RFA NO. RDD2021

This solicitation is a reissuance of the RDD2021 grant opportunity that was released on April 30, 2021.

SUMMARY OF CHANGES\*

|  |
| --- |
| **SECTION** |
| 1.3 MINIMUM QUALIFICATIONS |
| 1.5 PERIOD OF PERFORMANCE |
| 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES |
| 2.3 PRE-APPLICATION CONFERENCES |
| 2.7 REVISIONS TO THE RFA |
| 2.10 COMPLAINT PROCESS |
| 3.1 TWO PHASE APPLICATION PROCESS |
| 3.2 PHASE ONE APPLICATION INSTRUCTIONS AND CONTENTS |
| 3.3 PHASE TWO APPLICATION INSTRUCTIONS AND CONTENTS |
| 4.2 EVALUATION BREAKDOWN |
| 5 RFA EXHIBITS |

\*A detailed summary of changes will also be posted on the website.

STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR PROPOSALS (RFA)

RFA NO. RDD2021

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

GRANT TITLE: ­­­­­­­­­­­­­­­­Clean Energy Fund 4 Research Development and Demonstration

APPLICATION PHASE ONE DUE: ~~May 28, 2021~~ July 30, 2021 at 5 p.m. Pacific Time, Olympia, WA

APPLICATION PHASE TWO DUE: ~~August 20, 2021~~ October 28, 2021 at 5 p.m. Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: 24 to 36 months from contract execution date

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.

CONTENTS OF THE REQUEST FOR PROPOSALS:

1. Introduction
2. General Information for Applicants
3. Application Process and Contents
4. Evaluation and Award
5. Exhibits
   1. Certifications and Assurances
   2. Diverse Business Inclusion Plan
   3. Workers’ Rights Certification
   4. Technology Readiness Level
   5. ~~Department of Revenue Status Screenshot~~ Assurances or Documentation of Secured Match Sample Letter
   6. ~~Assurances or Documentation of Secured Match Sample Letter~~ Risk Assessment Survey
   7. ~~Risk Assessment Survey~~ Service Contract

Contents

[1. INTRODUCTION 3](#_Toc76670346)

[1.1 PURPOSE AND BACKGROUND 3](#_Toc76670347)

[1.2 OBJECTIVES AND SCOPE OF WORK 3](#_Toc76670348)

[1.3 MINIMUM QUALIFICATIONS 3](#_Toc76670349)

[ADDITIONAL AND SECONDARY SELECTION CRITERIA 4](#_Toc76670350)

[1.4 FUNDING 5](#_Toc76670351)

[1.5 PERIOD OF PERFORMANCE 6](#_Toc76670352)

[1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES 6](#_Toc76670353)

[1.7 DEFINITIONS 6](#_Toc76670354)

[1.8 ADA 7](#_Toc76670355)

[2. GENERAL INFORMATION FOR APPLICANTS 8](#_Toc76670356)

[2.1 RFA COORDINATOR 8](#_Toc76670357)

[2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES 8](#_Toc76670358)

[2.3 PRE-APPLICATION CONFERENCES 9](#_Toc76670359)

[2.4 SUBMISSION OF APPLICATIONS 9](#_Toc76670360)

[2.5 DISCLAIMER 9](#_Toc76670361)

[2.6 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE 10](#_Toc76670362)

[2.7 REVISIONS TO THE RFA 10](#_Toc76670363)

[2.8 DIVERSE BUSINESS INCLUSION PLAN 11](#_Toc76670364)

[2.9 ACCEPTANCE PERIOD 11](#_Toc76670365)

[2.10 COMPLAINT PROCESS 11](#_Toc76670366)

[2.11 RESPONSIVENESS 11](#_Toc76670367)

[2.12 MOST FAVORABLE TERMS 12](#_Toc76670368)

[2.13 CONTRACT GENERAL TERMS & CONDITIONS 12](#_Toc76670369)

[2.14 COSTS TO PROPOSE 12](#_Toc76670370)

[2.15 NO OBLIGATION TO CONTRACT 12](#_Toc76670371)

[2.16 REJECTION OF PROPOSALS 12](#_Toc76670372)

[2.17 COMMITMENT OF FUNDS 13](#_Toc76670373)

[2.18 ELECTRONIC PAYMENT 13](#_Toc76670374)

[2.19 INSURANCE COVERAGE 13](#_Toc76670375)

[3. APPLICATION PROCESS AND CONTENTS 14](#_Toc76670376)

[3.1 TWO PHASE APPLICATION PROCESS 14](#_Toc76670377)

[3.2 PHASE ONE APPLICATION INSTRUCTIONS AND CONTENTS 15](#_Toc76670378)

[3.3 PHASE TWO APPLICATION INSTRUCTIONS AND CONTENTS 16](#_Toc76670379)

[4. EVALUATION AND CONTRACT AWARD 17](#_Toc76670380)

[4.1 EVALUATION PROCEDURE 17](#_Toc76670381)

[4.2 EVALUATION BREAKDOWN 17](#_Toc76670382)

[A. PHASE ONE 17](#_Toc76670383)

[B. PHASE TWO: SCORED 17](#_Toc76670384)

[4.3 ORAL PRESENTATIONS MAY BE REQUIRED 18](#_Toc76670385)

[4.4 NOTIFICATION TO PROPOSERS 19](#_Toc76670386)

[4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS 19](#_Toc76670387)

[4.6 PROTEST PROCEDURE 19](#_Toc76670388)

[5. RFA EXHIBITS 20](#_Toc76670389)

[EXHIBIT A: CERTIFICATIONS AND ASSURANCES 21](#_Toc76670390)

[EXHIBIT B: DIVERSE BUSINESS INCLUSION PLAN 22](#_Toc76670391)

[EXHIBIT C: CONTRACTOR CERTIFICATION Executive Order 18-03 – Workers’ Rights Washington State Goods & Services Contracts 1](#_Toc76670392)

[EXHIBIT D: TECHNOLOGY READINESS LEVEL 2](#_Toc76670393)

[EXHIBIT E: ASSURANCES OR DOCUMENTATION OF REQUIRED MATCH SAMPLE 3](#_Toc76670394)

[EXHIBIT F: RISK ASSESSMENT SURVEY 4](#_Toc76670395)

[EXHIBIT G: CONTRACT FORM 6](#_Toc76670396)

[FACE SHEET ii](#_Toc76670397)

[DECLARATIONS 1](#_Toc76670398)

[PROGRAM SPECIFIC TERMS AND CONDITIONS 1](#_Toc76670399)

[1. Insurance (replace Specific Terms and conditIons SECTION #6) 1](#_Toc76670400)

[2. subcontracting (Replaces General Terms and Conditions #36 Subcontracting) 2](#_Toc76670401)

[SPECIAL TERMS AND CONDITIONS 3](#_Toc76670402)

[1. CONTRACT MANAGEMENT 3](#_Toc76670403)

[2. COMPENSATION 3](#_Toc76670404)

[3. BILLING PROCEDURES AND PAYMENT 3](#_Toc76670405)

[Duplication of Billed Costs 3](#_Toc76670406)

[Disallowed Costs 3](#_Toc76670407)

[4. SUBCONTRACTOR DATA COLLECTION 3](#_Toc76670408)

[5. HISTORICAL OR CULTURAL ARTIFACTS 4](#_Toc76670409)

[6. INSURANCE (Replaced by Program Specific Terms and Conditions #1) 4](#_Toc76670410)

[7. ORDER OF PRECEDENCE 5](#_Toc76670411)

[GENERAL TERMS AND CONDITIONS 6](#_Toc76670412)

[1. DEFINITIONS 6](#_Toc76670413)

[2. ALLOWABLE COSTS 6](#_Toc76670414)

[3. ALL WRITINGS CONTAINED HEREIN 6](#_Toc76670415)

[4. AMENDMENTS 6](#_Toc76670416)

[5. AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the “ADA” 28 CFR Part 35 6](#_Toc76670417)

[6. APPROVAL 6](#_Toc76670418)

[7. ASSIGNMENT 6](#_Toc76670419)

[8. ATTORNEYS’ FEES 7](#_Toc76670420)

[9. CODE REQUIREMENTS 7](#_Toc76670421)

[10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION 7](#_Toc76670422)

[11. CONFORMANCE 7](#_Toc76670423)

[12. CONFLICT OF INTEREST 7](#_Toc76670424)

[13. COPYRIGHT 8](#_Toc76670425)

[14. DISALLOWED COSTS 8](#_Toc76670426)

[15. DISPUTES 8](#_Toc76670427)

[16. DUPLICATE PAYMENT 9](#_Toc76670428)

[17. GOVERNING LAW AND VENUE 9](#_Toc76670429)

[18. INDEMNIFICATION 9](#_Toc76670430)

[19. INDEPENDENT CAPACITY OF THE CONTRACTOR 9](#_Toc76670431)

[20. INDUSTRIAL INSURANCE COVERAGE 10](#_Toc76670432)

[21. LAWS 10](#_Toc76670433)

[22. LICENSING, ACCREDITATION AND REGISTRATION 10](#_Toc76670434)

[23. LIMITATION OF AUTHORITY 10](#_Toc76670435)

[24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS 10](#_Toc76670436)

[25. PAY EQUITY 10](#_Toc76670437)

[26. POLITICAL ACTIVITIES 11](#_Toc76670438)

[27. PREVAILING WAGE LAW 11](#_Toc76670439)

[28. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION 11](#_Toc76670440)

[29. PUBLICITY 11](#_Toc76670441)

[30. RECAPTURE 11](#_Toc76670442)

[31. RECORDS MAINTENANCE 11](#_Toc76670443)

[32. REGISTRATION WITH DEPARTMENT OF REVENUE 12](#_Toc76670444)

[33. RIGHT OF INSPECTION 12](#_Toc76670445)

[34. SAVINGS 12](#_Toc76670446)

[35. SEVERABILITY 12](#_Toc76670447)

[36. SUBCONTRACTING (Replaced by Program Specific Terms and Conditions #2) 12](#_Toc76670448)

[37. SURVIVAL 12](#_Toc76670449)

[38. TAXES 12](#_Toc76670450)

[39. TERMINATION FOR CAUSE 13](#_Toc76670451)

[40. TERMINATION FOR CONVENIENCE 13](#_Toc76670452)

[41. TERMINATION PROCEDURES 13](#_Toc76670453)

[42. TREATMENT OF ASSETS 14](#_Toc76670454)

[43. WAIVER 14](#_Toc76670455)

[Scope of Work 15](#_Toc76670456)

[Budget 16](#_Toc76670457)

# 1. INTRODUCTION

## 1.1 PURPOSE AND BACKGROUND

The Washington State Department of COMMERCE, hereafter called “COMMERCE,’ will be accepting grant applications for the Clean Energy Fund (CEF) Research, Development and Demonstration (RD&D) Program from Washington-based entities seeking funds for clean energy projects.

The Washington State Legislature created the Clean Energy Fund to fund projects that provide a public benefit through deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or increase energy independence for the state. There is currently $7,802,744 in funding available in the RD&D program. This program is part of Clean Energy Fund 4 (CEF 4) and appears in [Section 1005 of Engrossed Substitute Senate Bill 6248](http://leap.leg.wa.gov/leap/budget/lbns/2020Cap6248-S.SL.pdf).[[1]](#footnote-1)

Desired program outcomes include increasing investment in innovation and strategic research of new and emerging clean energy technologies, fostering economic development, reducing air pollution for Vulnerable Populations and Tribes, increasing reliable and affordable energy supply, and community climate resilience for all of Washington state.

The legislation mandates that eligible projects include, but are not limited to:

* Solar technologies
* Advanced bioenergy and biofuels
* Development of new earth abundant materials or lightweight materials
* Advanced energy storage
* Battery components recycling
* New renewable energy and energy efficiency technologies

For the full list of Eligible Technologies, see RFA SECTION 1.2 OBJECTIVES AND SCOPE OF WORK.

COMMERCE intends to award *multiple* contracts to provide the services described in this RFA.

## 1.2 OBJECTIVES AND SCOPE OF WORK

Grants will be used to match federal or other non-state funds to research, develop, and demonstrate clean energy technologies.

The primary goals of this solicitation include

* increasing the competitiveness of Washington-based research and development organizations, and partners, by providing a required cost-share or match funding assistance
* leveraging non-state funding to help grow Washington’s clean technology sector
* developing and strengthening relationships and new technologies in the clean energy sector

For this round of funding, new language states that for clean energy fund grants “Priority must be given to projects that benefit vulnerable populations, including tribes and communities with high environmental or energy burden.”[[2]](#footnote-2) [[3]](#footnote-3) These new provisions support the equitable distribution of benefits envisioned in state policy, such as the Clean Energy Transformation Act (CETA).[[4]](#footnote-4) Additionally, this solicitation has been designed using guidelines and recommendations from the Energy and Climate Policy Advisory Committee (ECPAC)[[5]](#footnote-5) and the 2021 State Energy Strategy.[[6]](#footnote-6) In order to align with state clean energy policy goals and greenhouse gas emissions mandates[[7]](#footnote-7) and to ensure an equitable transition to clean energy, this solicitation will incentivize projects that:

* establish a partnership or ensure a formal advisory role for projects in Vulnerable Populations or Federally Recognized Tribal Governments, and organizations serving American Indian and Alaska Native (AIAN) primary service populations (“Tribes”)
* reduce energy burden and foster economic benefits for Vulnerable Populations or Tribes
* reduce emissions; increase access to clean energy, and/or community resiliency for Vulnerable Populations or Tribes
* increase Tribal energy sovereignty

The above bullets will be reflected in the scoring criteria. Projects are still eligible to apply for funding if they do not provide benefits to the priority groups mentioned.

Eligible projects must support Washington state clean energy policies and goals.[[8]](#footnote-8) If you apply to fund a technology or research that is not included, please be prepared to provide an explanation for how it supports state clean energy policy. Examples of eligible projects are included in the table below.

|  |  |  |
| --- | --- | --- |
| 2021 SES | Outcome | Technology |
| Key Action/ Recommendation | RD&D Applicable Outcome | Clean Energy Fund Technology Eligibility Based on the 2021 State Energy Strategy |
| Communities | Enhancing resilience in rural WA | Resilient Distributed Energy |
| Transportation | Decarbonization of transportation sector | Electric Vehicles |
| Electric or Hybrid Marine Vessels |
| Electric or Hybrid Short-Haul Aircraft |
| Battery Technologies |
| Hydrogen Produced from Renewable Resources |
| Renewable Hydrogen Storage and Distribution |
| Hydrogen Fuel Cells |
| Advanced Biofuels |
| Buildings | Reduce/eliminate use of fossil fuels to heat and power homes, offices, warehouses, shops and other buildings | Building Electrification |
| Energy Efficiency |
| Low-Carbon Building Materials |
| Grid-Connected and High-Efficiency Electric Heat Pumps and Water Heaters |
| Industry | Promote renewable hydrogen production, clean fuels refining, and carbon capture | Advanced Bioenergy and Biorefining |
| Renewable Hydrogen Storage, Distribution and Dispensing |
| Hydrogen Produced from Renewable Resources |
| Battery Recycling |
| Development of New Earth Abundant and Lightweight Materials |
| Carbon Capture, Use and Storage: |
| * Direct Air and Flue Gas Capture |
| * Geological Storage |
| Electricity | Develop distributed energy resources with smart grid capabilities, including consumer equipment, to ensure reliability and flexibility | Renewable and Distributed Energy Production |
| * Wind |
| * Solar |
| * Bioenergy |
| * Hydrogen |
| * Hydrokinetic |
| * Geothermal |
| Advanced Energy Storage |
| Transmission and Distribution |
| Smart Grid and Grid Controls |
| Energy Efficiency |

Examples of Ineligible Projects include:

* Coal, oil, natural gas, or projects in which the primary focus involves these fossil fuels are not eligible for Clean Energy Fund RD&D grants.
* Projects that do not illustrate research, development or demonstration of a new technology or improve on proven technologies are ineligible.
* Projects that install available systems infrastructure or implement systems of proven, commercial technologies, without improving on those technologies will be ineligible.

## 1.3 MINIMUM QUALIFICATIONS

Projects not meeting one or more of the minimum qualifications outlined in SECTION 1.3 MINIMUM QUALIFICATIONS will be disqualified in the administrative review and will not be scored.

**Applicants, including project partners[[9]](#footnote-9), must:**

* Be a Washington state-based research institution; non-profit; private business; Federally Recognized Tribal Government, organization serving American Indian and Alaska Native (AIAN) primary service populations; local government; or other organization pursuing clean energy technology. (See SECTION 1.7 DEFINITIONS) Eligible technologies are outlined in SECTION 1.2 OBJECTIVES AND SCOPE OF WORK.
* Be able to demonstrate partnership through continuous and intensive engagement with the research community through relevant research, development, and/or demonstration projects or for other entities, partnership or connection with larger research institutions. Be affiliated with, or be a member of an identified research association. *Federally Recognized Tribal Governments, and all organizations serving American Indian and Alaska Native (AIAN) primary service populations, including Tribal colleges, Tribal utilities and others are exempt from this requirement.*
* Show significant in-state presence by conducting primary research, development, demonstration, and deployment in Washington state.
* Have current registration ~~or similar criteria~~ with the Washington State Department of Revenue and Secretary of State~~, as applicable,~~ for a minimum of six months. All applicants are required to be registered with the Department of Revenue for a minimum of six months at the time of application. Limited liability companies, corporations and limited liability partnerships are required to have a Secretary of State registration for a minimum of six months at the time of application. Other entities (including but not limited to sole proprietorships, general partnerships, non-profits, public entities and Tribes) are exempt from the Secretary of State registration requirement.
* Not request RD&D funding to supplant or displace prior or existing match commitments.

**Projects must:**

* Develop or acquire capital assets with a lifespan with a minimum of thirteen years and be located in the Washington state
* Include a life cycle-cost analysis
* Be completed within 36 months of execution of the RD&D contract; however, extensions may be considered on a case-by-case basis.
* Identify how the project will benefit Washington state and its population
* Develop or demonstrate eligible clean energy technologies which:
  + either have demonstrated viability, such as pilot or full scale prototype, but not commercialization. (See 1.3 ADDITIONAL AND SECONDARY SELECTION CRITERIA)
  + have expanded existing technologies through innovation, such as novel configurations or increased efficiencies
* specifically enable access to new non-state funding by finding match funds

### ADDITIONAL AND SECONDARY SELECTION CRITERIA

Life Cycle Cost Analysis (LCCA)

Life Cycle Cost Analysis (LCCA) is a method to determine the most efficient and cost-effective option among different competing alternatives to purchase, assemble, operate, and maintain an object or process. A LCCA compares initial investment options as well as least cost alternatives for initial design and long term cost effectiveness. The project application must include a life cycle cost analysis tailored to each project, and the criteria used for the Life Cycle Cost Analysis must be specified. COMMERCE has not established a dedicated process for the Life Cycle Cost Analysis.

**Technology Readiness Level**

Grants under this program aim to support technologies between the pilot or prototype stage and commercialization and are not meant to support commercialized technologies. Criteria for the grant will include, but not be limited to, identifying the appropriate technology readiness level of the project. Applicants must self-assess their project at the time of application, clearly articulating how the project is between prototype development and commercialization and using the Technology Readiness Level (TRL) table in Exhibit D. Eligible projects must be at a TRL of 4-7, past conceptualization but not yet at commercialization.

## 1.4 FUNDING

This program has $7,802,744 in state funds from CEF4 and funds from previous biennia. This amount reflects the deduction of the 3% administrative costs as approved by the Office of Financial Management.

Additional funds may be available through other sources including but not limited to:

* Additional state funds made available from previous grant rounds[[10]](#footnote-10)
* Future funding authorized by the legislature

There will be one competitive solicitation, opening on July 19, 2021 ~~April 30, 2021~~ in which the amount above will be awarded. Additional funds may be available at the time of the award announcement or after awards have been issued.

The intent is to award all funds under this competitive solicitation. However, any additional or leftover funds may be awarded to applicants who applied to this application cycle and received high scores, but were not selected for initial funding. We encourage all applicants to apply to this solicitation, in order to be eligible for future funding.

**MATCH REQUIREMENT**

This round of funding will be divided as follows:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Group | Eligible applicant | Budget | Minimum Award | Maximum Award | Match |
| 1 | Non-profits; Local Governments; [Non-R1](https://cehd.gmu.edu/assets/docs/faculty/tenurepromotion/institutions-research-categories.pdf) research institutions; Federally Recognized Tribal Governments, and all organizations serving American Indian and Alaska Native (AIAN) primary service populations, including but not limited to Tribal Colleges, Tribal utilities and others.  *National labs are not eligible for the carve out or reduced match.* | $ 1,000,000 | $150,000 | $1,000,000\* | 1:5 |
| 2 | All other applicants including but not limited to national labs, established research institutions and private companies | $ 6,802,744 | $150,000 | $1,500,000 | 1:1 |
|  | Total | $ 7,802,744 |  | | |

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

Matching funds may be sought from lending institutions, investors, federal awards, non-state awards, or the applicants.

* Applicants are expected to notify COMMERCE of all applicable non-state award decisions.
* Applicants who do not receive their non-state match funding within six months of receipt of their RD&D conditional award letter may have their award withdrawn, but may apply for future funding pending new opportunity announcements.
  + An additional six months to secure required match, for a total of 12 months following the date on the award letter, may be provided on a case-by-case basis.
* Proposals less than $150,000 or greater than $1,500,000 will be considered non-responsive and will not be evaluated.
* \* Group 1 Applicants may request grants up to $1,500,000. However, Group 1 Applicantsthat request grants greater than $1,000,000 will automatically be placed in the Group 2 Applicant pool, and will be evaluated as a Group 2 Applicant.

## 1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin around May 2022 ~~February 2022~~ and to end 24 to 36 months from contract execution date. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE.

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

## 1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

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

## 1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

Apparent Successful Contractor: 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, company or entity interested in the RFA and that may or does submit an application in order to attain a contract with the AGENCY.

Capital Asset: The definition of “Capital Asset” has been modified from that of the Office of Financial Management to provide generic guidance to Research, Development and Demonstration applicants. Please note that eligible capital assets will depend on the type of RD&D project and will be considered on a case by case basis: *Tangible or intangible assets held and used in state operations which have a service life of more than thirteen years and meet the state’s capitalization policy. Capital assets of the state include infrastructure, leasehold improvements, furnishings, equipment, and all other tangible and intangible assets that are used in state operations.*

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

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

Energy Burden: The share of annual household income used to pay annual home energy bills. RCW 19.405.020. <https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020>

Group 1: Non-profits; local governments; [Non-R1](https://cehd.gmu.edu/assets/docs/faculty/tenurepromotion/institutions-research-categories.pdf) research institutions; Federally Recognized Tribal Governments, and all organizations serving American Indian and Alaska Native (AIAN) primary service populations, including but not limited to Tribal Colleges, Tribal utilities and others.

Group 2: All other applicants not listed in Group 1 including but not limited to national labs, established research institutions and private sector applicants.

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

Local Government: For the purpose of this Program, “Local Governments” includes cities, towns, counties, special and school districts, transportation authorities, municipal corporations, port districts or authorities, political subdivisions of any type, or any other entities or authorities of local government in corporate form or otherwise.

Non-Profit Organization: A corporation no part of the income of which is distributable to its members, directors or officers and that holds a current tax exempt status as provided under 26 U.S.C. Sec. 501(c)(3) or is specifically exempted from the requirement to apply for its tax exempt status under 26 U.S.C. Sec. 501(c)(3).

Vulnerable Population: Communities that experience a disproportionate cumulative risk from environmental burdens due to: (a) adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; and (b) sensitivity factors, such as low birth weight and higher rates of hospitalization.[[11]](#footnote-11)

## 1.8 ADA

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

# 2. GENERAL INFORMATION FOR APPLICANTS

## 2.1 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 | Angela LaSalle |
| E-Mail Address | [cef@commerce.wa.gov](mailto:Forrest.Watkins@commerce.wa.gov) |
| Phone Number | 360-764-9127 |
| Website | <https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-rdd-clean-energy-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.*

## 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

|  |  |
| --- | --- |
| Issue Request For Applications | July 19, 2021 ~~April 30, 2021~~ |
| Question & Answer Period One | July 19, 2021-July 23, 2021 ~~May 1-May 14, 2021~~ |
| Bidders’ Conference | July 21, 2021 ~~May 5, 2021~~ |
| Application Phase One Due | July 30, 2021, 5:00pm PT ~~May 28, 2021~~ |
| Evaluate Phase One Applications | July 30, 2021-September 2, 2021 ~~May 28 2021~~ |
| Applicants Sent “Encouraged” or “Discouraged” Emails | October 1, 2021 ~~July 23, 2021~~ |
| Application Phase Two Opens | October 1, 2021 ~~July 24, 2021~~ |
| Question & Answer Period Two | October 1, 2021-October 15, 2021 ~~July 24, 2021- August 6, 2021~~ |
| Application Phase Two Due | October 28, 2021, 5:00pm PT  ~~August 20, 2021~~ |
| Evaluate Phase Two Applications | November 1, 2021-January 17 2022 ~~August 24, 2021~~ |
| Conduct Oral Interviews With Finalists, If Required | Scheduled as needed |
| Announce “Apparent Successful Contractor” And Send Notification Via E-Mail To Unsuccessful Proposers | February 9, 2022  ~~November 12, 2021~~ |
| Hold Debriefing Conferences (If Requested) | ~~November 12-December 15, 2021~~  February 9-18, 2022 |
| Begin Contract Negotiations | March 2022 |
| Begin Contract Work | ~~February~~ June 2022 |

COMMERCE reserves the right to revise the above schedule at any time for any reason.

## 2.3 PRE-APPLICATION CONFERENCES

~~Two~~ One virtual Bidders’ Conference ~~are~~ is scheduled to be held at the date and time listed in RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. All prospective Applicants are encouraged attend; however, attendance is not mandatory**.** The conference~~s~~ will be recorded and a link to the recording~~s~~ will be posted on the[CEF RD&D Webpage](https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-rdd-clean-energy-fund/). The recordings of the Pre-Application Conferences from the solicitation that opened on April 30, 2021 will be posted on the program website for reference. The previous Pre-Application Conferences provided an overview of the application, and addressed the purpose, available funding and the structure of the grant. Applicants are responsible for referencing the most recent RFA, application documents and latest Bidders’ Conference

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 Q&A will be posted on the website.

## SUBMISSION OF APPLICATIONS

ELECTRONIC APPLICATIONS:

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

Proposals 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 RFA COORDINATOR.

* All attachments must be submitted in 11 point, single space Arial font.
* Page Margins must not be narrower than 1 inch on all sides.
* Page counts assume single sided documents on standard, letter size pages.
* Proposals must be written in English.

Attachments to e-mail shall be in Microsoft Word format unless another format is specified in the application instructions. Zipped files cannot be received by COMMERCE and cannot be used for submission of proposals. 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.

Proposals may not be transmitted using facsimile transmission or hard copy.

Applicants should allow sufficient time to ensure timely receipt of the proposal by the RFA Coordinator. Late proposals 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 proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

## DISCLAIMER

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

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

Only applications with responses meeting all Mandatory Eligibility Criteria in PHASE ONE: PART A will be approved for further evaluation in the PHASE ONE: PART B Application. COMMERCE reserves the right to determine at its sole discretion whether the proposer's responses to the Mandatory Eligibility Criteria is sufficient for the application to proceed for further review. COMMERCE also reserves the right to disqualify any project at any time for any reason.

COMMERCE reserves the right to modify award amount from that requested, negotiate with qualified applicants, cancel or reissue at any time without obligation or liability, or change the application guidelines for subsequent funding rounds. Updates will be made to the RFA and the webpage.

## 2.6 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

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

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

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.

## 2.7 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 SECTION 2.1 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/~~](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 SECTION 2.1 RFA COORDINATOR.

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

Grant and application guidelines, RFA documents, as well as required documentation for applicant download, will be posted electronically on COMMERCE’s [Clean Energy Fund RDD website](https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-rdd-clean-energy-fund/). Any amendments and addenda to the documents will be posted on the same site.

**Applicants are responsible for checking the website for updates, amendments, and addenda. COMMERCE accepts no liability and will provide no accommodation for applicants who submit an application based on out-of-date solicitation documents.**

## 2.8 DIVERSE BUSINESS INCLUSION PLAN

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

COMMERCE has the following agency goals:

10% participation by Minority Owned Business

6% participation by Women Owned Business

5% participation by Veteran Owned Business

5% participation by Small Businesses

## 2.9 ACCEPTANCE PERIOD

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

## 2.10 COMPLAINT PROCESS

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

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

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

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

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

## 2.11 RESPONSIVENESS

All proposals 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 proposal as non-responsive.

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

## 2.12 MOST FAVORABLE TERMS

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

The Apparent Successful Contractor 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 proposal. It is understood that the proposal will become a part of the official procurement file on this matter without obligation to COMMERCE.

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

The Apparent Successful Contractor must 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).

All Apparent Successful Contractors will be required to adhere to all state laws pertaining to capital funding, including but not limited to, compliance with Executive Order 21-02.

## 2.13 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 G. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit exceptions as allowed in the Certifications and Assurances form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

## 2.14 COSTS TO PROPOSE

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

## 2.15 NO OBLIGATION TO CONTRACT

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

## 2.16 REJECTION OF PROPOSALS

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

## 2.17 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.

## 2.18 ELECTRONIC PAYMENT

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

## 2.19 INSURANCE COVERAGE

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

The Contractor shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE. Standard insurance requirements are included within the sample contract and its Special Terms and Conditions attached as Exhibit ~~H~~ G.

# 3. APPLICATION PROCESS AND CONTENTS

Proposals should be submitted following the process found in SECTION 3.1 TWO PHASE APPLICATION PROCESS. Additional details can be found in the application documents.

Application requirements vary between Group 1 and Group 2, and the applicant *must* specify which group they are in and fill out required sections for their respective group.

Application questions and detailed instructions are provided in the application forms. Items marked “MANDATORY” must be included as part of the application for it to be considered responsive, however, these items are not necessarily scored. Items marked “scored” are those that have a point system as part of the evaluation conducted by the evaluation team.

## 3.1 TWO PHASE APPLICATION PROCESS

The application process consists of Two Phases. There are different applications and supporting documents for each phase. Please refer to the table below, and to the application documents for details. Application documents are available on the RD&D website listed in SECTION 2.1 RFA COORDINATOR.

|  |  |
| --- | --- |
| Phase | Application Phase |
| Phase One | Part A: Project Information |
| Part B: Concept Paper |
| Phase Two | Part A: Broader Impacts and Equity |
| Part B: Intellectual Merit, Technical Proposal and Cost Proposal |
| Part C: Management Proposal and Match |

**PHASE ONE APPLICATION** (Refer to RFA SECTION 3.2 PHASE ONE APPLICATION INSTRUCTIONS AND CONTENTS, and the application documents for more detail on **PHASE ONE** application contents).

* **PHASE ONE: Part A** will be screened for minimum qualifications. COMMERCE staff will review **PHASE ONE: Part A** to determine whether it was properly completed, submitted on time, and whether it addresses and aligns with the minimum qualifications described in RFA SECTION 1.3, MINIMUM QUALIFICATIONS.
* **PHASE ONE: Part A** applications that do not pass the minimum qualifications screening will receive an email indicating they were administratively disqualified. If the project meets the minimum thresholds, the **PHASE ONE: Part B** application will be evaluated.
* Evaluation Team (ET) 1 will review **PHASE ONE: Part B** Applicationsand assign “Encouraged” or “Discouraged” recommendations. Favorably reviewed applicants will be notified via email a recommendation of “Encouraged to submit **PHASE TWO** Application” and unfavorably reviewed applicants will be notified via email a recommendation of “Discouraged to submit **PHASE TWO** Application.”
* Applicants will not receive feedback on the recommendation. Applicants will not be provided an opportunity for project presentations or to request meetings or phone calls to discuss the projects at this stage. Applicants who were “Discouraged” can submit a **PHASE TWO** Application. However, the Evaluation Team (ET) 2 may review a limited number of **PHASE TWO** applications, and applicants receiving “Encouraged” emails will be reviewed first. “Discouraged” Applications will be reviewed on an as needed basis. The “Encouraged” or “Discouraged” decision is intended to minimize the time and effort to develop a **PHASE TWO** Application for projects that do not meet the intent of the program or have a low chance of success.
* Applicants will have approximately 28 days from the receipt of the “Encouraged” or “Discouraged” email to submit a **PHASE TWO** Application. As stated in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES, COMMERCE reserves the right to revise the schedule at any time, and applicants may have fewer than 28 days to prepare the **PHASE TWO** Application. Submitting a **PHASE ONE** Application does not obligate the applicant to submit a **PHASE TWO** Application. However, applicants must submit a **PHASE ONE** Application to be eligible for consideration for the **PHASE TWO** application.

**PHASE TWO APPLICATION** (Refer to RFA SECTION 3.3 PHASE TWO APPLICATION INSTRUCTIONS AND CONTENTS and the application documents for more detail on **PHASE TWO** application contents).

* ET 2 will evaluate PHASE TWO of Encouraged Applicants, with the option of reviewing PHASE ONE for context. The team will only evaluate “Discouraged” Applications, if more applications are needed. If ET 2 chooses to review “Discouraged “Applications, it will start by reviewing PHASE ONE: Part B of “Discouraged” Applications.
* Scores, comments, and recommendations will be provided to COMMERCE for consideration when determining awards. COMMERCE will make all final funding decisions. Notification of Research, Development, and Demonstration Program grant awards, along with notification of unsuccessful proposals, will take place approximately according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.
* Successful applicants will enter into contract negotiations starting according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

## 3.2 PHASE ONE APPLICATION INSTRUCTIONS AND CONTENTS

PHASE ONE Application must be received by the RFA Coordinator by the date specified in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. **PHASE ONE Applications not received by the deadline will be disqualified.** The application and required supplemental forms are on the website and/or in EXHIBITS of the RFA. Refer to the application for detailed instructions and contents.

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

1. Application Phase One
   1. Part A
   2. Part B
2. Biographical sketches
3. ~~Screenshot of Department of Revenue and Secretary of State Registration (Mandatory)~~
4. ~~Debarment Certification (Mandatory)~~
5. Certification of Official (Mandatory)
6. Ethics in Public Service Compliance Form (Mandatory)
7. Certifications and Assurances (Exhibit A to this RFA) (Mandatory)

APPLICATION PHASE ONE CONTENTS

* **A. PHASE ONE: PART A: Project Information (Mandatory)**
  + **Applicant Information (Mandatory)**
  + **Minimum Qualifications & General Project Information (Mandatory)**
  + **Funding and Match (Mandatory)**
  + **Specific Project Information (Mandatory)**

Phase One Applications that do not meet the minimum requirements outlined in Part ONE A will be considered non-responsive.

* **B. PHASE ONE: PART B: Concept Paper** 
  + **Project Title (Mandatory)**
  + **Objectives and Approach (Mandatory)**
  + **Team (Mandatory)**
  + **Estimated Schedule (Mandatory)**
  + **Estimated Budget (Mandatory)**
  + **Equity Benefits, TRL and Broader Impacts**

## 3.3 PHASE TWO APPLICATION INSTRUCTIONS AND CONTENTS

Phase Two Application must be received by the Procurement Coordinator by the date specified in SECTION 2.2. PHASE TWO Applications not received by the deadline will be disqualified. PHASE TWO applications submitted before the Phase Two Period opens, specified in SECTION RFA SECTION 2.2 will be disqualified.

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

1. Application Phase Two
   1. Part A
   2. Part B
   3. Part C
2. Diverse Business Inclusion Plan (Mandatory)
3. Workers’ Rights Certification (Mandatory, Scored)
4. Risk Assessment Form (Optional)
5. Matching Funds Documentation for SECURED Matching Funds Only (Optional, Scored)
6. Partnership letter(s) (Optional, Scored)

APPLICATION PHASE TWO CONTENTS

* **Project Information (Mandatory)**
* **A. PHASE TWO: PART A: Broader Impacts and Equity (Scored)**
  + Partnerships (Optional, Scored)
  + Equity Narrative: (Scored)
    - Energy Burden Reduction (Optional, Scored)
    - Economic Benefits (Optional, Scored)
    - Emissions Reduction (Optional, Scored)
    - Clean Energy Access (Optional, Scored)
    - Tribal Energy Sovereignty (Optional, Scored)
* **B. PHASE TWO: PART B: Intellectual Merit, Technical Proposal and Cost proposal: (Mandatory, Scored)**

**Technical Proposal**

* + Abstract/Project Summary (Mandatory, Scored)
  + Background (Mandatory, Scored)
  + Methodology (Mandatory, Scored)
  + Outcomes (Mandatory, Scored)
  + Life Cycle Cost Analysis (Mandatory, Scored)
  + Risks (Mandatory, Scored)
  + Schedule (Mandatory, Scored)
  + Work Plan (Mandatory, Scored)
  + Scalability (Mandatory, Scored)

**Cost Proposal**

* + Detailed Project Budget (Mandatory, Scored)
* **C. PHASE TWO: PART C: Management Proposal and Match**

**Management Proposal**

* + Organization (Mandatory, Scored)
  + Team and Project Management (Mandatory, Scored)

**Match** (Mandatory for Groups 1 and 2, Scored for Group 2 only)

# 4. EVALUATION AND CONTRACT AWARD

## 4.1 EVALUATION PROCEDURE

Refer to SECTION 3.1 TWO PART APPLICATION PROCESS for detailed information on the evaluation process.

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

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 proposal.

## 4.2 EVALUATION BREAKDOWN

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

### PHASE ONE

#### PHASE ONE: PART A: PASS/FAIL

#### PHASE ONE: PART B: ENCOURAGED/DISCOURAGED

|  |  |  |
| --- | --- | --- |
|  | Criteria | Weight |
| Proposal and Abstract | Objectives and approach | 20% |
| Schedule | 5% |
| Budget | 5% |
| Team including relevant experience, subject matter knowledge, and skills | 30% |
| Equity and Partnerships | Project’s benefits to WA and/or Tribes | 20% |
| Project’s benefits to Vulnerable Populations or Tribes | 5% |
| Partnerships | 10% |
|  | TRL Scale | 5% |
|  | Phase One Total | 100% |

The weights for Part One B are guidelines for applicants on which questions the review team will prioritize. Part One B will not have a numerical score but will be evaluated on an “Encouraged” or “Discouraged” basis. Evaluators will be instructed to evaluate the Phase One Part One B: Concept Paper as a whole ~~rather than scored in discrete parts.~~

### PHASE TWO: SCORED

|  |  |  |  |
| --- | --- | --- | --- |
|  |  | Group 1 | Group 2 |
| Part | Category | Percentage of score | |
| A | Broader Impacts | 30% | 30% |
| B | Intellectual Merit, Technical Proposal, Cost Proposal | 60% | 60% |
| C | Management Proposal: Team, Project Management and Organization | 10% | 5% |
| Match | N/A | 5% |
|  | Phase Two Total | 100% | 100% |

|  |  |  |
| --- | --- | --- |
| A Broader Impacts and Equity – Percentage of Overall Score 30%   * Equity Narrative 18%   + Energy Burden Reduction   + Economic Benefits   + Emissions Reduction   + Clean Energy Access   + Increase Tribal Energy Sovereignty * Partnerships 12% |  | |
| B Intellectual Merit, Technical Proposal, Cost Proposal – Percentage of Score 60%   * Project Summary 9% * Background 9% * Methodology 6% * Outcomes 9% * Life Cycle Cost Analysis 1.5% * Risks 1.5% * Schedule 6% * Work Plan 9% * Scalability 4.5% * Cost Proposal: Budget and Budget Justification 4.5%   Cost Proposal The evaluation process is designed to award this procurement not necessarily to the Applicant of least cost, but rather to the Applicant whose application best meets the requirements of this RFA. However, Applicants are encouraged to submit applications which are consistent with state government efforts to conserve state resources.    C Management Proposal and Match – 10%   |  |  |  | | --- | --- | --- | |  | Group 1 | Group 2 | | Management Proposal | 10% | 5% | | Match | N/A | 5% | |  |
| Workers’ Rights Certification – 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 3% added to their total score (see Exhibit C). |

Please see RFA SECTION 1.2, OBJECTIVES AND SCOPE OF WORK for more information on project prioritization.

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

## 4.3 ORAL PRESENTATIONS MAY BE REQUIRED

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

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

## 4.4 NOTIFICATION TO PROPOSERS

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

## 4.5 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

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

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

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

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

## 4.6 PROTEST PROCEDURE

Protests may be made only by Applicant 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.

Applicant 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 Applicant 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 a proposal, or 2) COMMERCE’S assessment of its own and/or other agencies needs or requirements.

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

In the event a protest may affect the interest of another Applicant that also submitted a proposal, 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 proposals, and/or
* Reissue the solicitation document and begin a new process, or
* Make other findings and determine other courses of action as appropriate.

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

# 5. RFA EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers’ Rights Certification

Exhibit D Technology Readiness Level

Exhibit E: ~~Department of Revenue Status Screenshot~~ Assurances or Documentation of Secured Match Sample Letter

Exhibit F: ~~Assurances or Documentation of Secured Match Sample Letter~~ Risk Assessment Survey

Exhibit G: ~~Risk Assessment Survey~~ Contract Sample

~~Exhibit H: Contract Sample~~

## EXHIBIT A: CERTIFICATIONS AND ASSURANCES

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

1. I/we declare that all answers and statements made in the proposal are true and correct.
2. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
3. The attached proposal is a firm offer for a period of 60 days following receipt, and it may be accepted by COMMERCE without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the 60-day period.
4. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. If there are exceptions to these assurances, I/we have described them in full detail on a separate page attached to this document.
5. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of COMMERCE, and I/we claim no proprietary right to the ideas, writings, items, or samples, unless so stated in this proposal.
6. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Proposer and will not be knowingly disclosed by him/her prior to opening, directly or indirectly, to any other Proposer or to any competitor.
7. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Proposer to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others who may have pertinent information regarding the ability of the Applicant and the lead staff person to perform the services contemplated by this 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 2.13 Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

are not submitting proposed Contract exceptions (*default if neither are checked*).

On behalf of the Applicant submitting this proposal, my signature below attests to the accuracy of the above statement as well as my authority to bind the submitting organization.

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

## EXHIBIT B: DIVERSE BUSINESS INCLUSION PLAN

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

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

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

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

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

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

Minority \_\_%

Women \_\_%

Veteran \_\_%

Small Business \_\_%

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

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

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

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

## EXHIBIT C: CONTRACTOR CERTIFICATION Executive Order 18-03 – Workers’ Rights Washington State Goods & Services Contracts

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

| Solicitation No.: | RDD2021 |
| --- | --- |

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

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

or

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

OR

* This firm certifies it has no employees.

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

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

## EXHIBIT D: TECHNOLOGY READINESS LEVEL

Technology Readiness Level: Technology Readiness Level (TRL) is a method of measuring the maturity of a technology, originally developed by NASA. While there are many TRL definitions and scales, this program has adapted and modified the Technology Readiness Levels developed by NASA, the Department of Energy and the Government Accountability Office.

|  |  |
| --- | --- |
| TRL Level | Description |
| 1 | Basic research: Initial scientific research has been conducted, and basic principles are observed and reported. |
| 2 | Applied research: Technology concept formulated and/or initial practical applications are identified. |
| 3 | Experimental critical function and/or proof of concept: Active research and early development begins. A proof of concept model is developed. |
| 4 | Lab testing: Basic technological components and processes are tested in a laboratory environment. |
| 5 | Prototype validated in a relevant environment: Components are integrated in order to be tested in a simulated environment. |
| 6 | Prototype system verified: System model or prototype tested and demonstrated in a relevant environment. |
| 7 | Integrated pilot system demonstrated: Prototype demonstration in an operational environment. |
| 8 | System demonstrated and incorporated in commercial design. |
| 9 | System tested, proven and ready for commercialization: Actual application is in its final form and ready for full commercial deployment. |

Sources:

National Aeronautics and Space Administration, “Technology Readiness Level,” <https://www.nasa.gov/directorates/heo/scan/engineering/technology/technology_readiness_level>, Accessed April 15, 2021

Government Accountability Office, “Technology Readiness Assessment Guide,” GAO-20-48, [https://www.gao.gov/assets/gao-20-48g.pdf, pg. 11](https://www.gao.gov/assets/gao-20-48g.pdf,%20pg.%2011), Accessed April 15, 2021

Brookhaven National Laboratory, U.S. Department of Energy, <https://www.bnl.gov/techtransfer/TMFP/definitions.php>, Accessed February 26, 2021

## EXHIBIT E: ASSURANCES OR DOCUMENTATION OF REQUIRED MATCH SAMPLE

*Submit letters on letterhead of business and/or organization with the non-state funding you are seeking to match.*

*Text can be modified but needs to address the following basic information.*

Non-state Funding Letter of Intent to Commit

*(date)*

*(applicant name, title and address)*

Dear (applicant chief executive officer),

I am pleased to confirm our commitment of *($xxxxxx)* towards *(project title).*

Please note (Additional instructions for items to address in the match funding commitment letter):

1. Please notify us once the match is fulfilled. You may subsequently draw upon our committed funds in whole or in part (revise per standard practice of funding organization).
2. (Add any unique conditions and/or expectations of non-state funding source here such as subject to completion of due diligence.)

3. Please sign and return a copy of this intent to commit letter to verify your acceptance of this offer and the conditions herein.

Sincerely,

(name and title of person authorized to make offer)

Accepted by: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_ *(name) (date)*

Authorized Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

## EXHIBIT F: RISK ASSESSMENT SURVEY

|  |  |  |  |
| --- | --- | --- | --- |
| Contractor Name: |  | | |
| Contract Number: |  | Award Amount: |  |
| Main Funding Source: |  | Sub Funding Source: |  |
| Contract Manager: |  | Email: |  |

1. What is the age of your company or agency?

* Click or tap here to enter text.

1. Entity Type

* Click or tap here to enter text.

1. Has there been any restructuring of your company or agency within the past 12 months?

* Yes
* No

1. Have there been any investigations or lawsuits against the company or agency within the past 12 months?

* Yes ☐
* No ☐

1. Has the company or agency filed for bankruptcy within the last five years?

* Yes ☐
* No ☐

1. Have there been any State Auditor’s Office or internal audit findings within the last five years?

* Yes ☐
* No ☐

1. Are internal financial reports completed annually?

* Yes ☐
* No ☐

1. Has your company or agency received state funds in the past?

* Yes ☐
* No ☐

1. Has your company or agency received federal funds in the past?

* Yes ☐
* No ☐

1. Has your company or agency had any contracts terminated in the past?

* Yes ☐
* No ☐

1. Has your company or agency had any Commerce contract compliance issues in the past?

* Yes ☐
* No ☐

1. Has your company or agency secured match, if required?

* Yes ☐
* No ☐
* NA ☐

## EXHIBIT G: CONTRACT FORM

*Please note that this contract is subject to change for contracts with Federally Recognized Tribal Governments.*

<<Date>>

«Organization\_Name»

«Organization\_Address\_\_Street»

«Organization\_Address\_\_Street2»

«Organization\_Address\_\_City\_WA\_ZIP»

RE: CEF4 Research Development and Demonstration Program #«Contract\_Number»

Dear «Organizational\_Official\_\_Name»:

Attached is the contract for a grant under the Research Development and Demonstration Program grants program. This contract details the terms and conditions that will govern the agreement between us. Please review the Special and General Terms and Conditions of the contract carefully. We recommend consulting with your legal advisor before accepting this offer.

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

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

A requirement of this program is that you must maintain updated project records as well as ensure current liability insurance documents are sent to Commerce annually.

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

Sincerely,

[CEF@commerce.wa.gov](mailto:CEF@commerce.wa.gov)

State Energy Office

Capital Agreement with

<Organization\_Official\_Name>

through

CEF 4 Research, Development and Demonstration Program

For

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

Start date: <Month> <Day>, <Year>

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TABLE OF CONTENTS

Face Sheet 1

Program Specific, Terms and Conditions.…………...…………………………………………………………….2

1. Insurance………………………...………………………………………….….2
2. Subcontracting………………………………………..……………………….2

Special Terms and Conditions

1. Contract Management 3
2. Compensation 3
3. Billing Procedures and Payment 3
4. Subcontractor Data Collection 3
5. Historical or Cultural Artifacts 4
6. Insurance 4
7. Order of Precedence 5

General Terms and Conditions

1. Definitions 6
2. Allowable Costs 6
3. All Writings Contained Herein 6
4. Amendments 6
5. Americans with Disabilities Act (ADA) 6
6. Approval 6
7. Assignment 6
8. Attorney’s Fees 6
9. Code Requirements 7
10. Confidentiality/Safeguarding of Information 7
11. Conformance 7
12. Conflict of Interest 7
13. Copyright 8
14. Disallowed Costs 8
15. Disputes 8
16. Duplicate Payment 9
17. Governing Law and Venue 9
18. Indemnification 9
19. Independent Capacity of the Contractor 9
20. Industrial Insurance Coverage 9
21. Laws 10
22. Licensing, Accreditation and Registration 10

23. Limitation of Authority 10

1. Noncompliance with Nondiscrimination Laws 10
2. Pay Equity 10
3. Political Activities 10
4. Prevailing Wage Law 10
5. Prohibition Against Payment of Bonus or Commission 11
6. Publicity 11
7. Recapture 11
8. Records Maintenance 11
9. Registration with Department of Revenue 11
10. Right of Inspection 11
11. Savings 11
12. Severability 12
13. Subcontracting 12
14. Survival 12
15. Taxes 12
16. Termination for Cause 12
17. Termination for Convenience 13
18. Termination Procedures 13
19. Treatment of Assets 13
20. Waiver 14

Attachment A: Scope of Work 15

Attachment B: Budget 17

Contract Number: <insert number>

## FACE SHEET

**Contract Number: «Contract\_Number»**

**Washington State Department of Commerce**

**Energy Division – Research Development and Demonstration Program**

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| 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 10/13/2020

## DECLARATIONS

The Washington State Department of Commerce (Commerce) has been appropriated state funds under [SECTION 1005 of Engrossed Substitute Senate Bill 6248](http://lawfilesext.leg.wa.gov/biennium/2019-20/Pdf/Bills/Session%20Laws/Senate/6248-S.SL.pdf#page=1), SECTION 1028 of the Second Engrossed House Bill 1115, SECTION 1013 of Substitute Senate Bill 6090 and to provide grants for the Research, Development And Demonstration program.

|  |  |
| --- | --- |
| CLIENT INFORMATION | |
| Legal Name: | «Organizational\_Official\_\_Name» |
| Contract Number: | «Contract\_Number» |
| Award Year: | 2021 |
| State Wide Vendor Number: | «SWV» |
|  | |
| PROJECT INFORMATION | |
|  |  |
| Project Title: |  |
| Project Address: |  |
| Project City: |  |
| Project State: | Washington |
| Project Zip Code: |  |
|  | |
| GRANT INFORMATION | |
|  | |
| Grant Amount: | «Award\_Amount» |
| Non-State Match | <Enter cost share> |
| Type of Match Accepted: |  |
| Earliest Date for Reimbursement: |  |
| Time of Performance: | <Date as agreed upon> |
|  |  |
|  |  |
| PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT | |
|  | |

## PROGRAM SPECIFIC TERMS AND CONDITIONS

As identified herein, notwithstanding General & Specific Terms and Conditions SECTIONs, the following Program Specific Terms and Conditions take precedence over any similarly referenced Special or General Terms and Conditions:

1. Insurance (replace Specific Terms and conditIons SECTION #6)

The Grantee shall provide insurance coverage as set out in this SECTION. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Grantee or Subcontractor, or agents of either, while performing under the terms of this contract.

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

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

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

The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this 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 Grantee is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

1. subcontracting (Replaces General Terms and Conditions #36 Subcontracting)

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

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

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

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

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

SPECIAL TERMS AND CONDITIONS

1. CONTRACT MANAGEMENT

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

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

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

2. COMPENSATION

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

3. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor not more often than monthly upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE. The invoices shall describe and document, to COMMERCE’s satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number \_\_\_\_\_\_. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of $50.00 or more in order to receive reimbursement. Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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.

4. 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.

5. 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 memorandum 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.

6. INSURANCE (Replaced by Program Specific Terms and Conditions #1)

~~The Contractor shall provide insurance coverage as set out in this SECTION. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any loss, or negligent or intentional act or omission of the Contractor or Subcontractor, or agents of either, while performing under the terms of this contract.~~

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

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

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

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

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

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

~~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. ~~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.~~

7. 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
* Program Specific Terms and Conditions
* Special Terms and Conditions
* General Terms and Conditions
* Attachment A: Scope of Work
* Attachment B: Budget

GENERAL TERMS AND CONDITIONS

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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. ATTORNEYS’ FEES

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

9. 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.

10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

1. “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).
2. 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.
3. 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.

11. 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.

12. 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 their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the COMMERCE program managing the grant, 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.

13. 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.

14. DISALLOWED COSTS

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

15. 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.

16. 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.

17. GOVERNING LAW AND VENUE

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

18. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, 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 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.

19. INDEPENDENT CAPACITY OF THE CONTRACTOR

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

20. INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with all applicable provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by

COMMERCE under this Contract and transmit the deducted amount to the Department of Labor and Industries (L&I) Division of Insurance Services. This provision does not waive any of L&I’s rights to collect from the Contractor.

21. LAWS

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

22. LICENSING, ACCREDITATION AND REGISTRATION

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

23. LIMITATION OF AUTHORITY

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

24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

25. 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:
   1. 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.
   2. 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.
   3. 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.

26. POLITICAL ACTIVITIES

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

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. REGISTRATION WITH DEPARTMENT OF REVENUE

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

33. 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.

34. 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.

35. 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.

36. SUBCONTRACTING (Replaced 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.~~

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

42. 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.

43. WAIVER

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

## Scope of Work

## Budget

1. “Engrossed Substitute Senate Bill 6248” (2020), 66th Legislature 2020 Regular Session, 2019-2020 biennial capital budget, SECTION 1005(1) <http://leap.leg.wa.gov/leap/budget/lbns/2020Cap6248-S.SL.pdf> [↑](#footnote-ref-1)
2. Chapter 19.405, RCW 19.405. <https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020> [↑](#footnote-ref-2)
3. Under CETA, Tribes and communities with high environmental burden are defined as “highly impacted communities” and use a cumulative impacts analysis map created by Department of Health, that designated the communities highly impacted by fossil fuel pollution and climate change in Washington. This definition references a law to geographically locate communities based on these factors (RCW 19.405.140). Vulnerable populations are defined under CETA as demographic communities whose biological or socioeconomic status make them more sensitive to changes from climate change and fossil fuel pollution. <https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.140> <https://app.leg.wa.gov/RCW/default.aspx?cite=19.405.020> [↑](#footnote-ref-3)
4. Chapter 19.405, “Clean Energy Transformation Act” <https://app.leg.wa.gov/RCW/default.aspx?cite=19.405> [↑](#footnote-ref-4)
5. “ECPAC: Report on Clean Energy Fund Recommendations,” Accessed February 20, 2021. <https://www.commerce.wa.gov/wp-content/uploads/2020/12/ECPAC-Report_11-24-2020.pdf> [↑](#footnote-ref-5)
6. “2021 State Energy Strategy,” Accessed January 15, 2021. <https://www.commerce.wa.gov/growing-the-economy/energy/2021-state-energy-strategy/> [↑](#footnote-ref-6)
7. Chapter 70A.45 [RCW 70A.45.020: Greenhouse gas emissions reductions—Reporting requirements. (wa.gov)](https://app.leg.wa.gov/RCW/default.aspx?cite=70A.45.020) [↑](#footnote-ref-7)
8. Technology priorities are based on the 2021 State Energy Strategy. [↑](#footnote-ref-8)
9. Applicants are able to partner with entities in another state. However, the project and research collaboration needs to be within Washington. [↑](#footnote-ref-9)
10. Clean Energy Fund 2 and Clean Energy Fund 3, which appear in Section 1028 of the Second Engrossed House Bill 1115, and Section 1013 of Substitute Senate Bill 6090 respectively. [↑](#footnote-ref-10)
11. Revised Code of Washington, Chapter 288, Laws of 2019, SECTION 2 (40). [↑](#footnote-ref-11)