

ATTACHMENT C

Clauses to be included in State Price Agreements

VENDOR OFFSET:

Pursuant to CRS 24-30-202.4 (as amended), the state controller may withhold debts owed to state agencies under the vendor offset Intercept system for: (a) unpaid child support debt or child support arrearages; (b) unpaid balance of tax, accrued interest, or other charges specified in Article 21, Title 39, CRS; (c) unpaid loans due to the student loan division of the department of higher education; (d) owed amounts required to be paid to the unemployment compensation fund; and (e) other unpaid debts owing to the state or any agency thereof, the amount of which is found to be owing as a result of final agency determination or reduced to judgment as certified by the controller.

INTERNET HOME PAGE:

Vendor will need to maintain current pricing information, names of primary sales person and technicians on an electronic World Wide web homepage using a format specified by the Division of Purchasing. Prices must be updated at least on a quarterly basis, but it will be a benefit to the vendor to update the database as their prices change. Vendors will provide the URL (Uniform Resource Locator) of their homepage to the Division of Purchasing for inclusion in the State of Colorado World Wide Web site.

Vendor must provide a complete price list in machine readable format to any State agency upon their request.

Vendor must notify the Division of Purchasing immediately of any change of vendor name or address, back order problems, price changes, etc..

QUARTERLY VOLUME REPORTS:

The vendor will be required to submit quarterly volume reports for their company, to the Division of Purchasing. A vendor's failure to submit these reports in a timely manner, in a format which is acceptable to the state, shall be sufficient cause for the state, at its sole discretion, to terminate their price agreement for cause. Reports are due within 15 (fifteen) calendar days of the close of each calendar quarter. The vendor must also provide detailed reports to any state agency requesting usage for their agency against this state price agreement. Cost savings reporting will be requested from the vendor (format to be determined).

ATTACHMENT D

Companies who responded to the RFP:

Adesta Communications

AT&T Broadband Network Solutions

Colorado Access Network

GDC Broadband Solutions

US West (now Qwest)

ATTACHMENT E

STATE OF COLORADO

GENERAL SUPPORT SERVICES
DEPARTMENT OF PERSONNEL
DIVISION OF PURCHASING

225 East 10th Avenue, Suite 802
Denver, Colorado 80203
Phone: (303) 866-6100
Fax: (303) 894-7440

Via Certified Mail
Return Receipt Requested
2 191 511 863



Bill Owens
Governor

Larry E. Trumbull, Sr.
Executive Director

C. Richard Pennington
Division Director

November 5, 1999

Kenneth Swinchart
President, Amigo.net
609 Main St.
Alamosa, CO 81101

Dear Mr Swinchart:

This letter is in response to your November 1, 1999 pre-award protest of the Request for Proposal for the State of Colorado Multi-Use Network procurement, RFP #TK-00011-00.

BACKGROUND

On October 22, 1999 the Colorado Division of Purchasing for Telecommunication Services issued RFP #TK-00011-00 for the configuration, implementation, and ongoing management of an outsourced statewide Multi-Use Network. By letter dated November 1, 1999, Amigo.net, an internet service provider with headquarters in Alamosa, Colorado, submitted a letter of protest to the Executive Director of the Colorado Department of Personnel. This protest was timely filed under Section 24-109-102, C.R.S. (1999).

ISSUES

The issues raised by this protest are:

- (1) The State sample contract is incomplete and does not provide all of the terms and conditions anticipated in this procurement.
- (2) The RFP reserves to the State the right to reject or accept portions of proposals, thereby making it impossible for offerors to provide a fixed price.
- (3) The RFP impermissibly adds a vague right to the State to cancel the contract for unstated reasons, in addition to the standard termination for default/cause clause contained in the sample contract.
- (4) The terms of the MNT RFP and resulting services violate the Federal Telecommunications Act of 1996 and the terms of the RFP itself.
- (5) The proposed contract, an indefinite delivery, indefinite quantity contract, lacks a minimum quantity, thereby includes no consideration, and will be void because of the lack of consideration.
- (6) The RFP treats subcontractors ambiguously and inconsistently.
- (7) The RFP contains a vague and contradictory evaluation scheme.

Exhibit B

DISCUSSION

- (1) The State sample contract is incomplete and does not provide all of the terms and conditions anticipated in this procurement.**

The contract that results from the competitive procurement process includes the RFP and winning offeror's proposal. The State is prohibited from making any changes to an offeror's proposal. Any changes to the RFP must be made by formal amendment and distributed in the same manner as the original RFP. Some of the terms within the basic contract document depend upon the winning offeror's proposal and the negotiations that result therefrom. A sample contract is included within the RFP to allow the offerors the opportunity to become familiar with the State contract format and provisions. While there are certain mandatory provisions in a State of Colorado contract, there is allowance for offeror negotiations for variances. Section 2T states, "Certain portions of the contract may be edited or adjusted to reflect the actual award given a particular vendor." The winning vendor is not obligated to the State until signing the contract.

- (2) The RFP reserves to the State the right to reject or accept portions of proposals, thereby making it impossible for offerors to provide a fixed price.**

The language in Section 2, paragraph Z, allows the State to "reject any proposal ...and to accept any portion of a proposal or all items proposed if deemed in the best interest of the State of Colorado." This was intended to explain two procurement processes, i.e. the establishment of the competitive range and the contract negotiations with the winning vendor. The MNT evaluation term is governed by the Colorado Procurement Code. The pricing for this RFP is adequately explained within Sections 3.6, 4.1.1, and 4.9.

- (3) The RFP impermissibly adds a vague right to the State to cancel the contract for unstated reasons, in addition to the standard termination for default/cause clause contained in the sample contract.**

Section 2 of the RFP, paragraph CC allows the State to cancel the contract for cause. This has legal significance and prevents the State from being arbitrary and capricious. This is further reflected in the sample contract clauses 2.3, 13, and 15, availability of funds, remedies, and termination for default, respectively.

- (4) The terms of the MNT RFP and resulting services violate the Federal Telecommunications Act of 1996 and the terms of the RFP itself.**

The Multi-use Network does not violate the Telecommunications Act. Quite the opposite is true. The MNT supports and advances the Act's goals of Universal Service. The MNT will acquire, through a public-private partnership, advanced telecommunication services to public sector organizations in rural and high cost areas at a reasonable and affordable rate.

Historically, the State of Colorado has allowed its agencies to satisfy communications requirements in a piecemeal manner. Traditionally, telecommunication providers have claimed that there is no business case to allow them to upgrade facilities in rural areas. This has left many areas of the State without the necessary infrastructure to deliver government services.

One goal of MNT is to aggregate the State's demand for telecommunication services to gain better buying power while, at the same time, providing incentive to the telecommunications industry to add the needed infrastructure to the rural areas. The aggregation of demand drives the MNT public/private partnership infrastructure which will allow more competition, particularly in the rural areas. For example, MNT may require 20 MB of network capacity to a particular ANAP. The installed infrastructure should

have additional capacity to allow other vendors to use the pipeline and compete their services into the area serviced by the ANAP. This competition should result in additional services with better quality at competitive rates.

Additionally, the MNT does not create "barriers to entry". Rather, the Multi-use Network public/private partnership creates the environment to allow more entrants into the field. The State is procuring a pipeline that will carry voice, data, and video traffic for the public sector in an integrated statewide network. Each county will have an Aggregated Network Access Point (ANAP) which allows the individual public users to connect to the network. Not only will offerors be allowed to bid on the MNT request for proposal, but they have the additional opportunity to bid on each community request for proposal (BeanPole) to connect to the MNT network.

The Community Incentive Funds (BeanPole) allows local communities to apply for grants to aggregate public sector demand in each community. It encourages local communities to aggregate the telecommunications demand from schools, libraries, local government offices, non-profit health care, etc. in order to obtain a connection to the state Multi-use Network. This will enhance the business case to telecommunications providers to increase the services and capacity available in those local communities. Each community will conduct a separate procurement for these services.

The goal of the MNT project is not to build ANAPs but to build connected ANAPs into an integrated statewide network. The State believes that a single integrator can manage the network much better than 70+ vendors. Bidding each ANAP separately would create additional administrative and management problems for the State. Additionally, the State believes that costs will be significantly higher if we acquire the infrastructure piecemeal. First, the state would be forced to act as the integrator to solve the compatibility and integration problems caused by having multiple vendors. Second, most of the ANAPS are located in rural areas. The State believes that the economies of scale realized through one vendor, coupled with the single integrator approach, will significantly reduce the costs associated with this procurement.

MNT does not require "flat-rate pricing". Offerors are provided the opportunity to price each ANAP separately. The State believes that competition will lead to fair and reasonable pricing for these services.

(5) The proposed contract, an indefinite delivery, indefinite quantity contract, lacks a minimum quantity, thereby includes no consideration, and will be void because of the lack of consideration.

You have correctly pointed out that this will be an indefinite delivery, indefinite quantity contract and that there must a stated minimum quantity in the contract to be legally binding. The RFP contains a sample contract that does not contain all the necessary terms due to obvious reasons. The stated minimum will be a negotiated contract term based upon the winning vendor's proposal. It will be at that time when the State will be able to quantify the minimum based upon the vendor's implementation schedule. Section 2T states, "Certain portions of the contract may be edited or adjusted to reflect the actual award given a particular vendor." The winning vendor is not obligated to the State until signing the contract.

(6) The RFP treats subcontractors ambiguously and inconsistently.

The RFP states that due to the size and complexity of this project, the Prime Contractor may require the use of subcontractors (Article 3, paragraph 3.2.1). The provisions pertaining to subcontractors were intended to encourage the Prime Contractor to use local subcontractors. The prime contractor/subcontractor team will be evaluated on their qualifications and experience in providing the desired services. The prime contractor will be responsible for all the work performed, including all subcontractors. The Prime Contractor will not have to submit a subcontractor for approval, but the State

will retain the right to refuse any subcontractor for just cause. The RFP amendment will reflect the deletion of the word "approved" in the note under paragraph 3.2.1.

(7) The RFP contains a vague and contradictory evaluation scheme.

The MNT evaluation scheme is clearly articulated in Section 4, paragraphs 4.1 and 4.1.1. There will be a total point value of 1200 with point breakdowns per the stated sections in paragraph 4.1. Paragraph 4.1.1 further explains the evaluation scheme and specifically details which items in paragraphs 4.2 through 4.9 will be evaluated and which items are mandatory requirements for award. The language in the first sentence of paragraph 4.1.1 only reflects those general considerations that are included within the evaluated sections.

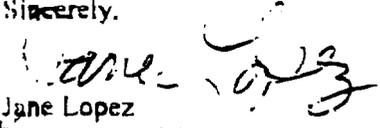
DECISION

Based upon the above, I find:

1. The State contract included in the RFP is a sample contract that will be completed in detail after negotiations with the winning vendor.
2. The pricing for this RFP is adequately explained in sections 3.6, 4.1 and 4.9.
3. The RFP is not vague in its right to cancel the contract for cause.
4. The State of Colorado Division of Purchasing for Telecommunication Services has not violated the Telecommunications Act of 1996.
5. The RFP contains a sample contract that is incomplete and will be completed upon award. This will include a stated minimum quantity for the indefinite delivery, indefinite quantity contract.
6. The State of Colorado is not treating subcontractors ambiguously nor inconsistently. An RFP amendment will be issued reflecting the word "approved" deleted from the note within section 3.2.1.
7. The RFP does not contain a vague and contradictory evaluation scheme. Sections 4.1 and 4.1.1 adequately explain what is required of all vendors.

Therefore your protest is denied. This denial is based on the procurement code and rules §24-109-102, C.R.S. (1999), C.C.R. 101-9, R-24-109-103 (01-99).

Sincerely,


Jane Lopez
Procurement Manager

ATTACHMENT F

STATE OF COLORADO

**GENERAL SUPPORT SERVICES
DIVISION OF FINANCE AND PROCUREMENT
STATE PURCHASING OFFICE**

225 East 16th Avenue, Suite 802
Denver, Colorado 80203
Phone: (303) 866-6100
Fax: (303) 894-7444

Via Certified Mail
Return Receipt Requested
Z 191 511 906

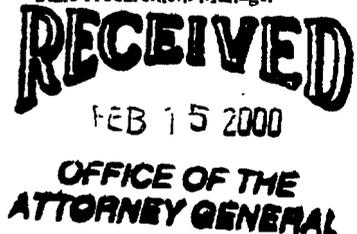


Bill Owens
Governor

Larry E. Trujillo, Sr.
Executive Director

Arthur L. Barnhart
State Controller

C. Richard Pennington
State Procurement Manager



February 15, 2000

Mr. Kenneth Swineheart
Amigo.net
609 1/2 Main Street
Alamosa, Colorado 81101

Dear Mr. Swineheart,

This letter responds to your January 4, 2000 appeal of the state's denial of your protest pursuant to Request for Proposals (RFP) # TK 00011-00.

BACKGROUND

On October 22, 1999, the Colorado Division of Purchasing, acting on behalf of Telecommunication Services, issued RFP # TK 00011-00 for the configuration, implementation, and on-going management of a statewide multi-use network. On November 1, Amigo.net protested certain elements of the specifications and content of the RFP. Ms. Jane Lopez, Procurement Manager for the Division of Purchasing, denied the protest on November 5, 1999. Because the protest decision did not advise Amigo.net of its right to appeal, as required by Procurement Rule R 24-109-102-03, I extended the appeal due date, and Amigo.net subsequently appealed on January 4 2000. An appeal hearing was held on January 27.

ISSUES

The issues raised by this appeal are:

1. Whether the RFP specifications are ambiguous because the state's sample contract does not set forth all the terms and conditions that will be encompassed by the final contract;
2. Whether the resulting contract will be void for lack of consideration because the RFP does not specify an exact quantity to be delivered;
3. Whether the RFP specifications are arbitrary or ambiguous because the RFP reserves to the state the right to accept portions of proposals;

Working together to support the business of government as your chosen provider



4. Whether the RFP specifications are arbitrary or capricious because the RFP gives the state the right to cancel the contract for cause;
5. Whether the RFP treats subcontractors ambiguously;
6. Whether the evaluation process set forth in the RFP is ambiguous and/or contradictory; and
7. Whether the provisions of the RFP violate the Federal Telecommunications Act.

DISCUSSION

Issues #1 & 2

The sample contract is included in the RFP in order to acquaint vendors with the standard provisions included in every state contract. The RFP and the offeror's proposal form the key elements that will be unique to this particular contract. The RFP specifications cannot be deemed ambiguous on the basis that the final contract language, which will be determined in large part by the winning offeror's proposal, is not part of the specifications or sample contract. Similarly, the final elements of the contract will set forth certain minimums, based on the provisions of the winning proposal and corresponding guarantees from the state, and this will constitute consideration sufficient to form a binding contract.

Issue #3

RFP paragraph Z of Section 2 states that the state may "... accept any portion of a proposal or all items proposed..." Amigo.net has interpreted this clause to mean that the state may pick and choose, at its sole discretion, any parts of a proposal without the offeror's concurrence. This provision is intended to address §24-103-203(6), which states:

As provided in the Request for Proposals and pursuant to rules, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for an award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions or revisions of proposals, and such revisions may be permitted after submission and prior to award for the purpose of obtaining best and final offerors.

I interpret paragraph Z of the RFP as referring to the negotiations provided for above. Therefore, (except in situations where line item bidding or use of alternates is expressly provided for) the state does not have authority to unilaterally alter a proposal by selecting/deleting portions but may negotiate revisions with the offeror.

Issue #4

The RFP, Section 2, paragraph CC, provides that the state may cancel this contract for cause by providing timely written notice to the contractor. Amigo.net contrasts this provision with paragraph 15 of the sample contract, which addresses "Termination for Default/Cause," and assumes that paragraph CC provides the state with authority to cancel the contract arbitrarily, for any reason it may choose. I believe this is an erroneous interpretation. Both paragraph CC and paragraph 15 require that a termination be based on a legally adequate "cause," and thus both prohibit the state from arbitrarily or capriciously terminating the contract.

Issue #5

This issue was addressed in the protest decision, and the RFP was modified to eliminate the word "approved." While the state retains the right to reject a specific subcontractor for a legitimate reason, offerors are not required to submit a list of potential subcontractors for the state's approval.

Issue #6

I have reviewed RFP sections 4.1 and 4.1.1, and find that they are not ambiguous. Section 4.1 properly sets forth the evaluation factors, as required by §24-103-203(5) CRS, and 4.1.1 describes the process the state will use in evaluating the proposal in regard to those factors. The process described in 4.1.1 does not change the factors set forth in 4.1.

Issue #7

Section 24-109-204(1) CRS states:

On each appeal submitted, the Executive Director or the Executive Director's designee shall promptly decide the contract controversy, debarment, or suspension or **whether the solicitation or award was in accordance with the procedures provided in this code, regulations enacted pursuant to this code, and the terms and conditions of the solicitation.** ... (Emphasis added.)

Therefore, I do not have authority to interpret the Federal Telecommunications Act of 1996 or federal anti-trust laws under the scope of this appeal, nor is it appropriate for me to substitute my judgment for that of Telecommunications Services in formulating policy to address the State of Colorado's telecommunications needs. My role, with regard to this issue, is to ensure that Telecommunications Services acted reasonably and did not arbitrarily disregard statutory requirements when they developed the specifications for this procurement. Telecommunications Services consulted with the Colorado Attorney General's Office in interpreting the applicable laws, and after reviewing the Attorney General analysis of the application of the act, I find that they gave due regard to the act's requirements. Therefore, I find no basis upon which to conclude that the state acted arbitrarily or capriciously in formulating the specifications for or the scope of this procurement.

DECISION

Based on the above, I find:

1. The absence of final details in the state's sample contract does not make the specifications ambiguous;
2. The ultimate contract signed by the state and the winning offeror will include substantially more detail regarding the deliverables; therefore it cannot be deemed to be void for lack of consideration at this stage in the procurement process;
3. The state's right to accept part of a proposal encompasses those changes allowable within the framework of the RFP negotiation process; therefore, the changes would have to be agreeable to the offeror or no contract would be signed between the parties;

4. The right to cancel the contract "for cause" means the state cannot cancel arbitrarily or capriciously;
5. The evaluation process described in the RFP is adequate and is not ambiguous or contradictory; and
6. Telecommunications Services has given due consideration to the requirements of the Telecommunications Act of 1996.

Therefore, the appeal is denied.

APPEAL RIGHTS

In accordance with §§24-109-205 and 24-109-206 CRS, you may appeal this decision to the District Court for the City and County of Denver within ten working days after receipt of the decision.

Sincerely,



Kay Kishline
Manager of Procurement Programs

ATTACHMENT G

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO
Case No. 00CV0942

Courtroom 9

ORDER

INS
OCT 13 2000

KENNETH D. SWINEHART,

ATTORNEY GENERAL

Plaintiff,

v.

STATE OF COLORADO, et al.,

Defendants.

Plaintiff having failed to file an Amended Complaint by September 1, 2000 or proof of service by September 29, 2000, as directed in my Order dated August 10, 2000, this case is HEREBY DISMISSED WITHOUT PREJUDICE for failure to prosecute.

DONE THIS 6th DAY OF October, 2000.

BY THE COURT:



Morris B. Hoffman
District Court Judge

cc: E. Schwiesow
R. Wolthoff (AG)

10-11-00
[Signature]

ATTACHMENT H



The State of Colorado Homepage

Office of the Governor - Press Office

FOR RELEASE:

Monday, April 17, 2000

CONTACTS:

Dick Wadhams

303/866-6324

Amy Jewett Sampson

303/866-6323

Anna Osborn, U S WEST

303/965-2556

OWENS ANNOUNCES \$37 MILLION STATE CONTRACT FOR U S WEST TO BUILD HIGH-SPEED COMPUTER NETWORK LINKING ALL OF COLORADO

DENVER – Governor Bill Owens announced today at a news conference that the State of Colorado has awarded U S WEST a \$37 million, ten-year contract to build a digital voice, video and data network that will provide high-speed links to state offices and schools in all 64 counties across Colorado.

"This new statewide network will help Colorado bridge the digital divide between rural and urban communities," said Gov. Owens. "It will be a key tool in helping to foster economic development and accelerate Colorado's high-tech growth."

The Multi-Use Network (MNT) is the fiber-optic backbone connecting all state government offices and educational institutions across the state. Through this public/private partnership, many rural communities will have access, for the first time, to advanced, high-speed broadband services for a variety of multi-use applications including distance learning, tele-medicine, electronic commerce, Internet access, and tele-working or commuting.

Colorado residents will be able to use the MNT backbone network to access applications that might include a parent being able to check online their child's homework assignments or a patient conferring with their doctor via the Internet.

The business-base in rural Colorado has not been developed to the point where it can support high-speed, broadband digital services. The MNT will help to close this gap between rural and urban Colorado. U S WEST, Cisco Systems and independent telco partners (CenturyTel, Phillips County Telephone Company, and Eastern Slope Telephone Company) will invest more than \$60 million to build out the state-wide network. The MNT will consolidate existing, but disparate, networks into one seamless backbone network to provide an array of advanced telecommunications services.

"We are committed along with our partners to helping Governor Owens realize his vision of making Colorado a thriving technology capital – not just of the West, but of the world," said Sue Parks, vice president and general manager of U S WEST's Large Business and Government Solutions group.

"Cisco believes the MNT will place Colorado at the forefront of states in providing Internet access that

will change the way Coloradans work, live, play, and learn," said Dave O'Callaghan, director of operations for Cisco Systems.

Last year, the Governor signed into law legislation (Beanpole bill) that provides approximately \$4.8 million dollars for the aggregation of rural telecommunications purchases by state and local governments and non-profit organizations to encourage private sector providers to extend modern telecommunications services to under-served areas of Colorado. The MNT serves as the backbone to this legislation.

Return to [Office of the Governor - Press Office](#).



[[Home](#) | [Top](#)]

governorowens@state.co.us

last modified 4-17-00

ATTACHMENT I

Qwest's Subcontractors:

CenturyTel

Cisco

EDS

Citizens Communications

Eastern Slope Telephone Company

Phillips County Telephone Company