STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR APPLICATIONS (RFA)

RFA NO. LICSD2020

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

GRANT TITLE: Low-Income Community Solar Deployment Grant Program – Clean Energy Fund 3

APPLICATION DUE: December 1, 2020, 5 p.m., Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: ~~06/25/21 –06/23/23~~07/08/2021~~-~~07/07/2023

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

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3. Application Contents
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5. RFA Exhibits
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   2. Diverse Business Inclusion Plan
   3. Workers’ Rights Certification
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1. INTRODUCTION

* 1. PURPOSE AND BACKGROUND

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

The Washington State Legislature created the Clean Energy Fund (CEF) to fund projects that provide a public benefit to communities in Washington State through deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or otherwise increase energy independence for the state. The Program is funded as part of CEF 3 funding reappropriated in [Section 1013 (9) of Substitute House Bill 1102 in the 2019 Capital budget.](http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/House%20Passed%20Legislature/1102-S.PL.pdf#page=1)

This Program aims to increase the beneficial deployment of solar energy in Washington State, an effort that requires investment in solar projects that address peak demand considerations and provide concrete benefits to low-income communities. This Program provides grants to Federally Recognized Tribal Governments, Housing Authorities, Non-profits, and Retail Electric Utilities for community solar project equipment and related development costs. A list of eligible costs for grant funds and match can be found in SECTION 1.2 OBJECTIVES AND SCOPE OF WORK.

These grants support state policy to pursue equitable, clean energy included in the Clean Energy Transformation Act of 2019 (Chapter 19.405 RCW). As part of the work towards a 100% clean energy standard in 2045, electric utilities in Washington must ensure that all customers benefit from a transition to clean energy through the equitable distribution of energy and non-energy benefits to Vulnerable Populations and Highly Impacted Communities (which, among others, include communities “located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151”).

Desired outcomes from projects funded under this solicitation include demonstrating models for low-income Community Solar project deployment, reducing the Energy Burden of Low-Income Households and Low-Income Service Providers (as defined in SECTION 1.7 DEFINITIONS), providing direct and indirect benefits to Highly Impacted Communities and Vulnerable Populations, reducing harmful air emissions through the deployment of solar technology, and addressing the impacts of peak electricity demand by supplying energy on the distribution side of the electric grid.

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

COMMERCE intends to award multiple contract(s) to provide the services described in this RFA.

* 1. OBJECTIVES AND SCOPE OF WORK

The primary purpose of grants funded under this solicitation must be for Community Solar projects that produce solar electricity and provide energy and/or non-energy benefits to Qualifying Subscribers. Per SECTION 1.7 DEFINITIONS, Community Solar:

* Has a nameplate generating capacity more than 100 kilowatts (kW) direct current (DC)
* Lowers the Energy Burden of Subscribers

Pursuant to Clean Energy Transformation Act (CETA), measures that lower Energy Burden(as defined in SECTION 1.7 DEFINITIONS) include, but are not limited to, weatherization, conservation and efficiency services, and monetary assistance, such as a grant program or discounts for lower income households, intended to lower a household's Energy Burden. Customer ownership in distributed energy resources or other strategies are permissible if such strategies achieve a reduction in Energy Burden for the customer above other available conservation and demand-side measures. Grant funding provided under this solicitation must not be used to supplant or displace previous, current, or future funding (for example, via a reduction in other funding provided to a program to lower low-income Energy Burden).

As stated in RFA SECTION 1.7 DEFINITIONS, a Qualifying Subscriber is a Subscriber to the Community Solar project that is also a qualified Low-Income Household or a Low-Income Service Provider.

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

* Projects that allocate funding equal to or greater than the grant amount to initiatives lowering the Energy Burden of Qualifying Subscribers (or alternative initiatives allowable under Project Minimum Qualification 3a below) over the life of the project, and that maximize total Energy Burden reduction for Qualifying Subscribers.
* Projects that maximize pass-through of direct and/or indirect benefits to Highly Impacted Communities and Vulnerable Populations.
* Projects that demonstrate meaningful community engagement and/or co-creation of projects
* Projects with lower cost per watt and projects that can document the application of non-state dollars toward the project.
* Projects with a higher annual average of daily solar radiation per square meter ~~total solar resource fraction~~.
* Distribution side projects that help meet peak electricity demand.
* Projects with major components made in Washington. *Note: Commerce’s ability to prioritize these projects may be affected by further review by the World Trade Organization.[[1]](#footnote-1)*
* Projects that improve the distribution of project sizes and/or geographic distribution of awards under this program within the state. Geographic distribution will be based on congressional district boundaries.

These goals are reflected in the scoring criteria. A project is still eligible to apply to this grant if it does not intend to or is unable to accomplish one or all of these policy goals.

All project costs must be necessary for and directly connected to the acquisition and installation of the solar array.

Examples of eligible, reimbursable expenditures include:

* Solar technology and construction materials
* Solar electrical connectivity, inverters, etc.
* Personnel costs for site design, site preparation and installation

Examples of ineligible, non-reimbursable expenditures include:

* Purchase or rental of real estate
* Construction or general maintenance of buildings and parking facilities
* New paving and landscaping
* Maintenance costs
* Studies or research
* Surveys
* Batteries or other energy storage infrastructure
  1. MINIMUM QUALIFICATIONS

Applicant Qualifications

1. Applicant must be licensed to do business in the State of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
2. The primary eligible Applicant, who may partner with other organizations, must be one of the following: 501(c)(3) Non-Profit, Federally Recognized Tribal Government, Housing Authority, or Retail Electric Utility.

Project Qualifications

1. Project must develop or acquire capital assets with a lifespan of greater than 13 years and be located in the State of Washington.
2. Project must develop or demonstrate eligible solar energy technologies which:
   1. Have demonstrated viability
   2. Have interconnection with the grid
3. Project must produce solar electricity and pass through benefits, including a lowered Energy Burden, to Qualifying Subscribers. Limiting distribution of benefits to a single Qualifying Subscriber is allowable only if that Qualifying Subscriber is a Low-Income Service Provider.
   1. If a project proposes to serve Qualifying Subscribers that are not retail electric customers of an electric utility, direct cash payments or contributions to funds controlled by the Qualifying Subscribers may substitute for initiatives lowering the Energy Burden of Qualifying Subscribers (for purposes of scoring and evaluation of minimum qualifications).
4. At each project site, Applicant must plan to construct one or more solar arrays, which together have a nameplate generating capacity of more than 100 kW DC. A project site must be limited to one property, or to contiguous properties owned by the same entity.
5. Applicant must include a clear and detailed plan for engagement with and qualification of Qualifying Subscribers.
   1. FUNDING

[Section 1013 (9) of Substitute House Bill 1103](http://leap.leg.wa.gov/leap/budget/lbns/1719Cap6090-S.SL.pdf), in the 2019 Capital Budget authorized a reappropriation of the $3,880,000 previously available for the CEF Solar Deployment program. Of this funding, $1,552,000 in state funds and up to $2,328,000 in federal funds from the U.S. Department of Energy, as part of the American Recovery and Reinvestment Act (ARRA), are expected to be competitively awarded this round.

|  |  |
| --- | --- |
| Funding Source | Available to be Awarded |
| Total ARRA Funds | Up to $2,328,000 |
| Total Washington State Capital Funds | $1,552,000 |
| Total Available Funding for Competition | Up to $3,880,000 |

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

Any unallocated state funds may be combined with federal funds, as appropriate and at COMMERCE’s discretion. Awardees will be subject to the funding source requirements as applicable. See SECTION 4.7.D FUNDING REQUIREMENTS for more information.

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFA. The maximum award is $1,000,000.

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

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

No match is required for this program; however, priority will be given to projects that can document the application of non-state dollars toward the project.

The application contains a section where applicants are able to indicate and funding preference for state or federal funds as the entity’s funding preference. An indication of preference does not guarantee an award will be made from the desired funding pool.

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

* 1. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about 07/08/2021 ~~06/25/2021 06/01/2021~~ and to end on 07/07/2023 ~~06/23/2023 05/29/2023~~. Amendments extending the period of performance, if any, shall be at the sole discretion of COMMERCE.

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

* 1. CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

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

* 1. DEFINITIONS

Definitions for the purposes of this RFA include:

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

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

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

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

Community Solar: A solar project that has a nameplate generating capacity of more than 100kW direct current and which lowers the Energy Burden of Subscribers.

Energy Burden: Means the share of annual household income used to pay annual home energy bills.[[2]](#footnote-2)

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

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

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

Housing Authority: any of the public corporations created by RCW 35.82.030.[[3]](#footnote-3)

Low-Income Household: a household that has a taxable income for the preceding year not exceeding the higher of 80% of area median household income or 200% of the federal poverty level, adjusted for household size.[[4]](#footnote-4)

Low-Income Service Provider: A non-profit organization that provides services to low-income households. This includes, but is not limited to, a local community action agency or local community service agency designated by the Department of Commerce under chapter 43.63A RCW, local Housing Authority, Tribal housing authority, low-income Tribal housing program, affordable housing provider, or food bank.

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

Qualifying Subscriber: a Subscriber that is a qualified Low-Income Household or Low-income Service Provider.

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

Retail Electric Utility: any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state, per RCW 80.60.010.[[5]](#footnote-5)

Subscriber: a retail electric customer of an electric utility or individual residing within a retail electric utility territory who owns or is the beneficiary of one or more units of a Community Solar project directly interconnected with that same utility.

Vulnerable Population: Communities that experience a disproportionate cumulative risk from environmental burdens due to: (a) adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and (b) sensitivity factors, such as low birth weight and higher rates of hospitalization.[[6]](#footnote-6)

* 1. ADA

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

2. GENERAL INFORMATION FOR APPLICANTS

* 1. RFA COORDINATOR

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

|  |  |
| --- | --- |
| Name | Aaron Dumas |
| E-Mail Address | [cef@commerce.wa.gov](mailto:Forrest.Watkins@commerce.wa.gov) |
| Mailing Address | 1011 Plum St SE  PO Box 42525  Olympia WA 98504-2525 |
| Program Website | https://commerce.wa.gov/cef-solar |
| Phone Number | 564-999-1414 |

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

* 1. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

|  |  |
| --- | --- |
| Issue Request for Applications | 10/01/2020 |
| Question & answer period | 10/01/2020-11/23/2020 |
| Answers to Q&A posted no later than | Weekly, through 11/26/2020 |
| Pre-Application Virtual Conference 1 | 10/08/2020 12:30 p.m. |
| Pre-Application Virtual Conference 2 | 10/13/2020 12:30 p.m. |
| Pre-Application Virtual Conference 3 | 10/15/2020 10:00 am |
| Applications due | 12/01/2020 5 p.m. |
| Evaluate applications | 01/19/2020 |
| Conduct oral interviews with finalists, if required | As needed |
| Announce “Apparent Successful Grantee” and send notification via e-mail to unsuccessful proposers | ~~02/08/2021~~ 02/22/2021 |
| Hold debriefing conferences (if requested) | ~~02/24/2021~~ 03/02/2021 |
| Negotiate contract | ~~02/25/2021-06/24/2021~~ 03/10/2021-07/07/2021 |
| Begin contract work | No later than ~~06/25/2021~~ 07/08/2021 |

COMMERCE reserves the right to revise the above schedule.

2.3 PRE-APPLICATION CONFERENCE

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

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

2.4 SUBMISSION OF APPLICATIONS

ELECTRONIC APPLICATIONS:

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

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

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

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

2.5 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

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

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

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

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

* 1. REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, addenda will be provided via e-mail to all individuals who have made the RFA Coordinator aware of their interest. Addenda will also be published on Washington’s Electronic Bid System (WEBS). The website can be located at <https://fortress.wa.gov/ga/webs/>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFA and will be placed on the website. Such addenda will also be published on the program website listed in SECTION 2.1 RFA COORDINATOR.

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

* 1. DIVERSE BUSINESS INCLUSION PLAN

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

COMMERCE has the following agency goals:

10% participation by Minority Owned Business

6% participation by Women Owned Business

5% participation by Veteran Owned Business

5% participation by Small Businesses

* 1. ACCEPTANCE PERIOD

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

* 1. **COMPLAINT PROCESS**

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

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

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

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

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

* 1. RESPONSIVENESS

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

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

* 1. MOST FAVORABLE TERMS

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

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

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

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

* 1. CONTRACT GENERAL TERMS & CONDITIONS

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

* 1. COSTS TO PROPOSE

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

* 1. NO OBLIGATION TO CONTRACT

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

* 1. REJECTION OF APPLICATIONS

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

* 1. COMMITMENT OF FUNDS

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

* 1. ELECTRONIC PAYMENT

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

* 1. INSURANCE COVERAGE

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

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

3. APPLICATION CONTENTS

ELECTRONIC PROPOSALS:

Proposals must be written in English and submitted electronically to the RFA Coordinator in the order noted below:

1. Application Summary
2. Technical Proposal
3. Management Proposal
4. Cost Proposal
5. Letter of Submittal
6. Certifications and Assurances (Exhibit A to this RFA)
7. Staff Resumes
8. Site Information Data Sheet
9. Verification of Solar Asset
10. Letter from the Retail Electric Utility (OPTIONAL)
11. Letter(s) of Support from a Tribal Government (OPTIONAL)
12. OMWBE Certification (OPTIONAL AND NOT SCORED)
13. Diverse Business Inclusion Plan (Exhibit B to this RFA)
14. Workers’ Rights Certification (Exhibit C to this RFA)

Applications 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 application, but should assist the Applicant in preparing a thorough response.

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

Items marked “mandatory” must be included as part of the application for the application 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.

* 1. APPLICATION SUMMARY (MANDATORY, SCORED)

The Applicant should use the provided Application form to provide Application Summary and Technical, Management, and Cost proposal information. The Applicant should be prepared to submit the following information as elements of their Application Summary:~~The Applicant should be prepared to submit the following information under the “Application Summary” tab of the Application Portal:~~

1. Application Title/Project Name
2. Total Nameplate Generating Capacity to Be Installed (All Project Sites) (Kilowatts - Direct Current)
3. Amount Requested (Refer to RFA SECTION 1.4: FUNDING for more information on minimum and maximum request amounts)
4. Applicant/Organizational Contact Information
5. Applicant Tax Identification Number (TIN)
6. Applicant DUNS number
7. Statewide Vendor Number (SWV)
8. Applicant Universal Business Identifier (UBI)
9. Primary Official Contact Information (Signatory to Letter of Submittal)
10. Additional Contacts for the Applicant
11. The Applicant type (501(c)(3) Non-Profit, Retail Electric Utility, Federally Recognized Tribal Government, or Housing Authority)
12. The Applicant’s preference between state or federal funding
    1. TECHNICAL PROPOSAL (MANDATORY, SCORED)

The Applicant should use the provided Application form to provide Application Summary and Technical, Management, and Cost proposal information. The Applicant should be prepared to submit the following information as elements of their Technical Proposal:

1. **Project Approach/Methodology**: Include a complete description of the Applicant’s proposed approach and methodology for the project. This section should convey Applicant’s understanding of the high-level objectives and minimum qualifications of this RFA and how their project relates to these objectives. If the project would be interconnected on the distribution grid and would help address peak demand considerations, the Applicant’s response should describe what steps they have taken to verify this with the local electric utility, and what steps if any would be taken to ensure the array helps to meet peak demand (trackers, western orientation of panels, etc.). If the project would utilize major components, including panels/modules or inverters, made in Washington, identify the components, manufacturer, and the place of manufacture.
2. Equity Narrative: The Equity Narrative should describe:
   1. How the project provides lowered Energy Burden to Qualifying Subscribers and/or other direct or indirect benefits to Highly Impacted Communities and/or Vulnerable Populations. Please include specific project cashflow figures that will be dedicated to lowering Qualifying Subscriber Energy Burden, total Energy Burden reduction projected to be delivered to Qualifying Subscribers as a result of the project, and describe the basis of any calculations necessary to arrive at these figures[[7]](#footnote-7). Other direct or indirect benefits may include but are not limited to: job or training opportunities for members of Highly Impacted Communities or Vulnerable Populations, or concrete environmental benefits that would be directly traceable to the project;
   2. Which, if any, Low-Income Service Provider(s) the project will serve and how the project will benefit their program(s) and/or community(ies).
   3. How the project will verify eligibility of Qualifying Subscribers, as applicable. Possible methods for verifying eligibility of Low-Income Households may include participation in other income-qualified benefits programs (LIHEAP, SNAP, etc), tenancy in income-qualified housing units, or other methods which verify income against the thresholds described in SECTION 1.7 DEFINITIONS.
   4. Ways in which the project has or will demonstrably and meaningfully engage(d) communities as part of project development, and in which community input has or will inform(ed) project development. Priority will be given to projects demonstrating meaningful co-creation of project design and outcomes.
3. Work Plan: Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFA. This section of the technical proposal must contain sufficient detail 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 also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
4. Project Schedule: Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
5. **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.
6. **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.
   1. MANAGEMENT PROPOSAL

The Applicant should use the provided Application form to provide Application Summary and Technical, Management, and Cost proposal information. The Applicant should be prepared to submit the following information as elements of their Management Proposal:

1. **Project Management (MANDATORY, SCORED)**
2. Project Team Structure and 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. As applicable, describe lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the Applicant’s organization. Include who within the firm will have prime responsibility and final authority for the work.
3. **Staff Qualifications and 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.
4. **Experience of the Applicant (MANDATORY, SCORED)**
5. Indicate the experience the Applicant and any subcontractors have in the following areas:
   * 1. Solar PV project development and/or installation of related infrastructure;
     2. Community engagement with groups relevant to the proposed project, including meaningful co-creation of similar projects; and
     3. Other relevant experience that indicates the qualifications of the Applicant, and any subcontractors, for the performance of the potential contract.
6. Indicate other relevant experience that indicates the qualifications of the Applicant, and any subcontractors, for the performance of the potential contract.
7. Include a list of contracts the Applicant has had during the last five years that relate to the Applicant’s ability to perform the services needed under this RFA. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

**C. Related Information (MANDATORY)**

1. If the Applicant 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 Applicant’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 Applicant 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 Applicant’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 Applicant’s position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the application on the grounds of the past experience. If no such termination for default has been experienced by the Applicant in the past five years, so indicate.
5. **References (MANDATORY)**

List names, addresses, telephone numbers, and fax numbers/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 an application in response to this RFA, the vendor and team members grant 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.

* 1. COST PROPOSAL

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

The maximum award for this contract must not exceed the amount specified in RFA SECTION 1.4 FUNDING to be considered responsive to this RFA.

The evaluation process is designed to award this procurement not necessarily to the Applicant of least cost, but rather to the Applicant whose application best meets the requirements of this RFA. However, Applicants are encouraged to submit applications which are consistent with state government efforts to conserve state resources.

1. **Identification of Costs (MANDATORY, SCORED)**

Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Applicant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Applicants are required to collect and pay Washington state sales and use taxes, as applicable, and should note any sales and/or use tax exemptions that may apply under CETA.[[8]](#footnote-8)

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.

1. **Match (MANDATORY, SCORED)**

Identify the total eligible project costs to be funded by the Applicant. Indicate what proportion of this funding has already been secured and which is subject to pending applications. (Note: The match commitment is a scored criterion. If the Applicant is unable to secure the full match committed in their application, Commerce reserves the right to proportionally reduce the Applicant’s award amount.)

1. **Computation**

The score for the cost proposal will be computed by summing the figures resulting from the following calculations:

1. Dividing the lowest cost-per-watt bid received by the Applicant’s total cost-per-watt
2. Dividing the Applicant’s match commitment by their total award requested.
   1. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal must be signed and dated by a person authorized to legally bind the Applicant 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 should include by attachment the following information about the Applicant and any proposed subcontractors:

1. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
2. Legal status of the Applicant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
3. If the Applicant does not have a UBI number, the Applicant must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
4. Identify any state employees or former state employees employed or on the Applicant’s governing board as of the date of the application. 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.
   1. CERTIFICATIONS AND ASSURANCES (MANDATORY)

The Certifications and Assurances form (Exhibit A to this RFA) must be completed, signed and dated by a person authorized to legally bind the Applicant 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.

* 1. STAFF RESUMES (MANDATORY, SCORED)

Provide resumes for staff (at minimum those named in response to 3.3 (A)2), which include information on the individual’s particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Applicant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of COMMERCE.

* 1. SITE INFORMATION DATA SHEET (MANDATORY, SCORED)

The site information data sheet (template provided at the website listed in RFA SECTION 2.1 RFA COORDINATOR) must be completed for all project sites included in the application.

1. Street Address A project site must be limited to one property, or to contiguous properties owned by the same entity. See RFA SECTION 1.3 MINIMUM QUALIFICATIONS for information on minimum project size for each site. *Note: For projects with multiple associated street addresses, please enter the street address most closely matching the largest solar array.*
2. Congressional District Enter the Washington State congressional district of the project site.
3. Median Income: ACS 2018 5-year household median income levels for the city or town where the site is located
   * 1. Go to <https://data.census.gov/cedsci/>.
     2. Enter the name of your city or town and the word “income” in the search bar.
     3. Click on the first search result under the heading “Explore Data” near the top of the page.
     4. Near the top of the page, use the “Product:” dropdown menu to select the “2018: ACS 5-Year Estimates Subject Tables” data set.
     5. Scroll down to learn your municipality’s Estimate for Median Income (dollars) for Households.
     6. Note: If an Applicant’s city- or town-level data is unavailable from the source provided above, an Applicant is permitted to substitute county-level ACS 5-Year Estimates instead. If city- or town-level data is available, the Applicant must use that data to determine eligibility for this reduced match option.
4. Environmental Health Disparities: Environmental Health Disparities v1.1 rank for the census tract where the site is located
5. Based on the Washington Department of Health’s Washington Tracking Network tool
6. <https://fortress.wa.gov/doh/wtn/wtnibl/>
7. Click “Environmental Health Disparities V 1.1” on the left-hand column
8. Locate the exact location of the project’s site(s) and click that tract (optionally use the location tool to search for the site’s physical address)
9. The rank is shown in the left-hand column adjacent to “Environmental Health Disparities V 1.1”
10. Rural Status: Whether the proposed site is in an area identified as “non-entitlement” according to information provided by COMMERCE’s Community Development Block Grant program.
11. Based on <http://www.commerce.wa.gov/wp-content/uploads/2016/06/CDBG-2014-Map-of-Local-Governments-Served.pdf>
12. Note that some cities in Non-Entitlement Counties are identified as Entitlement Cities and will count as entitlement areas for the purposes of this program
13. Utility Fuel Mix: List the percentage of electricity generation derived from emitting sources (Coal, Natural Gas, Petroleum, Waste, and Unspecified) for the utility that serves the project site.
14. Based on [COMMERCE’s 2018 Preliminary Fuel Mix Disclosure Report](http://www.commerce.wa.gov/wp-content/uploads/2019/12/2018-Preliminary-Disclosure-Data-03122019.pdf):
15. http://www.commerce.wa.gov/wp-content/uploads/2019/12/2018-Preliminary-Disclosure-Data-03122019.pdf
16. Find the Utility Fuel Mix table corresponding to the retail electric utility that serves the project site
17. Sum the percentage of electricity derived from the following sources: Coal, Natural Gas, Petroleum, Waste, and Unspecified
    1. VERIFICATION OF SOLAR ASSET (MANDATORY, SCORED)

For all project sites, Applicants must complete and submit a report of expected energy production using the U.S. National Renewable Energy Laboratory’s PVWatts® calculator tool.

1. Go to <https://pvwatts.nrel.gov/>
2. Type street address for project into “Get Started” box
3. Confirm the correct location for this project on “Resources Data Map” then click “Go to system info”
4. Enter best estimates for all values and click “Go to PVWatts® results”
5. Click “Print Results” and save the report as a PDF
   1. LETTER FROM THE RETAIL ELECTRIC UTILITY (OPTIONAL, SCORED)

Applicants may attach a letter from the Retail Electric Utility covering all project sites describing expected impacts, if any, to the grid, and any coordination efforts that will be needed, or that have already been completed, between the Retail Electric Utility and the Applicant. If there are multiple Retail Electric Utilities serving project sites, attach one letter for each applicable Retail Electric Utility, compiled into a single PDF.

* 1. LETTER OF SUPPORT FROM TRIBAL GOVERNMENT (OPTIONAL, SCORED)

If the Applicant is not a Federally Recognized Tribal Government (nor a subdivision of a Federally Recognized Tribal Government) *and* the project will to benefit community(ies) located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151, the Applicant may submit a Letter or Letters of Support from the corresponding Federally Recognized Tribal Government(s). Letters of Support may describe the Federally Recognized Tribal Government’s relationship to the Applicant, as well as any anticipated involvement of the Federally Recognized Tribal Government in the project.

If the Applicant and project meet the above criteria, the presence or absence of a Letter of Support from a Tribal Government may contribute to a portion of the Applicant’s Highly Impacted Communities and Vulnerable Populations score. The presence or absence of this attachment will not affect the overall score of any application not addressing work in these communities.

* 1. 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>.

* 1. DIVERSE BUSINESS INCLUSION PLAN (MANDATORY)

The Diverse Business Inclusion Plan form (Exhibit B to this RFA) must be completed and submitted as a component of the application. See RFA SECTION 2.7 DIVERSE BUSINESS INCLUSION PLAN for more information.

* 1. WORKERS’ RIGHTS CERTIFICATION (MANDATORY, SCORED)

The Workers’ Rights Certification form (Exhibit C to this RFA) must be completed, signed and dated by a person authorized to legally bind the Applicant 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.

4. EVALUATION AND CONTRACT AWARD

* 1. EVALUATION PROCEDURE

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

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

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

* 1. EVALUATION BREAKDOWN

The following weighting will be assigned to the application for evaluation purposes. Reviewers may use any relevant information from an Applicant’s application to complete their scoring, however sections are listed below each scoring category that are expected to be of particular relevance to scoring that category.

|  |  |
| --- | --- |
| Category (Including application components scored) | Percentage of Score |
| Energy Burden Reduction[[9]](#footnote-9)  Equity Narrative | 30% |
| Highly Impacted Communities & Vulnerable Populations  Site Information Data Sheet  Equity Narrative  Letter of Support from Tribal Government (conditional, see RFA SECTION 3.11) | 30% |
| Project and Development Plan  Technical Proposal  Verification of Solar Asset  Letter from the Retail Electric Utility | 23% |
| Management Proposal  Management Proposal | 11% |
| Distribution Side and Peak Demand  Technical Proposal | 6% |
| Cost Proposal is computed in accordance with section 3.5(C) and the result is then added to the combined score for the above categories.  Workers’ Rights Certification – Those Applicants which certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 3% added to their score (see Attachment C). |

Please see RFA SECTION 1.2 OBJECTIVES AND SCOPE OF WORK for more information on program priorities.

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

* 1. ORAL PRESENTATIONS MAY BE REQUIRED

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

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

* 1. NOTIFICATION TO PROPOSERS

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

* 1. DEBRIEFING OF UNSUCCESSFUL PROPOSERS

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

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

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

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

* 1. PROTEST PROCEDURE

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

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

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

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

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

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

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

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

The final determination of the protest shall:

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

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

* 1. SUCCESSFUL APPLICANTS

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

1. **REQUIREMENTS OF SUCCESSFUL APPLICANTS**

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

1. PROJECT REQUIREMENTS:

* Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
* Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor’s Executive Order 05-05](https://dahp.wa.gov/project-review/governors-executive-order-05-05) or [Section 106 of the National Historic Preservation Act](https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106), depending on the funding source.
* Must serve the intended purpose of the contract for the duration of the performance period.
* Must have an anticipated lifespan of 13+ years.
* Must be completed within 24 months of execution of the grant agreement. Exceptions may be negotiated on a case-by-case basis.
* All entities involved must comply with [Washington State Prevailing Wage](https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/) or [Davis-Bacon Act](https://www.dol.gov/whd/govcontracts/dbra.htm), depending on the source of funding.
* Comply with [Washington State Environmental Policy Act (SEPA)](https://ecology.wa.gov/regulations-permits/SEPA-environmental-review) or [National Environmental Policy Act (NEPA),](https://www.epa.gov/nepa) depending on the source of funding.

1. REPORTING REQUIREMENTS:

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

1. FUNDING REQUIREMENTS:

* Funding awarded through this Program cannot supplant or displace any funding designated for the submitted project. If awarded funds will go towards an existing project, the Applicant may be required to provide information concerning the project’s funding to demonstrate that funds have not been displaced.
* If the total value of incentives and rebates exceeds the upfront funding provided by the Applicant, COMMERCE will use the total incentives and rebates to calculate the gap in funding. This method ensures that COMMERCE does not overfund the project.

Projects which receive any Federal American Recovery and Reinvestment Act (ARRA) funds are subject to the following additional requirements:

* Cannot use other Federal Funding as match
* Have active registration through [SAM.gov](https://sam.gov/SAM/)
* Follow Presidential Executive Order on Buy American and Hire American
* Must follow the most restrictive of any local, state, federal, or utility requirements. This includes requirements for but is not limited to:
  + - Procurement (the Federal requirements are outlined by 2 CFR 200)
    - Records maintenance (the Federal requirements are outlined by 2 CFR 200)
    - Audit requirements (the Federal requirements are outlined by 2 CFR 200)
    - Historic Preservation (the Federal requirement is established by Section 106 of National [Historic Preservation](https://www.npi.org/NEPA/nhpa106) Act).
    - Environmental review and permitting (the Federal requirement is established by [National Environmental Policy Act](https://ceq.doe.gov/ceq-reports/reports_congress_may2009.html))
    - Prevailing wage (the Federal requirement is established by [Davis Bacon](https://www.dol.gov/whd/govcontracts/dbra.htm))

5. RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers’ Rights Certification

Exhibit D Service Contract Template with General Terms and Conditions (Federal)

EXHIBIT A

CERTIFICATIONS AND ASSURANCES

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

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

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

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

EXHIBIT B

DIVERSE BUSINESS INCLUSION PLAN

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

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

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

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

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

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

Minority \_\_%

Women \_\_%

Veteran \_\_%

Small Business \_\_%

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

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

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

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

EXHIBIT C

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

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

| Solicitation No.: | \_\_\_LICSD2020\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| --- | --- |

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

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

or

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

OR

* This firm certifies it has no employees.

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

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

EXHIBIT D



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

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

*www.commerce.wa.gov*

<Insert Date>

<Organization Name>

<Organization Representative>

<Address>

<City, State, Zip>

RE: <Program Name and Grant Number>

Dear <Organization Representative>,

Attached is the contract for a grant under the Low-Income Community Solar Deployment Grants Program. This contract details the terms and conditions that will govern the agreement between us. Please review the Special and General Terms and Conditions of the contract carefully. We recommend consulting with your legal advisor before accepting this offer.

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

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

Please note that the U.S. Department of Energy is the funding source for this program and the Catalog of Federal Domestic Assistance (CFDA) number is 81-041. Consequently, the grant funds are federal and subject to both state and federal requirements.

A requirement of this program is that you must maintain updated project records and yearly renewal of your registration in the System for Award Management at [www.sam.gov](http://www.sam.gov).

Another requirement of this program is that all entities are required to verify that the federal government has not suspended or debarred them from receiving federal funds. This includes, but is not limited to, project contractors, subcontractors, engineers, architects, consultants, and equipment vendors. The exclusion report can be accessed at www.sam.gov. Failure to provide this required certification may result in termination of your loan contract.

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

Sincerely,

<Commerce Grant Manager>



Capital Agreement with

<Grant Recipient>

through

Low-Income Community Solar Deployment Grants Program

For <Grantee Project>

Start date: <Date>

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FACE SHEET

Contract Number <Contract Number>

Washington State Department of Commerce

Energy Division

Low-Income Community Solar Deployment Grants Program

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. Grantee | | | | | 2. Grantee Doing Business As (optional) | | | | |
| <Insert Legal Name>  <Insert Mailing Address>  <Insert Physical Address>  <Insert Location> | | | | | <Insert DBA Name>  <Insert DBA Mailing Address>  <Insert DBA Physical Address>  <Insert DBA Location> | | | | |
| 3. Grantee Representative | | | | | 4. COMMERCE Representative | | | | |
| <Insert Name>  <Insert Title>  <Insert Phone>  <Insert E-mail> | | | | | <Insert Name>  <Insert Title>  <Insert Phone>  <Insert E-mail> | | | | PO Box 42525  1011 Plum St SE  Olympia WA 98504 |
| 5. Contract Amount | | 6. Funding Source | | | 7. Start Date | | 8. End Date | | |
| <Insert $ amount> | | Federal:  State:  Other:  N/A: | | | <Insert Date> | | <Insert Date> | | |
| 9. Federal Funds (as applicable)  <Insert $ Amount> | | | 10. Federal Agency  US Department of Energy | | | 11. CFDA Number:  81-041 | | | |
| 12. Tax ID # | 13. SWV # | | | 14. UBI # | | | | 15. DUNS # | |
| <Insert Number> | <Insert Number> | | | <Insert Number> | | | | <Insert Number> | |
| 16. Contract Purpose | | | | | | | | | |
| <Briefly describe contract purpose>  COMMERCE, defined as the Department of Commerce and Grantee 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: Grantee Terms and Conditions including Attachment “A” – Scope of Work Attachment “B” – Budget, Attachment “C” – Reporting, Attachment “D” - Budget Proviso Language, Attachment “E” – Special Provisions | | | | | | | | | |
| FOR GRANTEE | | | | | FOR COMMERCE | | | | |
| <Insert Name>, <Insert Title>    Date | | | | | Michael Furze, Assistant Director    Date  APPROVED AS TO FORM ONLY  BY ASSISTANT ATTORNEY GENERAL  10-10-2019  Sandra Adix, Assistant Attorney General  SIGNATURE ON FILE | | | | |

DECLARATIONS

The Washington State Department of Commerce (Commerce) has been appropriated federal funds under Section 1013 of the 2018 Capital Budget (Substitute Senate Bill 6090) (Chapter 2, Laws of 2018) to provide grants to deploy solar projects that benefit Washington communities.

|  |  |
| --- | --- |
|  | |
| CLIENT INFORMATION | |
| Legal Name | <Insert Legal Name> |
| Contract Number | <Insert Contract Number> |
| Award Year | <Award Year> |
| State Wide Vendor Number | <SWV Number> |
|  | |
| PROJECT INFORMATION | |
|  |  |
| Number of Sites: | <Insert Number of Sites> |
| Project City: | <Insert Name of City> |
| Project Zip Code: | <Insert Project Zip> |
|  |  |
|  | |
| GRANT INFORMATION | |
|  | |
| Non-State Match Required: | <Insert $ Match> |
| Maximum Percent from Commerce: | <Insert % Commerce will Pay> |
| Type of Match Accepted: | Cash |
| Earliest Date for Reimbursement: | Execution Date or Agreed Upon Date |
| Time of Performance | <Insert Time of Performance> |
|  |  |
|  |  |
| PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT | |
|  | |
| As identified herein, notwithstanding General Terms and Conditions Sections, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:   1. PUBLICITY (Replaces General Terms And Conditions Section #2.34)   The Grantee will make reasonable efforts to notify Commerce of potential publicity, including but not limited to media coverage, site signage, and public events. The Grantee agrees to include references to Commerce or the Low-Income Community Solar Deployment Grants Program as requested and approved by Commerce. The Grantee agrees to include Commerce or the Low-Income Community Solar Deployment Grants program as a project funder. The Grantee agrees to notify and invite Commerce to any public events relating to this project, including but not limited to ground breaking ceremonies, ribbon cuttings, and public tours.  Grantee will allow Commerce to publicly share information on the project that is included in the application and contract. All other information shared will be coordinated with the Grantee, unless related to PUBLIC RECORDS ACT.  Unless addressed above, the Grantee agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE’s name is mentioned, or language used from which the connection with the state of Washington’s or COMMERCE’s name may reasonably be inferred or implied, without the prior written consent of COMMERCE.   1. SUBCONTRACTING (Replaces General Terms and Conditions #2.41)   The Grantee may only subcontract work contemplated under this Contract if it provides written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Grantee Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).  The Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.  Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee 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 Grantee to COMMERCE for any breach in the performance of the Grantee’s duties.  Every subcontract shall include a term that COMMERCE and the State of Washington are not liable for claims or damages arising from a Subcontractor’s performance of the subcontract.   1. TREATMENT OF ASSETS (Replaces General Terms Section #2.47)   The parties do not anticipate that COMMERCE will furnish property (other than the funds granted herein) to Grantee for use in Grantee’s performance under this Contract; provided, however, that title to any other property that may be so furnished by COMMERCE shall remain in COMMERCE. COMMERCE claims no ownership for the materials, goods, or services purchased by the Grantee for the completion of this Contract, regardless of reimbursement status under this contract.   1. Any property of COMMERCE furnished to the Grantee shall, unless otherwise provided herein or approved by COMMERCE, be used only for the performance of this contract. 2. The Grantee shall be responsible for any loss or damage to property of COMMERCE that results from the negligence of the Grantee or which results from the failure on the part of the Grantee to maintain and administer that property in accordance with sound management practices. 3. If any COMMERCE property is lost, destroyed or damaged, the Grantee shall immediately notify COMMERCE and shall take all reasonable steps to protect the property from further damage. 4. The Grantee shall surrender to COMMERCE all property of COMMERCE prior to settlement upon completion, termination or cancellation of this contract   All reference to the Grantee under this clause shall also include Grantee’s employees, agents or subcontractors. | |
|  | |

SPECIAL TERMS AND CONDITIONS

FEDERAL CAPITAL FUNDS

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

The Grantee agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Grantee describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the acknowledgement and disclaimer statements found in Section 1.10 – Publications of this Contract.

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 Grantee and their contact information are identified on the Face Sheet of this Contract.

The Grantee and COMMERCE will notify the other party in writing of any of the contact information changes at any time.

1. COMPENSATION

COMMERCE shall pay an amount not to exceed the amount shown as grant amount on the contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work.

1. CHANGES TO SCOPE OF WORK

All changes to the scope of work must be approved by COMMERCE prior to construction. In the event that a change to the Scope of Work occurs that would have changed the outcome of the application, COMMERCE reserves the right to reevaluate the project based on the original criteria outlined in the Request for Applications. Revisions that fail to meet the same criteria as the original application may lose grant funds, in part or in whole. If the revised project is no longer eligible for funding, the Grantee agrees to repay grant funds as requested by COMMERCE.

1. MATCH

If the Grantee fails to provide the agreed to match, including resulting from a change in project costs to the Grantee, COMMERCE reserves the right to reduce the award amount to maintain the agreed to match requirements.

1. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Grantee upon acceptance of the applicable deliverable and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more than once per month.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and amount of funds requested. The invoice shall include the Contract Number referenced on the contract Face Sheet.

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

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

Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the account designated by the Grantee, as associated with the State Wide Vendor Number.

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Grantee for services rendered if the Grantee 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

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

Disallowed Costs

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

1. SUBCONTRACTOR DATA COLLECTION

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

1. HISTORIC OR CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, Grantee shall complete the requirements of Governor’s Executive Order 05-05, where applicable, or Grantee shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Grantee agrees that the Grantee is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources s discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Grantee shall, in accordance with Governor’s Executive Order 05-05, coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation (“DAHP”), including any recommended consultation with any affected tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Grantee agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Grantee agrees that, unless the Grantee is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Grantee shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Grantee shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned tribe's cultural staff or committee.

The Grantee shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Grantee agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permits.

Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor’s Executive Order 05-05.

In the event that the Grantee finds it necessary to amend the Scope of Work the Grantee may be required to re-comply with Governor's Executive Order 05-05 or Section 106 of the National Historic Preservation Act.

1. INSURANCE

The Grantee 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 Grantee or Subgrantee/subcontractor, or agents of either, while performing under the terms of this Grant. Failure to maintain the required insurance coverage may result in termination of this Grant.

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 Grantee shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

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

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

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Grant, 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 Grant activity but no less than $1,000,000 per occurrence. Additionally, the Grantee is responsible for ensuring that any Subgrantee/subcontractor provide adequate insurance coverage for the activities arising out of subgrants/subcontracts.

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

1. PUBLICATIONS

The Grantee is encouraged to publish or otherwise make publicly available the results of work performed under this Award. The Grantee is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

Acknowledgment: “This material is based upon work supported by the Department of Energy, Office of Energy Efficiency and Renewable Energy (EERE), under the State Energy Program Award Number DE-EE0008296.”

Disclaimer: “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

1. PROPERTY STANDARDS

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

1. REAL PROPERTY

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (a) retain title after compensating DOE as described in 2 CFR 200.311(c)(1);(b) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (c) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit recipients.

1. EQUIPMENT

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (a) items of equipment with a current fair market value of $5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (b) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (c) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

1. REQUIRMENT FOR REGISTRATION in THE SYSTEM FOR AWARD management

Unless the Grantee is exempted from this requirement under 2 CFR 25.110, the Grantee must maintain the currency of its information in SAM until the Grantee submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Grantee reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

1. COMPLIANCE WITH SPECIAL PROVISIONS

Contractor shall maintain compliance with all terms in Attachment D - Special Provisions.

1. ORDER OF PRECEDENCE

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

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

GENERAL TERMS AND CONDITIONS

FEDERAL CAPITAL FUNDS

1. DEFINITIONS

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

1. “Authorized Representative” shall mean the Director and/or the designee authorized in writing to act on the Director’s behalf.
2. “COMMERCE” shall mean the Department of Commerce.
3. “Contract” or “Agreement” means the entire written agreement between COMMERCE and the Grantee, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
4. "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Grantee.
5. “Personal Information” shall mean information identifiable to any person, including, but not limited to, information that relates to a person’s name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
6. ”State” shall mean the state of Washington.
7. "Subcontractor" shall mean one not in the employment of the Grantee, who is performing all or part of those services under this Contract under a separate contract with the Grantee. The terms “subcontractor” and “subcontractors” mean subcontractor(s) in any tier.
8. ADMINISTRATIVE COST ALLOCATION

Administrative costs that may be allowed are set forth in the Special Terms and Conditions. Administrative services shared by other programs shall be assigned to this Contract based on an allocation plan that reflects allowable administrative costs that support services provided under each Contract administered by the Grantee. An approved current federal indirect cost rate may be applied up to the maximum administrative budget allowed.

1. ALLOWABLE COSTS

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

1. ALL WRITINGS CONTAINED HEREIN

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

1. AMENDMENTS

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

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

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

1. APPROVAL

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

1. ASSIGNMENT

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

1. ATTORNEYS’ FEES

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

1. AUDIT

If the Grantee is a subrecipient and expends $750,000 or more in federal awards from any and/or all sources in any fiscal year, the Grantee shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Grantee shall:

1. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

If the Grantee is a subrecipient and expends less than $750,000 in federal awards from any and/or all sources in any fiscal year, the Grantee shall notify COMMERCE they did not meet the single audit requirement.

The Grantee shall send all single audit documentation to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov).

1. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

A. Grantee, defined as the primary participant and it principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief that they:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
2. Have not within a three-year period preceding this contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
4. Have not within a three-year period preceding the signing of this contract had one or more public transactions (federal, state, or local) terminated for cause of default.

B. Where the Grantee is unable to certify to any of the statements in this contract, the Grantee shall attach an explanation to this contract.

C. The Grantee agrees by signing this contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

D. The Grantee further agrees by signing this contract that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

LOWER TIER COVERED TRANSACTIONS

1. The lower tier contractor certifies, by signing this contract that neither it nor its principals is   
   presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the lower tier contractor is unable to certify to any of the statements in this contract, such contractor shall attach an explanation to this contract.

E. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

1. CODE REQUIREMENTS

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

1. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

A. “Confidential Information” as used in this section includes:

1. All material provided to the Grantee by COMMERCE that is designated as “confidential” by COMMERCE;
2. All material produced by the Grantee that is designated as “confidential” by COMMERCE; and
3. All personal information in the possession of the Grantee 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 Grantee shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Grantee 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 Grantee 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 Grantee 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 Grantee shall make the changes within the time period specified by COMMERCE. Upon request, the Grantee shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Grantee against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Grantee 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.

1. CONFORMANCE

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

1. CONFLICT OF INTEREST

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

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

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

1. COPYRIGHT 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 Grantee 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 Grantee 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 Grantee warrants and represents that the Grantee has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Grantee 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 Grantee shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Grantee 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 Grantee.

1. DISALLOWED COSTS

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

1. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

1. DUPLICATE PAYMENT

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

1. GOVERNING LAW AND VENUE

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

1. INDEMNIFICATION

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

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

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

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

1. INDEPENDENT CAPACITY OF THE GRANTEE

The parties intend that an independent Grantee relationship will be created by this Contract. The Grantee and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Grantee 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 Grantee 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 Grantee.

1. INDUSTRIAL INSURANCE COVERAGE

The Grantee shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Grantee 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 Grantee the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Grantee to the accident fund from the amount payable to the Grantee 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 Grantee.

1. LAWS

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

United States Laws, Regulations and Circulars (Federal)

A. Audits

2 CFR Part 200

B. Labor and Safety Standards

Convict Labor, 18 U.S.C. 751, 752, 4081, 4082.

Drug-Free Workplace Act of 1988, 41 USC 701 et seq.

Federal Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Work Hours and Safety Act of 1962, 40 U.S.C. 327-330 and Department of Labor Regulations, 29 CFR Part 5.

C. Laws against Discrimination

Age Discrimination Act of 1975, Public Law 94-135, 42 U.S.C. 6101-07, 45 CFR Part 90 Nondiscrimination in Federally Assisted Programs.

Americans with Disabilities Act of 1990, Public Law 101-336.

Equal Employment Opportunity, Executive Order 11246, as amended by Executive Order 11375 and supplemented in U.S. Department of Labor Regulations, 41 CFR Chapter 60.

Executive Order 11246, as amended by EO 11375, 11478, 12086 and 12102.

Employment under Federal Contracts, Rehabilitation Act of 1973, Section 503, 29 U.S.C. 793.

Nondiscrimination under Federal Grants, Rehabilitation Act of 1973, Section 504, 29 U.S.C. 794.

Minority Business Enterprises, Executive Order 11625, 15 U.S.C. 631.

Minority Business Enterprise Development, Executive Order 12432, 48 FR 32551.

Nondiscrimination and Equal Opportunity, 24 CFR 5.105(a).

Nondiscrimination in benefits, Title VI of the Civil Rights Act of 1964, Public Law 88-352, 42 U.S.C. 2002d et seq, 24 CFR Part 1.

Nondiscrimination in employment, Title VII of the Civil Rights Act of 1964, Public Law 88-352.

Nondiscrimination in Federally Assisted Construction Contracts, Executive Order 11246, 42 U.S.C. 2000e, as amended by Executive Order 11375, 41 CFR Chapter 60.

Section 3, Housing and Urban Development Act of 1968, 12 USC 1701u (See 24 CFR 570.607(b)).

D. Office of Management and Budget Circulars

2 CFR Parts 200

E. Other

Anti-Kickback Act, 18 U.S.C. 874; 40 U.S.C. 276b, 276c; 41 U.S.C. 51-54.

Governmental Guidance for New Restrictions on Lobbying; Interim Final Guidance, Federal Register 1, Vol. 54, No. 243\Wednesday, December 20, 1989.

Hatch Political Activity Act, 5 U.S.C. 1501-8.

Lobbying and Disclosure, 42 USC 3537a and 3545 and 31 USC 1352. (Byrd Anti-Lobbying Amendment). 31 U.S.C. 1352 provides that contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or other award covered by 31 U.S.C. 1352. Each tier must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

National Environmental Policy Act (NEPA)

Section 106 of the National Historic Preservation Act (NHPA)

Non-Supplanting Federal Funds.

Section 8 Housing Assistance Payments Program.

F. Privacy

Privacy Act of 1974, 5 U.S.C. 552a.

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 42.17A 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.

The Grantee is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

1. LICENSING, ACCREDITATION AND REGISTRATION

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

1. LIMITATION OF AUTHORITY

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

1. LOCAL PUBLIC TRANSPORTATION COORDINATION

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

1. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

During the performance of this Contract, the Grantee shall comply with all federal, state, and local nondiscrimination laws, regulations and policies. In the event of the Grantee’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 Grantee may be declared ineligible for further contracts with COMMERCE. The Grantee 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.

The funds provided under this contract may not be used to fund religious worship, exercise, or instruction. No person shall be required to participate in any religious worship, exercise, or instruction in order to have access to the facilities funded by this grant.

1. PAY EQUITY

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

1. Employees are “similarly employed” if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
2. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
3. A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
4. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
5. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

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

1. POLITICAL ACTIVITIES

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

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

1. PREVAILING WAGE LAW

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

The Grantee is also required to comply with Wage Rate Requirements under Section 1606 of the Recovery Act, Davis Bacon Act, and Contract Work Hours and Safety Standards Act. In the event of conflicting requirements, the most stringent requirements apply.

1. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

A Grantee which is a local government or Indian Tribal government must establish procurement policies and procedures in accordance with 2 CFR 200, for all purchases funded by this Contract.

A Grantee which is a nonprofit organization shall establish procurement policies in accordance with 2 CFR Part 200.

The Grantee’s procurement system should include at least the following:

1. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
2. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
3. Minimum procedural requirements, as follows:
4. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
5. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
6. Positive efforts shall be made to use small and minority-owned businesses.
7. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Grantee, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
8. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
9. Some form of price or cost analysis should be performed in connection with every procurement action.
10. Procurement records and files for purchases shall include all of the following:
11. Contractor selection or rejection.
12. The basis for the cost or price.
13. Justification for lack of competitive bids if offers are not obtained.
14. A system for contract administration to ensure Grantee conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
15. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this contract is expected to exceed $5,000.

Prior approval requests shall include a copy of proposed contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

1. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

1. PUBLICITY (REPLACED BY PROGRAM SPECIFIC TERM #1)

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

1. RECAPTURE

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

1. RECORDS MAINTENANCE

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

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

1. REGISTRATION WITH DEPARTMENT OF REVENUE

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

1. RIGHT OF INSPECTION

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

1. SAVINGS

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

1. SEVERABILITY

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

1. SUBCONTRACTING (REPLACED BY PROGRAM SPECIFIC TERM #2)

~~The Grantee may only subcontract work contemplated under this Contract if it provides prior written notification to COMMERCE of any subcontractors who will be performing work under this Grant Agreement. The written notice must provide the names and address of the subcontractor with a brief description of which tasks within the Contractor Scope of Work (Attachment A) that will be undertaken by the subcontractor(s).approval of COMMERCE..~~

~~If COMMERCE approves subcontracting, the Grantee 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 Grantee to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Grantee from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.~~

~~Every subcontract shall bind the Subcontractor to follow all applicable terms of this Contract. The Grantee is responsible to COMMERCE if the Subcontractor fails to comply with any applicable term or condition of this Contract. The Grantee 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 Grantee to COMMERCE for any breach in the performance of the Grantee’s duties.~~

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

1. SURVIVAL

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

1. TAXES

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

1. TERMINATION FOR CAUSE

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

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

1. TERMINATION FOR CONVENIENCE

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

1. TERMINATION PROCEDURES

Upon termination of this contract, COMMERCE, in addition to any other rights provided in this contract, may require the Grantee 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 Grantee the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Grantee 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 Grantee such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

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

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

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

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

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

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

1. WAIVER

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

1. WORK HOURS AND SAFETY STANDARDS

The Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)-Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Section 102 and 107 of the Contract Work Hours Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each subcontractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

ATTACHMENT A – SCOPE OF WORK

ATTACHMENT B - BUDGET

ATTACHMENT C - REPORTING

During the construction phase of the Scope of Work, the Grantee must provide quarterly written reports and host a quarterly phone meeting with Commerce for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Grantee shall provide a report to Commerce a minimum of quarterly, or with submitted invoices. Quarterly reports are due no later than 15 days after the end of each quarter or at the time of invoice. The report form will be provided by Commerce. The intent is to collect a description of the project activity that occurred during the period, including but not limited to:

1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
2. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.);
3. Any additional metrics required from the capital budget proviso, legislature, governor’s office, or Commerce;
4. Quarterly updated budget projections for project expenditures;
5. The grant expenditures to date and anticipated in the next quarter.

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ATTACHMENT D – STATE BUDGET PROVISO LANGUAGE

2018 Enacted Supplemental Capital Budget

Section 1013 of Substitute Senate Bill 6090

Solar Deployment Grants (30000881)

The appropriations in this section are subject to the following conditions and limitations:

1. The appropriations are provided solely for projects that provide a benefit to the public through development, demonstration, and deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or increase energy independence for the state.
2. 2) In soliciting and evaluating proposals, awarding contracts, and monitoring projects under this section, the department must:
   1. Ensure that competitive processes, rather than sole source contracting processes, are used to select all projects, except as otherwise noted in this section; and
   2. Conduct due diligence activities associated with the use of public funds including, but not limited to, oversight of the project selection process, project monitoring and ensuring that all applications and contracts fully comply with all applicable laws including disclosure and conflict of interest statutes.
3. Ethics in Public Service
   1. Pursuant to chapter 42.52 RCW, the ethics in public service act, the department must require a project applicant to identify in application materials any state of Washington employees or former state employees employed by the firm or on the firm's governing board during the past twenty-four months. Application materials must identify the individual by name, the agency previously or currently employing the individual, job title or position held, and separation date. If it is determined by the department that a conflict of interest exists, the applicant may be disqualified from further consideration for award of funding.
   2. If the department finds, after due notice and examination, that there is a violation of chapter 42.52 RCW, or any similar statute involving a grantee who received funding under this section, either in procuring or performing under the grant, the department in its sole discretion may terminate the funding grant by written notice. If the grant is terminated, the department must reserve its right to pursue all available remedies under law to address the violation.
4. $1,600,000 of the state building construction account and $2,400,000 of the energy efficiency account are provided solely for grants to be awarded in competitive rounds for the deployment of solar projects located in Washington state.
5. Priority must be given to distribution side projects that reduce peak electricity demand.
6. Projects must be capable of generating (( ~~at least five hundred))~~ more than one hundred kilowatts of direct current generating capacity.
7. Except as provided in (d) of this subsection, grants shall not exceed $200,000 per megawatt of direct current generating capacity and total grant funds per project shall not exceed $1,000,000 per applicant. Applicants may not use other state grants.
8. At least ((~~25~~)) 35 percent of the total allocation of a project ((~~shall be provided solely for projects that provide direct benefits to low income residents or communities. The department must attempt to prioritize an equal geographic distribution~~)) must be for community solar projects that provide solar electricity to low-income households, low-income tribal housing programs, affordable housing providers, and nonprofit organizations providing services to low-income communities. The provisions of (c) of this subsection do not apply to projects funded under this subsection (9)(d).
9. Priority must be given to major components made in Washington.
10. The department must attempt to prioritize an equitable geographic distribution and a diversity of project sizes.

ATTACHMENT E – SPECIAL PROVISIONS

SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (MAR 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this term, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30,2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Subrecipient means any entity that receives Recovery Act funds from a Recipient.

Special Provisions:

1. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

1. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

1. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

1. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized

1. to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subcontract, grant, or subgrant; and
2. to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.
3. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website [www.recovery.gov](http://www.recovery.gov/), maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

1. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:- gross mismanagement of an agency contract or grant relating to covered funds;

* + a gross waste of covered funds;
  + a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
  + an abuse of authority related to the implementation or use of covered funds; or
  + as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

* + Order the employer to take affirmative action to abate the reprisal.
  + Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
  + Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceablity of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, [www.Recovery.gov](http://www.recovery.gov/), for specific requirements of this section and prescribed language for the notices.).

1. Request for Reimbursement

RESERVED

1. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

1. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

1. Availability of Funds

Funds appropriated under the Recovery Act and obligated to this award are available for reimbursement of costs until September 30, 2015.

1. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor -- Not later than April 3, 2009, for funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

1. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS)--SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

1. Definitions. As used in this award term and condition--

Designated country

1. A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Chinese Taipei (Taiwan), Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom;
2. A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore);
3. A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom; or
4. An Agreement between Canada and the United States of America on Government Procurement country
5. (Canada).

Designated country iron, steel, and/or manufactured goods

1. Is wholly the growth, product, or manufacture of a designated country; or
2. In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good

1. Is wholly the growth, product, or manufacture of the United States; or
2. In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been

1. Processed into a specific form and shape; or
2. Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

1. Iron, steel, and manufactured goods.
2. The award term and condition described in this section implements-
   1. Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and
   2. Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. As of January 1, 2010, this obligation shall only apply to projects with an estimated value of $7,804,000 or more.
3. The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.
4. The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

none

1. The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that--
2. The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;
3. The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or
4. The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.
5. Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.
6. i. Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including--
7. A description of the foreign and domestic iron, steel, and/or manufactured goods;
8. Unit of measure;
9. Quantity;
10. Cost;
11. Time of delivery or availability;
12. Location of the project;
13. Name and address of the proposed supplier; and
14. A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.
15. A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
16. The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.
17. Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.
18. If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods.. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).
19. Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.
20. Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description Unit of measure Quantity Cost (dollars)\*

Item 1:

Foreign steel, iron, or manufactured good \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Item 2:

Foreign steel, iron, or manufactured good \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Domestic steel, iron, or manufactured good \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

[List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.]

[Include other applicable supporting information.]

[\*Include all delivery costs to the construction site.]

WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

1. Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of $2,000 for construction, alteration or repair (including painting and decorating).

1. For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

1. To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111--5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-­102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A--102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html.>
2. For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A--133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF--SAC) required by OMB Circular A--133. OMB Circular A--133 is available at[http://www.whitehouse.gov/omb/circulars/a133/a133.html](http://This). This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF--SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF--SAC.
3. Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.
4. Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html.>

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

DAVIS BACON ACT AND CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Definitions: For purposes of this article, Davis Bacon Act and Contract Work Hours and Safety Standards Act, the following definitions are applicable:

1. “Award” means any grant, cooperative agreement or technology investment agreement made with Recovery Act funds by the Department of Energy (DOE) to a Recipient. Such Award must require compliance with the labor standards clauses and wage rate requirements of the Davis-Bacon Act (DBA) for work performed by all laborers and mechanics employed by Recipients (other than a unit of State or local government whose own employees perform the construction) Subrecipients, Contractors and subcontractors.
2. “Contractor” means an entity that enters into a Contract. For purposes of these clauses, Contractor shall include (as applicable) prime contractors, Recipients, Subrecipients, and Recipients’ or Subrecipients’ contractors, subcontractors, and lower-tier subcontractors. “Contractor” does not mean a unit of State or local government where construction is performed by its own employees.”
3. “Contract” means a contract executed by a Recipient, Subrecipient, prime contractor or any tier subcontractor for construction, alteration, or repair. It may also mean (as applicable) (i) financial assistance instruments such as grants, cooperative agreements, technology investment agreements, and loans; and, (ii) Sub awards, contracts and subcontracts issued under financial assistance agreements. “Contract” does not mean a financial assistance instrument with a unit of State or local government where construction is performed by its own employees.
4. “Contracting Officer” means the DOE official authorized to execute an Award on behalf of DOE and who is responsible for the business management and non-program aspects of the financial assistance process.
5. “Recipient” means any entity other than an individual that receives an Award of Federal funds in the form of a grant, cooperative agreement or technology investment agreement directly from the Federal Government and is financially accountable for the use of any DOE funds or property, and is legally responsible for carrying out the terms and conditions of the program and Award.
6. “Subaward” means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a Recipient to an eligible Subrecipient or by a Subrecipient to a lower- tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include the Recipient’s procurement of goods and services to carry out the program nor does it include any form of assistance which is excluded from the definition of “Award” above.
7. “Subrecipient” means a non-Federal entity that expends Federal funds received from a Recipient to carry out a Federal program, but does not include an individual that is a beneficiary of such a program.
8. Davis Bacon Act
9. Minimum wages.
10. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3) ), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: *Provided*, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

1. A. The Contracting Officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the Contract shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
2. The work to be performed by the classification requested is not performed by a classification in the wage determination; and
3. The classification is utilized in the area by the construction industry; and
4. The proposed wage rate, including any bona fide fringe benefits, bears a   
   reasonable relationship to the wage rates contained in the wage determination.
5. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
6. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the Contracting Officer do not agree on the
7. proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.
8. (D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
9. Whenever the minimum wage rate prescribed in the Contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
10. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, *Provided*, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
11. Withholding. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the Contract, the Department of Energy, Recipient, or Subrecipient, may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
12. Payrolls and basic records.
13. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which showthat the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

ii (A) The Contractor shall submit weekly for each week in which any Contract work is performed a copy of all payrolls to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit the payrolls to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at[http://www.dol.gov/esa/whd/forms/wh347instr.htm](http://or) or its successor site. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the Department of Energy if the agency is a party to the Contract, but if the agency is not such a party, the Contractor will submit them to the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner, as the case may be, for transmission to the Department of Energy, the Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the Recipient or Subrecipient (as applicable), applicant, sponsor, or owner).

1. Each payroll submitted shall be accompanied by a “Statement of Compliance,” signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:
2. That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
3. That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
4. That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.
5. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.
6. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 3729 of title 31 of the United States Code.
7. The Contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Department of Energy or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.
8. Apprentices and trainees--
9. Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
10. Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
11. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.
12. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.
13. Contracts and Subcontracts. The Recipient, Subrecipient, the Recipient’s and Subrecipient’s contractors and subcontractor shall insert in any Contracts the clauses contained herein in(a)(1) through (10) and such other clauses as the Department of Energy may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of the paragraphs in this clause.
14. Contract termination: debarment. A breach of the Contract clauses in 29 CFR 5.5 may be grounds for termination of the Contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.
15. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.
16. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Recipient, Subrecipient, the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.
17. Certification of eligibility.
18. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
19. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
20. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.
21. Contract Work Hours and Safety Standards Act. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.
22. Overtime requirements. No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
23. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
24. Withholding for unpaid wages and liquidated damages. The Department of Energy or the Recipient or Subrecipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
25. Contracts and Subcontracts. The Recipient, Subrecipient, and Recipient’s and Subrecipient’s contractor or subcontractor shall insert in any Contracts, the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Recipient shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.
26. The Contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract.

Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shallbe made available by the Contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Energy and the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

RECIPIENT FUNCTIONS

1. This delegation of Department of Energy (DOE) functions to the Recipient applies only to DBA effort performed by Subrecipients and Contractors under this award. Those functions are not delegated to the Recipient for any DBA effort performed by employees of the Recipient under this award. On behalf of the Department of Energy (DOE), Recipient shall perform the following functions:
2. Obtain, maintain, and monitor all DBA certified payroll records submitted by the Subrecipients and Contractors at any tier under this Award;
3. Review all DBA certified payroll records for compliance with DBA requirements, including applicable DOL wage determinations;
4. Notify DOE of any non-compliance with DBA requirements by Subrecipients or Contractors at any tier, including any non-compliances identified as the result of reviews performed pursuant to paragraph (b) above;
5. Address any Subrecipient and any Contractor DBA non-compliance issues; if DBA non­compliance issues cannot be resolved in a timely manner, forward complaints, summary of investigations and all relevant information to DOE;
6. Provide DOE with detailed information regarding the resolution of any DBA non-compliance issues;
7. Perform services in support of DOE investigations of complaints filed regarding noncompliance by Subrecipients and Contractors with DBA requirements;
8. Perform audit services as necessary to ensure compliance by Subrecipients and Contractors with DBA requirements and as requested by the Contracting Officer; and
9. Provide copies of all records upon request by DOE or DOL in a timely manner.
10. All records maintained on behalf of the DOE in accordance with paragraph (1) above are federal government (DOE) owned records. DOE or an authorized representative shall be granted access to the records at all times.
11. In the event of, and in response to any Freedom of Information Act, 5 U.S.C. 552, requests submitted to DOE, Recipient shall provide such records to DOE within 5 business days of receipt of a request from DOE.

1. See https://www.wto.org/english/tratop\_e/dispu\_e/cases\_e/ds510\_e.htm [↑](#footnote-ref-1)
2. Revised Code of Washington, Chapter 288, Laws of 2019, Section 2 (17) [↑](#footnote-ref-2)
3. Revised Code of Washington, Chapter 363, Laws of 1989, Section 1 (1) [↑](#footnote-ref-3)
4. Revised Code of Washington, Chapter 288, Laws of 2019, Section 2 (25). [↑](#footnote-ref-4)
5. Revised Code of Washington, Chapter 235, Laws of 2019, Section 1 (5) [↑](#footnote-ref-5)
6. Revised Code of Washington, Chapter 288, Laws of 2019, Section 2 (40). [↑](#footnote-ref-6)
7. If the Applicant is pursuing an allowable substitute to Energy Burden reduction under RFA SECTION 1.3 MINIMUM QUALIFICATIONS – Project Minimum Qualification #3a, the Applicant should instead provide specific cashflow figures to be dedicated to the substitute and describe the basis of any calculations necessary to arrive at this figure. [↑](#footnote-ref-7)
8. <https://dor.wa.gov/find-taxes-rates/tax-incentives/incentive-programs#1133> (see: Solar energy system sales tax exemption refund) [↑](#footnote-ref-8)
9. Or allowable substitute – see RFA SECTION 1.3 MINIMUM QUALIFICATIONS – Project Minimum Qualification #3a [↑](#footnote-ref-9)