



WASHINGTON DEPARTMENT OF COMMERCE

STATE ENERGY OFFICE

Olympia, Washington

NOTICE OF FUNDING OPPORTUNITY

SOLICITATION NUMBER	2021-WE-001
PROJECT TITLE:	Wood Energy for Public Facilities
APPLICATION RELEASE DATE:	January 4, 2021
BIDDER CONFERENCE DATE:	January 8, 2021 3:00pm Pacific
APPLICATION DUE:	January 29, 2021 5:00pm Pacific
PERFORMANCE PERIOD:	12 months from contract execution date

APPLICANT ELIGIBILITY:

This funding opportunity is open to Washington-based public entities, including state agencies, and general and special purpose local governments.

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1 INTRODUCTION

1.1 Background and Programmatic Goals

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Notice of Funding Opportunity to solicit proposals from prospective applicants interested in fuel switching projects at public facilities. Projects should focus on converting furnaces and boilers fueled by oil or propane to wood biomass fuel.

This program uses funding from Clean Energy Fund 2 (CEF2) as described in Section 1028 (10) of the 2015-17 biennial capital budget, 2EHB 1115, "solely for capital funding of competitively selected wood energy conversion projects at public facilities." Additional goals include enhancing forest ecosystem function, reducing forest fire hazards and supporting energy resiliency in rural, timber-dependent communities.

1.2 Available Funding and Match Requirement

- There is \$388,000 available under a competitive application process.
- Due to the limited amount of funds and anticipated capital costs, COMMERCE anticipates making one to two awards to provide the services described in this Notice of Funding Opportunity. Proposals in excess of this amount will be considered non-responsive and will not be evaluated.
- Any contract awarded as a result of this procurement is contingent upon the availability of funding.
- A minimum 1:1 match of funds is required.
 - Documentation of secured match must be provided prior to contract execution. Documentation must be on the match provider's letterhead and include a specific dollar amount dedicated for matching funds. Matching funds may be sought from lending institutions or investors, or provided by the applicants.
 - Successful applicants who do not provide documentation of secured match funding within three months of award may have their award withdrawn. Additional time may be granted to secure match, depending on circumstances, on a case-by-case basis.
- Contracts executed for awarded projects will be performance based, with negotiated milestones, tasks and deliverables. Budgets must be specifically tied to the deliverables for purposes of reimbursement.

1.3 Program Priorities

Applicants are encouraged to pursue projects that replace heating oil or propane with wood energy products (e.g., pellets, chips, cordwood, other forms of forestry management debris). Projects which seek to replace natural gas will not be considered due to lower anticipated economic and environmental benefits.

Projects located in rural, timber-dependent communities that support forestry-related employment and energy resilience in areas prone to power and fuel supply interruptions are strongly encouraged.

1.4 Americans with Disabilities Act

COMMERCE complies with the Americans with Disabilities Act (ADA). Respondents may contact the NOFO Coordinator to receive this NOFO in Braille or on tape.

2 GENERAL INFORMATION FOR APPLICANTS

2.1 Notice of Funding Opportunity (NOFO) Coordinator

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

Name:	Angela LaSalle
Phone Number:	360-725-5034
NOFO Website:	https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/
E-Mail Address:	CEF@commerce.wa.gov SUBJECT LINE naming convention: Wood Energy_ Name of Organization _ topic

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

2.2 Bidders' Conference

COMMERCE will host a bidders' conference via Skype to review the application process and respond to questions from potential applicants. The online bidder conference will be held **January 8, 2021 at 3:00pm Pacific Time**. Participants may join the conference via [Skype](#) or phone (360-407-3813, conference ID 78356462). All prospective applicants are encouraged to attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the Bidders' Conference or in subsequent communication with the NOFO Coordinator will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Applicant that has received a copy of the NOFO or made the NOFO Coordinator aware of its interest in this procurement.

Written questions regarding the application process may only be submitted via email to CEF@commerce.wa.gov. All questions and responses will be published on a "Frequently Asked Questions" (FAQ) document which will be updated at least weekly at <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/>. The last opportunity to submit questions is **noon on January 22, 2021**.

Applicants:

- Must submit applications following the Notice of Funding Opportunity (NOFO) instructions and processes.
- Must complete the required documents as indicated below and send as attachments with the application.

Summary of Documentation

Forms listed below are available for download on the CEF website:

<https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/>

The following forms must accompany the application at the time of submission:

- ☐ Risk Assessment Form
- ☐ Match Documentation Letter(s)
- ☐ Department of Revenue Compliance
- ☐ Ethics in Public Service Compliance
- ☐ Certifications and Assurances

If selected for a conditional award, the following must be completed and on file prior to contract execution:

- ☐ Countersigned Award Letter
- ☐ Certificate of Required Insurance
- ☐ Online Invoicing Registration Form
- ☐ EO 05-05 Process, if applicable
- ☐ Scope of Work
- ☐ Budget

Application process:

- Applicants are required to follow the instructions as indicated on the application.
- Applications must be received by COMMERCE by **5:00pm Pacific Time on January 29, 2021**.
- Send questions regarding the application process to CEF@commerce.wa.gov.
- To ensure delivery, the maximum size of the application is 10 MB.
- Any violations of these instructions may result in point reductions and/or disqualification, depending on the severity of the infraction, at COMMERCE's discretion.
- Applications will only be accepted via email by submitting the package to CEF@commerce.wa.gov. Mailed paper applications will not be accepted.
- COMMERCE will determine all final funding award decisions.

Steps (as outlined on the application):

- Save the document with this file name structure in WORD format (not PDF):
 - <Name of Organization>_ Wood Energy
- After saving the document, email it to: CEF@commerce.wa.gov
 - Subject line: Wood Energy_< Name of Organization >_APP_ PKG
- Include all required attachments as separate files attached to the same email message as the application:
 - Risk Assessment Survey
 - Match Documentation Letter(s)
 - [DOR Compliance Status](#)
 - Ethics in Public Service Compliance
 - Certification and Assurances

Awardees must:

- Conform to all state laws, regulations and policies, including Chapter 42.52 of the Revised Code of Washington. Proposers should familiarize themselves with these requirements prior to submitting a proposal that includes current or former state employees.
- Report all pass-through funding using the reportable expense template provided by COMMERCE under the Governor's Diverse Spend Initiative.
- Comply with Archaeological and Cultural Resource and Tribal consultation requirements under Executive Order 05-05, as applicable, and if awarded funds, complete the process prior to entering into a contract.
- Comply with audit and monitoring requirements, including scheduled site visits.
- Utilize the online invoicing process for reimbursement.

2.3 Estimated Timeline

Wood Conversion Projects at Public Facilities		
Estimated Date	Task Category	Subtask Description
January 4, 2021	NOFO and Application Released	NOFO released, web posting, application period opens
January 8, 2021	Bidders' Conference	Host and record Bidders' Conference
January 29, 2021	Application Closes	Application period closes
February 26, 2021	Awards	Awardees and non-awardees notified
March 2021	Debriefing Conferences	Hold debriefing conferences for unsuccessful applicants, if requested
April 2021	Contracts Executed	Contracts negotiated and executed
<i>COMMERCE reserves the right to modify dates as required for program implementation.</i>		

2.4 Period of Performance

Successful applicants are expected to complete their projects within twelve months of contract execution. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE. COMMERCE reserves the right to extend the contract for two one-year periods.

2.5 Application Steps

Step 1: Thoroughly review guidelines and Notice of Funding Opportunity (NOFO) and note any items for clarification. Email questions to CEF@commerce.wa.gov. Review posted questions and answers (Q&A) on the program website <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/>

Step 2: Attend or review the Bidders' Conference, which will be recorded and published on the <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/>

Step 3: Confirm the proposed project is eligible for funding under this program.

Step 4: Complete and submit an application, along with all required support documents.

Step 5: Scoring and recommendation of projects for funding will be conducted by an evaluation team, and may include consultation with outside experts or advisory bodies as warranted.

Step 6: COMMERCE will make all final funding decisions. Notification of program grant awards, along with notification of unsuccessful proposals, will take place **February 26, 2021**.

Step 7: Successful applicants will enter into contract negotiations starting **April 2021**.

2.6 Eligibility Criteria

Any Washington-based public entity including state agencies, and general and special purpose local governments may apply.

Applicants must not seek funding to supplant or displace prior or existing match commitments.

Program funds must be used to develop and acquire capital assets having a lifespan of 13+ years.

2.7 Minority and Women Owned Business Participation

In accordance with 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). However, no preference will be included in the evaluation of proposals, no minimum level of MWBE participation will be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis. Annual procurement participation goals for this type of project are 10% MBE and 4% WBE. These goals are voluntary. For information, contact OMWBE at (360) 753-9693 or omwbe.wa.gov.

2.8 Recipient Reporting

Recipients of Wood Energy for Public Facilities 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 web conference to demonstrate milestone completion.

2.9 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 Apparent Successful Contractor is announced; 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 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 proposal exempt from disclosure or as Proprietary Information will not be honored. "Proprietary Information" means information owned by the applicant to which the applicant claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by copyright, patent, trademark, or trade secret laws.

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 NOFO Coordinator is required. All requests for information should be directed to the NOFO Coordinator.

2.10 Revisions to the NOFO

In the event it becomes necessary to revise any part of this Notice of Funding Opportunity (NOFO), a new version will be posted on the website, along with the current revision date. Applicants are responsible for checking the [website](#) to determine they are referring to the most current NOFO version. Failure to check for the most current version or updated requirements may result in an incomplete application based on earlier versions of this NOFO. COMMERCE also reserves the right to cancel or to reissue this NOFO, in whole or in part, prior to execution of a contract.

2.11 Disclaimer

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

This solicitation does not commit COMMERCE to award any funds, pay any costs incurred in preparing an application, or procure or contract for services or supplies.

Only applications with responses meeting all Mandatory Eligibility Criteria will be approved for further evaluation. COMMERCE reserves the right to determine at its sole discretion whether the proposer's responses are sufficient for further review.

COMMERCE reserves the right to:

- Reject any and all proposals received without penalty and not to issue a contract as a result of this NOFO.
- Waive minor administrative irregularities.
- Contact an Applicant for clarification of its proposal.

This solicitation will be distributed electronically to subscribers who have signed up for [email updates](#) and by posting on the program website: <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/wood-energy-for-public-facilities/>. Applicants are responsible for checking the website for updates, amendments and addenda. COMMERCE accepts no liability and will provide no accommodation for applicants who submit an application based on out-of-date solicitation documents.

2.12 No Obligation to Contract

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

2.13 Diverse Business Inclusion Plan

Responders will be required to submit a Diverse Business Inclusion Plan with their proposal. 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

2.14 Acceptance Period

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

2.15 Complaint Process

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

- a) The solicitation unnecessarily restricts competition;
- b) The solicitation evaluation or scoring process is unfair; or
- c) 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:

- a) The complaint must be in writing;
- b) The complaint must be sent to the NOFO coordinator in a timely manner;
- c) The complaint should clearly articulate the basis for the complaint; and
- d) The complaint should include a proposed remedy.

The NOFO 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.

2.16 Responsiveness

All proposals will be reviewed by the NOFO Coordinator to determine compliance with administrative requirements and instructions specified in this NOFO. The Applicant is

specifically notified that failure to comply with any part of the NOFO may result in rejection of the proposal as non-responsive.

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

2.17 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 which the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact a Applicant for clarification of its proposal.

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

2.18 Contract General Terms & Conditions

The apparent successful contractor will be expected to enter into a contract which is substantially the same as the sample Interagency Agreement 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.

2.19 No Obligation to Contract

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

2.20 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 NOFO. No cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.21 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.

2.22 Insurance Coverage

Upon request, 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 within the contract.

The Contractor 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. 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. Standard insurance requirements are included within the sample contract and its special terms and conditions attached as Exhibit C.

3 EVALUATION AND CONDITIONAL AWARD

3.1 Proposal Contents

Section 1: Applicant Information

The Applicant should be prepared to submit the following information under the “Application Summary” tab of the Application Portal

- A. Organization Name and Project Title
- B. Total Project Cost and Dollar Amount of Grant Funding Requested
- C. Applicant/Organizational Contact Information
- D. Additional Contacts for the Applicant
- E. Applicant Type (State Agency, Federal Agency, Local Government)
- F. Federal Employer Tax Identification Number
- G. Location of Facility from Which Consultant Would Operate

Section 2: Project Information

Project Summary: Describe the project in one to three paragraphs, including its specific goals and objectives, general scope, and how it will achieve the legislative intent of replacing fossil energy sources with wood energy to meet the thermal and/or electrical needs of public facilities in Washington State.

Methodology and Context: Discuss how this proposal will evaluate the technologies, operations and resources to be utilized in the proposed project. Include a detailed explanation of the proposed approach and methodology, and the locations of proposed activities. Projects that address the needs of rural communities for greater energy resiliency, and integrate into existing or emerging wood energy product enterprises, are strongly encouraged. Preference will be given to projects that catalyze a larger impact.

Feedstocks: Discuss the project’s proximity to available sources of woody biomass. This section should also address the preference for projects that can utilize wood industry waste, as well as projects in close proximity to existing, functioning forestry collaboratives. In order to receive full points for this section, projects shall address local forest management needs such as forest health treatments or fire hazard reduction efforts.

Work Plan: Include proposed tasks, services, activities, deliverables and any additional aspects necessary to accomplish the scope of the project. Describe what permitting needs and/or

strategies are being considered to enable the project to move forward. This section should contain detail sufficient to convey to members of the evaluation team the Applicant's knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff. The Applicant may present creative approaches and pertinent supporting documentation to support their work plan.

Project Schedule: Include a schedule indicating when the elements of the work would be completed. The project schedule must ensure that deadlines for proposed deliverables are met.

Budget: Submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and produce the deliverables under the proposed contract, including the level and sources of matching funds. Applicants are required to collect and pay Washington state sales and use taxes, as applicable. Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises. Please note how you will be providing match, match amount, match confirmed and match source. Please highlight any non-state match.

Outcomes and Performance Measurement: Describe the impacts/outcomes the Applicants 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.

Risks: The Applicant must identify potential risks that are considered significant to the success of the project. Include how the Applicant would propose to effectively monitor and manage these risks, including reporting of risks to the COMMERCE contract manager.

Local Support: Identify sources of local support and their levels of engagement, including local governments, community organizations, and especially forest collaboratives and existing or potential business relations. Letters of support and other expressions of commitment are not required, but may strengthen the application.

Staff Qualifications/Experience:

- Identify staff, including subcontractors, who will be assigned to the proposed contract, indicating the responsibilities and qualifications of such personnel, and amount of time each will be assigned to the project. Describe the project team structure and internal controls to be used during the course of the project, including any subcontractors.
- Provide resumes for the named staff that include information on the individual's particular skills related to this project, education, experience, significant accomplishments, and any other pertinent information. Identify any current or former state employees employed by or on the Applicant's governing board as of the date of the proposal. Include their position and responsibilities within the Applicant's organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Applicant may be disqualified from further consideration for the award of a contract.
- The Applicant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have prior approval from COMMERCE.

References: List names, addresses, telephone numbers and e-mail addresses of three (3) business references for the Applicant and three (3) business references for the lead staff person for whom work has been accomplished, and briefly describe the type of service provided. Do not include current COMMERCE staff as references. By submitting this request, the Applicant grants permission to COMMERCE to contact these references and others who from COMMERCE's perspective may have pertinent information. COMMERCE may or may not, at

COMMERCE'S discretion, contact references. COMMERCE may evaluate references at COMMERCE'S discretion.

OMWBE Certification: (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) if certified minority-, women-, or veteran-owned firm(s) will be participating on this project. For more information please visit: <http://www.omwbe.wa.gov>.

3.2 Scoring and Weighting

The following weighting and points will be assigned to the proposal for evaluation purposes. The highest possible score will be 100 points:

Methodology and Context (40 points): Points will be awarded after examining a number of factors, including feasibility of the technologies, operations and resources to be utilized in the proposed project. Reviewers will also award points if synergies exist between the subject of the proposed study and broader community needs for energy resiliency.

Feedstocks (20 points): Points will be awarded to projects in close proximity to available sources of woody biomass, with preference to those that can utilize biomass resulting from forest management activities such as forest health treatments or fire hazard reduction.

Applicant Strength (20 points): Reviewers will evaluate the proposed scope of work and schedule, including the project team and additional expertise to be drawn upon to complete the scope of work. Priority will be given to projects proposed by experienced teams with demonstrated expertise and proven track records of seeing projects through to successful completion.

Local Support (10 points): Points will be based upon the level of engagement and commitment to success expressed by local governments, community organizations, and existing or potential business relations. Projects which work closely with forest collaboratives are preferred.

Matching Funds (10 points): Points will be based on the level of match included in the proposal. Applications with less than a one-to-one match will not be reviewed. A two-to-one match or higher will be necessary to receive the full 10 points. Lesser match levels will receive five points.

COMMERCE reserves the right to award contracts to Applicants whose proposals are deemed to be in the best interest of COMMERCE and the state of Washington.

3.3 Debriefing of Unsuccessful Applicant

Any Applicant who has submitted a proposal 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 NOFO 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 NOFO 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 firm's proposal;
- Critique of the proposal based on the evaluation;
- Review of proposer's final score in comparison with other final scores *without* identifying the other firms or reviewing their proposals.

Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted over web conference or on the telephone and will be scheduled for a maximum of thirty minutes.

3.4 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 NOFO Coordinator. Protests must be received by the NOFO 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 email to: CEF@commerce.wa.gov.

Applicants protesting the process 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 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 NOFO 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 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. 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 submitted a proposal, such Applicant will be given an opportunity to submit its views and any relevant information on the protest to the NOFO Coordinator.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE's action.
- Find only technical or harmless errors in COMMERCE's acquisition process and determine COMMERCE to be in substantial compliance and reject the protest.

- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the errors and re-evaluate all proposals
 - Reissue the solicitation document and begin a new process
 - 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 Awardees. If the protest is determined to have merit, one of the alternatives noted in the preceding paragraph will be taken.

End of Notice of Funding Opportunity

4 EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers' Rights Certification

Exhibit D Interagency Agreement with General Terms and Conditions

EXHIBIT A

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:

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. 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 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 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 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 ability of the Applicant and the lead staff person to perform the services contemplated by this NOFO.
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.

We (*check one*):

- ☐ **are** submitting proposed Contract exceptions. (See Section 2.12, Contract and 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 proposal, 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.: 2021-WE-001

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 Printed name

Title: _____ Place: _____
Title of person signing certificate Print city and state where signed

Date: _____

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



EXHIBIT D

INTERAGENCY AGREEMENT TEMPLATE

Interagency Agreement with

<Name of Governmental Entity Here>

through

<Name of COMMERCE program issuing/administering contract here>

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: **<Month> <Day>, <Year>**

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Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: <Insert Number>

Washington State Department of Commerce

Energy Division

Energy Contracts and Programs (ECAP)

Clean Energy Fund (CEF) 2 – Wood Energy for Public Facilities

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>						
<table style="width: 100%; border: none;"> <tr> <td style="width: 33%;">9. Federal Funds (as applicable)</td> <td style="width: 33%;">Federal Agency:</td> <td style="width: 33%;">CFDA #</td> </tr> <tr> <td><Insert \$ amount></td> <td><Insert name></td> <td><Insert number></td> </tr> </table>				9. Federal Funds (as applicable)	Federal Agency:	CFDA #	<Insert \$ amount>	<Insert name>	<Insert number>
9. Federal Funds (as applicable)	Federal Agency:	CFDA #							
<Insert \$ amount>	<Insert name>	<Insert number>							
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. DUNS # <Insert number>						
14. Contract Purpose <Briefly describe contract purpose>									
15. Signing Statement 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 and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents hereby incorporated by reference: Attachment "A" – Scope of Work, Attachment "B" – Budget, <etc.>									
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL 08/22/2019. APPROVAL ON FILE.							

**SPECIAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
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Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. 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.

3. COMPENSATION

COMMERCE shall pay an amount not to exceed \$ for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

4. 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.

5. 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/quarterly].

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. 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.

Invoices and End of Fiscal Year

Invoices are due on the 20th of the month following the provision of services.

Final invoices for a state fiscal year may be due sooner than the 20th and Commerce will provide notification of the end of fiscal year due date.

The grantee must invoice for all expenses from the beginning of the contract through June 30, regardless of the contract start and end date.

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.

6. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

7. SUBCONTRACTOR DATA COLLECTION

Contractor 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 Agreement performed by subcontractors and the portion of 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.

8. 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

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
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General Terms and Conditions

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. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any attachments, 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.
- D. "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.
- E. "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.
- F. "State" shall mean the state of Washington.
- G. "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. 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.

3. 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.

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
 - i. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - ii. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
 - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
- 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

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
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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.

6. COPYRIGHT

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.

7. DISPUTES

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. GOVERNING LAW AND VENUE

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

9. INDEMNIFICATION

**GENERAL TERMS AND CONDITIONS
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Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. 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.

11. 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.

12. 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.

The Contractor shall retain such records for a period of six (6) 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.

13. 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 calendar day notice requirement. In lieu of termination, the Contract may be amended to reflect the new funding limitations and conditions.

14. 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.

15. 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

**GENERAL TERMS AND CONDITIONS
INTERAGENCY AGREEMENT
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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.

16. 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.

17. 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.

18. 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.

19. TERMINATION PROCEDURES

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.

**GENERAL TERMS AND CONDITIONS
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After receipt of a notice of termination, and except as otherwise directed by the Authorized Representative, 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 except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. 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;
- D. 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;
- E. 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;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. 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 the Authorized Representative has or may acquire an interest.

20. TREATMENT OF ASSETS

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.

- A. 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.
- B. 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.
- C. 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.
- D. 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.

21. 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.

Scope of Work

Budget