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**Thurston 9-1-1 Communications (TCOMM)**  
**2703 Pacific Ave SE, Suite A**  
**Olympia, WA 98501**

Request for Proposal # **BH-PS-150421**

Description: **Bald Hill Power Supply Reconfiguration**

Issue Date: **20 April 2021**

Proposal Deadline: **2:00PM PST, 25 May 2021**

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## 1.0 INTRODUCTION AND OVERVIEW

### 1.1 INTRODUCTION

Thurston 9-1-1 Communications (TCOMM) is seeking bids to install an off-grid power supply at the Bald Hills radio site, located at Right Spur Weyerhaeuser Forest Service Road 1176F25, Washington; N46-48-42.6, W122-24-21.4.

### 1.2 RFP CONTACT INFORMATION

**Keith Flewelling**

2703 Pacific Ave SE Suite A

Olympia, WA 98501

360-704-2732

[keith.flewelling@tcomm911.org](mailto:keith.flewelling@tcomm911.org)

All questions/inquiries pertaining to this RFP should be directed to the Contact listed above. Any information obtained from any other source shall not be binding. All questions must be requested in writing no later than **5:00PM PST on 11 May 2021**. Questions received will be shared with other RFP respondents and will be posted on TCOMM's website at [www.tcomm911.org](http://www.tcomm911.org).

### 1.3 PRE-BID SITE WALK-THROUGH

An optional site walk is available **5 May 2021 at 9:00 AM PST** at the work site. Bidders must pre-register for the site walk no later than **2:00 PM PST on 3 May 2021** via email to the Contact listed above. **Registration Requests received after the time and date specified will not be eligible for attending the site walk. Thurston 9-1-1 Communications is not responsible for registrations not received.** COVID-19 precautions will be followed during the site walk – masks will be required.

### 1.4 BID DEADLINE

Bids shall be submitted no later than **2:00 PM PST on 25 May 2021** and may be mailed or hand-delivered to 2703 Pacific Ave SE, Suite A, Olympia, WA 98501, prior to the deadline. **Bids received after the time and date specified above will not be eligible for consideration. Thurston 9-1-1 Communications is not responsible for bids delivered late by the U.S. Postal Service or other private carrier.**

## 2.0 STATEMENT OF WORK

### 2.1 SCOPE OF WORK

**A. Project Overview**

TCOMM is requesting bids to design, provide and install an off-grid power supply to the Bald Hills radio site located at Right Spur Weyerhaeuser Forest Service Road 1176F25, Washington; N46-48-42.6, W122-24-21.4. Project specifications are outlined in Exhibit A.

**B. Installation Scheduling, Cooperation and Coordination**

No work is to be done on site without coordination with the designated TCOMM representative. TCOMM will have a representative on site during the Work process, but reserves the right to waive this requirement in order to expedite the Work process.

Work must be done during the hours of 8 AM PST and 5 PM PST, Monday through Friday. Alternate hours may be considered with the written approval of the designated TCOMM representative. All efforts will be made to accommodate the Bidder's scheduling in order to expedite the Work process. It will be the responsibility of the Bidder to coordinate with TCOMM to accommodate alternate schedules.

**C. Site Plans, As-Built Drawings**

The Exhibit B, Site Plan drawings provided by TCOMM shall be construed as drawings indicating principles and general details of the construction of the various parts of the installations. The Bidder shall be responsible for the review, cross-checking and correction, if required, of these drawings with respect to possible errors, contradictions and inconsistencies in association with the Work.

The Bidder shall provide a written list of any discrepancies, errors, contradictions or inconsistencies that are directly related to the Work. TCOMM will make corrections at its discretion.

**D. Site Conditions**

The site compound is fenced and gated with alarm monitors on the entrances, gates, and other access points. Video surveillance at the site is constant. Restroom facilities are not available on site. Bidder must make accommodations for workers as is required by other documents. Bidder must remove all debris, trash, or other items that remain on site and are a product of the installation.

**2.2 PROJECT ORGANIZATION AND MANAGEMENT**

**A. Project Manager**

The Bidder shall assign a Project Manager with full authority over all personnel and resources of the project organization as well as over subcontractors and other third parties. The Project Manager shall have full authority to negotiate and conclude with TCOMM and his/her subcontractors and suppliers all issues related to the agreement. The Project Manager shall be the single point of contact to the designated TCOMM representative for all formal matters.

The Project Manager shall establish and maintain an effective project management program in order to supervise and direct the Work and use his/her best skill and attention to accomplish the objectives of the Work agreement. The Bidder's project management shall have full control of the work to be performed and be responsible for the work methods and techniques, planning, co-ordination of the work with TCOMM or other contractors. The Bidder shall at all times enforce strict discipline and good order amongst the Bidder's employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him/her.

The Bidder and/or Bidders' subcontractors shall give timely notices and comply with all laws, codes, standards, ordinances, rules, regulations and orders of any authority bearing on the performances of the Work. If the Bidder observes, that the agreement is at variance therewith in any respect, the Bidder shall promptly notify TCOMM in writing. If the Bidder without such notice to TCOMM performs any work, knowing to be in conflict with such rules, regulations, laws, codes, standards and orders, the Bidder shall assume full responsibility therefore and shall bear all costs attributable thereto.

## **B. Work Performed by TCOMM**

TCOMM reserves the right to simultaneously perform any work on the Site(s), but outside the scope of this agreement, with TCOMM's own forces, and/or to award separate contracts in connection with other work on the Site(s).

## **2.3 SAFETY AND SECURITY**

The Bidder shall comply with all safety standards associated with the trade and in regards to OSHA and Washington State Administrative Code WAC Ch. 296-155 as it pertains to Safety Standards for Construction Workers.

The Bidder shall enforce the applicable safety and health rules and measures on all his/her subcontractors and all other persons directly or indirectly employed by him/her on the Site.

The Bidder shall provide to himself/herself the necessary first aid facilities in the construction site. This facility shall be equipped with first aid equipment in accordance with OSHA instructions and guidelines.

## **2.4 PREVAILING WAGES**

Thurston 911 Communications requires prevailing wages under chapter 39.12 RCW. Any worker, laborer, or mechanic employed in the performance of any part of the work shall be paid not less than the applicable prevailing rate of wage.

The work is located in Thurston County.

The effective date for prevailing wages on this project will be the **bid due date** with these exceptions:

- If the project is not awarded within six (6) months of the due date, the award date is the effective date.
- If the project is not awarded pursuant to bids, the award date (date the contract is executed) is the effective date

The rates in effect on the bid due date shall apply for the duration of the contract.

Prevailing rates of pay, benefit, and overtime codes can be located at [www.lni.wa.gov](http://www.lni.wa.gov). Hard copies are available upon request at 2703 Pacific Ave Suite A, Olympia, WA 98501.

For prevailing wage questions, contact the Dept. of Labor & Industries at 360-902-5335.

## **2.5 CHANGE PROCEDURES**

### **A. Minor Adjustments**

TCOMM shall have the authority to order minor changes in the work not involving an adjustment of the agreement sum, or an extension of the agreement time and not inconsistent with the intent of the Quote. Such changes may be affected by a supplementary field instruction or by written order.

### **B. Change Orders**

TCOMM, without invalidating the agreement, may request at any time Changes in the Scope of the Work, consisting of additions, deletions or other revisions, affecting the scope of the works initially quoted. The contracted sum and the contracted time shall be adjusted accordingly. All such Changes shall be authorized by issue of a Change Order as an agreement amendment and shall be executed under the applicable conditions of the executed Contract except in what the orders explicitly modify.

A Change Order is a written order authorized by TCOMM, issued after the signing of the executed Contract authorizing a change in the Work or an adjustment in the agreement sum or agreement time. The agreement sum and agreement time can only be changed only by an official Change Order.

The adjustment of the Contract sum for the Quoted Work and Materials resulting from a change in the Work shall be determined in the following ways:

1. By mutual acceptance of a lump sum proposal of the Contractor for the works comprising the change, properly and in detail itemized as described below, by using forms identical or similar as the ones included in Exhibit C.
2. By unit prices stated in the original agreement or subsequently agreed upon.

The change proposal shall contain a detailed and itemized list of the affected or to be performed works, including a detailed measurement of volume of quantities per item; furthermore, cost breakdown for labor, material, equipment, general and overhead costs and a summary and detailed analysis of the impact of the change on the schedule.

The preparation of any change proposal(s) of the Bidder and the detailed schedule analysis associated with the Change Proposal shall be free of cost for TCOMM.

TCOMM reserves the right to involve any third party for the implementation of a change if no satisfactory agreement can be reached between TCOMM and the Bidder.

No changes shall be implemented into the work prior to explicit authorization or approval by TCOMM.

The Bidder shall keep and make available to TCOMM an updated record of the changes and their status (pending, rejected, approved, in progress, closed).

## 3.0 PROPOSALS

### 3.1 INSTRUCTIONS

#### **A. Cost of Preparing Bids**

TCOMM is not liable for any costs incurred by Bidder in the Preparation and evaluation of Bids submitted.

#### **B. Bid Effective Date**

All Bids submitted shall be a firm quote for a minimum period of 90 days after the due date listed in this document, unless otherwise stated in writing in the quotation.

#### **C. Pricing and Taxes**

The Bid price shall include everything necessary for the execution and completion of the Contract, except as may be provided otherwise in this document. The Bid must include all costs including labor, and all costs associated with the equipment, as described in the bid, including but not limited to labor, materials, freight, overhead, administrative, and permit and regulatory costs, unless otherwise agreed to in advance in writing. Freight charges shall be FOB to the designated delivery point(s).

Washington State sales tax shall be listed as a separate line item on the bid. The vendor shall remit sales tax to the State as provided by statute.

**D. Examination of RFP Document**

The submission of a bid shall constitute an acknowledgement upon which TCOMM may rely that the Bidder has thoroughly examined and is familiar with this document, including any work site identified, and has reviewed and inspected all applicable statutes, regulations, ordinances and resolutions addressing or relating to the goods or services to be provided hereunder.

The failure of a Bidder to comply with above requirement shall in no way relieve the Bidder from any obligations with respect to its quotation or to any Contract awarded pursuant to this RFP. No claim for additional compensation shall be allowed which is based upon a lack of knowledge or misunderstanding of this RFP.

**E. Alterations to Proposals**

Any addition, limitation, or provision made or attached to the bid proposal may render it non-responsive and/or be cause for its rejection. Any alteration by erasure or interlineations shall be explained or noted and initialed by the Bidder.

**F. Public Disclosure**

Bids received shall be considered a public document and will be available for inspection and copying by the public in accordance with the Public Records Act, Chapter 42.56 RCW (the "Act").

If the Bidder considers any portion of any record provided to TCOMM under this RFP whether in electronic or hard copy form, to be protected under law, the Bidder shall clearly identify each such portion with words such as "CONFIDENTIAL," "PROPRIETARY" or "BUSINESS SECRET". If a request is made for disclosure of such portion, TCOMM will determine whether the material should be made available under the Act. If TCOMM determines that the material is subject to disclosure, TCOMM will notify the Bidder of the request and allow the Bidder ten (10) business days to take whatever action it deems necessary to protect its interests. If the Bidder fails or neglects to take such action within said period, TCOMM will release the portions of records deemed by TCOMM to be subject to disclosure. TCOMM shall not be liable to the Bidder for inadvertently releasing records pursuant to a disclosure request not clearly identified by the Bidder as "CONFIDENTIAL", "PROPRIETARY" or "BUSINESS SECRET".

### 3.2 REQUIRED PROPOSAL DOCUMENTS

Bids must include all information requested and meet all specifications/requirements outlined in this RFP. Incomplete bids will not be included in the selection process.

**A. Format and Submission**

The format of the proposal is detailed in Exhibit A. All bids must be submitted in a sealed package or envelope. The package/envelope shall be clearly identified with the appropriate RFP number on the outside and addressed to the RFP Contact listed in this RFP. A minimum of three (3) copies of the RFP shall be included in the package.

### 3.3 BID OPENING

The Bid Opening will be held at **2:00 PM PST, 25 May 2021** at 2703 Pacific Ave SE Suite A, Olympia, WA 98501.

### 3.4 BID SELECTION

TCOMM reserves the right to reject any or all Bids or to waive any minor irregularities within a bid. TCOMM reserves the right to award the Contract to the lowest responsive, responsible bidder as it best serves the interest of TCOMM. All materials submitted by the Bidder will be scored, along with other evidence TCOMM may obtain otherwise, to determine whether the Bidder is in compliance with the terms and conditions set forth in this RFP. Failure of a bidder to be deemed responsible or responsive may result in the rejection of a quotation.

In determining the responsibility of the bidder, TCOMM may also consider:

- The ability, capacity and skill to perform the Contract or provide the service required.
- The character, integrity, reputation, judgment and efficiency of the bidder.
- Financial resources to perform the Contract properly and within the times specified.
- The quality and timeliness of performance on previous contracts with TCOMM.
- Compliance with federal, state and local laws and ordinances relating to public contracts.

Bidder deemed to be not responsible may submit an appeal to the RFP Contact listed in this document no later than 2 business days after the Bid Opening. Appeals received after this date shall not be considered.

### 3.5 BID PROTEST

In order to be considered, a protest shall be in writing, addressed to the project manager, and must include:

- The name, address and phone number of the bidder or the authorized representative of the bidder
- The RFP Number and/or Title under which the protest is submitted
- A detailed description of the specific grounds for protest and any supporting documentation. It is the responsibility of the protesting bidder to supplement its protest with any subsequently discovered documents prior to the Purchasing Agent's decision
- The specific ruling or relief requested

Protests based on specifications or other terms in the RFP documents which are apparent on the face of said documents must be received by TCOMM911 no later than ten (10) calendar days prior to the date established for submittal of bids. Protests based on other circumstances must be received by TCOMM911 within five (5) calendar days after the protesting bidder knows or should have known of the facts and circumstances upon which the protest is based. In no event shall a protest be considered if all bids are rejected or after award of the contract.

TCOMM911 shall not execute the contract with anyone other than the protesting bidder without first providing at least two full business days' written notice of TCOMM911's intent to execute the contract for the project, provided that the protesting bidder submits notice in writing of its protest no later than two full business days following bid opening.

Upon receipt of a timely written protest, the Executive Director shall investigate and shall respond in writing to the protest prior to award of contract. The decision of the Executive Director shall be final.

Failure to comply with the protest procedures set forth herein may render a protest untimely or inadequate and may result in rejection thereof by TCOMM911.

## 4.0 TERMS AND CONDITIONS

No Change or deviation from the terms set forth in this document is permitted without prior written approval by TCOMM.

### 4.1 CONTRACT DEADLINE

The Bidder to whom the contract is awarded shall execute and return the contract to TCOMM within seven (7) business days from the date the Notice of Award is sent to the Bidder. In case of failure of the Bidder to execute the contract, TCOMM shall have the right to award to contract to the next lowest responsive, responsible Bidder.

### 4.2 REQUIRED INFORMATION

Contracts awarded will require the submission of several documents to include but not be limited to the following:

1. W-4 Request for Taxpayer Identification Number
2. Unified Business Identifier (UBI)
3. Employment Security Department (ESD) Number
4. WA Certificate of Workers' Comp Coverage
5. Sworn Statement in accordance with RCW 49.48.082
6. WA Labor & Industries Training Certificate in accordance with ESSHB 1673, when applicable

### 4.3 INSURANCE

Contractors shall comply with the insurance terms listed in Exhibit C.

### 4.4 RETAINAGE AND BONDS

Contracts awarded will be subject to the bond and retainage requirements per RCW 39.08.010 and RCW 60.28.011 when applicable.

### 4.5 STANDARD CONTRACT TERMS

#### **A. Administration**

This Contract is between TCOMM and the Contractor who shall be responsible for providing the goods or services described herein. TCOMM is not party to defining the division of work between the Contractor and its Subcontractors. The Contractor represents that it has or shall obtain all duly licensed or qualified personnel, materials and equipment required to perform work hereunder.

The Contractor's performance under this Contract may be monitored and reviewed by a Project Manager appointed by TCOMM. Reports and data required to be provided by the Contractor shall be delivered to the Project Manager. Questions by the Contractor regarding interpretation of the terms, provisions and requirements of this Contract shall be addressed to the Project Manager for response.

#### **B. Amendments**

No oral order or conduct by TCOMM shall constitute a Contract Amendment. Contract Amendments shall only be effective upon written notification by TCOMM. TCOMM reserves the right to amend the contract to add or delete goods or services within the intended scope of this contract. This may include, but is not limited to:

- Approval or replacements for discontinued items,

- Add items of like function, or similar in nature or purpose to the originally listed products
- The provision of ancillary services in response to minor changes in TCOMM needs
- Extend the contract to include optional terms

Cost or Price Analysis may be required by TCOMM for the evaluation of contract modifications, terminations, revision to contract requirements or other circumstances as determined by TCOMM.

### **C. Invoices and Payments**

The Contractor shall submit properly certified invoices to TCOMM. The invoice(s) shall contain the following information: The Contract Number, item numbers, description of supplies or services, quantities, unit prices, extended totals, and discounts, if applicable. For services, identify specific deliverables, and/or hourly rates, hours worked, total hours or related fees. The Contractor shall bill to the address in the Contract. Failure to comply with these requirements or to provide an invoice in conformance with the contract may delay payment.

Upon acceptance of payment, the Contractor waives any claims for the goods or services covered by the Invoice. No advance payment shall be made for the goods or services furnished by Contractor pursuant to this Contract.

TCOMM will not be bound by prices contained in an invoice that are higher than those in the currently approved price list. If a price increase has not been accepted in writing by TCOMM, the invoice may be rejected and returned to the Contractor for a correction.

### **D. Rejection of Goods or Services**

After award, the Project Manager or authorized TCOMM representative shall have the option of rejecting or refusing delivery of any and all goods or services which are not in strict conformity with the requirements of the Statement of Work documents, the RFP, and other listed items. All rejected goods or services shall be promptly replaced or re-performed and be subject to approval by TCOMM. All replacement goods and services shall be provided at the Contractor's own expense.

### **E. Termination**

#### ***1. Termination for Convenience***

TCOMM for its convenience may terminate this Contract, in whole or in part, at any time by written notice sent certified mail, return receipt requested, to the Contractor. After receipt of a Notice of Termination ("Notice"), and except as directed by TCOMM, the Contractor shall immediately stop work as directed in the Notice, and comply with all other requirements in the Notice. The contractor will be paid its costs, including necessary and reasonable Contract close-out costs and profit on that portion of the work satisfactorily performed up to the date of termination as specified in the notice. The Contractor shall promptly submit its request for the termination payment, together with detailed supporting documentation. If the Contractor has any property in its possession belonging to TCOMM, the Contractor shall account for the same and dispose of it in the manner TCOMM directs. All termination payment requests may be subject to Cost or Price Analysis to determine reasonableness and compliance with the Contract and applicable laws and regulations. TCOMM is not required to accept goods if the contract is terminated for convenience.

#### ***2. Termination for Default***

If the Contractor does not deliver work in accordance with the Contract, or the Contractor fails to perform in the manner called for in the Contract, or the Contractor fails to comply with any material provisions of the Contract, TCOMM may terminate this Contract, in whole or in part, for default as follows:

A Notice to Cure will be served on the Contractor by certified mail (return receipt requested) or a delivery

service capable of providing a receipt. The Contractor shall have ten (10) days from the date the Notice to Cure was served to cure the default or provide TCOMM with a detailed written plan, which indicates the time and methods needed to bring the work into compliance and cure the default.

If the Contractor has not cured the default or the plan to cure the default is not acceptable to TCOMM, TCOMM may terminate the Contract. Termination shall occur by serving a Notice of Termination by certified mail (return receipt requested) or delivery service capable of providing a receipt on the Contractor setting forth the manner in which the Contractor is in default and the effective date of termination.

The Contractor will only be paid for work delivered and accepted, or work performed in accordance with the manner of performance set forth in the Contract less any damages to TCOMM caused by or arising from such default. All termination payment requests are subject to cost or price analysis to verify compliance with the Contract and applicable laws and regulations.

The termination of this contract shall in no way relieve the Contractor from any of its obligations under this Contract nor limit the rights and remedies of TCOMM hereunder in any manner. TCOMM is not required to accept goods if the contract is terminated for default.

**F. Force Majeure**

The term force majeure shall include, without limitation by the following enumeration: acts of nature, acts of civil or military authorities, fire, accidents shutdown for purpose of emergency repairs, industrial, civil or public disturbances, causing the inability to perform the requirements of this Contract. If any party is rendered unable, wholly or in part, by a force majeure event or any event cause not within such party's control, to perform or comply with any obligation or condition of this Contract, upon giving notice and reasonably full particulars to the other party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event the Contractor ceases to be excused pursuant to this provision, then TCOMM shall be entitled to exercise any remedies otherwise provide for in this Contract, including Termination for Default.

**G. Taxes, Licenses, and Certificate Requirements**

This Contract and any of the work provided hereunder is contingent and expressly conditioned upon the ability of the Contractor to provide the specified goods or services consistent with applicable federal, state or local laws and regulations. If, for any reason, the Contractor's required compliances are terminated, suspended, revoked or in any manner modified from their status at the time this Contract becomes effective, the Contractor shall notify TCOMM immediately of such condition in writing.

The Contractor and subcontractor(s) shall maintain and be liable for all taxes (except sales/use taxes), fees, licenses, permits and costs as may be required by applicable federal, state or local laws and regulations as applicable to the work under this Contract.

**H. Assignment**

Neither party shall assign any interest, obligation or benefit under or in this Contract or transfer any interest in the same, whether by assignment or novation, without prior written consent of the other party. If assignment is approved, this Contract shall be binding upon and inure to the benefit of the successors of the assigning party. If assignment is approved, it shall be accepted by either party upon the posting of all required bonds, securities and the like by the assignee and the written agreement by assignee to assume and be responsible for the obligations and liabilities of the Contract, known and unknown, and applicable law.

**I. Indemnification and Hold Harmless**

In providing services under this Contract, the Contractor is an independent contractor, and neither the

Contractor, nor its officers, agents nor employees are employees of TCOMM for any purpose. The Contractor shall be responsible for all federal and/or state tax, industrial insurance and Social Security liability that may result for the performance of and compensation for these services and shall make no claim of career service or civil service rights which may accrue to a TCOMM employee under state or local law.

TCOMM assumes no responsibility for the payment of any compensation, wages, benefits, or taxes by or on behalf of the Contractor, its employees and/or others by reason of this Contract. The Contractor shall protect, indemnify, defend and save harmless TCOMM and its officers, agents and employees from and against any and all claims, costs, and/or in support of the performance of this Contract.

The Contractor further agrees that it is responsible for and shall repay TCOMM all indicated amounts following an audit exception which occurs due to the negligence, intentional act and/or failure for any reason to comply with the terms of this Contract by the Contractor, its officers, employees, agents, and/or representatives. This duty to repay shall not be diminished or extinguished by the prior termination of the Contract pursuant to the Duration of Contract, or the Termination section.

The Contractor shall protect, defend, indemnify, and save harmless TCOMM, officers, employees, and agents from any and all costs, fees (including attorney fees), claims, actions, lawsuits, judgments, awards of damages or liability of any kind, arising out of or in any way resulting from the negligent acts or omissions of the Contractor, its officers, employees, subcontractors or any tier and/or agents. The Contractor agrees that its obligations under this paragraph extend to any claim, demand, and/or cause of action brought by or on behalf of any of its employees, subcontractors of any tier or agents.

In addition to injuries to persons and damage to property, the term "claims", for purposes of this paragraph, shall include, but not be limited to, assertions that the use of transfer of any software, book, document, report, film, tape, or sound reproduction or material of any kin, delivered hereunder, constitutes an infringement of any copyright, patent, trademark, trade name, and/or otherwise results in unfair trade practice.

For purposes of indemnity, the Contractor, by mutual negotiation, hereby waives, as respects TCOMM only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

In the event TCOMM incurs attorney fees and/or costs in the defense of claims within the scope of the indemnity clause, such attorney fees and costs shall be recoverable from the Contractor. In addition, TCOMM shall be entitled to recover from the Contractor its attorney fees, and costs incurred to enforce the provisions of this section.

The indemnification, protection, defense and save harmless obligations contained herein shall survive the expiration, abandonment or termination of this Contract.

Nothing contained within this provision shall affect and/or alter the application of any other provision contained with this Contract.

#### **J. Applicable Law and Forum**

Except as hereinafter specifically provided, this Contract shall be governed by and construed according to the laws of the State of Washington, including, but not limited to, the Uniform Commercial Code, Title 62A RCW.

#### **K. Conflicts of Interests and Non-Competitive Practices**

By entering into this Contract to perform work, the Contractor represents that it has no direct or indirect pecuniary or proprietary interest, and that it shall not require any interest that conflicts in any manner or degree with the work required to be performed under this Contract. The Contractor shall not employ any Person or agent having any conflict of interest. In the event that the Contractor or its agents, employees or representatives

hereafter acquires such a conflict of interest, it shall immediately disclose such conflict to TCOMM. TCOMM shall require that the Contractor take immediate action to eliminate the conflict up to and including termination for default.

By entering into this Contract to perform work, the Contractor represents that no Persons except as designated by Contractor shall be employed or retained to solicit or secure this Contract with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and no gratuities, in the form of entertainment, gifts or otherwise, were bided or given by the Contractor or any of its agents; employees or representatives, to any official, member or employee of the County or other governmental agency with a view toward securing this Contract or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Contract.

**L. Disputes, Claims, and Appeals**

The Contractor shall address questions or claims regarding the Contract in writing to the Project Manager, within ten (10) Days of the date on which the Contractor knows or should know of the question or claim. No claim by the Contractor shall be allowed if asserted after final payment under this Contract. No claim shall be allowed for any costs incurred more than ten (10) Days before the Contractor gives written notice, as required in this section. The Project Manager shall ordinarily respond to the Contractor in writing with a decision, but absent such written response, the question or claim shall be deemed denied upon the tenth (10th) Day following receipt by the Project Manager.

In the event the Contractor disagrees with the determination of the Project Manager, the Contractor shall within five (5) Days of the date of such determination, appeal the determination in writing to TCOMM. Such written notice of appeal shall include all information necessary to substantiate the appeal. TCOMM shall review the appeal and make a determination in writing, which shall be final. Appeal TCOMM shall be a condition precedent to alternative dispute resolution or litigation.

Pending final decision of a dispute hereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with the direction of the Project Manager. Failure to comply precisely with the time deadlines under this subsection as to any claim shall operate as a waiver and release of that claim and an acknowledgement of prejudice to TCOMM.

**M. Maintenance of Records/Audits**

The Contractor shall maintain, and shall require any sub-contractor to maintain, accounts and records, including personnel, property, financial, and programmatic records and such other records as may be deemed necessary by TCOMM to ensure proper accounting for all contract funds and compliance with this Contract. All such records shall sufficiently and properly reflect all direct and indirect costs of any nature expended and services provided in the performance of this Contract. The Contractor shall make such documents available to TCOMM for inspection, copying, and auditing upon request.

**N. Severability**

Whenever possible, each provision of this Contract shall be interpreted to be effective and valid under applicable law. If any provision is found to be invalid, illegal, or unenforceable, then such provision or portion thereof shall be modified to the extent necessary to render it legal, valid, and enforceable and have the intent and economic effect as close as possible to the invalid, illegal, and unenforceable provision. If it is not possible to modify the provision to render it legal, valid and enforceable, then the provision shall be severed from the rest of this Contract. The invalidity, illegality or unenforceability of any provision shall not affect the validity, legality or enforceability of any other provision of this Contract, which shall remain valid and binding.