STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR APPLICATIONS (RFA)

RFA NO. GRID2021

**NOTE**: If you download this RFA from the Department of Commerce website, you are responsible for regularly checking the Program Website listed in RFA SECTION 2.1 RFA COORDINATOR in order for your organization to receive any RFA amendments or Applicant questions/agency answers.

GRANT TITLE: Grid Modernization Program – Clean Energy Fund 3 & Clean Energy Transition 4

APPLICATION DUE: May 18, 2021, 5 p.m., Pacific Time, Olympia, WA

TRACK 1 ESTIMATED TIME PERIOD FOR CONTRACT: 09/27/2021-09/26/2022

TRACK 2 ESTIMATED TIME PERIOD FOR CONTRACT: 09/27/2021-09/26/2023

APPLICANT ELIGIBILITY: This procurement is open to those applicants that satisfy the minimum qualifications stated herein and that are available for work in Washington State.

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1. INTRODUCTION

* 1. PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE,” is initiating this Request for Applications (RFA) to solicit applications from Applicants interested in the Grid Modernization Grant Program (Program).

The Washington State Legislature created the Clean Energy Fund (CEF) to fund projects that provide a public benefit to communities in Washington State through deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or otherwise increase energy independence for the state. This RFA includes funds appropriated in Sections 1035 (4) and 6006 (5) of [Substitute House Bill 1102](http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1102-S.PL.pdf#page=1), Clean Energy Transition 4 (CET4) and Clean Energy Fund 3 (CEF3), respectively.

This Program supports the deployment of grid modernization projects that advance clean and renewable energy technologies, and transmission and distribution control systems; that support integration of renewable energy sources, deployment of distributed energy resources, and sustainable microgrids; and that increase utility customer options for energy sources, energy efficiency, energy equipment, and utility services. This Program provides grants to Retail Electric Utilities for development costs related to grid modernization projects.

This approach aligns with state policy goals and stakeholder feedback, including as expressed through the Clean Energy Transformation Act[[1]](#footnote-1), State Energy Strategy[[2]](#footnote-2), and Energy and Climate Policy Advisory Committee: Report on Clean Energy Fund Recommendations[[3]](#footnote-3). As part of the work towards a 100% clean energy standard in 2045, electric utilities in Washington must ensure that all customers benefit from a transition to clean energy through the equitable distribution of energy and non-energy benefits to Vulnerable Populations and Highly Impacted Communities (which, among others, include communities “located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151”). Such benefits include energy security and resilience, requiring enhancements to the resilience and flexibility of our state’s energy infrastructure to reduce the threat of natural and human caused disasters and to address the risks posed by climate change. To ensure that applicants of all sizes and technical capacities can participate in the equitable transition to clean energy, it is also vital that funding be made available at all stages of project design and deployment.

Desired Program outcomes include advancing clean energy technologies and transmission and distribution control systems; supporting Retail Electric Utilities in meeting their commitment to equitably distribute direct and indirect benefits to Federally Recognized Tribal Governments, Tribal Communities and Vulnerable Populations, including increased grid and community resilience; encouraging innovative utility project partnership arrangements that support project co-creation and help Applicants to meet the above goals; and providing equitable support to Retail Electric Utilities in pursuing these goals, regardless of their level of previous engagement with relevant technologies.

Any award going to contract is contingent on the Applicant successfully meeting all requirements outlined in these Program documents, submitting application materials, competitive evaluation of the application, and securing financial match requirements as committed in their application.

COMMERCE intends to award multiple contracts to provide the services described in this RFA.

* 1. OBJECTIVES AND SCOPE OF WORK

The primary purpose of grants funded under this solicitation must be to:

* + Advance clean and renewable energy technologies,
  + Advance transmission and distribution control systems,
  + Support integration of renewable energy sources,
  + Support the deployment of distributed energy resources and sustainable microgrids and/or
  + Increase utility customer options for energy sources, energy efficiency, energy equipment and utility services.

Grants funded under this solicitation will be evaluated under two parallel tracks. Each track has its own application form and required attachments, so please select the track that best fits your project’s readiness level.

Track 1 projects will primarily consist of earlier-stage predesign efforts. Each project must, at a minimum, have completed the following activities (Track 1 Minimum Scope of Work) by the conclusion of its performance period:

* Procure consulting and/or other services necessary to completing Track 1 activities
* Complete commercial and financial feasibility analysis.
* Form project team and preliminary contractual relationships between partners, as well as preliminary commercial terms of the project
* Assess site, including constraints and opportunities
* Assess legal and environmental suitability
* Complete preliminary (10%) system technical design (technology assessment and selection, configuration)
* Complete preliminary project management and operations plan, budget and schedule

Track 2 projects will primarily consist of detailed design and engineering efforts. Each project must, at a minimum, have completed the following activities (Track 2 Minimum Scope of Work) by the conclusion of its performance period:

* Procure consulting and/or other services necessary to completing milestones starting in Track 2 and extending through project completion
* Conduct project valuation and investment planning
* Assess regulatory, legal and environmental suitability and financial viability
* Develop formal commercial terms/contractual relationships between project participants (project organization and operational control, legal and financial terms)
* Complete 30% Design Basis Memorandum and secure approval from all project partners
* Complete detailed plans for project construction, commissioning, and operations (including, but not limited to, procurement of equipment and services, operations, permitting and compliance, and project schedules)

Ineligible activities (for both tracks) include:

* Early stage concept development.
* Project site acquisition or site selection activities
* Grant proposal development for future State or other funding applications.

To align with state and local policy goals, COMMERCE is prioritizing projects that meet the following criteria:

* Projects that would support the deployment of capital assets that provide direct and/or indirect benefits to Federally Recognized Tribal Governments, Tribal Communities or Vulnerable Populations;
* Projects that include partnership with Federally Recognized Tribal Governments or non-profit organizations serving Tribal Communities or Vulnerable Populations;
* Projects that would support the deployment of capital assets that use new or innovative products or services, which deploy a proven technology in a novel approach, and which have the potential to catalyze market transformation;
* Projects that demonstrate meaningful community engagement and/or co-creation of project design and outcomes;
* Projects located in Non-Entitlement areas and areas with low household median income and high Environmental Health Disparities rankings;
* Projects which provide other benefits to Washington communities or to the host utility; and
* Projects sited and/or designed to provide added reliability and/or resilience in communities that experience a high frequency and/or duration of power interruptions.

These goals are reflected in the scoring criteria. A project is still eligible to apply to this grant if it does not intend to or is unable to accomplish one or all of these policy goals. Prioritization varies between Tracks; see Section 4.2 for further information.

All project costs must be necessary for and directly connected to the deployment of a planned capital asset.

Examples of eligible, reimbursable expenditures include:

* Personnel costs for site design, permitting, project management, and procurement of services necessary to the completion of project objectives.
* Energy storage technologies, controllers, etc. (if the capital asset will be completed during the performance period)
* Forms of clean and renewable distributed generation that are not conventional or commercially available technology (if the capital asset will be completed during the performance period) (see list of ineligible expenditures)
* Certain other distributed energy resources (such as demand response), provided they are not conventional or commercially available technology (if the capital asset will be completed during the performance period) (see list of ineligible expenditures)
* Construction materials, electrical connectivity, inverters, etc. directly connected to the deployment of the capital asset (if the capital asset will be completed during the performance period).

Examples of ineligible, non-reimbursable expenditures include:

* Property purchases and leases, or activities related to site selection or acquisition
* Equipment purchases for capital assets that would not be completed during the grant performance period (see Section 1.5 Period of Performance)
* Buildings and structures
* Other non-electrical or thermal energy system facilities improvements
* Rolling stock and other non-capital assets
* Conventional and commercially available technology (like solar PV systems, smart meters, etc. unless there is an inherent innovative application),
* Software upgrades and maintenance agreements
* Expenses related to early stage project concept development
* Grant proposal development for future State or other funding applications.
  1. MINIMUM QUALIFICATIONS

*Note:* *For an application to be considered responsive, the Application must clearly demonstrate how all minimum qualifications are met.*

Applicant Qualifications

1. Applicant must be licensed to do business in the State of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
2. The primary eligible Applicant, which may partner with other organizations, must be a Retail Electric Utility, as defined in Section 1.7 DEFINITIONS.

Project Qualifications

1. Project must conduct activities necessary to the deployment of capital assets with a lifespan of greater than 13 years and planned to be located in the State of Washington.
2. Application must demonstrate a commitment to completing the minimum scope of work for the corresponding application Track, as defined in Section 1.2 OBJECTIVES AND SCOPE OF WORK.
3. Project must primarily address one or more of the following technology areas:
   1. Battery energy storage
   2. Demand management
   3. Distribution protection and automation for integration of renewable energy and/or distributed energy resources
   4. Microgrids using renewable energy or other renewable distributed energy resources
   5. Transactive controls
   6. Building thermal or district energy systems
   7. Reduce transmission or distribution congestion issues limiting renewable energy resources
   8. Other clean, distributed energy resources (must not be conventional and commercially available technology such as solar PV systems, smart meters, etc., unless there is an inherent innovative application)
4. Application must commit to providing match at a level equal to or greater than 1:1.
   1. FUNDING

This program combines funding from the CEF3 and CET4, in Sections 6006 (5) and 1035 (4) of [Substitute House Bill 1102](http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1102-S.PL.pdf#page=1), respectively. Of this funding, up to $3,000,000 in state funds from CEF3 and $1,655,790 in state funds from CET4 are expected to be competitively awarded this round.

|  |  |
| --- | --- |
| Funding Source | Available to be Awarded |
| Total CEF3 Funds (Washington State Capital Funds) | $3,000,000 |
| Total CET4 Funds (Washington State Capital Funds) | $1,655,790 |
| Total Available Funding for Competition | Up to $4,655,790 |

Grant funding provided under this solicitation must not be used to supplant or displace previous, current, or future funding.

Awards for Track 1 projects will be drawn from CET4 funding. Awards for Track 2 projects will be drawn from CEF3 funding. Each applicant may only receive one grant award for a Track 1 project and one grant award for a Track 2 project, unless all applicants with applications recommended by a majority of reviewers in the same track have been awarded funds. If funding from either source remains after all projects recommended by a majority of reviewers are awarded funding, Commerce may choose to allocate funding from that source to any remaining applications from the other Track. Awardees will be subject to the funding source requirements as applicable. See SECTION 4.7.D FUNDING REQUIREMENTS for more information.

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFA.

Maximum award amounts for each track are as follows:

* The maximum award for Track 1 projects is $150,000
* The maximum award for Track 2 projects is $500,000.

Applications exceeding the maximum allowable award will be considered non-responsive and will not be evaluated.

Contracts will be performance based, with final payment made upon successful completion of the scope of work. Progress payments for completed milestones can be negotiated during contract development.

A minimum 1:1 match of non-state cash and/or in-kind resources is required.

In-kind or cash claimed as match for this program cannot be claimed as match for any other funding sources. Match cannot be originally paid from any state sources and may not be incurred prior to the award date. All costs must be necessary and reasonable to accomplish the proposed project.

Any contract awarded as a result of this competitive process is contingent upon no successful process protests. Any contract awarded as a result of this procurement is contingent upon the availability of funding.

* 1. PERIOD OF PERFORMANCE

Applicants are strongly encouraged to develop projects that can be implemented within 12 months after contract execution. The period of performance of any Track 1 contract resulting from this RFA is tentatively scheduled to begin on or about 09/27/2021 and to end prior to 09/26/2022. The period of performance of any Track 2 contract resulting from this RFA is tentatively scheduled to begin on or about 09/27/2021 and to end prior to 09/26/2023. Amendments extending the period of performance, if any, shall be at the sole discretion of COMMERCE.

COMMERCE reserves the right to extend the contract for two one-year periods.

* 1. CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with the requirements prior to submitting an application that includes current or former state employees.

* 1. DEFINITIONS

Definitions for the purposes of this RFA include:

Apparent Successful Grantee: The applicant selected as the entity to perform the anticipated services, subject to completion of contract negotiations and execution of a written contract.

Applicant: Individual or company interested in the RFA and that may or does submit an application in order to attain a contract with the AGENCY.

Application: A formal offer submitted in response to this solicitation.

COMMERCE or AGENCY: The Department of Commerce is the agency of the state of Washington that is issuing this RFA.

Federally Recognized Tribal Government: The government of any federally recognized Indian tribe whose traditional lands and territories included parts of Washington, designated subdivisions and agencies (such as a Tribal Housing Authority), or any other entities or authorities of a federally recognized Tribal government in corporate form or otherwise.

Grantee: Individual or company whose application has been accepted by COMMERCE and is awarded a fully executed, written contract.

Highly Impacted Community: Geographic locations characterized by degraded environmental conditions, whose residents face economic or historic barriers to participation in environmental quality decisions and solutions.

Non-Profit Organization: a corporation no part of the income of which is distributable to its members, directors or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

Proposer: Individual or company that submits an application in order to attain a contract with COMMERCE.

Request for Applications (RFA): Formal procurement document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an RFA is to permit the applicant community to suggest various approaches to meet the need at a given price.

Retail Electric Utility: any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state, per RCW 80.60.010.[[4]](#footnote-4)

Vulnerable Population: Communities that experience a disproportionate cumulative risk from environmental burdens due to: (a) adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and (b) sensitivity factors, such as low birth weight and higher rates of hospitalization.[[5]](#footnote-5)

* 1. ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Applicants may contact the RFA Coordinator to receive this Request for Applications in Braille or on tape.

2. GENERAL INFORMATION FOR APPLICANTS

* 1. RFA COORDINATOR

The RFA Coordinator is the sole point of contact in COMMERCE for this procurement. All communication between the Applicant and COMMERCE upon release of this RFA shall be with the RFA Coordinator, as follows:

|  |  |
| --- | --- |
| Name | Forrest Watkins |
| E-Mail Address | [cef@commerce.wa.gov](mailto:Forrest.Watkins@commerce.wa.gov) |
| Mailing Address | 1011 Plum St SE  PO Box 42525  Olympia WA 98504-2525 |
| Program Website | https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-grid-modernization/ |
| Phone Number | 360-522-3390 |

Any other communication will be considered unofficial and non-binding on COMMERCE. Applicants are to rely on written statements issued by the RFA Coordinator. *Communication directed to parties other than the RFA Coordinator may result in disqualification of the Applicant.*

* 1. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

|  |  |
| --- | --- |
| Issue Request for Applications | 03/11/2021 |
| Question & answer period | 03/11/2021/-05/11/2021 |
| Answers to Q&A posted no later than | Weekly, through 05/14/2021 |
| Pre-Application Virtual Conference 1 | 03/22/2021 12:00 p.m. PT |
| Pre-Application Virtual Conference 2 | 03/30/2021 10 a.m. PT |
| Applications due | 05/18/2021 5 p.m. |
| Evaluate applications | 06/08/2021 |
| Conduct oral interviews with finalists, if required | As needed |
| Announce “Apparent Successful Grantee” and send notification via e-mail to unsuccessful proposers | 06/30/2021 |
| Hold debriefing conferences (if requested) | 07/09/2021 |
| Negotiate contract | 07/19/2021-09/24/2021 |
| Begin contract work | No later than 09/27/2021 |

COMMERCE reserves the right to revise the above schedule.

2.3 PRE-APPLICATION CONFERENCE

Two virtual pre-application conferences are scheduled to be held at the dates and times listed in RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. All prospective Applicants are encouraged to attend; however, attendance is not mandatory. A video conference link will be available for remote attendance via the program website.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-application conference or in subsequent communication with the RFA Coordinator will be documented and answered in written form. A copy of the questions and answers will be posted to the program website specified in SECTION 2.1 RFA COORDINATOR, provided the question(s) are received prior to the end of the Question & Answer Period listed in RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

2.4 SUBMISSION OF APPLICATIONS

ELECTRONIC APPLICATIONS:

The application must be received by the RFA Coordinator no later than the deadline stated in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

Applications must be submitted electronically as an attachment to an e-mail to the RFA Coordinator, at the e-mail address listed in RFA SECTION 2.1 RFA COORDINATOR. Applicants must use the application form corresponding to the track under which they are applying for funding, and must submit all mandatory attachments listed on that application form. Attachments to e-mail shall be in Microsoft Word format or PDF. Application files submitted via email shall be in Microsoft Word format, PDF, or Excel formats. All attachments must be submitted in 12 point, single space Arial font. Page Margins must not be narrower than ½ inch on all sides. Page counts assume single sided documents on standard, letter size pages. Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. The Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Applicant to the offer. COMMERCE does not assume responsibility for problems with Applicant’s e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Applications may not be transmitted using facsimile transmission or via hard copy.

Applicants should allow sufficient time to ensure timely receipt of the application by the RFA Coordinator. Late applications will not be accepted and will be automatically disqualified from further consideration, unless COMMERCE e-mail is found to be at fault at COMMERCE’S sole determination. All applications and any accompanying documentation become the property of COMMERCE and will not be returned.

2.5 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Applications submitted in response to this competitive procurement shall become the property of COMMERCE. All applications received shall remain confidential until the Apparent Successful Grantee is announced; thereafter, the applications shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the application that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Applicant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words “Proprietary Information” printed on the lower right hand corner of the page. Marking the entire application exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Applicant has marked as "Proprietary Information," COMMERCE will notify the Applicant of the request and of the date that the records will be released to the requester unless the Applicant obtains a court order enjoining that disclosure. If the Applicant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If an Applicant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours’ notice to the RFA Coordinator is required. All requests for information should be directed to the RFA Coordinator.

* 1. REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, amendments will be provided via the program website listed in SECTION 2.1 RFA COORDINATOR. Amendments will also be published on Washington’s Electronic Bid System (WEBS). The WEBS website can be located at <https://fortress.wa.gov/ga/webs/>. The published questions and answers and any other pertinent information will be placed on the program website listed in SECTION 2.1 RFA COORDINATOR.

COMMERCE also reserves the right to cancel or to reissue the RFA in whole or in part, prior to execution of a contract.

* 1. DIVERSE BUSINESS INCLUSION PLAN

Responders will be required to submit a Diverse Business Inclusion Plan with their application. In accordance with legislative findings and policies set forth in RCW 39.19, the state of Washington encourages participation in all contracts by firms certified by the office of Minority and Women’s Business Enterprises (OMWBE), set forth in RCW 43.60A.200 for firms certified by the Washington State Department of Veterans Affairs, and set forth in RCW 39.26.005 for firms that are Washington Small Businesses. Participation may be either on a direct basis or on a subcontractor basis. However, no preference on the basis of participation is included in the evaluation of Diverse Business Inclusion Plans submitted, and no minimum level of minority- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal governmental rules included or referenced in the contract documents will apply.

COMMERCE has the following agency goals:

10% participation by Minority Owned Business

6% participation by Women Owned Business

5% participation by Veteran Owned Business

5% participation by Small Businesses

* 1. ACCEPTANCE PERIOD

Applications must provide 60 days for acceptance by COMMERCE from the due date for receipt of applications.

* 1. **COMPLAINT PROCESS**

Vendors may submit a complaint to COMMERCE based on any of following:

1. The solicitation unnecessarily restricts competition;
2. The solicitation evaluation or scoring process is unfair; or
3. The solicitation requirements are inadequate or insufficient to prepare a response.

A complaint may be submitted to COMMERCE at any time prior to 5 days before the bid response deadline. The complaint must meet the following requirements:

1. The complaint must be in writing;
2. The complaint must be sent to the RFA coordinator in a timely manner;
3. The complaint should clearly articulate the basis for the complaint; and
4. The complaint should include a proposed remedy.

The RFA coordinator will respond to the complaint in writing. The response to the complaint and any changes to the solicitation will be posted on WEBS. The Director of COMMERCE will be notified of all complaints and will be provided a copy of COMMERCE’S response. The complaint may not be raised again during the protest period. COMMERCE’S action or inaction in response to the complaint will be final. There will be no appeal process.

* 1. RESPONSIVENESS

All applications will be reviewed by the RFA Coordinator to determine compliance with administrative requirements and instructions specified in this RFA. The Applicant is specifically notified that failure to comply with any part of the RFA may result in rejection of the application as non-responsive.

COMMERCE also reserves the right at its sole discretion to waive minor administrative irregularities.

* 1. MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the application submitted. Therefore, the application should be submitted initially on the most favorable terms which the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact an Applicant for clarification of its application.

The Apparent Successful Grantee should be prepared to accept this RFA for incorporation into a contract resulting from this RFA. Contract negotiations may incorporate some, or all, of the Applicant’s application. It is understood that the application will become a part of the official procurement file on this matter without obligation to COMMERCE.

Recipients of funding will be expected to report to COMMERCE no less than quarterly regarding progress of the funded project. A final Fact Sheet summarizing project successes, lessons learned, and other information requested by COMMERCE will be required prior to processing the final invoice. Information deemed proprietary may be viewed, but not downloaded, via Skype or Google docs, to demonstrate milestone completion.

All Apparent Successful Grantees will be required to adhere to all laws pertaining to the funding source(s).

* 1. CONTRACT GENERAL TERMS & CONDITIONS

The Apparent Successful Grantee will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit D. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

* 1. COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Applicant in preparation of an application submitted in response to this RFA, travel to or conduct of a presentation, or any other activities related to responding to this RFA

* 1. NO OBLIGATION TO CONTRACT

This RFA does not obligate the state of Washington or COMMERCE to contract for services specified herein.

* 1. REJECTION OF APPLICATIONS

COMMERCE reserves the right at its sole discretion to reject any and all applications received without penalty and not to issue a contract as a result of this RFA.

* 1. COMMITMENT OF FUNDS

The Director of COMMERCE or delegate is the only individual who may legally commit COMMERCE to the expenditures of funds for a contract resulting from this RFA. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

* 1. ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful grantee will be provided a form to complete with the contract to authorize such payment method.

* 1. INSURANCE COVERAGE

Upon request, the Grantee is to furnish COMMERCE with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements set forth within the contract.

The Grantee shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. Upon request, the Grantee shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of Commerce request. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit D.

3. APPLICATION CONTENTS

Proposals should be submitted following the instructions found in Section 2.4 SUBMISSION OF APPLICATIONS. Please see Section 1.2 OBJECTIVES AND SCOPE OF WORK for more information on the two application Tracks.

Application requirements vary between tracks, and the application *must*:

* Use the application form corresponding to their project’s application track.
* Include all mandatory attachments for their project’s application track

Application files submitted via email shall be in Microsoft Word format, PDF, or Excel formats. All attachments must be submitted in 12 point, single space Arial font. Page Margins must not be narrower than ½ inch on all sides. Page counts assume single sided documents on standard, letter size pages. Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. Proposals must be written in English

Application questions and detailed instructions are provided in the application form corresponding to each application track. Items marked “mandatory” in each track’s application form must be included as part of the application for it to be considered responsive under that track, however, these items are not all scored. Items marked “scored” in each track’s application form are those that are awarded points as part of the evaluation conducted by the evaluation team.

* 1. TRACK 1 APPLICATION CONTENTS

ELECTRONIC PROPOSALS:

Track 1 proposals must be submitted electronically to the RFA Coordinator in the order noted below:

1. Application Summary
2. Technical and Management Proposal
3. Cost Proposal
4. Certifications and Assurances (Exhibit A to this RFA)
5. Site Information Data Sheet
6. Diverse Business Inclusion Plan (Exhibit B to this RFA)
7. Workers’ Rights Certification (Exhibit C to this RFA)
8. Partner Letter(s) of Support (OPTIONAL)
9. OMWBE Certification (OPTIONAL AND NOT SCORED)

The Applicant must use the provided Track 1 Application form to provide Track 1 Application Summary and Technical, Management, and Cost proposal information.

* 1. TRACK 2 APPLICATION CONTENTS

ELECTRONIC PROPOSALS:

Track 2 proposals must be submitted electronically to the RFA Coordinator in the order noted below:

1. Application Summary
2. Technical Proposal
3. Management Proposal
4. Cost Proposal
5. Certifications and Assurances (Exhibit A to this RFA)
6. Staff Resumes
7. Site Information Data Sheet
8. Diverse Business Inclusion Plan (Exhibit B to this RFA)
9. Workers’ Rights Certification (Exhibit C to this RFA)
10. Partner Letter(s) of Support (OPTIONAL)
11. OMWBE Certification (OPTIONAL AND NOT SCORED)

The Applicant must use the provided Track 2 Application form to provide Track 2 Application Summary and Technical, Management, and Cost proposal information.

4. EVALUATION AND CONTRACT AWARD

* 1. EVALUATION PROCEDURE

COMMERCE staff will review the Application to determine whether it a) was properly completed, b) submitted on time, and c) whether it addresses and aligns with the minimum qualifications described in RFA Section 1.3 MINIMUM QUALIFICATIONS. If the application does not meet threshold criteria, it will not be scored.

Responsive Applications will be reviewed and scored by an evaluation panel determined by COMMERCE. Responsive applications will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of applications shall be accomplished by an evaluation team(s), to be designated by COMMERCE, which will determine the ranking of the applications.

COMMERCE, at its sole discretion, may elect to invite the top-scoring Applicants as finalists for an oral presentation.

The RFA Coordinator may contact the Applicant for clarification of any portion of the Applicant’s application.

* 1. EVALUATION BREAKDOWN

1. Track 1 Evaluation Breakdown

The following weighting will be assigned to the application for evaluation purposes.

|  |  |
| --- | --- |
| Category (Including application components scored) | Percentage of Score |
| Innovation & Impact  Technical and Management Proposal | 35% |
| Equity & Community Benefits  Technical and Management Proposal  Site Information Data Sheet  Partner Letters of Support (conditional, see description of Attachment #8 in the Track 1 Application) | 35% |
| Project and Development Plan  Technical and Management Proposal  Cost Proposal | 15% |
| Management Proposal  Technical and Management Proposal  Partner Letters of Support | 15% |
| Cost Proposal The evaluation process is designed to award this procurement not necessarily to the Applicant of least cost, but rather to the Applicant whose application best meets the requirements of this RFA. However, Applicants are encouraged to submit applications which are consistent with state government efforts to conserve state resources. The Cost Proposal will be evaluated for reasonableness but not scored.  Workers’ Rights Certification – Those Applicants which certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 3% added to their score (see Attachment C). |

1. Track 2 Evaluation Breakdown

The following weighting will be assigned to the application for evaluation purposes.

|  |  |
| --- | --- |
| Category (Including application components scored) | Percentage of Score |
| Innovation & Impact  Technical Proposal | 33% |
| Equity & Community Benefits  Site Information Data Sheet  Equity Narrative  Letter of Support from Tribal Government (conditional, see description of Attachment #10 in the Track 2 Application) | 33% |
| Project and Development Plan  Technical Proposal  Cost Proposal | 22% |
| Management Proposal  Management Proposal  Partner Letters of Support  Staff Resumes | 11% |
| Cost Proposal The evaluation process is designed to award this procurement not necessarily to the Applicant of least cost, but rather to the Applicant whose application best meets the requirements of this RFA. However, Applicants are encouraged to submit applications which are consistent with state government efforts to conserve state resources. The Cost Proposal will be evaluated for reasonableness but not scored.  Workers’ Rights Certification – Those Applicants which certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 3% added to their score (see Attachment C). |

Please see RFA SECTION 1.2 OBJECTIVES AND SCOPE OF WORK for more information on project prioritization.

COMMERCE reserves the right to award the contract to the Applicant whose application is deemed to be in the best interest of COMMERCE and the state of Washington.

* 1. ORAL PRESENTATIONS MAY BE REQUIRED

After evaluating the written applications COMMERCE may elect to schedule oral presentations of the finalists. Should oral presentations become necessary, COMMERCE will contact the top-scoring Applicant(s) from the written evaluation to schedule a date, time, and location. Commitments made by the Applicant at the oral interview, if any, will be considered binding.

The scores from the written evaluation and the oral presentation combined together will determine the apparent successful grantee.

* 1. NOTIFICATION TO PROPOSERS

COMMERCE will notify the Apparently Successful Bidder of their selection in writing upon completion of the evaluation process. Applicants whose applications were not selected for further negotiation or award will be notified separately by e-mail.

* 1. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Any Applicant who has submitted an application and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Unsuccessful Applicant Notification is e-mailed or faxed to the Applicant. Debriefing requests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington, on the third business day following the transmittal of the Unsuccessful Applicant Notification. The debriefing must be scheduled within three (3) business days of the request.

Discussion at the debriefing conference will be limited to the following:

* Evaluation and scoring of the Applicant’s application;
* Critique of the application based on the evaluation;
* Review of proposer’s final score in comparison with other final scores *without* identifying the other Applicants or reviewing their applications.

Comparisons between applications or evaluations of the other applications will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

* 1. PROTEST PROCEDURE

Protests may be made only by Applicants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest of the acquisition with the RFA Coordinator. Protests must be received by the RFA Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

Applicants protesting this procurement shall follow the procedures described below. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Applicants under this procurement.

All protests must be in writing, addressed to the RFA Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFA number, the grounds for the protest with specific facts and complete statements of the action(s) being protested. A description of the relief or corrective action being requested should also be included.

Only protests stipulating an issue of fact concerning the following subjects shall be considered:

* A matter of bias, discrimination, or conflict of interest on the part of an evaluator;
* Errors in computing the score;
* Non-compliance with procedures described in the procurement document or COMMERCE policy.

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) an evaluator’s professional judgment on the quality of an application, or 2) COMMERCE’S assessment of its own and/or other agencies needs or requirements.

Upon receipt of a protest, a protest review will be held by COMMERCE. The COMMERCE Director or an employee delegated by the Director who was not involved in the procurement will consider the record and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may affect the interest of another Applicant that also submitted an application, such Applicant will be given an opportunity to submit its views and any relevant information on the protest to the RFA Coordinator.

The final determination of the protest shall:

* Find the protest lacking in merit and uphold COMMERCE’S action; or
* Find only technical or harmless errors in COMMERCE’S acquisition process and determine COMMERCE to be in substantial compliance and reject the protest; or
* Find merit in the protest and provide COMMERCE options which may include:
* Correct the errors and re-evaluate all applications, and/or
* Reissue the solicitation document and begin a new process, or
* Make other findings and determine other courses of action as appropriate.

If COMMERCE determines that the protest is without merit, COMMERCE will enter into a contract with the apparently successful grantee. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

* 1. SUCCESSFUL APPLICANTS

The following requirements will apply to successful Applicants who are awarded funds. In all cases, the most restrictive requirements apply.

1. **REQUIREMENTS OF SUCCESSFUL APPLICANTS**

* Must complete a Risk Assessment Survey provided by COMMERCE.
* Must maintain good standing with all applicable federal, state, local, and utility laws and requirements, including COMMERCE.
* Will maintain responsibility for the project for the duration of the contract and performance period.
* Is responsible for compliance with the contract for the duration of the performance period.
* Must provide a certification of and maintain insurance as designated in SECTION 2.18 INSURANCE COVERAGE and as stated in the executed contract for the performance period of the contract.
* Must follow all state and/or local procurement requirements that apply.
* Comply with contract, audit, and monitoring requirements, including scheduled site visits.
* Utilize the online invoicing process for reimbursement.
* Are responsible for all costs incurred prior to the execution of a contract and not have the expectation for reimbursement of those costs.
* Must comply with and ensure that all Grantees, Subcontractors, and Partners comply with:
  + All applicable federal, state, local, and utility laws and requirements.
  + The applicable requirements of this Program and any resulting contract.
* Must ensure that all Grantees, Subcontractors, and Partners:
  + Are responsible and qualified Applicants.
  + Are eligible to bid on public works projects (not debarred).
  + Are in and maintain good standing with all applicable federal, state, local, and utility laws and requirements, including from COMMERCE.
* Must accurately and honestly represent the project within the application. COMMERCE reserves the right to revoke awards or terminate contracts inclusive of recuperating funding for projects that were misrepresented or fail to implement the project proposed during application.

1. PROJECT REQUIREMENTS:

* Must serve the intended purpose of the contract for the duration of the performance period.
* By the end of the performance period, the applicant must have completed all mandatory activities for their Track, as described in Section 1.2 OBJECTIVES AND SCOPE OF WORK.
* Project must conduct activities necessary to the deployment of capital assets with a lifespan of greater than 13 years and planned to be located in the State of Washington.
* Capital projects must be planned to cost less than or equal to $10 million.
* Project financial analysis must demonstrate a pathway to economic viability without future state funding.
* Must be completed within 12 months of execution of the grant agreement for Track 1 projects. Must be completed within 24 months of execution of the grant agreement for Track 2 projects. Exceptions may be negotiated on a case-by-case basis.
* All entities involved must comply with [Washington State Prevailing Wage](https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/).
* Comply with [Washington State Environmental Policy Act (SEPA)](https://ecology.wa.gov/regulations-permits/SEPA-environmental-review).
* Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
* Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor’s Executive Order 05-05](https://dahp.wa.gov/project-review/governors-executive-order-05-05).

1. REPORTING REQUIREMENTS:

* Report on all pass-through funding using the provided reportable expense template under the [Governor’s Diverse Spend Initiative](https://omwbe.wa.gov/state-supplier-diversity-reporting).
* Recipients of funding must report to COMMERCE no less than quarterly regarding progress of the funded project, project outcomes upon completion of the project, budget projections, and other information upon request by COMMERCE. Upon project completion, a final summary of the project is required.

1. FUNDING REQUIREMENTS:

* Funding awarded through this Program cannot supplant or displace any funding designated for the submitted project. If awarded funds will go towards an existing project, the Applicant may be required to provide information concerning the project’s funding to demonstrate that funds have not been displaced.

5. RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers’ Rights Certification

Exhibit D Service Contract Template with General Terms and Conditions *(Note: The provided template is for CEF3-funded projects. Contract terms for CET4 projects may vary.)*

EXHIBIT A

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the application to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

1. I/we declare that all answers and statements made in the application are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single application.
3. The attached application is a firm offer for a period of 60 days following receipt, and it may be accepted by COMMERCE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this application, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this application or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this application. All applications become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this application.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached application constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit an application for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others who may have pertinent information regarding the ability of the Applicant and the lead staff person to perform the services contemplated by this RFA.
10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.
11. If the Applicant does not have a UBI number, a statement is attached stating that the Applicant will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
12. The project proposed in this application could not go forward at the scale or on the schedule proposed without the requested funding.

We (*check one*):

are submitting proposed Contract exceptions. (See Section 2.12, Contract General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

are not submitting proposed Contract exceptions (*default if neither are checked*).

On behalf of the Applicant submitting this application, my signature below attests to the accuracy of the above statement as well as my authority to bind the submitting organization.

|  |  |
| --- | --- |
|  | |
| Signature of Proposer Date | |
|  | |
| Printed Name | Title |

EXHIBIT B

DIVERSE BUSINESS INCLUSION PLAN

Do you anticipate using, or is your firm, a State Certified Minority Business? Y/N

Do you anticipate using, or is your firm, a State Certified Women’s Business? Y/N

Do you anticipate using, or is your firm, a State Certified Veteran Business? Y/N

Do you anticipate using, or is your firm, a Washington State Small Business? Y/N

If you answered No to all of the questions above, please explain: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Please list the approximate percentage of work to be accomplished by each group:

Minority \_\_%

Women \_\_%

Veteran \_\_%

Small Business \_\_%

Please identify the person in your organization who will manage your Diverse Inclusion Plan responsibility:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

E-Mail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT C

Contractor Certification  
Executive Order 18-03 – Workers’ Rights  
Washington State Goods & Services Contracts

*Pursuant to the Washington State Governor’s Executive Order 18-03 (dated June 12, 2018), the Washington State Department of Commerce is seeking to contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.*

| Solicitation No.: | \_\_\_GRID2021\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- |

I hereby certify, on behalf of the firm identified below, as follows (check one):

* No Mandatory Individual Arbitration Clauses and Class or Collective Action Waivers for Employees. This firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

or

* Mandatory Individual Arbitration Clauses and Class or Collective Action Waivers for Employees. This firm requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

* This firm certifies it has no employees.

|  |  |
| --- | --- |
| I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.  Firm Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name of Contractor/Bidder – Print full legal entity name of firm | |
| By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature of authorized person  Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Title of person signing certificate  Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name  Place: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print city and state where signed |

Return Contractor Certification to Procurement Coordinator as part of your complete response.

EXHIBIT D



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

*1011 Plum St SE• PO Box 42525 • Olympia, Washington 98504-2525 • (360) 725-4000*

*www.commerce.wa.gov*

<<Date>>

Contact Name

Legal Name

Street

Street2

City, WA ZIP

RE: Grant Contract Number

Dear Contact Name:

Attached is the contract for a grant under the Clean Energy Fund. This contract details the terms and conditions that will govern the agreement between us. Please review the Program Specific, Special and General Terms and Conditions of the contract carefully. We recommend consulting with your legal advisor before accepting this offer.

When you have obtained the appropriate original signatures, either return two signed original contracts and all the attachments to the Washington State Department of Commerce (Commerce) within 60 calendar days of the date of this letter OR email a scanned legible signed copy. Failure to return the contracts within this timeline may result in your project being delayed.

After the contracts have been fully executed by Commerce, the scanned original, along with instructions for invoicing and reporting will be emailed to you. If a hard copy if preferred, please indicate so upon return of the signed contract. We encourage you to store all pertinent documents associated with this project and grant offer in a file that is readily accessible to auditors for their periodic review.

A requirement of this program is that you must maintain updated project records as well as ensure current liability insurance documents are sent to Commerce annually.

We look forward to working with you over the course of your successful project. If you have any questions about this contract, please contact us.

Sincerely,

Staff Name

State Energy Office

Phone number

Email

Capital Agreement with

<Local gov or recipient organization name here>

through

Clean Energy Fund 3

Grid Modernization Program

For

<List project title, if applicable, and/or describe the primary purpose for the funding or the intended outcome/deliverables in approx. 25 words or less>

Start date: Date of Last Signature

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DECLARATIONS

The Washington State Department of Commerce (Commerce) has been appropriated state funds under Section 1013 of the 2017-2018 Capital Budget (SSB 6090) (Chapter 2, Laws of 2018) and Section 1035 of the 2019-2020 Capital Budget (SHB 1102) for projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or increase energy independence for the state.

Grid modernization grants are for projects that advance clean and renewable energy technologies, and transmission and distribution control systems; that support integration of renewable energy sources, deployment of distributed energy resources, and sustainable microgrids; and that increase utility customer options for energy sources, energy efficiency, energy equipment, and utility services.

|  |  |
| --- | --- |
| CLIENT INFORMATION | |
| Legal Name: | Enter name |
| Contract Number: | # |
| Award Year: | 2021 |
| State Wide Vendor Number: | # |
|  | |
| PROJECT INFORMATION | |
|  |  |
| Project Title: | «ProjectTitle» |
| Project City: | «ProjectCity» |
| Project State: | Washington |
| Project Zip Code: | «ProjectZip» |
|  | |
| GRANT INFORMATION | |
|  | |
| Grant Amount: | Enter grant amount |
| Non-State Match (1:1) | Enter cost share |
| Type of Match Accepted: | Enter approved match (Cash, in-kind, etc.) |
| Earliest Date for Reimbursement: | Execution Date or Agreed Upon Date |
| Time of Performance | One year after acceptance of last milestone or other date as agreed upon |
|  |  |
|  |  |
| PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT | |
|  | |
| As identified herein  Notwithstanding General and Special Terms and Conditions Sections, the following Program Specific Terms and Conditions are incorporated or take precedence over any similarly referenced Special or General Terms and Conditions:   1. COMPETITIVE BIDDING   The Contractor shall use competitive bidding processes, in accordance with applicable state or local law and organizational policy, to select all subcontractors used to perform work under this contract, as set forth in the proviso language of the capital budget. If the Office of the State Auditor or a certified public accountant discovers a failure to follow competitive requirements, COMMERCE may in its sole discretion, terminate this contract upon written notice and pursue remedies   1. COPYRIGHT PROVISIONS (Replace General Terms & Conditions #13)   Provided that the deliverables required under the Scope of Work are produced in substantial compliance with the Project Timeline and Milestones COMMERCE disclaims any ownership interest in all other Materials produced under this Contract, and “Work Product” including, without limitation, document, data, studies, surveys, drawings, maps, photographs and any objects or source code for any software developed pursuant to or in connection with this Contract, as well as any copyrights, patents, trade secrets, trademarks or other intellectual property developed for or in connection with this Contract, shall be exclusively owned by and be the exclusive property of Contractor and/or its Subcontractors (as determined between Contractor and its Subcontractors).  Notwithstanding the foregoing, COMMERCE shall have a nonexclusive, royalty-free, irrevocable license and right to translate, reproduce, sublicense on the terms set forth herein, prepare derivative works, publicly perform, and publicly display the Project Reports (as defined below).  “Project Reports” mean the project implementation reports and other information required to be submitted by Contractor to COMMERCE under the Scope of Work herein. Project Reports will not contain Confidential Information or Work Product.   1. INTELLECTUAL PROPERTY PROVISIONS   All work product including, without limitation, capital asset and any object or source code for any software developed pursuant to or in connection with this contract, as well as any copyrights, patents, trade secrets, trademarks or other intellectual property developed for or in connection with this Contract, shall be exclusively owned by and be the exclusive property of Contractor and/or its Subcontractors (as determined between Contractor and its Subcontractors).  COMMERCE reserves the right to request a nonexclusive, royalty-free, irrevocable license and right to translate, reproduce, sublicense on the terms set forth herein, prepare derivative works, publicly perform, and publicly display such work product, provided that any proprietary and confidential information shall be clearly marked as such and shall be protected from disclosure (except to the extent otherwise required by law) as more fully set forth in Section 10 of the General Terms and Conditions.   1. INSURANCE (REPLACES SPECIAL TERMS AND CONDITIONS #5)   The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.  The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. The insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.  The Contractor shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance, which outlines the coverage and limits defined in this insurance section. During the term of the Contract, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.  The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:  Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.   1. MONITORING   Contractor shall cooperate with COMMERCE and provide information as may be requested, to enable COMMERCE to comply with the requirements of Attachment D.   1. REPORTING PROCEDURES AND DOCUMENTATION   The Contractor must provide quarterly written reports and host regular (bi-weekly, monthly, etc.) meetings with COMMERCE for project update purposes, as outlined in Attachment C.   1. TERM   The term of this Contract shall commence on the Date of last signature and end on the first to occur of the following: (i) termination under Section 40; (ii) termination by COMMERCE under Section 41; or (iii) one year after the acceptance of the completion of the final Milestone under Attachment B, provided funds are re-appropriated in the next biennium.   1. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #37)   The Contractor may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Contractor Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).  The Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.  Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor’s duties.  Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor’s performance of the subcontract.   1. TERMINATION PROCEDURES (REPLACES GENERAL TERMS & CONDITIONS #42)   COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.  The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.  After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall, except to the extent Contractor desired to continue work for its own account and when communicated in writing to Commerce:   1. Stop work under the contract on the date, and to the extent specified, in the notice; 2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated; 3. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause; 4. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE; 5. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and 6. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest. 7. TREATMENT OF ASSETS (Replaces General Terms and Conditions #43)   The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to Contractor for use in Contractor’s performance under this Contract; provided, however, that title to any other property that may be so furnished by COMMERCE shall remain in COMMERCE.   1. Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract. 2. The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices. 3. If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage. 4. The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract   All reference to the Contractor under this clause shall also include Contractor’s employees, agents or Subcontractors   1. USEFUL LIFE OF ASSETS   Expenditures funded under this contract must be used to support projects that develop and acquire assets with a useful life of at least thirteen years as set forth in Attachment D. | |
|  | |
| SCOPE OF WORK | |
|  |  |
| Insert abbreviated version of what is stated in Attachment A | |

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FACE SHEET

Contract Number: XX-XXXXX-XXX

Washington State Department of Commerce

Energy Division – Grid Modernization Program

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| 1. Contractor | | | | 1. Contractor Doing Business As (optional) | | |
| Name of Contractor  Address  City State Zip | | | | N/A | | |
| 1. Contractor Representative | | | | 1. Commerce Representative (State Energy Office) | | |
| Name  Title  Phone  Email | | | | PO Box 42525 | Olympia, Washington 98504-2525 Staff Contact Name  Staff Contact Phone Number  Staff Contact Email | | |
| 5. Contract Amount | | 6. Funding Source | | 7. Start Date | 8. End Date | |
| $ | | Federal:  State:  Other: N/A: | | Date of Last Signature | Per Program Specific Terms and Conditions #7 | |
| 9. Federal Funds (as applicable)  NA | | | 10. Federal Agency  NA | | 1. CFDA Number:   NA | |
| 1. 10. Tax ID # | 1. 11. SWV # | | | 1. 12. UBI # | | 1. 13. DUNS # |
| XX-XXXXXXX | XXXXXXXXX | | | XXX-XXX-XXX | | XXXXXXX |
| 1. Contract Purpose   <<This is a short statement – no more than a sentence or two – that encapsulates the purpose of the contract. Use keywords to describe the work being performed so that you can easily distinguish this contract from other contracts.>> | | | | | | |
| COMMERCE, defined as the Department of Commerce and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment “A” – Scope of Work, Attachment “B” – Budget, Attachment “C” – Reporting, and Attachment “D” - Budget Proviso Language. | | | | | | |
| FOR CONTRACTOR | | | | FOR COMMERCE | | |
| <<First and Last Name>>, <<Title>>    Date | | | | Michael Furze, Assistant Director, Energy Division    Date  APPROVED AS TO FORM ONLY  BY ASSISTANT ATTORNEY GENERAL  June 15, 2018  Sandra Adix, Assistant Attorney General  SIGNATURE ON FILE | | |

SPECIAL TERMS AND CONDITIONS

CAPITAL STATE FUNDS

1. CONTRACT MANAGEMENT

The Representative for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Representative for COMMERCE and their contact information are identified on the Face Sheet of this Contract.

The Representative for the Contractor and their contact information are identified on the Face Sheet of this Contract.

1. COMPENSATION

Commerce shall pay an amount not to exceed the amount shown as grant amount on the attached declarations page for the performance of all things necessary for or incidental to the performance of work as set forth in the scope of work.

1. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices for completed milestones.

The Contractor shall provide the Representative of COMMERCE a signed electronic Invoice A19 form that includes the contract number referenced on the declarations page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed and the milestone number(s) achieved.

The Contractor is required to maintain documentation to support invoiced costs and cost share obligations. The Contractor shall make these documents available to COMMERCE if requested.

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each Milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone. However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor’s control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

COMMERCE may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to comply with any term or condition of this contract, in accordance with General Terms and Conditions Sections 40-42.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by COMMERCE.

Duplication of Billed Costs

The Contractor shall not bill COMMERCE for services performed under this Contract, and COMMERCE shall not pay the Contractor, if the Contractor is entitled to payment or has been or will be paid by any other source, including grants, for that service.

Disallowed Costs

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

1. HISTORICAL OR CULTURAL ARTIFACTS

Certain capital construction projects may be subject to the requirements of Washington State Executive Order 05-05 "Archaeological and Cultural Resources”. CONTRACTOR will cooperate with Commerce as may be required, to fulfill the requirements of EO-05-05. In the event that historical or cultural artifacts are discovered at the Project site during construction or rehabilitation, the Contractor or subcontractor shall immediately stop work and notify the local historical preservation officer and the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. If human remains are discovered, the Contractor shall immediately stop work and report the presence and location of the remains to the coroner and local enforcement, then contact DAHP and any concerned tribe’s cultural staff or committee.

1. INSURANCE (Replaced on Declarations Page Program Specific Terms and Conditions #4)

~~The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Contract.~~

~~The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.~~

~~The Contractor shall submit to COMMERCE within fifteen (15) calendar days of a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.~~

~~The Contractor shall provide, at COMMERCE’s request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.~~

~~The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:~~

~~Commercial General Liability Insurance Policy. Provide a Commercial General Liability Insurance Policy, including contractual liability, written on an occurrence basis, in adequate quantity to protect against legal liability arising out of contract activity but no less than $1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.~~

~~Automobile Liability. In the event that performance pursuant to this Contract involves the use of vehicles, owned or operated by the Contractor or its Subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is $1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.~~

~~Professional Liability, Errors and Omissions Insurance. The Contractor shall maintain Professional Liability or Errors and Omissions Insurance. The Contractor shall maintain minimum limits of no less than $1,000,000 per occurrence to cover all activities by the Contractor and licensed staff employed or under contract to the Contractor. The state of Washington, its agents, officers, and employees need~~ *~~not~~* ~~be named as additional insureds under this policy.~~

~~Fidelity Insurance. Every officer, director, employee, or agent who is authorized to act on behalf of the Contractor for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks, or other instruments of payment for program costs shall be insured to provide protection against loss:~~

1. ~~The amount of fidelity coverage secured pursuant to this Contract shall be $100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.~~
2. ~~Subcontractors that receive $10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.~~
3. SCOPE OF WORK, AMENDMENTS, AND MODIFICATIONS (REPLACES GENERAL TERMS AND CONDITIONS #4)

In the event that the Scope of Work, methodologies for accomplishing the scope, milestone, and/or budget are adjusted from those incorporated into this contract by attachment, the contractor must request approval and an amendment to this contract.  The contractor must provide Commerce with a written request detailing the proposed change prior to implementation.  Proceeding with changes to the Scope of Work prior to gaining the express written approval from Commerce may be considered a substantive breach of contract and may result in suspension of payment until breach is cured or termination for cause.

Commerce shall review and approve changes to scope of work, requested amendments, and/or modifications to this contract within thirty (30) calendar days of receipt of all necessary information.

1. SUBCONTRACTOR DATA COLLECTION

Grantee will submit reports, in a form and format to be provided by Commerce and at intervals as agreed by the parties, regarding work under this Grant performed by subcontractors and the portion of Grant funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. “Subcontractors” shall mean subcontractors of any tier.

1. ORDER OF PRECEDENCE

In the event of an inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

* Applicable federal and state of Washington statutes and regulations
* Current Washington State Capital Budget Proviso language
* Program Specific Terms and Conditions
* Special Terms and Conditions
* General Terms and Conditions
* Attachment A – Scope of Work
* Attachment B – Budget
* Attachment C – Reporting
* Attachment D – Budget Proviso Language

GENERAL TERMS AND CONDITIONS

CAPITAL

STATE FUNDS

1. DEFINITIONS

As used throughout this Contract, the following terms shall have the meaning set forth below:

1. “Authorized Representative” shall mean the Director and/or the designee authorized in writing to act on the Director’s behalf.
2. “COMMERCE” shall mean the Department of Commerce.
3. “Contract” or “Agreement” means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
4. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
5. “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
6. ”State” shall mean the state of Washington.
7. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms “subcontractor” and “subcontractors” mean subcontractor(s) in any tier.
8. “Intellectual Property” means patents, trademarks, copyrights, mask works, and other forms of comparable property rights protected by Federal law and foreign counterparts, except trade secrets.
9. “Project” shall mean the proposed activities listed in Attachment A.
10. “Deliverables” shall mean the deliverables listed on Attachment B.
11. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

1. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

1. AMENDMENTS (Replaced BY PROGRAM SPECIFIC Terms and Conditions #6)

~~This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.~~

1. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

1. APPROVAL

This contract shall be subject to the written approval of COMMERCE’s Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

1. ASSIGNMENT

Neither this Contract, nor any claim arising under this Contract, shall be transferred or assigned by the Contractor without prior written consent of COMMERCE.

1. ATTORNEYS’ FEES

Unless expressly permitted under another provision of the Contract, in the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorneys’ fees and costs.

1. CODE REQUIREMENTS

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

1. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION
2. “Confidential Information” as used in this section includes:
   1. All material provided to the Contractor by COMMERCE that is designated as “confidential” by COMMERCE;
   2. All material produced by the Contractor that is designated as “confidential” by COMMERCE; and
   3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
      1. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
      2. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.
3. CONFORMANCE

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

1. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the Clean Energy Fund, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the “Disputes” clause of this contract.

1. COPYRIGHT (Replaced on Declarations Page Program Specific Terms and Conditions #2)

~~Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered “works for hire” under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to COMMERCE effective from the moment of creation of such Materials.~~

~~“Materials” means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. “Ownership” includes the right to copyright, patent, register and the ability to transfer these rights.~~

~~For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to COMMERCE a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.~~

~~The Contractor shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Contract. The Contractor shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Contract. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.~~

1. DISALLOWED COSTS

The Contractor is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its Subcontractors.

1. DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director of COMMERCE, who may designate a neutral person to decide the dispute.

The request for a dispute hearing must:

* be in writing;
* state the disputed issues;
* state the relative positions of the parties;
* state the Contractor's name, address, and Contract number; and
* be mailed to the Director and the other party’s (respondent’s) Contract Representative within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requestor’s statement to both the Director or the Director’s designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10)working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties’ choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

1. DUPLICATE PAYMENT

The Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

1. GOVERNING LAW AND VENUE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

1. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, for, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. “Claim” as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney’s fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor’s obligation to indemnify, defend, and hold harmless includes any claim by Contractor’s agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor’s or any subcontractor’s performance or failure to perform the contract. Contractor’s obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless the state and its agencies, officers, agents or employees.

1. INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

1. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I’s rights to collect from the Contractor.

1. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local, state, and federal governments, as now or hereafter amended.

1. LICENSING, ACCREDITATION AND REGISTRATION

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Contract.

1. LIMITATION OF AUTHORITY

Only the Authorized Representative or Authorized Representative’s designee by writing (designation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract.

1. LOCAL PUBLIC TRANSPORTATION COORDINATION

Where applicable, Contractor shall participate in local public transportation forums and implement strategies designed to ensure access to services.

1. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Contractor shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Contractor’s non-compliance or refusal to comply with any nondiscrimination law, regulation or policy, this contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the “Disputes” procedure set forth herein.

No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

1. PAY EQUITY

The Contractor agrees to ensure that “similarly employed” individuals in its workforce are compensated as equals, consistent with the following:

* 1. Employees are “similarly employed” if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
  2. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

(i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.

(ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.

(iii) A bona fide regional difference in compensation level must be: consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

This Contract may be terminated by the Department, if the Department or the Department of Enterprise services determines that the Contractor is not in compliance with this provision.

1. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17A RCW and the Federal Hatch Act, 5 USC 1501 - 1508.

No funds may be used for working for or against ballot measures or for or against the candidacy of any person for public office.

1. PREVAILING WAGE LAW

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the “Statement of Intent to Pay Prevailing Wages” and “Affidavit of Wages Paid” as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE’s review upon request.

1. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

1. PUBLICITY

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE’s name is mentioned, or language used from which the connection with the state of Washington’s or COMMERCE’s name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

1. RECAPTURE

In the event that the Contractor fails to perform this contract in accordance with state laws, federal laws, and/or the provisions of this contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this contract.

1. RECORDS MAINTENANCE

The Contractor shall maintain books, records, documents, data and other evidence relating to this contract and performance of the services described herein, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract.

Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

1. REGISTRATION WITH DEPARTMENT OF REVENUE

If required by law, the Contractor shall complete registration with the Washington State Department of Revenue.

1. RIGHT OF INSPECTION

At no additional cost all records relating to the Contractor’s performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

1. SAVINGS

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, COMMERCE may suspend or terminate the Contract under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

1. SEVERABILITY

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

1. SUBCONTRACTING (REPLACED on Declarations Page Program Specific Terms and Conditions #8)

~~The Contractor may only subcontract work contemplated under this Contract if it obtains the prior written approval of COMMERCE.~~

~~If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause, COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Contractor is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Contractor shall appropriately monitor the activities of the Subcontractor to assure fiscal conditions of this Contract. In no event shall the existence of a subcontract operate to release or reduce the liability of the Contractor to COMMERCE for any breach in the performance of the Contractor’s duties.~~

~~Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor’s performance of the subcontract.~~

1. SURVIVAL

The terms, conditions, and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive.

1. TAXES

All payments accrued on account of payroll taxes, unemployment contributions, the Contractor’s income or gross receipts, any other taxes, insurance or expenses for the Contractor or its staff shall be the sole responsibility of the Contractor.

1. TERMINATION FOR CAUSE

In the event COMMERCE determines the Contractor has failed to comply with the conditions of this contract in a timely manner, COMMERCE has the right to suspend or terminate this contract. Before suspending or terminating the contract, COMMERCE shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the contract may be terminated or suspended.

In the event of termination or suspension, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

COMMERCE reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Contractor or a decision by COMMERCE to terminate the contract. A termination shall be deemed a “Termination for Convenience” if it is determined that the Contractor: (1) was not in default; or (2) failure to perform was outside of his or her control, fault or negligence.

The rights and remedies of COMMERCE provided in this contract are not exclusive and are, in addition to any other rights and remedies, provided by law.

1. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract COMMERCE may, by ten (10) business days written notice, beginning on the second day after the mailing, terminate this Contract, in whole or in part. If this Contract is so terminated, COMMERCE shall be liable only for payment required under the terms of this Contract for services rendered or goods delivered prior to the effective date of termination.

1. TERMINATION PROCEDURES (Replaced on Declarations Page Program Specific Terms and Conditions #9)

~~Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Contractor to deliver to COMMERCE any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.~~

~~COMMERCE shall pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Contractor and COMMERCE for (i) completed work and services for which no separate price is stated, (ii) partially completed work and services, (iii) other property or services that are accepted by COMMERCE, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Authorized Representative shall determine the extent of the liability of COMMERCE. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.~~

~~The rights and remedies of COMMERCE provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.~~

~~After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, the Contractor shall:~~

1. ~~Stop work under the contract on the date, and to the extent specified, in the notice;~~
2. ~~Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;~~
3. ~~Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;~~
4. ~~Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;~~
5. ~~Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;~~
6. ~~Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and~~
7. ~~Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.~~
8. TREATMENT OF ASSETS (Replaced on Declarations Page Program Specific Terms and Conditions #10)

~~Title to all property furnished by COMMERCE shall remain in COMMERCE. Title to all property furnished by the Contractor, for the cost of which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in COMMERCE upon delivery of such property by the Contractor. Title to other property, the cost of which is reimbursable to the Contractor under this contract, shall pass to and vest in COMMERCE upon (i) issuance for use of such property in the performance of this contract, or (ii) commencement of use of such property in the performance of this contract, or (iii) reimbursement of the cost thereof by COMMERCE in whole or in part, whichever first occurs.~~

1. ~~Any property of COMMERCE furnished to the Contractor shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract.~~
2. ~~The Contractor shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices.~~
3. ~~If any COMMERCE property is lost, destroyed or damaged, the Contractor shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage.~~
4. ~~The Contractor shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract~~

~~All reference to the Contractor under this clause shall also include Contractor’s employees, agents or Subcontractors.~~

1. WAIVER

Waiver of any default or breach shall not be deemed to be a waiver of any subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this Contract unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

ATTACHMENT A – SCOPE OF WORK

Insert contract specific summary here

Specific tasks <<Contractor Name>> will undertake are described below:

ATTACHMENT B - BUDGET

<<Enter Budget Here>>

ATTACHMENT C – REPORTING

The Contractor must provide quarterly written reports and host regular monthly meetings with COMMERCE for project update purposes.

1. The Contractor shall issue a quarterly report to COMMERCE, no later than 15 days after the end of each quarter, describing the project activity that occurred during the quarter, including but not limited to:
   1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
   2. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.); and,
   3. The project expenditures to date and anticipated in the next quarter; and,
   4. Any additional metrics required from the capital budget proviso, legislature, governor’s office, or COMMERCE, including but not limited to, jobs created or jobs retained.
   5. Submit an initial project fact sheet upon of Milestone A completion and submit a final fact sheet with the final report. Commerce may request fact sheet be updated between initial and final fact sheet as conditions warrant.
2. The Contractor shall host regular monthly meetings with COMMERCE and include but not limited to:
   1. Generating an agenda or dashboard 24 hours in advance of the meeting;
   2. Providing summary notes of those meetings within 48 hours of hosting the meeting; and,
   3. Providing a system for tracking risks / issues and their resolutions.
3. The Contractor shall retain and if requested by COMMERCE, provide summary notes for Project Meetings with subcontractors, Communication Plans, Project Kick-Off, Design Reviews, Testing Overview, Go-Live Events, Conference Calls, etc.
4. Failure to submit required reports will be treated as a default, which left uncured, may result in COMMERCE’s right to recoup disbursed funds and terminate any obligation to disburse additional funds.
5. If construction is to be completed during the grant performance period, in addition to the above the Contractor anticipates subcontracting with [insert research institution] to collect data and analyze the microgrid system and components and then publish use case studies and reports including but not limited to the following:

ATTACHMENT D – BUDGET PROVISO LANGUAGE

Section 1013 of the 2018-2019 Capital Budget (SSB 6090) (Chapter 2, Laws of 2018)

9 (5) $11,000,000 of the state building construction account, is

10 provided solely for grid modernization grants for projects that

11 advance clean and renewable energy technologies, and transmission and

12 distribution control systems; that support integration of renewable

13 energy sources, deployment of distributed energy resources, and

14 sustainable microgrids; and that increase utility customer options

15 for energy sources, energy efficiency, energy equipment, and utility

16 services.

17 (a) Projects must be implemented by public and private electrical

18 utilities that serve retail customers in the state. Eligible

19 utilities may partner with other public and private sector research

20 organizations and businesses in applying for funding.

21 (b) The department shall develop a grant application process to

22 competitively select projects for grant awards, to include scoring

23 conducted by a group of qualified experts with application of

24 criteria specified by the department. In development of the

25 application criteria, the department shall, to the extent possible,

26 allow smaller utilities or consortia of small utilities to apply for

27 funding.

28 (c) Applications for grants must disclose all sources of public

29 funds invested in a project.

1. Revised Code of Washington, Chapter 19.405 [↑](#footnote-ref-1)
2. https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/ [↑](#footnote-ref-2)
3. https://www.commerce.wa.gov/growing-the-economy/energy/energy-and-climate-policy-advisory-committee/ [↑](#footnote-ref-3)
4. Revised Code of Washington, Chapter 235, Laws of 2019, Section 1 (5) [↑](#footnote-ref-4)
5. Revised Code of Washington, Chapter 288, Laws of 2019, Section 2 (40). [↑](#footnote-ref-5)