

STATE OF WASHINGTON

Department of Commerce

REQUEST FOR PROPOSALS

RFP No 12-98274-001

PROJECT TITLE: Developmental Disabilities Endowment Trust Fund Tax Preparation and Filing Services

PROPOSAL DUE DATE: January 23, 2012 at Noon, *Pacific Standard Time*, Olympia, Washington, USA.

Only e-mailed bids will be accepted. Proposals may not be submitted via facsimile.

ESTIMATED TIME PERIOD FOR CONTRACT: February 16, 2012 – March 15, 2014
The Washington State Department of Commerce (COMMERCE) reserves the right to extend the contract for up to two additional one-year periods, at the sole discretion of the Agency.

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

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Developmental Disabilities Council, through the administrative services provided by the Department of Commerce, hereafter called "COMMERCE," is initiating this Request for Proposals (RFP) to solicit proposals from firms interested in participating on a project to provide technical assistance to the Developmental Disabilities Endowment Trust Fund program and to execute tax preparation activities for each client account.

In 1999, the Washington State Legislature enacted RCW 43.330.195 launching the Developmental Disabilities Endowment Trust Fund, hereafter called "TRUST", a special program which supports families, guardians, and individuals in long-term financial planning to build assets for the purpose of financing services and supports that persons with developmental disabilities may will need throughout their lives without jeopardizing the beneficiary's government benefits.

The Trust is managed under the policy direction of a seven member governing board. The board includes four individuals who are family members of people with developmental disabilities and people knowledgeable in business and finance.

The Developmental Disabilities Council is the Trust Administrator and provides staff to support to the governing board and the Trust. The DDC contracts with the Arc of Washington to fulfill the duties of Trust Manager. The Washington State Investment Board manages the investment policy, earnings of the trust, and related needs of the Trust.

It is expected that you will download this RFP from Washington's Electronic Business Solution (WEBS), at <http://fortress.wa.gov/ga/webcust/>. Any addenda or further information about this RFP will be posted to this website. You are responsible for checking this website and downloading any such addenda, bidder questions and answers, or other related notices sending your name, address, e-mail address and telephone number to the RFP Coordinator in order for your organization to receive any RFP amendments or bidder questions/COMMERCE answers.

1.2 OBJECTIVE

The Contractor will be expected to coordinate with Trust program stakeholder groups to support maximum program efficiency, ensure successful completion of the tax preparation process. Stakeholders include, but are not limited to the Trust Governing Board, Administrator, Manager, current and/or potential clients, and other community members as identified by the Governing Board.

The Contractor will:

- Provide technical assistance to Trust stakeholders upon request;
- Prepare and file all required federal income forms for each client account annually;
- Provide related services in a timely manner, and;
- Maintain the security of confidential client records.

1.3 MINIMUM QUALIFICATIONS

The Contractor must:

- Be licensed to perform work in Washington State.
- Have a minimum of five (5) years of experience preparing special needs trust taxes.
- Demonstrate effective financial controls, accountability, management, systems/technology, and staff to support the efficient, accurate, and timely completion of services and high quality customer service delivery,
- The ability to work as a team with the Program Manager to solve problems is efficient, accurate, and timely.
- Compliance with the Americans with Disabilities Act (ADA).
- The Consultant must be insured as follows: liability insurance, and a valid Washington State driver's license

1.4 FUNDING

COMMERCE has budgeted an amount not to exceed \$282,850 for this project. Proposals in excess of this amount will be rejected as non-responsive and will not be evaluated.

Any contract awarded as a result of this procurement is contingent upon the availability of funding. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about February 16, 2012 and to end on March 15, 2014. This Contract may be extended for up to two one-year periods at the sole discretion of COMMERCE.

1.6 DEFINITIONS

Definitions for the purposes of this RFP include:

Beneficiary – A person with a developmental disability who resides in Washington State and for whom an Individual Trust Account is established.

COMMERCE – The Department of Commerce is the agency of the state of Washington that is issuing this RFP.

Consultant – Individual or company submitting a proposal in order to attain a contract with COMMERCE.

Contractor – Individual or company whose proposal has been accepted by COMMERCE and is awarded a fully executed, written contract.

Developmental Disabilities Endowment Fund – A public and private partnership established to create a stable resource to enhance the quality of life for citizens with developmental disabilities, through the establishment of a special needs trust.

Proposal – A formal offer submitted in response to this solicitation.

Request for Proposals (RFP) – 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 RFP is to permit the consultant community to suggest various approaches to meet the need at a given price.

1.7 ADA

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

2. GENERAL INFORMATION FOR CONSULTANTS

2.1 RFP COORDINATOR

The RFP Coordinator is the sole point of contact in COMMERCE for this procurement. The RFP will be posted on the General Administration Washington's Electronic Business Solutions web site (GA WEBS) under the commodity code 946.82 for Tax Services. WEBS Site registration can be found at <http://www.ga.wa.gov/Business/register.htm>. The RFP and any questions and answers will also be posted to the COMMERCE website at <http://www.commerce.wa.gov/site/1107/default.aspx>.

All communication between the Consultant and COMMERCE upon receipt of this RFP shall be with the RFP Coordinator.

Jennifer Blazian-RFP Coordinator

2600 Martin Way E.

Mail Stop 48314

Olympia, WA 98504-8314

Telephone Number: (360) 586-3554

Email Address: Jennifer.Blazian@ddc.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals	1/11/12
Question and Answer Period	1/11-17/12
Proposals due	1/23/12
Evaluate proposals	1/23-24/12
Conduct oral interviews with finalists, if required	1/26/12
Announce "Apparently Successful Contractor" and send notification	1/30/12
Hold debriefing conferences (if requested)	2/2/12
Negotiate contract	1/30/12-2/1/12
File contract with Office of Financial Management (if required)	2/2/12
Begin contract work	2/16/12

COMMERCE reserves the right to revise the above schedule.

2.3 PROPOSED TASKS

The Contractor will provide Technical Assistance services activities upon request by the Trust Administrator. Service activities will include:

1. Training Stakeholders to increase learning and understanding of the tax preparation process, the complexity of tax laws affecting the special needs trust tax preparation & filings, and other related topics.

2. Participate in Quality Assurance efforts of the Trust to ensure efficient and accurate systems and processes and strengthen outreach efforts

Compensation for Technical Assistance Activities will be provided at an hourly rate to include includes costs for travel, lodging, meals and honorarium.

The Contractor will complete the following Tax Preparation service activities each year:

3. New Account Set Up

- a. Activities include: Completion of an IRS Form 1041 form and IRS Schedule K-1, as required; Creation of written correspondence to the Primary Account Representative to inform them of the purpose of the IRS forms they will be provided; Submit electronic files of the IRS forms, Correspondence, and computation tools and materials to the Developmental Disabilities Council (DDC).
- b. Completion Date: On or before February 28th of each year in the contracted term of performance.
- c. Compensation for New Account Set Up activities is based on the Trust program fee schedule and is currently set at \$15.00 per new account. There are approximately 250 new accounts each year; payment will be based on actual number of new accounts.

4. Account Tax Filing

- a. Activities include; Conducting Quality assurance reviews on client account information, activities, and fees; Receive and apply investment results reported by Washington State Investment Board (WSIB) to accounts; Calculate client account taxes owed; Determine status on Third Party Settled Trusts (Simple vs. Complex); Apply Net Operating Loss to applicable client accounts; Create client account tax documents and provide in printed and electronic formats; Electronically transfer tax filing to the IRS.
- b. Completion Date: On or before March 15 of each year in the contracted term of performance.
- c. Compensation for Tax Filing activities is based on the Trust program fee schedule and is currently set at \$75.00 per return. There were approximately 1,700 Trust accounts in the 2011 tax year; payment will be based on actual number of returns.

2.4 SUBMISSION OF PROPOSALS

Proposals must be submitted electronically by e-mail to the RFP coordinator at the e-mail address listed in Section 2.1 of this RFP. Proposals may not be transmitted via facsimile.

The proposal must be received by COMMERCE no later than noon, local time in Olympia, Washington, on January 23, 2012. The proposal is to be sent to the RFP Coordinator at the address shown above in Section 2.1.

COMMERCE assumes no responsibility for delays caused by any delivery service.

Submitting the proposal electronically, the following information is applicable. Proposals being submitted electronically must be submitted as an attachment to an e-mail to the RFP Coordinator named above in Section 2.1. Proposals must arrive by noon, local time in Olympia, Washington, on January 23, 2012. Attachments to e-mail shall be on Microsoft

Word software. Zipped files cannot be received by COMMERCE and cannot be used for submission of proposals. Consultants submitting proposals via e-mail shall also submit original copies of the cover submittal letter and the certifications and assurances with original signatures to the RFP Coordinator. COMMERCE does not assume responsibility for any problems in the e-mail.

Late proposals will not be accepted and will be automatically disqualified from further consideration. The proposals must respond to the procurement requirements. Do not respond by referring to material presented elsewhere. The proposal must be complete and must stand on its own merits.

Failure to respond to any portion of the procurement document may result in rejection of the proposal as non-responsive. All proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

2.5 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

Proposals submitted in response to this competitive procurement shall become the property of COMMERCE. All proposals received shall remain confidential until the contract, if any, resulting from this RFP is signed by the Director of COMMERCE, or the Director's Designee, and the apparent successful Contractor; thereafter, the proposals shall be deemed public records as defined in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Consultant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Consultant 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 proposal exempt from disclosure will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information" COMMERCE will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, COMMERCE shall maintain the confidentiality of the Consultant's information per the court order.

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

2.6 REVISIONS TO THE RFP

In the event it becomes necessary to revise any part of this RFP, All changes and amendments to this RFP will be posted on GA WEBS portal and the COMMERCE website referenced in Section 2.1. It is the bidders' responsibility to check those websites for any changes or amendments. Questions and answers and any other pertinent information shall also be provided as an addendum to the RFP.

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

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2.7 MINORITY & WOMEN-OWNED BUSINESS PARTICIPATION

In accordance with the legislative findings and policies set forth in Chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the contract documents will apply.

2.8 ACCEPTANCE PERIOD

Proposals must provide 60 days for acceptance by COMMERCE from the due date for receipt of proposals.

2.9 RESPONSIVENESS

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

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

2.10 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the proposal submitted. Therefore, the proposal should be submitted initially on the most favorable terms that the Consultant can propose. There will be no best and final offer procedure. COMMERCE does reserve the right to contact a Consultant for clarification of its proposal during the evaluation process. In addition, if the Consultant is selected as the apparent successful contractor, COMMERCE reserves the right to enter into contract negotiations with the apparent successful contractor, which may include discussion regarding the terms of the proposal. Contract negotiations may result in incorporation of some or all of the Consultant's proposal. The Consultant should be prepared to accept this RFP for incorporation into a contract resulting from this RFP. It is also understood that the proposal will become part of the official procurement file.

2.11 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful contractor will be expected to enter into a contract that is substantially the same as the sample contract and its general terms and conditions attached as Exhibit B. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

2.12 COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Consultant in preparation of a proposal submitted in response to this RFP, in conduct of a presentation, or any other activities related to responding to this RFP.

2.13 NO OBLIGATION TO CONTRACT

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

2.14 REJECTION OF PROPOSALS

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

2.15 COMMITMENT OF FUNDS

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

2.16 ELECTRONIC PAYMENT

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

2.17 INSURANCE COVERAGE

The Contractor 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 below.

The Contractor shall, at its own expense, obtain and keep in force insurance coverage that shall be maintained in full force and effect during the term of the contract. The Contractor 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 the contract effective date.

Liability Insurance

- 1) Commercial General Liability Insurance: Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the

General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insured's (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

- 2) Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto."

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

1. **Additional Insured.** The state of Washington, COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State.
2. **Cancellation.** State of Washington, Department of Commerce, shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the State 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the State shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): COMMERCE shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, COMMERCE shall be given 10 days advance notice of cancellation.
3. **Identification.** Policy must reference COMMERCE's contract number and agency name.
4. **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by the COMMERCE Program Manager, or the Risk Manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.
5. **Excess Coverage.** By requiring insurance herein, COMMERCE does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to COMMERCE in this contract.

Worker's Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The State will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3. PROPOSAL CONTENTS

Proposals must be submitted on eight and one-half by eleven (8 1/2 x 11) inch paper, preferably with tabs separating the major sections of the proposal. Electronic submittals shall be formatted to print on this size paper. The four major sections of the proposal are to be submitted in the order noted below:

1. Signed or Certified Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP).
2. Technical Proposal.
3. Management Proposal.
4. Cost Proposal.

Proposals must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the proposal, but should assist the Consultant in preparing a thorough response.

Items in this section marked “mandatory” must be included as part of the proposal for the proposal to be considered responsive; however, these items are not scored. Items marked “scored” are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFP) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.).
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business, as the entity now substantially exists.
4. Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
5. Location of the facility from which the Consultant would operate.
6. Identify any State employees or former State employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.

3.2 TECHNICAL PROPOSAL (SCORED/MANDATORY)

The Technical Proposal must contain a comprehensive description of services including the following elements:

- A. Project Approach/Methodology** – Include a complete description of the Consultant's proposed approach and methodology for the project. This section should convey Consultant's understanding of the proposed project.
- B. Work Plan** – Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. Project Schedule** – Include a project schedule indicating when the elements of the work will be completed and when deliverables, if any, will be provided.

- D. Deliverables** – Fully describe deliverables to be submitted under the proposed contract.
- E. Outcomes and Performance Measurement** – Describe the impacts/outcomes the consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state agency.
- F. Risks** - Ask the consultant to address potential risks associated with this contract. Examples include:

Overall Risk

Define risks you identify as being significant to the success of the project. Include how you would propose to effectively monitor and manage these risks, including reporting of risks to COMMERCE's contract manager.

Specific Risks

- Outline a proposal for minimizing staff turnover and its impact on COMMERCE's contract management staff.
- Provide a business continuation plan that illustrates how you will monitor and manage through times of labor disruption, loss of facility and/or key staff/personnel.

3.3 MANAGEMENT PROPOSAL

A. Project Management (SCORED/MANDATORY)

1. **Project Team Structure/Internal Controls** - Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications/Experience** – Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide résumés for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of COMMERCE.

B. Experience of the Consultant (SCORED/MANDATORY)

1. Indicate the experience the Consultant and any subcontractors have in the following areas:
Tax preparation and related activities as described in this RFP.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last three years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

C. References (SCORED/MANDATORY)

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided. The Consultant and staff proposed to provide the services must grant permission to COMMERCE to contact references, and others for whom services have been provided. Do not include current COMMERCE staff as references. References will be contacted and scored for the top-ranking proposal(s) only.

D. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Consultant's position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

E. OMWBE Certification (Optional and Not Scored)

Include proof of certification issued by the Washington State Office of Minority and Women-Owned Business if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.4 COST PROPOSAL

The maximum fee for this contract must be \$262,500 or less to be considered responsive to this RFP. Non-responsive proposals will not be evaluated.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals that are consistent with State government efforts to conserve state resources.

A. Identification of Costs (SCORED/MANDATORY)

Identify all costs including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Consultant is to submit a fully detailed budget including staff costs, administrative costs, travel costs, and any other expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Consultants are required to collect and pay Washington State sales tax, if applicable.

Costs for subcontractors are to be broken out separately.

B. Computation

The score for the Cost Proposal is computed by dividing the lowest amount bid by the amount bid in the Bidder's Cost Proposal and multiplying that percentage against the total points available for this section, rounded to the nearest tenth of a point.

$$\frac{\text{Lowest Cost Bid}}{\text{Cost of Bid Being Scored}} \times \text{Available Points} = \text{Award Points}$$

Example: The total possible points for cost are 20. Two bids are received; one from Consultant A and one from Consultant B.

Consultant A's cost is \$20,000 and Vendor B's cost is \$25,000.

Vendor A would receive 20 points and Vendor B would receive 16 points (\$20,000/\$25,000) = 80% x 20 points = 16).

4. EVALUATION AND CONTRACT AWARD

ALL MANDATORY REQUIREMENTS MUST BE MET IN ORDER TO BE EVALUATED.

4.1 EVALUATION PROCEDURE

Responsive proposals will be evaluated strictly in accordance with the requirements stated in this solicitation and any addenda issued. The evaluation of proposals shall be accomplished by an evaluation team, to be designated by COMMERCE, which will determine the ranking of the proposals.

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

4.2 CLARIFICATION OF PROPOSAL

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes:

Technical Proposal – 35%		70 points
Project Approach/Methodology	15 points (maximum)	
Quality of Work Plan	35 points (maximum)	
Project Schedule	10 points (maximum)	
Project Deliverables	10 points (maximum)	
Management Proposal – 30%		60 points
Project Team Structure/Internal Controls	15 points (maximum)	
Staff Qualifications/Experience	15 points (maximum)	
Experience of the Consultant	30 points (maximum)	
Cost Proposal – 35%		70 points
References [top-scoring proposer(s) only]		10 points
GRAND TOTAL FOR WRITTEN PROPOSAL		210 points

References will be contacted for the top-scoring proposer(s) only and will then be scored and added to the total score.

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Written submittals and oral presentations, if considered necessary, will be utilized in selecting the winning proposal. COMMERCE, at its sole discretion, may elect to select the top scoring finalists from the written evaluation for an oral presentation and final determination of contract award. Should COMMERCE elect to hold oral presentations, it will contact the top-scoring firm(s) to schedule a date, time and location. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

Note: If oral interviews are used, final selection will be made based solely on evaluation from the interviews.

4.5 NOTIFICATION TO PROPOSERS

Firms whose proposals have not been selected for further negotiation or award will be notified via e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conversation may be scheduled with an unsuccessful Proposer. The request should be received by the RFP Coordinator within three (3) business days after the Notification of Unsuccessful Consultant letter is faxed/e-mailed to the Consultant.

Discussion will be limited to a critique of the requesting Consultant's proposal. Comparisons between proposals or evaluations of the other proposals 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.

4.7 PROTEST PROCEDURE

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conversation. Upon completing the debriefing conversation, the Consultant is allowed three (3) business days to file a protest of the acquisition with the RFP Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants 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 Consultants under this procurement.

All protests must be in writing and signed by the protesting party or an authorized Agent. The protest must state 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. All protests shall be addressed to the RFP Coordinator.

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 the 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 a proposal, 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. 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 five 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 Consultant that submitted a proposal, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFP 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 proposals, 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 contractor. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

5. RFP EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Contract including General Terms and Conditions

FACE SHEET

EXHIBIT A to RFP

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of the proposal 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(s):

1. I/we declare that all answers and statements made in the proposal 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 proposal.
3. The attached proposal 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 proposal, 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 proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
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 knowingly be 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 proposal 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 a proposal 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 Proposer's prior experience and ability to perform the services contemplated in this procurement.

Note: If submitted electronically, include the following:

On behalf of the firm submitting this proposal, my name below attests to the accuracy of the above statements.

Signature of Proposer

Title

Date

Contract Number: <Insert Number>

Washington State Department of Commerce

<Select Division, Board, or Commission>

<Insert Unit or Office>

<Insert Program(s) and/or Project(s)>

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Contract Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>		Federal Agency: <u>CFDA Number</u> <Insert name> <Insert number>	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. DUNS # <Insert date>
14. Contract Purpose <Briefly describe contract purpose>			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, 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" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.>			
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY _____ <insert name>, <insert title> _____ Date	

**SPECIAL TERMS AND CONDITIONS
PERSONAL SERVICE
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.

2. COMPENSATION

COMMERCE shall pay an amount not to exceed (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based on the following rates or in accordance with the following terms:

NOTES:

EXPENSES

Contractor shall receive reimbursement for travel and other expenses as identified below or as authorized in advance by COMMERCE as reimbursable. The maximum amount to be paid to the Contractor for authorized expenses shall not exceed \$ [REDACTED], which amount is included in the Contract total above.

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel.

Contractor shall receive compensation for travel expenses at current state travel reimbursement rates

1. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE [*not more often than monthly.*]

NOTE: *Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Contract, payment at conclusion of the Contract, etc.*

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number [REDACTED]. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement.

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 satisfactorily comply with any term or condition of this Contract.

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

Duplication of Billed Costs

**SPECIAL TERMS AND CONDITIONS
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The Contractor shall not bill COMMERCE for services performed under this Agreement, 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.

NOTE: *Optional Provision - COMMERCE shall withhold 10 percent from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).*

2. OFM FILING REQUIREMENT

NOTE: *If applicable use only one paragraph and delete the italicized phrases for the final Contract.*

10-Day Filing *(Competitively awarded 20K or more or sole source 20K or more and subject to OFM approval)*

The provisions of Chapter 39.29 RCW require COMMERCE to file this personal service Contract with the Office of Financial Management (OFM) for approval. No Contract so filed is effective nor shall work commence under it until the tenth (10th) working day following the date of filing, subject to OFM approval.

3. INSURANCE

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. 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 the Contract start date, 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.

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.

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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:

- A.** 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.
- B.** 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.
- C.** 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.

6. 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
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- add any other attachments incorporated by reference on the Face Sheet

**SPECIAL TERMS AND CONDITIONS
PERSONAL SERVICE
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1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "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.
- C. "COMMERCE" shall mean the Department of Commerce.
- D. "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.
- E. "State" shall mean the state of Washington.
- F. "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.

2. ACCESS TO DATA

In compliance with RCW 39.29.080, the Contractor shall provide access to data generated under this Contract to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

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

4. 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.

5. AMENDMENTS

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.

6. 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.

7. 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.

**SPECIAL TERMS AND CONDITIONS
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8. 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.

9. 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.

10. AUDIT

A. General Requirements

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate the audit requirement and shall ensure that Subcontractors also maintain auditable records.

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

COMMERCE reserves the right to recover from the Contractor all disallowed costs resulting from the audit.

As applicable, Contractors required to have an audit must ensure the audits are performed in accordance with Generally Accepted Auditing Standards (GAAS); Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General.

Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

B. State Funds Requirements

Contractors expending \$100,000 or more in total state funds in a fiscal year must have a financial audit as defined by Government Auditing Standards (The Revised Yellow Book) and according to Generally Accepted Auditing Standards (GAAS). The Schedule of State Financial Assistance must be included. The schedule includes:

- Grantor agency name
- State program name
- BARS account number
- Grantor
- COMMERCE Contract number
- Contract award amount including amendments (total grant award)
- Current year expenditures

If the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's financial records must be available for review by COMMERCE.

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C. Documentation Requirements

The Contractor must send a copy of the audit report described above no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to auditreview@commerce.wa.gov or a hard copy to:

Department of Commerce
ATTN: Audit Review and Resolution Office
1011 Plum Street SE
PO Box 42525
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Contractor must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter.

If the Contractor is required to obtain a Single Audit because of Circular A-133 requirements, no other audit report is required.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. "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).

B. 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.

C. 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.

12. CONFORMANCE

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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.

13. COPYRIGHT PROVISIONS

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.

14. 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.

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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.

15. 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.

16. ETHICS/CONFLICTS OF INTEREST

In performing under this Contract, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

17. 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.

18. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, all other agencies of the state and all officers, agents and employees of the state, from and against all claims or damages for injuries to persons or property or death arising out of or incident to the Contractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any Subcontractor or its agents, employees, or representatives.

The Contractor's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of the state or its agents, agencies, employees and officers.

Subcontracts shall include a comprehensive indemnification clause holding harmless the Contractor, COMMERCE, the state of Washington, its officers, employees and authorized agents.

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.

19. 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.

20. 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

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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.

21. LAWS

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

Washington State Laws and Regulations

- A. Affirmative action, RCW 41.06.020 (1).
- B. **Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.**
- C. **Disclosure-campaign finances-lobbying, Chapter 42.17 RCW.**
- D. Discrimination-human rights commission, Chapter 49.60 RCW.
- E. **Ethics in public service, Chapter 42.52 RCW.**
- F. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- G. **Open public meetings act, Chapter 42.30 RCW.**
- H. **Public records act, Chapter 42.56 RCW.**
- I. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

22. 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.

23. 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.

24. 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.

25. POLITICAL ACTIVITIES

Political activity of Contractor employees and officers are limited by the State Campaign Finances and Lobbying provisions of Chapter 42.17 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.

26. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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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.

27. 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.

28. 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.

29. RECORDS MAINTENANCE

The Contractor shall maintain all 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 which 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.

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 finally resolved.

30. REGISTRATION WITH DEPARTMENT OF REVENUE

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

31. 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 terminate the Contract under the "Termination for Convenience" clause, without the ten calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

32. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Contract and to this end the provisions of this Contract are declared to be severable.

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33. SUBCONTRACTING

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.

34. 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.

35. 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.

36. TERMINATION FOR CAUSE / SUSPENSION

In event COMMERCE determines that the Contractor failed to comply with any term or condition of this Contract, COMMERCE may terminate the Contract in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, COMMERCE upon written notice may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, COMMERCE may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Contract. Failure by the Contractor to take timely corrective action shall allow COMMERCE to terminate the Contract upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when COMMERCE determines that the Contractor did not fail to comply with the terms of the Contract or when COMMERCE determines the failure was not caused by the Contractor's actions or negligence.

If the Contract is terminated for cause, 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 Contract, as well as all costs associated with entering into the replacement Contract (i.e., competitive bidding, mailing, advertising, and staff time).

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37. 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.

38. TERMINATION PROCEDURES

After receipt of a notice of termination, except as otherwise directed by COMMERCE, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities related to the Contract;
- C. Assign to COMMERCE 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. Any attempt by the Contractor to settle such claims must have the prior written approval of COMMERCE; and
- D. Preserve and transfer any materials, Contract deliverables and/or COMMERCE property in the Contractor's possession as directed by COMMERCE.

Upon termination of the Contract, COMMERCE shall pay the Contractor for any service provided by the Contractor under the Contract prior to the date of termination. COMMERCE may withhold any amount due as COMMERCE reasonably determines is necessary to protect COMMERCE against potential loss or liability resulting from the termination. COMMERCE shall pay any withheld amount to the Contractor if COMMERCE later determines that loss or liability will not occur.

The rights and remedies of COMMERCE under this section are in addition to any other rights and remedies provided under this Contract or otherwise provided under law.

39. 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.