STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR APPLICATIONS (RFA)

RFA NO. CEF GNL 2021

**NOTE**: If you download this RFA from the Department of Commerce website, you are responsible for sending your name, address, e-mail address, and telephone number to the RFA Coordinator in order for your organization to receive any RFA amendments or bidder questions/agency answers.

PROJECT TITLE: Clean Energy Fund (CEF) Grants to Non-profit Lenders

APPLICATION DUE: July 27, 2021, at 5:00 p.m., Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: September 2021 - August 2031

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

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1. INTRODUCTION

* 1. PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE” is initiating this Request for Applications (RFA) to solicit applications from non-profit lenders interested in participating in projects to solely provide a benefit to the public through the development, demonstration, and deployment of technologies that save energy and reduce energy cost, reduce harmful air emissions, or increase energy independence for the State.

The Washington State legislature has appropriated $2,904,000 from the 2019-2021 biennium and $2,425,000 from 2021-2023 biennium for a total of $5,329,000 in funding that is available to provide grants to non-profit lenders for a revolving loan fund that supports the widespread use of proven energy efficiency and renewable energy technologies by households, or for the benefit of households, with high energy burden or environmental health risk now inhibited by lack of access to capital.

Priority will be given to projects that benefit vulnerable populations, including tribes and communities with high environmental or energy burden - please see section 1.7 DEFINITIONS for further details.

COMMERCE intends to award multiple contract(s) to provide the services described in this RFA and is requesting qualifications from eligible non-profit lenders who have experience in providing credit for energy efficiency and/or renewable energy projects.

* 1. OBJECTIVES AND SCOPE OF WORK

COMMERCE will identify qualified Grantee(s) to administer the fund using a Request for Applications (RFA) process allowing Commerce to receive, evaluate applications, and make recommendations to the appropriate authority as part of the process of awarding successful applicant. Once the applicant(s) are selected and announced, Commerce will work with Awardee(s) to discuss specific details of their prospective project and negotiate a contract.

Commerce may award one or more contracts to non-profit lenders who submit Applications as a result of this Request for Applications. Selected Grantees are required to provide at least 15 percent matching in private capital and commit to administer the loan fund. The award does not allow for the administration nor support costs of the Awardee in their efforts to manage the program.

Grantees granted a contract(s) will manage and run a revolving energy loan on behalf of Commerce and the state of Washington.

CEF Grants to Non-profit Lenders goals include the following:

* Ensure that lending plays a role in economic recovery efforts and the transition to clean energy
* Support the [2021 State Energy Strategy](https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/)
* Support energy efficiency and renewable energy market growth
* Provide access for vulnerable populations and Tribal communities to benefit from and/or participate directly in the clean energy transition
  1. MINIMUM QUALIFICATIONS

Minimum qualifications include:

* 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 Awardee. Qualifying applicants must be non-profit lenders including but not limited to:
  1. Community Development Financial Institutions as certified by CDFI Fund, US Treasury Department
  2. Credit Unions
  3. State conduit financing entities like the Housing Finance Commission
  4. Tribal Lending Enterprises
* Commit to providing at least 15 percent of matching funds from private capital.
* Utilize grant funds to make loans supporting the development of assets that have a useful life of at least 13 years.
* Agree to disclose all sources of public funds invested in the project.
* Make loans available, but not limited to:
  + 1. Residential, commercial, industrial, and agricultural energy retrofits,
    2. Residential and community-scale solar installations and
    3. Anaerobic digesters to treat dairy and organic waste.
* Have organizational capacity to attract matching capital, generate deal flow, underwrite loans, manage a loan portfolio, and meet requirements for reporting and compliance.
* Underwrite credits within its organization, and cannot use an affiliated organization for underwriting, credit determination, or portfolio management.
* Have at least *5* years of experience in clean energy sector lending or relevant real estate lending experience in the case of energy retrofits and upgrades.
  1. FUNDING

COMMERCE has budgeted an amount not to exceed $5,329,000 for multiple projects. This total includes the appropriations of $2,904,000 from the 2019-2021 biennium and $2,425,000 from 2021-2023 biennium.

COMMERCE intends to award multiple eligible contracts as funding allows as described in this RFA. The maximum award amount per Grantee is set at $2,000,000. Proposals in excess of the total amount will be considered non-responsive and will not be evaluated.

Any contract awarded as a result of this procurement is contingent upon the availability of funding.

Commerce will make a capital grant to the lender that will match 15 percent, at a minimum, with private capital. Funding preference will be provided to applications that offer a higher percentage of private match funds.

Commerce will flow the funds to the non-profit lenders in tranches based on loan production. For example, if one lender was granted $2 million, Commerce could structure two tranches of $1 million. The non-profit lender would have to match at least $150,000 in available loan funds at the time the first million tranches flowed from Commerce. The subsequent tranches would depend on loan volume.

* 1. PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on the date the contract was signed with Commerce and extend for 10 years from that date.

* 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. Applicants 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.

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

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.

Tribal Lending Enterprise: A type of financial services and lending organization owned and operated by a federally-recognized Native American Tribal government.

Vulnerable Populations (communities) Definition of vulnerable communities as defined by the Washington Environmental Health Disparities Map[[1]](#footnote-1) are as follow:

*Vulnerability* – a person’s (or population’s) situation, comprised of socioeconomic factors and biological sensitivities that affects their ability to cope with risk factors. Examples of vulnerability include low birth weight, low income, language barriers, or poor access to health care.

*Risk* – the combination of hazards and vulnerability to those hazards; how likely it is that exposure to environmental hazards will result in poor health for a population.

* 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 | Gerardo Gonzalez Gomez |
| E-Mail Address | [CEF@commerce.wa.gov](mailto:CEF@commerce.wa.gov) |
| Phone Number | ( 360 ) 764 – 0076 |
| RFA Website | <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-revolving-loan-fund/> |

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 | ~~06/15/2021~~ 06/17/2021 |
| Question & Answer Period | 06/17/2021-07/20/2021 |
| Answers to Q&A posted no later than | ~~Every 2 Weeks through 07/13/2021~~  Periodically through 07/21/2021 |
| Pre-Application Conference [(See website for link)](https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-revolving-loan-fund/) | 06/22/2021 at 1 p.m. PT |
| Applications due | 07/27/2021 at 5 p.m. PT |
| Evaluate Applications | 08/24/2021 |
| Conduct oral interviews with finalists, if required | As needed |
| Announce “Apparent Successful Grantee” and send notification via email to Unsuccessful Applicants | 09/07/2021 |
| Hold debriefing conferences (if requested) | 09/14/2021 |
| Negotiate contract | 09/21/2021 |
| Begin contract work | No later than 10/01/2021 |

COMMERCE reserves the right to revise the above schedule.

2.3 PRE-APPLICATION CONFERENCE

A pre-Application conference is scheduled to be held virtually at 1 p.m., Pacific Time on ***June 22, 2021***. All prospective Applicants are encouraged to attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the 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 on the website listed in Section 2.1.

2.4 SUBMISSION OF APPLICATIONS

ELECTRONIC APPLICATIONS:

The Application must be received by the RFA Coordinator no later than 5 p.m., Pacific Time, on July 27, 2021.

Applications must be submitted electronically as an attachment to an e-mail to the RFA Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. 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. Requests for deadline extensions will not be granted. 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 published on Washington’s Electronic Bid System (WEBS). The WEBS 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 an Agency page, located at <http://www.commerce.wa.gov/serving-communities/current-opportunities/> and the webpage listed in Section 2.1.

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

Applicants 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’s 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**

Applicants may submit a complaint to COMMERCE based on any of the 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 Application 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.

* 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 Applicant 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 the contract effective date. Standard insurance requirements are included within the sample contract and its special terms and conditions are attached as Exhibit D.

3. APPLICATION CONTENTS

ELECTRONIC APPLICATIONS:

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

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFA)
2. Technical Application
3. Management Application
4. Cost Application
5. Diverse Business Inclusion Plan (Exhibit B to this RFA)
6. Workers’ Rights Certification (Exhibit C to this RFA)
7. Survey Questions (Exhibit F 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. Proposals must be written in English

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. LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFA) 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 is to include by attachment the following information about the Applicant and any proposed subcontractor:

1. Name, address, principal place of business, telephone number, and e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Applicant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification Number or Social Security Number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. 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 Applicant.
5. Location of the facility from which the Applicant would operate.
6. Identify any state employees or former state employees employed or on the firm’s governing board as of the date of the 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. TECHNICAL APPLICATION (SCORED)

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

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 proposed project.
2. 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 Application 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. In addition to this, please specifically address:
   1. Identify the specific sector or sectors to be served by your proposed loan program, using the sectors identified below. The allowable uses of funds for this program include, but are not limited to the following energy efficiency and renewable energy project types:

* Residential, commercial, industrial, and agricultural energy retrofits
* Residential and community-scale solar installations and
* Anaerobic digesters to treat dairy and organic waste.
  1. For each sector identified, provide an analysis demonstrating that the proposed target sector lacks adequate access to loan capital. Describe the factors that contribute to any barriers to capital access in the sector and the mechanisms by which the proposed loan program would address the identified barriers to capital access.
  2. What is the proposed geographic area supported by these funds?
  3. Describe the proposed pipeline activities you will engage in to find qualified candidates for program funds.
  4. What revolving loan program is the applicant proposing to run with the award funds?
* Collateral Support Program (CSP)
* Direct Lending
* Loan Participations
* Supplemental Loan Loss Reserve Program
* Other (please describe)

1. Project Schedule: Include a project schedule indicating when the elements of the work will be completed as well as when tranches would be requested per Section 1.4 FUNDING. Include the number of loans estimated to be given for each year of the grant.
2. **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. Include an estimate and assumptions of how many loans will close over the 10-year term of the program.
3. **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.
4. **Vulnerable Populations**: Describe how the revolving loan fund will support the widespread use of proven energy efficiency and renewable energy technologies by or for the benefit of households with high energy burden or environmental health risk now inhibited by lack of access to capital. What would be the applicant’s strategy on how to market and engage/educate vulnerable communities in regards to energy efficiency and renewable energy technologies? (Please see Section 1.7 DEFINITION for the definition of vulnerable populations) Please include or describe any current or future approaches for marketing/outreach to Tribes and communities with high environmental or energy burden?
   1. MANAGEMENT APPLICATION
5. **Project Management (SCORED)**
6. 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 sub-contractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
7. **Staff Qualifications and Experience**: Identify staff, including sub-contractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual’s particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Applicant must commit that staff identified in its Application will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.
8. **Experience of the Applicant (SCORED)**
9. Indicate the experience the Applicant and any subcontractor(s) have in the following areas:
10. Managing other loan or grant programs;
11. Administering federal or state money;
12. Federal or state program reporting process.
13. Indicate other relevant experience that indicates the qualifications of the Applicant, and any subcontractor, for the performance of the potential contract. Include:
    1. Attach the most recent 3 years audited financial statements.
    2. Has your financial institution been subject to any findings, sanctions or restrictions by its regulatory body in the last three years? Please explain.
    3. Is your organization currently involved in any lawsuits? If so please explain.
    4. Estimate firm’s average loan size and the number of loans closed per year.
    5. Indicate firm’s lending limit.
    6. Indicate the total current amount your firm has available to lend.
    7. Indicate the amount obligated in loans currently.
    8. Describe your standard due diligence when reviewing a loan request.
    9. Describe your standard follow-up and services offered to new loan clients.
    10. How often are financials collected and reviewed on a borrower after a loan is approved?
    11. Without this program could you continue to operate as you have with satisfactory financial results?
    12. Have there been any significant changes to your source of operating income in the last five years? If so, please describe the changes and their impact on your business model.
    13. How is your loan pipeline currently generated? Relationships with relevant associations? Organization partnerships, etc.
14. 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.
15. **Related Information (MANDATORY)**
16. If the Applicant or any sub-contractor 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.
17. If the Applicant’s staff or sub-contractor 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.
18. 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 Applicant, or (b) litigated and such litigation determined that the Applicant was in default.
19. 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.
20. **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 Work Request, the Applicant 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. **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. COST APPLICATION (SCORED)

The maximum fee for this contract must not exceed the amount specified in 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 that are consistent with state government efforts to conserve state resources.

Any matching private capital claimed as match for this program cannot be claimed as match for any other funding sources. Match cannot be originally paid from any state sources and may not be incurred prior to the award date. All costs must be necessary and reasonable to accomplish the proposed project.

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

1. **Identification of Costs**

State the amount of grant funds requested and the amount of private funds to be committed as matching funds. Provide supporting information to demonstrate that the private match funds are available at time of contract signing and the source of those funds. Matching of private funds will be scored using a scale of up to 3:1 match to earn the maximum of points possible. See section 4.2 EVALUATION BREAKDOWN.

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.

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.

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 firms 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

Evaluations will be scored using a point system with a maximum of 240 points. The following weighting will be assigned to the Application for evaluation purposes:

|  |  |
| --- | --- |
| Technical Application – 160 Points | |
| Project Approach/Methodology | 35 points |
| Work Plan | 55 points |
| Project Schedule | 20 points |
| Outcome and Performance Measurement | 10 points |
| Risk | 10 points |
| Vulnerable Populations | 30 points |
|  |  |
| Management Application – | 40 Points |
| Project Management | 20 points |
| Experience of the Applicant | 20 points |
|  |  |
|  |  |
| Cost Application –  Applicant will be scored using a scale of up to 3:1 match for a maximum of thirty points. | 30 points |
|  |  |
| Workers’ Right Certification – Exhibit C  Those firms which certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 10 points added to their score (see Exhibit C). | 10 points |
| TOTAL | 240 Points |

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 firm(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.

* 1. NOTIFICATION TO APPLICANTS

COMMERCE will notify the Apparently Successful Grantee of its selection in writing upon completion of the evaluation process. Individuals or firms whose Applications were not selected for further negotiation or award will be notified separately by e-mail.

* 1. DEBRIEFING OF UNSUCCESSFUL APPLICANTS

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 to the Applicant. Debriefing requests must be received by the RFA Coordinator no later than 5:00 p.m., Pacific Time, in Olympia, Washington, on the third business day following the transmittal of the Unsuccessful Applicant Notification. The debriefing must be scheduled within three (3) business days of the request.

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

* Evaluation and scoring of the firm’s Application;
* Critique of the Application based on the evaluation;
* Review of Applicant’s final score in comparison with other final scores *without* identifying the other firms or reviewing their Applications.

Comparisons between Applications or evaluations of the other Applications will not be allowed. Debriefing conferences may be conducted by teleconference or on the telephone and will be scheduled for a maximum of 30 minutes.

* 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 p.m., Pacific Time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail, 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 agency’s 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 certification of and maintain insurance as designated in SECTION 2.18 INSURANCE COVERAGE and as stated in the executed contract for the performance period of the contract.
* Must follow all state and/or local procurement requirements that apply.
* Comply with contract, audit, and monitoring requirements, including scheduled site visits.
* Utilize the online invoicing process for reimbursement.
* Are responsible for all costs incurred prior to the execution of a contract and not have the expectation for reimbursement of those costs.
* Must comply with and ensure that all Grantees, Subcontractors, and Partners comply with:
  + All applicable federal, state, local, and utility laws and requirements.
  + The applicable requirements of this Program and any resulting contract.
* Must ensure that all Grantees, Subcontractors, and Partners:
  + Are responsible and qualified Applicants.
  + Are eligible to bid on public works projects (not debarred).
  + Are in and maintain good standing with all applicable federal, state, local, and utility laws and requirements, including from COMMERCE.
* Must accurately and honestly represent the project within the application. COMMERCE reserves the right to revoke awards or terminate contracts inclusive of recuperating funding for projects that were misrepresented or fail to implement the project proposed during application.

1. PROJECT REQUIREMENTS:

* Must serve the intended purpose of the contract for the duration of the performance period.
* By the end of the performance period, the applicant must have completed all mandatory activities for its Track, as described in Section 1.2 OBJECTIVES AND SCOPE OF WORK.
* Project must conduct activities necessary to the deployment of capital assets with a lifespan of greater than 13 years and planned to be located in the state of Washington.
* All entities involved must comply with [Washington State Prevailing Wage](https://lni.wa.gov/licensing-permits/public-works-projects/prevailing-wage-rates/).
* Comply with [Washington State Environmental Policy Act (SEPA)](https://ecology.wa.gov/regulations-permits/SEPA-environmental-review).
* Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
* Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor’s Executive Order 21-02](https://dahp.wa.gov/2102).

1. REPORTING REQUIREMENTS:

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

1. FUNDING REQUIREMENTS:

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

5. RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers’ Rights Certification

Exhibit D Service Contract Format with General Terms and Conditions

Exhibit E Proviso Language

Exhibit F Survey Questions

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 Applicant and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Applicant 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 Applicant 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 Applicant 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

Applicant 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.: | CEF GNL 2021 |
| --- | --- |

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 Applicant/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 Applicant Certification to Procurement Coordinator as part of your complete response.

EXHIBIT D

Capital Agreement with

<Local gov or recipient organization name here>

through

<Name of COMMERCE program issuing/administering contract here>

For

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

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Attachment A, Scope of Work

Attachment B, Budget

FACE SHEET

Contract Number: <insert number>

Washington State Department of Commerce

<Insert Unit or Office>

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

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 1. Contractor | | | | 2. Contractor 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. Contractor Representative | | | | 4. COMMERCE Representative | | | | |
| <Insert name>  <Insert title>  <Insert phone>  <Insert FAX>  <Insert e-mail> | | | | <Insert name>  <Insert title>  <Insert phone>  <Insert FAX>  <Insert e-mail> | | | <Insert mailing address>  <Insert physical address>  <Insert location> | |
| 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  <Insert name> | | | CFDA Number:  <Insert number> | | |
| 10. Tax ID # | | 11. SWV # | | 12. UBI # | | | 13. DUNS # | |
| <Insert number> | | <Insert number> | | <Insert number> | | | <Insert number> | |
| 14. Contract Purpose | | | | | | | | |
| <Briefly describe contract purpose> | | | | | | | | |
| COMMERCE, defined as the Department of Commerce and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment “A” - <insert title>, Attachment “B” – <insert title>, Attachment “C” – <insert title>, <etc.> | | | | | | | | |
| FOR CONTRACTOR | | | | FOR COMMERCE | | | | |
| <insert name>, <insert title>    Date | | | | <insert name>, <insert title>    Date  APPROVED AS TO FORM ONLY  BY ASSISTANT ATTORNEY GENERAL  APPROVAL ON FILE | | | | |

Last revision 10/13/202

SPECIAL TERMS AND CONDITIONS

CAPITAL

STATE FUND

1. CONTRACT MANAGEMENT

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

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

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

1. COMPENSATION

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

EXPENSES

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

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Contractor shall receive compensation for travel expenses at current state travel reimbursement rates.

1. BILLING PROCEDURES AND PAYMENT

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

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

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

COMMERCE may, in its sole discretion, terminate the Contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Contract.

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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

Disallowed Costs

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

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

1. SUBCONTRACTOR DATA COLLECTION

Contractor will submit reports, in a form and format to be provided by Commerce and at intervals, as agreed by the parties, regarding work under this 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. HISTORICAL OR CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor’s Executive Order 05-05, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Contractor agrees that the Contractor 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, Contractor 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. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memoranda of agreement if historical or cultural artifacts are discovered during construction, the Contractor 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 Contractor 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 Contractor 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, Contractor 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 Contractor finds it necessary to amend the Scope of Work the Contractor 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 Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the state should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract. Failure to maintain the required insurance coverage may result in termination of this Contract.

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

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

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

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

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

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

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

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

1. The amount of fidelity coverage secured pursuant to this Contract shall be $100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.
2. Subcontractors that receive $10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
3. ORDER OF PRECEDENCE

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

* Applicable federal and state of Washington statutes and regulations
* Special Terms and Conditions
* General Terms and Conditions
* Attachment A – Scope of Work
* Attachment B – Budget
* add any other attachments incorporated by reference on the Face Sheet

GENERAL TERMS AND CONDITIONS

CAPITAL

STATE FUNDS

1. DEFINITIONS

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

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

1. APPROVAL

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

1. ASSIGNMENT

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

1. ATTORNEYS’ FEES

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

1. CODE REQUIREMENTS

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

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

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

1. CONFLICT OF INTEREST

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

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

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

1. COPYRIGHT

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

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

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

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

1. DISALLOWED COSTS

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

1. DISPUTES

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

The request for a dispute hearing must:

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

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

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

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

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

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

1. DUPLICATE PAYMENT

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

1. GOVERNING LAW AND VENUE

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

1. INDEMNIFICATION

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

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

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

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

1. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

1. INDUSTRIAL INSURANCE COVERAGE

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

1. LAWS

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

1. LICENSING, ACCREDITATION AND REGISTRATION

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

1. LIMITATION OF AUTHORITY

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

1. Local Public Transportation Coordination

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

1. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

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

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

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

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

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

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

1. POLITICAL ACTIVITIES

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

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

1. PREVAILING WAGE LAW

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

1. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION

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

1. PUBLICITY

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

1. RECAPTURE

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

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

1. RECORDS MAINTENANCE

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

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

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

1. REGISTRATION WITH DEPARTMENT OF REVENUE

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

1. RIGHT OF INSPECTION

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

1. SAVINGS

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

1. SEVERABILITY

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

1. SUBCONTRACTING

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

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

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

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

1. SURVIVAL

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

1. TAXES

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

1. TERMINATION FOR CAUSE

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

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

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

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

1. TERMINATION FOR CONVENIENCE

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

1. TERMINATION PROCEDURES

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

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

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

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

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

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

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

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

1. WAIVER

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

Attachment A – Scope of Work

Attachment B – Budget

END OF TERMS AND CONDITIONS

EXHIBIT E

ENGROSSED SUBSTITUTE SENATE BILL 6248 Section 1005

Clean Energy Transition 4 (40000042)

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. Priority must be given to projects that benefit vulnerable populations, including tribes and communities with high environmental or energy burden.

(7)(a) $3,000,000 of the state taxable building construction account—state appropriation is provided solely as grants to nonprofit lenders to create a revolving loan fund to support the widespread use of proven energy efficiency and renewable energy technologies by or for the benefit of households with high energy burden or environmental health risk now inhibited by lack of access to capital.

(b) The department shall provide grant funds to one or more competitively selected nonprofit lenders that will provide at least fifteen percent matching private capital and will administer the loan fund. The department must select the loan fund administrator or administrators through a competitive process, with scoring conducted by a group of qualified experts, applying criteria specified by the department.

(c) The department must establish guidelines that specify applicant eligibility, the screening process, and evaluation and selection criteria. The guidelines must be used by the nonprofit lenders.

EXHIBIT E

21-22 SUBSTITUTE HOUSE BILL 1080 Section 1064

Investing in Washington’s Clean Energy (40000148)

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

(1) The appropriations in this section 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. Priority must be given to projects that benefit vulnerable populations and overburdened communities, including tribes and communities with high environmental or energy burdens.

(10)(a) $2,500,000 of the state taxable building construction account—state appropriation is provided solely as grants to nonprofit lenders to create a revolving loan fund to support the widespread use of proven energy efficiency and renewable energy technologies by households, or for the benefit of households, with high energy burden or environmental health risk now inhibited by lack of access to capital.

(b) The department shall provide grant funds to one or more competitively selected nonprofit lenders that must provide matching private capital and administer the loan fund. The department shall select the loan fund administrator or administrators through a competitive process, with scoring conducted by a group of qualified experts, applying criteria specified by the department.

(c) The department must establish guidelines that specify applicant eligibility, the screening process, and evaluation and selection criteria. The guidelines must be used by the non-profit lenders.

EXHIBIT F

APPLICATION PROCESS SURVEY

Survey Questions

The following questions are intended to help us improve our application process. Please indicate your agreement/disagreement with the following statements.

Your responses will not impact the evaluation of your application in any way.

1: Strongly Disagree

2: Disagree

3: Neither Agree nor Disagree

4: Agree

5: Strongly Agree

|  |  |
| --- | --- |
| Name of Applicant: | |
|  | |
| Application Survey Questions | Responses |
| 1. The guidelines provided enough information on the program. |  |
| 1. The Pre-Application Conference was helpful introducing the application process |  |
| 1. The Request for Applications (RFA) application instructions was clear. |  |
| 1. The RFA application process was easy to follow. |  |
| 1. I was able to receive the assistance I needed from Commerce to complete the application. |  |
| 1. Commerce staff was timely in responding to process-related inquiries. |  |
| 1. I had adequate time to prepare the application prior to the deadline. |  |
| 1. Given program requirements, the application process was reasonable. |  |

1. Washington Environmental Health Disparities Map [↑](#footnote-ref-1)