STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR APPLICATIONS (RFA)

RFA NO. SPI-21

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

PROJECT TITLE: ­­­­­­­­­­­­­­­­State Project Improvement Grants 2021-2023

ESTIMATED TIME-PERIOD FOR CONTRACT: February 2022–July 2023

APPLICANT ELIGIBILITY: This procurement is open to State agencies that satisfy the minimum qualifications stated herein.

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# INTRODUCTION

## PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE,” is initiating this Request for Applications (RFA) to solicit Applications from state agencies named by the State Efficiency and Environmental Performance (SEEP) office executive order 20-01 that are interested in funding to improve the energy efficiency and energy performance of currently funded Minor Works, Stand Alone, and Emergency Repair projects.

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

## OBJECTIVES AND SCOPE OF WORK

The primary purpose of grants funded under this solicitation must be to improve the energy efficiency and environmental performance of minor works, stand-alone, and emergency projects at state-owned facilities that repair or replace existing building systems and reduce greenhouse gas emissions from state operations.

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

* Projects in a Highly Impacted Community (see [RFA Section 1.7 DEFINITIONS](#_DEFINITIONS)) which result in a reduction in combustion fuels used onsite
* Projects with a lower cost/ton of CO2e reduction

These criteria will be used to select projects in the event funding requests exceed available funding. A project is still eligible to apply to this grant if it does not intend to or is unable to accomplish one or all of these policy goals.

All project costs must be necessary for and directly connected to energy and environmental improvements to funded capital projects. Examples of eligible, reimbursable expenditures include:

* Equipment and materials costs
* Installation labor
* Design and engineering
* Agency staff costs for the above activities

Examples of ineligible, non-reimbursable expenditures include:

* Purchase or rental of real estate
* Construction or general maintenance of buildings and parking facilities
* New paving and landscaping
* Maintenance costs
* Studies or research
* Surveys

## MINIMUM QUALIFICATIONS

Projects must meet the following minimum qualifications to be considered for funding.

Applicant Qualifications:

* The primary applicant must be a state agency named by the State Efficiency and Environmental Performance (SEEP) office executive order 20-01.
* Applicants must be in good standing with all applicable federal, state, and local laws and requirements, including with the Department of Commerce.
* Applicants must be responsive to communications from Commerce. Failure to reply by specified deadlines may result in elimination.
* Applicants may submit unlimited qualifying applications.

Project Qualifications:

* The project must be located at a facility owned by an eligible state agency
* The project must repair or replace existing building systems including but not limited to:
  + Heating, ventilation, and air conditioning equipment, distribution and control systems
  + Interior and exterior lighting fixtures and control systems
  + Insulation, windows, and air barrier improvements
  + Water heating and hot water distribution and control systems
  + Other mechanical systems.
  + Ineligible systems include:
    - Plug loads
    - Street and highway lighting
    - Rolling stock and vessels
    - Electric vehicle charging
* The baseline project is the minor works, stand-alone, or emergency repair project in the 2021-23 Enacted Capital Budget, or Transportation Budget, that will take place if no additional funding is received from this grant. Baseline projects must:
  + Be funded at least in part by the Capital Budget or Transportation Budget
  + Be fully funded without any funding needed from this grant
  + Meet applicable building, electrical, and energy codes as required (baseline projects which are not otherwise required to meet the most current energy code do not need to meet it to apply for this grant).
* The alternative project is an alternative design, component, or enhanced feature directly relating to the baseline project. Alternative projects must:
  + Incur an additional cost beyond the baseline project.
  + Be directly related to the systems altered in the baseline project.
  + If projects install heating devices or equipment, the project must, whenever possible and most cost effective, select devices and systems that do not use fossil fuels.
  + Examples:
    - Allowable example: The baseline is to replace an HVAC unit. The alternative is to purchase a more efficient and more expensive HVAC unit and adding HVAC controls.
    - Prohibited example: The baseline is to replace an HVAC unit. The alternative adds replacing the building’s lighting at the same time.

Application Requirements

* No more than one site may be submitted per application.
* Each application may include funding from only one Minor Works, Stand-Alone or Emergency Repair Project.
* Applications must be submitted through the process determined by Commerce.
* Applications must be received by the due date specified by Commerce.
* All application materials must be submitted in the format required by Commerce.
* Answers and attachments must not exceed the length specified in the RFA or in the application instructions. Content that exceeds the length limitations will not be considered.
* Applications must include:
  + All materials and information listed in the application instructions
  + A complete and accurate application
  + A completed and signed Certification of Organization Official

## FUNDING

There is currently $4,406,315 in funding available from the State Project Improvement Grant Program as authorized in Section 1065 and 1022 of House Bill 1080, the Capital Budget. This amount reflects the deduction of the 3% administrative costs as approved by the Office of Financial Management. Additional funds may become available from currently contracted projects with unspent funds.

COMMERCE intends to award as many eligible contracts as funding allows as described in this RFA. There is no minimum or maximum award amount.

No match is required for the grant. The Baseline Project must be fully funded and grants will be no more than 100% of the baseline project cost.

This funding cannot supplant or replace funds already committed to the project. Commerce will not fund projects beyond 100% of costs.

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

## PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about 2/1/2022 and to end on or about 7/31/2023. Amendments extending the period of performance, if any, shall be at the sole discretion of COMMERCE.

## 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.

## DEFINITIONS

Definitions for the purposes of this RFA include:

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

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

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

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

Grantee: Agency whose Application has been accepted by COMMERCE and is awarded a fully executed, written contract.

Highly Impacted Communities: The Department of Health designates as a highly impacted community any census tract with a 9 or 10 overall rank on the Environmental Health Disparities (EHD) map, or any census tract with tribal lands. To determine whether projects are in designated census tract, agencies may use the EHD map or the Highly Impacted Communities Data Table as described in these instructions:

<https://www.doh.wa.gov/DataandStatisticalReports/WashingtonTrackingNetworkWTN/ClimateProjections/CleanEnergyTransformationAct/CETAUtilityInstructions>

Request for Applications (RFA): Formal procurement document in which a 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.

## 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.

# GENERAL INFORMATION FOR APPLICANTS

## 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 | Jill Eikenhorst, Program Manager |
| E-Mail Address | [energyretrofits@commerce.wa.gov](mailto:energyretrofits@commerce.wa.gov) |
| Mailing Address | 1011 Plum Street SE  P.O. Box 42525  Olympia, WA 98504-2525 |
| Phone Number | 360-522-0000 |

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 about this RFA directed to parties other than the RFA Coordinator may result in disqualification of the Applicant.*

## ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Applications will be accepted until all funding is awarded.

Group 1: Emergency Repair Projects

Projects which receive funding from OFM’s Emergency Repair program may submit a Phase I application at any time. Commerce expects to review Phase I Emergency Repair applications in two business days. Projects which meet minimum criteria will be invited to submit a Phase II Application, which Commerce expects to review in 5 business days.

|  |  |
| --- | --- |
| Question & answer period | Questions about emergency repair projects may be submitted in writing any time while funds are available |
| Answers to Q&A posted no later than | Commerce will attempt to answer all questions within 2 business days.\* |
| Phase I Application Submitted by Applicant | Anytime while funds are available |
| Phase I Decision and Invitation for Phase II, if successful | Within 2 business days |
| Phase II Application Submitted by Applicant | Any time after invitation |
| Phase II Decision and Award Announcement | Within 5 business days |
| Hold debriefing conferences (if requested) | Within 10 business days |

\*Questions regarding emergency repair projects must be clearly labeled “SPI Emergency Repair”

Group 2: Minor Works and Stand-Alone Projects Initial Group

Commerce will review applications received by the deadlines below as a group. Projects which are determined to meet minimum qualifications and evaluation criteria will be eligible for funding. If requests exceed available funding, Commerce will prioritize projects as discussed in [RFA SECTION 4.3 PHASE II EVALUATION](#_PHASE_II_EVALUATION).

|  |  |
| --- | --- |
| Issue Request for Applications | September 28 |
| Pre-Application Conference | October 5, 1pm |
| Question & answer period | September 28 –  October 15 |
| Answers to Q&A posted no later than | October 18 |
| Phase I Application Due by 4:00pm PT | October 20 |
| Phase I Decisions Announced (estimated) | November 12 |
| Phase II Applications Due (estimated) | December 3 |
| Announce “Apparent Successful Applicants” and send notification via e-mail to unsuccessful Applicants (estimated) | January 28 |
| Hold debriefing conferences, if requested (estimated) | January 31-Feb 4 |
| Negotiate contract | February-April |
| Begin contract work | February-April |

**Group 3: Minor Works and Stand-Alone Projects Ongoing Funding**

Commerce will continue to accept Phase I applications on an ongoing basis until all funding is awarded. Applications received after the Group 2 deadline will be reviewed on an ongoing basis until all remaining funds are awarded.

COMMERCE reserves the right to revise the above schedule.

## PRE-APPLICATION CONFERENCE

A virtual pre-application conference is scheduled to be held at the dates and times listed in [RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#_ESTIMATED_SCHEDULE_OF). All prospective Applicants are encouraged to attend; however, attendance is not mandatory. Applicants may register for the meeting on the program website.

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

## SUBMISSION OF APPLICATIONS

Applications must be submitted electronically through ZoomGrants. Only electronic applications will be accepted.

E-mail and e-mail attachments shall not be accepted unless the attachment is too large for the ZoomGrants system. If any attachments are too large to include with the ZoomGrants application then the applicant must:

* Upload a document in place of the attachment stating the issue and that the document will be emailed and from whom the email will come.
* Email the required document to [energyretrofits@commerce.wa.gov](mailto:energyretrofits@commerce.wa.gov) by the specified application deadline with the Subject line: SPI Application, <Name of the Applicant>, <Name of the Project>, <Document Name>

Zipped files cannot be received by COMMERCE and cannot be used for submission of applications. Application materials attached as zip files will be disqualified.

Applications may not be transmitted using facsimile transmission. Hard copies will not be accepted.

Forms requiring signature must be signed by an individual within the organization authorized to bind the Applicant to the offer. Only scanned color original signed documents will be accepted. Commerce does not accept digital signatures as original signatures.

The application must be submitted by the entity for which an interagency agreement would be negotiated should the project be contingently awarded. Applications submitted by a third party, or on behalf of the applicant, will NOT be accepted. ZoomGrants allows the applicant to provide access to a third party to assist with completing the application, if desired.

COMMERCE does not assume responsibility for problems with Applicant’s submissions. If ZoomGrants prevents complete and timely submissions, appropriate allowances will be made at COMMERCE’S sole determination.

Applicants are highly encouraged to begin the online application early and to submit the application 24 hours ahead of the deadline to allow time to resolve any technical issues. The system can take several minutes to process application submissions, so be sure to allow time for the submission to process before the deadline.

Applicants should allow sufficient time to ensure timely receipt of the Application by the RFA Coordinator. Applications received after the deadline will be automatically moved to Group 3 consideration, unless ZoomGrants is found to be at fault at COMMERCE’S sole determination. All applications and any accompanying documentation become the property of COMMERCE and will not be returned.

Application link: <https://www.zoomgrants.com/zgf/StateProjectImprovement>

## 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 Applicant 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.

## REVISIONS TO THE RFA

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

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

## DIVERSE BUSINESS INCLUSION PLAN

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

COMMERCE has the following agency goals:

10% participation by Minority Owned Business

6% participation by Women Owned Business

5% participation by Veteran Owned Business

5% participation by Small Businesses

## ACCEPTANCE PERIOD

Applications must provide 120 days for acceptance by COMMERCE from the due date for receipt of Applications.

## COMPLAINT PROCESS

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

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

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

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

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

## 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.

## 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 Applicant 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.

## INTERAGENCY AGREEMENT GENERAL TERMS & CONDITIONS

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

## 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.

## NO OBLIGATION TO CONTRACT

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

## 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.

## 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.

## ELECTRONIC PAYMENT

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

## INSURANCE COVERAGE

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

# APPLICATION CONTENTS

Applications must be written in English and submitted electronically to the RFA Coordinator.

Applicants must answer all required questions in the application, and provide all required documentation. Any required document, in addition to the application, that is not included in the application submission may result in application disqualification.

## Phase I Application

Applicants must complete and submit the application form as specified in [RFA SECTION 2.4 SUBMISSION OF APPLICATIONS](#_SUBMISSION_OF_APPLICATIONS). The application form includes:

* Applicant Information
* Contractor Information
* Baseline Project Information
* Alternative Project Information

## Phase II Application

Phase I applications which meet the minimum requirements will be invited to submit a Phase II application. Full instructions and format for submitting the Phase II application will be sent to invited applicants. The Phase II application will include:

* Phase II Application Form
  + Baseline Project
  + Alternative Project
  + Budget
* Attachments
  + OFM Lifecycle Cost Tool comparing Baseline and Alternative Projects (submit as an Excel file)
  + Energy Consumption Calculations
  + Project Scope
  + Exhibit A Certifications and Assurances
  + Exhibit B Diverse Business Inclusion Plan
  + Exhibit C Applicant Certification

Additional information or attachments may be included at the time of Phase II applications.

# EVALUATION AND CONTRACT AWARD

## 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 minimum qualifications, and if needed, the ranking of the Applications.

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

## PHASE I EVALUATION

Commerce and the Office of Financial Management will review the Phase I applications for compliance with the process, completeness, and minimum qualifications. Applications that do not follow the process, are incomplete, or do not meet the minimum qualifications may be disqualified at any time. Applications that are disqualified will not be reviewed or evaluated further. Applications which are not disqualified will be invited to submit a full application. Commerce may request the Phase I application be submitted as multiple Phase II applications.

## PHASE II EVALUATION

Commerce will review the Phase II applications for compliance with the process, completeness, and minimum qualifications. Applications that do not follow the process, are incomplete, or do not meet the minimum qualifications may be disqualified at any time. Applications that are disqualified will not be reviewed or evaluated further.

Technical Review

Applications will be reviewed by technical experts for accuracy of assumptions and calculations.

* Calculations determined to be incorrect may be overridden with the technical review calculations.
* Applications which fail to meet the requirements or to provide sufficient information for technical review will be disqualified.

Award Criteria

Projects which meet the following criteria will be recommended for award:

* The Lifecycle Cost Tool calculates lower Tons of CO2e over Study Period for the alternative project than for the baseline project.
* The Lifecycle Cost Tool calculates a Net Present Savings above $0 for the alternative project.

Project Prioritization

If requests exceed available funding for Group 2 applications, projects will be prioritized as follows:

* Projects located in a Highly Impacted Community (see definition) and show a reduction in combustion fuels (Natural Gas, Diesel, Gasoline or LPG) on the Lifecycle Cost Tool will be awarded first.
* Projects will then be ranked according to the cost/ton of CO2e reduction over the baseline project. Projects which show the lowest cost/ton Co2e reduction will be awarded first. Cost/ton CO2e reduction is calculated as follows:

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

## NOTIFICATION TO APPLICANTS

COMMERCE will notify the Apparently Successful Applicant(s) of their selection in writing upon completion of the evaluation process. Agencies whose Applications were not selected for further negotiation or award will be notified separately by e-mail.

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

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

* Evaluation of the firm’s Application;
* Critique of the Application based on the evaluation;
* Review of Applicant’s final ranking in comparison with other final ranking *without* identifying the other applicants or reviewing their Applications.

Comparisons between Applications or evaluations of the other Applications will not be allowed. Debriefing conferences will be conducted online and will be scheduled for a maximum of thirty minutes.

## PROTEST PROCEDURE

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

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

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

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

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

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

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

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

The final determination of the protest shall:

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

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

## SUCCESSFUL APPLICANTS

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 Interagency Agreement and performance period.
* Is responsible for compliance with the Interagency Agreement for the duration of the performance period.
* Must maintain insurance as designated in [RFA SECTION 2.19 INSURANCE COVERAGE](#_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.
* 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.

Project Requirements:

* The project must not begin (be under construction contract) until Commerce received the signed award letter from the Awardee. Agencies may have a contract with the intended construction contractor if it does not include the Alternative Project scope of work. A construction contract may be amended after Commerce receives the signed award letter to include the Alternative Project scope of work. Costs incurred prior to the award date cannot be reimbursed.
* The construction phase of the project must be completed within 24 months of execution of the grant agreement, however extensions can be granted on a case by case basis.
* Must serve the intended purpose of the contract for the duration of the performance period.
* Project must conduct activities necessary to the deployment of capital assets with a lifespan of greater than 13 years and planned to be located in the State of Washington.
* Capital projects must be planned to cost less than or equal to $10 million.
* 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.

Reporting Requirements:

* Report on all pass-through funding to subcontractors and sub-subcontractors 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.
* Report energy production and utility costs and usage for one year following system commissioning.

Funding Requirements:

* Funded projects must apply for and use all applicable utility incentives. The sum of the baseline project cost, the SPI award, project utility incentives and any other project funding source may not exceed the total cost of the alternative project. The SPI award may be reduced if necessary to prevent overfunding.
* Funding awarded through this Program cannot supplant or displace any funding designated for the submitted project. The Applicant may be required to provide information concerning the project’s funding to demonstrate that funds have not been displaced.

# RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers’ Rights Certification

Exhibit D Capital Contract Format with Sample Terms and Conditions

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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.: | SPI-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 – 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. Form should be signed by and completed on behalf of applicant, not any sub-contractors.

PROGRAM SPECIFIC TERMS AND CONDITIONS

INTERAGENCY AGREEMENT

STATE FUNDS

1. COPYRIGHT (REPLACES GENERAL TERMS AND CONDITIONS #6)

Provided that the deliverables required under the scope of work are produced in substantial compliance with the project timeline and milestones, Commerce disclaims any ownership interest in all other materials produced under this contract, and “work product” including, without limitation, document, data, studies, surveys, drawings, maps, photographs and any objects or source code for any software developed pursuant to or in connection with this contract, as well as any copyrights, patents, trade secrets, trademarks or other intellectual property developed for or in connection with this contract, shall be exclusively owned by and be the exclusive property of contractor and/or its subcontractors (as determined between contractor and its subcontractors).

Notwithstanding the foregoing, Commerce shall have a nonexclusive, royalty-free, irrevocable license and right to translate, reproduce, sublicense on the terms set forth herein, prepare derivative works, publicly perform, and publicly display the project reports (as defined below).

“Project reports” mean the project implementation reports and other information required to be submitted by contractor to Commerce under the scope of work herein. Project reports will not contain confidential information or work product.

1. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #15)

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. TREATMENT OF ASSETS (REPLACES GENERAL TERMS AND CONDITIONS #20)

The parties do not anticipate that Commerce will furnish property (other than the state funds granted herein) to contractor for use in contractor’s performance under this Contract; provided, however, that title to any other property that may be so furnished by Commerce shall remain in Commerce.

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

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

1. USE OF STATE CAPITAL FUNDS

This grant is made with State Capital Funds. As such, the Grantee agrees to follow and to ensure that all subcontractors follow the requirements associated with state capital dollars, including but not limited to:

1. Washington State Prevailing Wage
2. Washington State Public Works requirements
3. State Cultural and Historic Resource requirements and Tribal consultation as required by Governor’s Executive Order 21-02
4. Comply with Washington State Environmental Policy Act (SEPA)
5. Report on all pass-through funding using the provided reportable expense template under the Governor’s Diverse Spend Initiative
6. 2021 STATE PROJECT IMPOVEMENT GRANT REQUIREMENTS

Grantee agrees to comply with the requirements and follow the guidelines as outlined in the Request for Applications dated September 2021 (the “RFA”), incorporated by this reference as if fully set forth herein. In the event of conflict between the RFA and the contract, the Contract prevails.

1. REPORTING REQUIREMENTS

During the construction phase of the Scope of Work, the Grantee must provide quarterly written reports to Commerce for project update purposes. Quarterly reports are due no later than 15 days after the end of each quarter or at the time of invoice for the quarter to be reported. The report form will be provided by Commerce. The intent is to collect a description of the project activity that occurred during the period, including but not limited to:

1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
2. The project milestones met to date and anticipated in the subsequent quarter;
3. Any additional metrics required from the capital budget proviso, legislature, governor’s office, or Commerce;
4. Quarterly updated budget projections for project expenditures;
5. The grant expenditures to date and anticipated in the next quarter.
6. AUTHORITY

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

1. CONTRACT MANAGEMENT

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

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

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

1. COMPENSATION

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

1. ~~EXPENSES~~

This Section Intentionally Deleted.

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 either the costs incurred by the Grantee or the billable amount agreed to in Attachment B. The invoice shall include the Contract Number stated on the face sheet.

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.

1. INSURANCE

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

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 Agreement performed by subcontractors and the portion of funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. “Subcontractors” shall mean subcontractors of any tier.

* 1. ORDER OF PRECEDENCE

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

* Applicable federal and state of Washington statutes and regulations
* Attachment C – Proviso Language
* Program Specific Terms and Conditions
* Special Terms and Conditions
* General Terms and Conditions
* Attachment A – Scope of Work
* Attachment B – Budget
* Request for Applications

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 attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
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. 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. ASSIGNMENT

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

1. CONFIDENTIALITY AND SAFEGUARDING OF INFORMATION
2. “Confidential Information” as used in this section includes:
3. All material provided to the Contractor by COMMERCE that is designated as “confidential” by COMMERCE;
4. All material produced by the Contractor that is designated as “confidential” by COMMERCE; and
5. All personal information in the possession of the Contractor that may not be disclosed under state or federal law.
   * 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.
6. COPYRIGHT

This section superseded by Program Specific Terms and Conditions #1

~~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. DISPUTES

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

1. GOVERNING LAW AND VENUE

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

1. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

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. 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.

The Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

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

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 calendar 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

This section is superseded by Program Specific Terms and Conditions #2.

~~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. 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 the Authorized Representative has or may acquire an interest.
8. TREATMENT OF ASSETS

This section is superseded by Program Specific Terms and Conditions #3.

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

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

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

1. WAIVER

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

Scope of Work

Insert contract specific summary here.

Budget

Enter budget here.

Proviso Language

SUBSTITUTE HOUSE BILL 1080, Chapter 332, Laws of 2021

Sec. 1065

2021-23 Energy Retrofits for Public Buildings Grant Program

(3) $4,500,000 of the appropriation in this section is provided

2 solely for the energy efficiency and environmental performance3 improvements to minor works, stand-alone, and emergency projects at4 facilities owned by agencies named by the state efficiency and5 environmental performance office executive order 20-01 that repair or6 replace existing building systems and reduce greenhouse gas emissions7 from state operations, including, but not limited to, HVAC, lighting,8 insulation, windows, and other mechanical systems. Eligibility for9 this funding is dependent on an analysis using the office of

10 financial management's life-cycle cost tool that compares project

11 design alternatives for initial and long-term cost-effectiveness.

12 Assuming a reasonable return on investment, the department shall

13 provide grants in the amount required to improve the project's energy

14 efficiency compared to the original project request. Prior to

15 awarding funds, the department shall submit to the office of

16 financial management a list of all proposed awards for review and

17 approval.