

	Montana Operations Manual Policy	Category	Procurement
		Effective Date	03/01/2018
		Last Revised	04/24/2018
Issuing Authority	Department of Administration State Financial Services Division		
Internet Neutrality Principles in State Procurement			

I. Purpose

This policy establishes the requirements and approvals necessary to carry out "Amended Executive Order No. 06-2018 Providing for Internet Neutrality Principles in State Procurement."

II. Scope

This policy applies to all executive branch state agencies, except for the University system, procuring internet, data, and telecommunications services (collectively, "telecommunication services"), regardless of delegated procurement authority.

Nothing in this Executive Order supersedes any obligation or authorization a provider of broadband internet access service may have to address the needs of emergency communications or law enforcement, public safety, or national security authorities, consistent with or as permitted by applicable law, or limits the provider's ability to do so.

III. Requirements

After April 1, 2018, all state contracts and contract renewals for telecommunication services require prior written approval from the Department of Administration, State Information Technology Services Division (SITSD), and State Procurement Bureau (SPB). Approval must be obtained through the Information Technology Procurement Request (ITPR) process.

A. Solicitation and Contract Requirements

1. The SPB has established the following requirements for solicitations and contracts:
 - a. The language included in Appendix A must be included in all state contracts for telecommunications services. Any modifications to this standard language must be approved in writing by the State Procurement Bureau.
 - b. All solicitations for telecommunications services must include a prerequisite (included in Appendix B) requiring each bidder/offeror to certify compliance with the internet neutrality principles in the prerequisite. Certification of compliance will be a pass/fail requirement.

B. Required Approvals

1. Any agency procuring telecommunications services must submit an ITPR to SITSD for review and approval in accordance with the MOM ITPR policy.
2. All contracts and contract amendments for telecommunications services must be signed by the State CIO (or designee).

IV. Enforcement

Non-compliance with this policy may result in any of the following:

- A. Cancellation of a contract executed without complying with this policy under the authority of the State CIO ([2-17-514](#), MCA).
- B. SPB rescinding the Agency's Procurement Delegation Agreement.

V. References

This section contains content or links to supporting documents or sources.

- A. Amended [Executive Order 06-2018](#)
- B. [ITPR Policy](#)

APPENDIX A- Required Contract Language

Internet Neutrality Requirements. Contractor shall comply with the State of Montana Executive Order No. 06-2018 providing for Internet neutrality principles.

Definitions. As used in this agreement, the following definitions apply:

1. "Broadband Internet Access Service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the State finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this section.
2. "Reasonable Network Management" means a network management practice that has a primarily technical network management justification, but does not include other business practices. A network management practice is reasonable if it is primarily used for and tailored to achieving a legitimate network management purpose, taking into account the particular network architecture and technology of the broadband Internet access service.

In the event of a dispute as to the definition of any other term in this section, a term that is defined in the State Financial Services Division's Internet Neutrality Principles in State Procurement Policy shall have the definition set forth in the Policy.

Public Disclosure. Contractor shall publicly disclose to all of its customers in the State of Montana (including but not limited to the State itself) accurate information regarding the network and transport management practices (including cellular data and wireless broadband transport), performance, and commercial terms of its broadband Internet access services sufficient for: a) consumers to make informed choices regarding use of such services and for content, application, service; and b) device providers to develop, market, and maintain Internet offerings. Compliance with the Federal Communications Commission's transparency rule, as amended by 83 Fed. Reg. 7852, 7922 (Feb. 22, 2018), satisfies Contractor's public disclosure requirements under this paragraph.

Provision of Services. Contractor shall not, with respect to any customer in the State of Montana (including but not limited to the State itself):

1. Block lawful content, applications, services, or non-harmful devices, subject to reasonable network management that is disclosed to the consumer;
2. Throttle, impair or degrade lawful Internet traffic on the basis of Internet content, application, service, or use of a non-harmful device, subject to reasonable network management that is disclosed to the consumer;
3. Engage in paid prioritization; or
4. Unreasonably interfere with or unreasonably disadvantage:
 - a. End users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice; or
 - b. Edge providers' ability to make lawful content, applications, services, or devices available to end users.

Compliance. Contractor agrees to provide the State, upon request, at any time during the term of this contract, records, documentation, or any other information as required to demonstrate Contractor's compliance with the requirements of this section.

APPENDIX B- Certificate of Compliance

DEPARTMENT OF ADMINISTRATION
STATE FINANCIAL SERVICES DIVISION
STATE PROCUREMENT BUREAU

sfsd.mt.gov



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GOVERNOR

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Certificate of Compliance

Amended Executive Order No. 06-2018 providing for internet neutrality principles in state procurement directs the Department of Administration to add internet neutrality requirements to state contracts for telecommunication services. The requirements include the following:

Internet Neutrality Requirements. Contractor shall comply with the State of Montana Amended Executive Order No. 06-2018 providing for Internet neutrality principles.

Definitions. As used in this agreement, the following definitions apply:

1. "Broadband Internet Access Service" means a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up Internet access service. This term also encompasses any service that the State finds to be providing a functional equivalent of the service described in the previous sentence, or that is used to evade the protections set forth in this section.
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1. Block lawful content, applications, services, or non-harmful devices, subject to reasonable network management that is disclosed to the consumer;
2. Throttle, impair or degrade lawful Internet traffic on the basis of Internet content, application, service, or use of a non-harmful device, subject to reasonable network management that is disclosed to the consumer;
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 - a. End users' ability to select, access, and use broadband Internet access service or the lawful Internet content, applications, services, or devices of their choice; or
 - b. Edge providers' ability to make lawful content, applications, services, or devices available to end users.

Compliance. Contractor agrees to provide the State, upon request, at any time during the term of this contract, records, documentation, or any other information as required to demonstrate Contractor's compliance with the requirements of this section.

Yes, I have read, understand, and will comply with the requirements for internet neutrality principles identified above and outlined in Amended Executive Order No. 06-2018.

Company Name (Clearly Printed): _____

Authorized Signature: _____

Date: _____

No, I do not agree. **Important: Non-compliance with these requirements will result in disqualification of your proposal from further consideration.**

Company Name (Clearly Printed): _____

Authorized Signature: _____

Date: _____