



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

**REQUEST FOR APPLICATION (RFA)
RFA NO. Energy Efficiency 2022 (EE 2022)**

Changes to the RFA

The following updates have been made as of 4/27/2022:

Changes in the document are highlighted in yellow.

- **Cover sheet** – has added the RFA number abbreviation (EE 2022)
- **Section 1.7** - Definitions, see Priority Communities.



STATE OF WASHINGTON

DEPARTMENT OF COMMERCE

REQUEST FOR APPLICATION (RFA)

RFA NO. Energy Efficiency 2022 (EE 2022)

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.

PROJECT TITLE: Energy Retrofits for Public Buildings - Energy Efficiency

APPLICATION DUE: May 25, 2022 at 4pm, Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: October 2022 – April 2025

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

The Applicant must be a public entity and must own the building or facility.

CONTENTS OF THE REQUEST FOR APPLICATION:

1. Introduction
2. General Information for Applicants
3. Application Contents
4. Evaluation and Award
5. Exhibits
 - A. Certifications and Assurances
 - B. Diverse Business Inclusion Plan
 - C. Workers' Rights Certification
 - D. Grant Contract Template with General Terms and Conditions

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Request for Application (RFA) to solicit Applications from organizations interested in participating in a project to retrofit public buildings for the purpose of reducing energy consumption.

The Energy Retrofits for Public Buildings program Energy Efficiency grants are offered to local governments, public higher education institutions, school districts, federally recognized Tribal governments, and state agencies for improvements to existing facilities and related projects that result in energy and operational cost savings.

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

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

This RFA includes program guidelines and requirements and instructions for applying. Read the entire RFA carefully, and refer to these sections for key information:

- [Section 1.3 MINIMUM QUALIFICATIONS](#) lists the qualifications that must be met for an application to be considered. Ensure the application clearly articulates how the project meets minimum qualifications.
- [Section 1.4 FUNDING](#) describes the total funding available, applicant match funding requirements, and maximum grant amounts.
- [Section 3 APPLICATION CONTENTS](#) includes a list of required attachments for the application. All attachments must be submitted according to the instructions. Materials cannot be accepted after the application deadline. The application questions can be found at the [ZoomGrants](#) link listed in [Section 2.4 SUBMISSION OF APPLICATIONS](#).
- [Section 4.2 EVALUATION BREAKDOWN](#) describes how applications that meet minimum qualifications will be evaluated, with weighting of various criteria.
- [Section 2.1 RFA COORDINATOR](#) explains the process for asking questions.

1.2 OBJECTIVES AND SCOPE OF WORK

The objective of the Energy Efficiency grant program is to help fund projects that will benefit communities through reduction of energy use and costs.

This solicitation is designed to align with and support the goals of the [Washington State Energy Strategy](#) to meet the state's greenhouse gas emission limits while benefitting people, businesses, and rural, urban, highly impacted and indigenous communities throughout the state

COMMERCE will prioritize projects that:

- Have a higher savings to investment ratio.
- Provide higher than the minimum required match.
- Remove PCB lighting from K-12 schools.
- Applicant organizations who have not previously contracted for one of these grants.
- Demonstrate community input and benefits
- Are located in Priority Communities. (DEFINITIONS Section 1.7)

These goals are reflected in the scoring criteria described in 4.2 EVALUATION BREAKDOWN. A project is still eligible to submit a project Application if it does not intend to or is unable to accomplish one or more of these program goals.

All project costs must be necessary for and directly related to the project objectives as proposed.

Examples of **eligible**, reimbursable expenditures include:

- Installed equipment and construction materials
- Personnel costs for design, permitting, project management, and procurement of services necessary to the completion of project objectives.
- Personnel costs for site preparation, installation, and commissioning.

Examples of **ineligible**, non-reimbursable expenditures include:

- Purchase or rental of real estate
- Construction or general maintenance of buildings and parking facilities
- EV charging
- New paving and landscaping
- Maintenance costs
- Studies, research or surveys

1.3 MINIMUM QUALIFICATIONS

Applicant Qualifications:

- Licensed to do business in the State of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
- Are public entities in the state of Washington, such as:
 - Local agencies – any city, town, county, special purpose district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.
 - Public Higher Education Institutions
 - K-12 public school districts
 - State agencies
 - Federally-recognized Tribal governments
- The primary Applicant is an eligible applicant that owns the facility with an eligible project.

Project Qualifications:

- The project must be an improvement to existing facilities and related projects that result in energy savings and operational cost savings. Any commissioning must be combined with a capital retrofit project.
- Projects must have a simple pay back of less than 35 years using statewide average utility rates (section 3.4, Table 1).
- The construction phase of the project must be completed within 18 months of the return of a signed award letter.
- The project must include at least one year of Measurement and Verification.
- Projects must use non-fossil fueled heating equipment or demonstrate why that is not possible or cost effective.

Application Requirements:

- Applications must be submitted through the process determined by Commerce.
- Applications must be received by the due date specified by Commerce.

- All application materials must be submitted in the format required by Commerce.
- Answers and attachments must not exceed the length specified in the RFA or in the application instructions.
- Content that exceeds the length limitations will not be considered.
- Applications must include:
 - All materials and information listed in the application instructions
 - A complete and accurate application
 - A completed and signed Certification of Organization Official

Applications that do not clearly meet or exceed all minimum qualifications listed above are non-responsive and will not be evaluated.

1.4 FUNDING

COMMERCE has budgeted an amount not to exceed \$1,815,130 for this solicitation.

HB 1080, the 2021-23 Capital Budget, in Section 1065 (1) (a) (i) authorizes grant funds to be competitively awarded under the Energy Efficiency Grant (EE Grant) program. HB 1080 section 1022 reauthorized the award of available funds for this program from previous biennia.

This amount reflects the deduction of 3% for administrative costs as approved by the Office of Financial Management.

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

- State funds available from previous grant rounds
- Federal funds available from previous grant rounds
- Additional funding as authorized by the legislature

Funds that are from a federal source will have additional requirements.

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

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

At least 20% of funds will be awarded to projects in Small Cities and Towns (see Section 1.7 DEFINITIONS).

The maximum award amount is \$350,000, with no minimum award amount. The same applicant entity can apply for more than one award with the combined maximum totalling no more than \$350,000.

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

MINIMUM MATCH REQUIREMENTS

Applications must provide 50% of the total project cost (leverage ratio of 1:1) from other, non-state sources. Match funds does not need to be secured prior to application, but must be secured before the contract is executed. Total project cost for this purpose excludes any contingency funds.

Certain projects are eligible for a reduced match requirement (see [Section 1.7 DEFINITIONS](#)):

- Projects located in:
 - Highly Impacted Communities
 - Lower Income Communities
 - Rural Communities
- Projects of federally recognized Tribal governments

These projects must provide 33% of the total project cost (leverage ratio of 1:2) from other, non-state sources. If a project does not meet the minimum match amount, COMMERCE will adjust the budget to meet the minimum match requirements. If the project is selected, COMMERCE will adjust the award to meet the minimum match requirements.

State funds cannot be used as match. Projects which provide additional match will receive higher scores.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about October 2022 and to end in April 2025. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE.

The period of performance includes up to 18 months for construction and a minimum of 12 months Measurement and Verification. If Measurement and Verification does not confirm energy savings commensurate with the original application, additional years of Measurement and Verification may be required.

The project must not be under construction contract prior to Commerce receiving the signed award letter from the Awardee.

During construction, grantees will be required to submit quarterly reports. During Measurement and Verification, no quarterly reports are required.

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. Applicants should familiarize themselves with the requirements prior to submitting an Application that includes current or former state employees.

1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

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

Applicant: Individual, organization, or other entity that submits an Application in order to attain a grant contract with COMMERCE.

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

Average state energy rates: As provided in Table 1, section 3.3. If a project uses an energy source that does not appear in the table, local utility rates should be used. Local rates are subject to review by Commerce.

Contractor: Any non-state entity hired by the applicant or grantee to perform work on the proposed project, including but not limited to energy audits, engineering, project management, construction, installation, or demolition.

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

Energy and Operational Cost Savings: The savings achieved by reducing the costs of resources consumed on site, including but not limited to electricity, propane, natural gas, and

water. Maintenance and capital expense reductions are not included for the purposes of this grant.

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

Grantee: Applicant(s) whose Application has been accepted by COMMERCE and is awarded a fully executed, written grant contract.

Priority Communities: Commerce has identified these **vulnerable** communities that will receive priority consideration and that are eligible for reduced match:

- Highly Impacted Communities: A census tract with an overall rank of 9 or 10 on the [Environmental Health Disparities V 1.1 tool](#) created by Washington Department of Health, or any census tract with Tribal lands, as listed in the Environmental Health Disparities tool.
- Lower Income Communities: A city, county, or Tribal Area with an area median income less than 80% of State Median Income (currently equivalent to \$59,020), according to the [American Community Survey 5-year estimates](#). Use the median income of the incorporated city in which the project is located, or the county if the project is located outside of an incorporated city. Tribes may instead use the median income of [Tribal Areas](#) (Reservations and Off-Reservation Trust Lands), as defined in the American Community Survey, for projects that are located in these areas.
- Rural Communities: Projects not located in a city or town that has a population of greater than 50,000 inhabitants and the urbanized area contiguous and adjacent to such a city or town, as defined by the [USDA Rural Energy Pilot Program](#).
- Projects of federally recognized Tribal governments.
- ~~Vulnerable Communities: population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, including but is not limited to racial or ethnic minorities, low income populations, populations disproportionately impacted by environmental harms, and populations of workers experiencing environmental harms.~~

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

Simple Pay Back: The total project cost divided by the annual energy and operational cost savings.

Small Cities and Towns: At least 20% of funds will be awarded to projects located in small cities and towns. To qualify, the project must be located within an incorporated city or town with a population of 5,000 or less. Commerce will use the Office of Financial Management official population estimates as published on November 30, 2021 to determine population eligibility. Grantees who believe the location of the project qualifies but is not included on this list may provide explanation in the narrative of the project. For more information on the official population estimates: <https://www.ofm.wa.gov/washington-data-research/population-demographics/population-estimates/april-1-official-population-estimates>

Total Project Cost: All eligible costs to complete the proposed project except any contingency funds, including but not limited to labor, project management, materials, sales tax, etc. Energy audits will be considered a project cost if they are included in the scope and budget submitted and will not be billed to the grantee prior to the award of a grant.

COMMERCE complies with the Americans with Disabilities Act (ADA). Prospective Applicants may contact the RFA Coordinator to receive this Request for Application 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	William Cox
E-Mail Address	energyretrofits@commerce.wa.gov
Program Webpage	https://www.commerce.wa.gov/growing-the-economy/energy/energy-efficiency/

Applicant questions must be sent by email to the RFA Coordinator. Questions and Answers will be posted to the program website periodically through the date listed in Section 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

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 Application	4/4/2022
Question & answer period	4/4/2022 - 5/17/2022
Answers to Q&A posted no later than	Periodically, through 5/19/2022
Applications due	5/25/2022, 4pm PT
Evaluate Applications	May – July 2022
Announce “Apparent Successful Grantee” and send notification via e-mail to unsuccessful Applications	July 2022
Hold debriefing conferences (if requested)	Up to 15 days following notification to unsuccessful Applicants
Negotiate contract	August 2022–October 2022
Begin contract work	October2022

COMMERCE reserves the right to revise the above schedule.

2.3 POSTED APPLICATION RESOURCES

Materials to assist with submission of the application will be posted to the program web-page. Materials include:

- This Request for Application (RFA) and any future amendments
- Questions and Answers (Q&A) to be posted periodically
- Audit Template guidance

2.4 SUBMISSION OF APPLICATIONS

Applications must be submitted electronically through ZoomGrants. Only electronic applications will be accepted. The application must be received through ZoomGrants no later than 4:00pm PT on the deadline date stated in [Section 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES](#).

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

- Upload a document in place of the attachment stating the issue and that the document will be emailed and from whom the email will come.
- Email the required document to energyretrofits@commerce.wa.gov by the specified Application deadline with the Subject line: Energy Efficiency Application, <Name of the Applicant>, <Name of the Project>, <Document Name>

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

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

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

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

COMMERCE does not assume responsibility for problems with Applicant's submissions. If ZoomGrants prevents complete and timely submissions, COMMERCE may make appropriate allowances at its sole determination.

Applicants should allow sufficient time to ensure timely receipt of the application by the RFA Coordinator. **Applicants are highly encouraged to begin the online Application early and to submit the Application 24 hours ahead of the deadline to allow time to resolve any technical issues.** The system can take several minutes to process Application submissions, so allow time for the submission to process before the deadline.

Late Applications will not be accepted and will be disqualified from further consideration unless ZoomGrants is found to be at fault at COMMERCE'S sole determination. All Applications and any accompanying documentation become the property of COMMERCE and will not be returned.

Application link:

<https://www.zoomgrants.com/zgf/Commerce/EnergyEfficiency2022>

2.5 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

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

Any information in the Application that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Applicant is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire Applicant 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 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.

2.6 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/>.

Such addenda will also be published on an Agency page, located at <http://www.commerce.wa.gov/serving-communities/current-opportunities/>.

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.

2.7 DIVERSE BUSINESS INCLUSION PLAN

Applicants are required to submit a Diverse Business Inclusion Plan with their Application. In accordance with legislative findings and policies set forth in RCW 39.19, the state of Washington encourages participation in all contracts by entities certified by the office of Minority and Women's Business Enterprises (OMWBE), set forth in RCW 43.60A.200 for entities certified by the Washington State Department of Veterans Affairs, and set forth in RCW 39.26.005 for entities 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

2.8 ACCEPTANCE PERIOD

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

2.9 COMPLAINT PROCESS

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

- a) The solicitation unnecessarily restricts competition;
- b) The solicitation evaluation or scoring process is unfair; or
- c) The solicitation requirements are inadequate or insufficient to prepare a response.

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

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

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

2.10 RESPONSIVENESS

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

Disqualified Applicants will be notified at or about the time of disqualification.

Disqualified Applicants will be afforded a Debriefing consistent with Section 4.5.

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

2.11 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the Application submitted. Therefore, the Application should be submitted initially on the most favorable terms which

the Applicant can propose. There will be no best and final offer procedure. COMMERCE reserves the right to contact an Applicant for clarification of its Application.

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

2.12 CONTRACT GENERAL TERMS & CONDITIONS

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

2.13 COSTS TO PROPOSE

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

2.14 NO OBLIGATION TO CONTRACT

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

2.15 REJECTION OF APPLICATIONS

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

2.16 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.

2.17 ELECTRONIC PAYMENT

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

2.18 INSURANCE COVERAGE

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

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

3. APPLICATION CONTENTS

Applications must be written in English and submitted following the instructions found in Section 2.4 SUBMISSION OF APPLICATIONS with all attachments appropriately named and included. Applications must be submitted electronically through ZoomGrants.

A complete application is mandatory for an application to be considered responsive and eligible for scoring. Detailed instructions are included in the ZoomGrants application. All required documents must be attached.

3.1 CONTENTS OF A COMPLETE APPLICATION (MANDATORY)

1. ZoomGrants Application (includes 4 tabs)
 1. Project Application Summary
 2. Application Questions
 - i. Minimum Requirements (see section 1.3)
 - ii. Applicant Organization
 - iii. Consultant Information
 - iv. Project Information
 3. Project Budget (see detail in section 3.4)
 - i. Project Budget
 - ii. Funding Sources
 4. Required Document Attachments
 - i. If not through Department of Enterprise Services (DES), submit qualifications that were used to select the licensed engineer/ certified energy manager
 - ii. Audit Template (PDFs of each building audit created using Building Energy Asset Score Template) (see Section 3.3 TECHNICAL REQUIREMENTS)
 - iii. Narrative (Energy Service Proposal or Scope of Work (see Section 3.3 TECHNICAL REQUIREMENTS)
 - iv. Supplemental list of Building IDs
 - v. [Utility Bills (only if no rate listed in RFP Table 1)]
 - vi. Completed and Signed Certifications and Assurances (Exhibit A)
 - vii. Completed Diverse Business Inclusion Plan (Exhibit B)
 - viii. Completed and Signed Applicant Certification (for Executive Order 18-03 – Worker's Rights) (Exhibit C). Note: this form should describe the applicant's policies and be signed by the applicant organization, not any contractors hired by the applicant.
 - ix. OMWBE Certification (OPTIONAL AND NOT SCORED)

3.2 ADMINISTRATIVE REVIEW (QUALIFICATION)

All Applications will undergo administrative review to ensure that the Minimum Qualifications (Sec. 1.3), have been met. Applications that fail to meet the Minimum Qualifications will be disqualified from further consideration.

Applicants must be responsive to communications from Commerce. Failure to reply by specified deadlines may result in elimination from consideration.

3.3 TECHNICAL REQUIREMENTS (MANDATORY, NOT SCORED)

A. ENERGY AUDIT REQUIREMENTS

An Energy Audit is required. The Audit Template report will be used to document the building energy audit, baseline energy use and the energy savings opportunities. Technical experts will review application materials to ensure that the scope of work will achieve energy and cost savings, that energy savings are reasonable (which is used to calculate simple payback), and meet the Minimum Qualifications. Applications that fail to sufficiently provide documentation justifying the estimated energy savings, or fail to provide the required documentation or information will be disqualified from further consideration.

The Energy Audit must have been completed or updated no earlier than January 2019. The audit information must be used to complete the Audit Template.

- If working through the [DES Energy Savings Performance Contracting](#) program (ESPC), the audit must be in compliance with the [ESPC guidelines](#).
- If not working through DES, an ASHRAE Level II energy audit must be conducted in compliance with [ASHRAE Standard 211-2018](#), Standard for Commercial Building Energy Audits - 2018.

The Audit Template

The required Audit Template is a web based tool developed to standardize energy audit reporting consistent with ASHRAE Standard 211 requirements. It contains automated error checking and can be exported in various formats. In the ZoomGrants Documents Tab, upload a PDF with an Audit Template report for each building (if more than one building, combine the separate reports into a single PDF).

The Energy Efficiency Opportunities section of the Audit Template provides a summary description of proposed energy efficiency measures proposed for the project. The base case building is then used within the Audit Template to create comparison reports of the proposed efficiency opportunities+. An energy audit of each facility in the project is required. All energy savings assumptions are clearly stated, documented, and based on recognized industry practices.

Commerce will be combining data we collect from the ZoomGrants application and the Audit Template report(s). To do this it is important to match a number of fields :

ZoomGrants Application	Audit Template
Building Name	Building Name
Project Name	Project Name
Energy Consultant (Auditor)	Auditor – organization name
Project Manager	Building Owner - person
Applicant Organization	Building Owner - organization

Building Energy Audit Template Instructions:

1. Access the Audit Template at <https://buildingenergyscore.energy.gov>
2. Register
3. Choose the Audit Template, next “add audit report”
4. Select from the drop-down menu, “WA Commerce Grants”

Completing the Audit Template:

- Complete an Audit Template for each building in the project. Give each building a unique name with a maximum of 10 characters.
- Complete the report type “WA Commerce Grants”. Complete all mandatory fields.
- Use optional audit fields to provide more detail about the baseline building condition. These should be completed for all elements of the buildings that will be impacted by the energy savings opportunities proposed for this project.
 - For example, if the energy efficiency improvement project proposes changes to the mechanical system, the audit of the base case mechanical system should be documented.
 - Other optional sections of the audit may be omitted or included.
- Populate the base case energy use fields required by the audit form. This should include at least one year of energy consumption data.
- 1 year of consecutive data must begin no earlier than January 1, 2019. If the available utility data has gaps, estimates from the utility may be substituted or with the approval of Commerce, monthly rates may be averaged.
- Complete each field required to document the energy savings opportunities, cost and benefits.
- This will be used for scoring and to determine if the project will have a simple payback of fewer than 35 years. See Table 1 (section 3.3): AVERAGE STATE ENERGY RATES.

Table 1: AVERAGE STATE ENERGY RATES

If your project uses an energy source that does not appear in the table, use local utility rates. Local rates are subject to review by Commerce for reasonableness.

	Average Cost	Unit
Electricity	\$0.0941	kWh
Natural Gas	\$0.93	therm
Propane	\$1.54	Gal.
Heating Oil	Provide utility bill that shows rates and units	
Other Utilities	Provide utility bill that shows rates and units	
Water	Provide utility bill that shows rates and units	

B. SUPPLEMENTAL SUBMISSION REQUIRED FOR SOME PROJECTS

All projects must use non-fossil fueled heating equipment or demonstrate why that is not possible or cost effective. If the project includes the purchase of heating equipment or systems that use fossil fuels, the Applicant must demonstrate why an alternative was not feasible.

The [Life Cycle Cost Analysis](https://www.ofm.wa.gov/sites/default/files/public/legacy/budget/capitalforms/lifecyclecosttool.xlsb) tool on the WA OFM website should be used for comparing the savings of the proposed fossil-fuel equipment versus a non-fossil fueled alternative.

SUBMISSION NOTE: The format of this tool is not accepted as an attachment in ZoomGrants. Please submit to the RFA Coordinator as per Question and Answer instructions in section 2.1 prior to the application submission deadline. Use the email heading: “EE 2022 RFA Response Life Cycle Cost Analysis”, with the name of the Applicant Organization in the body.

C. NARRATIVE

Proposed Scope of Work or Energy Services Proposal

Describe the impacts/outcomes the Applicants aim to achieve with this project including how these outcomes would be monitored, measured and reported.

Provide a list of primary contacts for the Applicant and the primary contractor/consultant, noting their responsibilities and qualifications. Provide a project schedule indicating when the elements of the work will be completed, and include a complete description of the Applicant's proposed approach and methodology for the project.

Ensure that the Energy Audit matches the information provided in the Energy Services Proposal or Scope of Work. In the audit, be specific. In the Executive Summary, use the same terminology as in the audit and reference each of the key figures of the audit.

- total energy saved
- project costs
- simple payback
 - Use statewide average utility rates to calculate the simple payback for each project
 - If the project uses fossil fuels, provide the Life Cycle Cost analysis (section 3.3, B)
- baseline energy consumption for the building/facility
- peak demand savings

In the body provide full supporting details:

- Narrative that describes the base case building condition and the proposed energy savings opportunities. Support all energy savings opportunities reported in the audit template.
- Include in the narrative the methods used to estimate energy savings for each energy efficiency measure. Include accounting for efficiency measure energy interaction effects.
- If baseline energy use is estimated rather than measured, include a description of the methodology used to develop the baseline energy use estimate.
- Include in the narrative any actions taken to assure the estimated energy savings will be realized, including measurement and verification, extended service contracts, building operator training and energy savings guarantees.
- Include in the narrative the method used to estimate the cost of energy efficiency measures.
- This should be consistent with an investment grade audit as required by DES or a level 2 audit as described in ASHRAE standard 211. Elements of the level 3 audit should be considered by the applicant. In particular, detailed auditing or metering that creates the base case required to successfully implement the measurement and verification plan.
- Total estimated costs of implementing the project.
 - Identify lighting savings separately. No more than 50% of the total project savings can come from lighting efficiency projects, with the exception:
 - PCB lighting projects at K-12 schools may be 100% of the energy savings.
- A measurement and verification plan for a minimum of 1 year following completion of the project. If Measurement & Verification does not confirm energy savings commensurate with the original application, additional years of Measurement & Verification will be required.

3.4 PROJECT BUDGET (MANDATORY, SCORED)

A. BUDGET

The maximum award amount is \$350,000, with no minimum award amount. The same applicant entity can apply for more than one award by submitting more than one Application. The maximum combined award will be no more than \$350,000.

Identification of Costs (MANDATORY)

Identify all costs in U.S. dollars including expenses to be charged for performing the services necessary to accomplish the objectives of the contract. The Applicant is to submit a fully detailed budget including staff costs and any expenses necessary to accomplish the tasks and to produce the deliverables under the contract. Applicants are required to collect and pay Washington state sales and use taxes, as applicable.

Where services necessary to accomplish the objectives of the contract are performed in-house, internal administrative costs are to be detailed in the same way.

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 resources.

B. FUNDING SOURCES

Minimum Match Requirements (Scored)

Applications must provide 50% of the total project cost (leverage ratio of 1:1) from other, non-state sources. See details in section 1.4 FUNDING.

Certain projects are eligible for a reduced match requirement (see [Section 1.7 DEFINITIONS](#)):

State funds cannot be used as match. Projects which provide additional match will receive higher scores.

Non-State Funding Leverage (Scored)

The ratio of non-state funds to funds provided by this contract will be scored. Ratios will be calculated by dividing the non-state funds by the grant funds requested. Scores will then be assigned based on a goal ratio of 3 to 1 (75% of the project funded by non-state funds).

Loans through the Washington State Treasurer are not considered state funds and are factored in when calculating the Non-State Funding Leverage Ratio.

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

COMMERCE staff will review the Application to determine whether it a) was properly completed, b) submitted on time, and c) whether it addresses and aligns with the minimum qualifications described in RFA Section 1.3 MINIMUM QUALIFICATIONS. If the application does not meet threshold criteria, it will not be scored.

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

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

The RFA Coordinator may contact the Applicant for clarification of any portion of the Applicant's Application. Applicants are not permitted to submit, or resubmit, any materials of any kind after the date and time stated in section 2.5 SUBMISSION OF APPLICATIONS.

4.2 EVALUATION BREAKDOWN

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

Simple Payback	Up to 30 pts
Factors:	
<ul style="list-style-type: none">• Annual Energy Savings• Total Cost of the Project	
<i>Note:</i> This will be evaluated using state-wide average costs as outlined in Table 1: AVERAGE STATE ENERGY RATES (Section 3.3, A).	
Non-state Funding Leverage Ratio	Up to 15 pts
Factors:	
<ul style="list-style-type: none">• Total Project Cost• Non-State Funding• Energy Efficiency Grant Amount Requested	
Projects Located in Priority Communities	5 pts each
Factors:	
<ul style="list-style-type: none">• Qualification will be based on site address (see section 1.7 DEFINITIONS 1.7• Projects may qualify in more than one category.	
<i>Note:</i> Project must be located in a Highly Impacted, lower income, or rural community or is a project of a Federally Recognized Tribal government.	
New Grantee	5 pts
Factors:	
<ul style="list-style-type: none">• Whether the applicant has received funds from this Energy Efficiency Grant in the past	
PCB Lighting for Schools	Up to 10 pts
Factors:	
<ul style="list-style-type: none">• The amount of PCB lighting being removed as part of the project	
<i>Note:</i> Open only to K-12 school districts	
Worker's Rights Certification	2 pts
Those Applicants that certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 2 points added to their score (see Attachment C).	
Community Engagement and Benefits	Up to 5 pts
Factors:	
<ul style="list-style-type: none">• Demonstrate community input, desire, and need for the project, especially from highly impacted and vulnerable communities, and projects that provide direct or indirect benefits to highly impacted and vulnerable communities.	
<i>Note:</i> This will be evaluated based on Applicant's description of the project planning process and considerations.	
Total Available Points	87

The evaluation team(s) may adjust the applicant's reported energy savings estimate, project costs, and other information used to calculate scores if they determine such information is not based on relevant best practices or compliant with this RFA. Energy savings estimates that are unable to be verified through provided documentation may be excluded from scoring calculations. The evaluation team(s) may also consider project feasibility, sustainability of the planned energy efficiency measures, and other technical considerations when making final project recommendations.

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

4.3 ORAL PRESENTATIONS MAY BE REQUIRED

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

The scores from the written evaluation and the oral presentation combined together will determine the Apparent Successful Grantee.

4.4 NOTIFICATION TO APPLICANTS

COMMERCE will notify the Apparent Successful Grantee(s) of their selection in writing upon completion of the evaluation process. Applicants who were not selected for further negotiation or award will be notified separately by e-mail.

4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Any Applicant who has submitted and received notice 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 is strictly limited to the following:

- Evaluation and scoring of that Applicant's Application;
- Any written comments from evaluators;
- Review of Applicant's final score in comparison with the other final scores *without* identifying the other Applicants or reviewing their Applications.

Comparisons between Applications or evaluations of the other Applications is not allowed. Debriefing conferences may be conducted on the telephone or by other electronic means and will be scheduled for a maximum of thirty (30) minutes.

4.6 PROTEST PROCEDURE

Protests may be made only by Applicants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest 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.

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

All protests must be in writing, addressed to the RFA Coordinator, and signed by the protesting party or an authorized Agent. The protest must state the RFA number, the grounds for the protest from the list below 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 this 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, or 2) COMMERCE'S assessment of its own and/or other agencies' needs or requirements.

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

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

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the errors and re-evaluate all Applications, 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 Apparent Successful Grantee(s). If the protest is determined to have merit, one of the options noted above will be taken.

4.7 SUCCESSFUL APPLICANTS

The following requirements will apply to successful Applicants who are awarded funds.

A. SUCCESSFUL APPLICANT REQUIREMENTS:

- Must complete a Risk Assessment Survey provided by COMMERCE.
- Must maintain good standing with all applicable federal, state, local, and utility laws and requirements, including COMMERCE.
- Will maintain responsibility for the project for the duration of the contract and performance period.
- Be responsible for compliance with the contract for the duration of the performance period.

- Must provide a certification of and maintain insurance as designated in SECTION 2.18 INSURANCE COVERAGE and as stated in the executed contract for the performance period of the contract.
- Must follow all state and/or local procurement requirements that apply.
- Comply with contract, audit, and monitoring requirements, including scheduled site visits.
- Utilize COMMERCE's online invoicing process for reimbursement.
- Are responsible for all costs incurred prior to the execution of a contract and not have the expectation for reimbursement of those costs.
- Must comply with and ensure that all Grantees, Subcontractors, and Partners comply with:
 - All applicable federal, state, local, and utility laws and requirements.
 - The applicable requirements of this Program and any resulting contract.
- Must ensure that all Grantees, Subcontractors, and Partners:
 - Are responsible and qualified Applicants.
 - Are eligible to bid on public works projects (not debarred).
 - Are in and maintain good standing with all applicable federal, state, local, and utility laws and requirements, including from COMMERCE.
- Must accurately and honestly represent the project within the application. COMMERCE reserves the right to revoke awards or terminate contracts inclusive of recuperating funding for projects that were misrepresented or fail to implement the project proposed during application.
- Successful applicants must apply for available utility incentives if awarded and must report such incentives received to COMMERCE. COMMERCE will adjust the award to ensure the project is not funded beyond 100%.

B. PROJECT REQUIREMENTS:

- Must serve the intended purpose of the contract for the duration of the performance period.
- The construction phase of the project must be completed within 18 months of the return of a signed award letter.
- By the end of the performance period, the Applicant must have completed all mandatory activities as described in Section 1.2 OBJECTIVES AND SCOPE OF WORK.
- Project must be owned by the Applicant and be located in the State of Washington.
- Construction must be completed within 18 months of execution of receipt by COMMERCE of the signed and returned award letter. Exceptions may be negotiated on a case-by-case basis.
- The project must not begin prior to COMMERCE receiving the signed award letter from the Awardee.
- All entities involved must comply with [Washington State Prevailing Wage](#).
- Comply with [Washington State Environmental Policy Act \(SEPA\)](#).
- Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
- Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor's Executive Order 21-02](#).

C. REPORTING REQUIREMENTS:

- Report on all pass-through funding using the provided reportable expense template under the [Governor's Diverse Spend Initiative](#).
- Recipients of funding must report to COMMERCE no less than quarterly regarding progress of the funded project, project outcomes upon completion of the project, budget projections, and other information upon request by COMMERCE. Upon project completion, a final summary of the project is required.
- Report energy savings and cost savings for a minimum of one year following system commissioning. If Measurement & Verification does not confirm energy savings commensurate with the original application, additional years of Measurement & Verification will be required.

- The Measurement & Verification should comply with the requirements of the International Performance Measurement and Verification Protocol (IPMVP) or similar.

D. FUNDING REQUIREMENTS:

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

5. RFA EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Diverse Business Inclusion Plan
- Exhibit C Workers' Rights Certification
- Exhibit D OMWBE Certification
- Exhibit E Grant Contract Format with General Terms and Conditions

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. All 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 an organization 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 organization 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 Proposer 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.
11. I/we are not debarred from doing business with the state of Washington or the United States.

We (check one):

- are** submitting proposed Contract exceptions. (See Section 2.12, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.
- are not** submitting proposed Contract exceptions (*default if neither are checked*).

On behalf of the Proposer 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

DIVERSE BUSINESS INCLUSION PLAN

	Yes	No
Do you anticipate using, or is your organization, a State Certified Minority Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a State Certified Women's Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a State Certified Veteran Business?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate using, or is your organization, a Washington State Small Business?	<input type="checkbox"/>	<input type="checkbox"/>

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: _____

**GRANTEE 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.: Energy fficiency2022

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

NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. This organization 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 organization 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 organization 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 organization listed herein.

ORGANIZATION NAME:

Name of Grantee/Bidder – Print full legal entity name of organization

By: _____
Signature of authorized person Printed Name

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

Date: _____

Return to Procurement Coordinator as part of your complete response.

OMWBE Certification (OPTIONAL AND NOT SCORED)

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

ENERGY EFFICIENCY 2022

EXHIBIT E

Contract Number: <insert number>

Washington State Department of Commerce
 <Select Division, Board, or Commission>
 <Insert Unit or Office>
 <Insert Program(s) and/or Project(s)>

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Contract Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>	10. Federal Agency <Insert name>		CFDA Number: <Insert number>
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. DUNS # <Insert number>
14. Contract Purpose <Briefly describe contract purpose>			
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 _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

Last revision 10/13/2020

PROGRAM SPECIFIC TERMS AND CONDITIONS

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

1. INSURANCE (Replaces Special Terms and Conditions 6)

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

The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and 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, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

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

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

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

2. SUBCONTRACTING (Replaces General Terms and Conditions 37)

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.

3. 2022 ENERGY EFFICIENCY GRANT REQUIREMENTS

Grantee agrees to comply with the requirements and follow the guidelines as outlined in the Request for APPLICATION dated April 2022 (the "RFA"), incorporated by this reference as if fully set forth herein. In the event of conflict between the RFA and the contract, the Contract prevails.

4. REPORTING REQUIREMENTS

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

- A. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
- B. The project milestones met to date and anticipated in the subsequent quarter
- C. Any additional metrics required from the capital budget proviso, legislature, governor's office, or Commerce;
- D. Quarterly updated budget projections for project expenditures;
- E. The grant expenditures to date and anticipated in the next quarter.

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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 the amount shown as grant amount on the attached declarations page for the performance of all things necessary for or incidental to the performance of work as set forth in the scope of work.

3. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE upon satisfactory completion of milestones and not less than one time per year.

The Contractor shall provide the Representative of COMMERCE a signed electronic Invoice A19 form that includes the contract number referenced on the Declarations page.

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, and the milestone/s achieved the progress of the project, and fees. The invoice shall include the Contract Number EE 2020. 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.

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

COMMERCE will pay Contractor the amounts set forth in Attachment B upon full completion of each Milestone. Upon full completion of each Milestone, Contractor will provide an invoice and any required supporting documentation to the Representative of COMMERCE. Except as may be agreed by COMMERCE in its discretion, COMMERCE shall only be obligated to make payments upon demonstration of completion of all Deliverables within a given Milestone. However, it is acknowledged that in the event one or two Deliverables of a Milestone is unduly delayed (more than 3 months) due to circumstances outside Contractor's control, COMMERCE may, in its sole discretion, reasonably negotiate with Contractor regarding paying for those Deliverables of such Milestones that are completed.

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

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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 21-02, 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 21-02, 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.

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Completion of the requirements of Section 106 of the National Historic Preservation Act shall substitute for completion of Governor's Executive Order 21-02.

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 21-02 or Section 106 of the National Historic Preservation Act.

6. INSURANCE-(Superseded 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. Failure to maintain the required insurance coverage may result in termination of this Contract.~~

~~The insurance required shall be issued by an insurance company authorized to do business within the state of Washington. Except for Professional Liability or Errors and Omissions Insurance, the insurance shall name the state of Washington, its agents, officers, and employees as additional insureds under the insurance policy. All policies shall be primary to any other valid and 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 OR a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.~~

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

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

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

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

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

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

~~A. 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.~~

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~~B. 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.~~

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
- Special Terms and Conditions
- Attachment C – Proviso
- Program Specific Terms & Conditions
- Special Terms & Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget

1. **DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any 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.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Personal Information" shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

2. **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 attorneys' 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

- A.** “Confidential Information” as used in this section includes:
- i. All material provided to the Contractor by COMMERCE that is designated as “confidential” by COMMERCE;
 - ii. All material produced by the Contractor that is designated as “confidential” by COMMERCE; and
 - iii. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. “Personal information” includes but is not limited to information related to a person’s name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver’s license number and other identifying numbers, and “Protected Health Information” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- B.** The 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.
- C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

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 (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE

that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

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

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. LOCAL PUBLIC TRANSPORTATION COORDINATION

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

25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

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

26. PAY EQUITY

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

- a. 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;
- b. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
 - (i) A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels.
 - (ii) A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
 - (iii) A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

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

27. 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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. REGISTRATION WITH DEPARTMENT OF REVENUE

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

34. 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.

35. 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.

36. 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.

37. SUBCONTRACTING (This section superseded by Program Specific Terms and Conditions 1.0)

~~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.~~

38. 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.

39. 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.

40. 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.

41. 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.

42. 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:

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and

- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

43. TREATMENT OF ASSETS

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

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

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

44. 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

xxxxxxx

BUDGET

xxxxxxx

PROVISO

**Enacted 2019-2021 Supplemental Capital Budget – Engrossed Substitute Senate Bull 6248
Chapter 356, Laws of 2020.
Section 1023, Subsection 1.**

(1)(a) \$1,785,000 for fiscal year 2020 and \$1,785,000 for fiscal 36 year 2021 is provided solely for grants to be awarded in competitive rounds to local agencies, public higher education institutions, school districts, federally recognized tribal governments, and state agencies for operational cost savings improvements to facilities and related projects that result in energy and operational cost savings.

(b) At least twenty percent of each competitive grant round must be awarded in small cities or towns with a population of five thousand or fewer residents.

(c) In each competitive round, the higher the leverage ratio of nonstate funding sources to state grant and the higher the energy savings, the higher the project ranking.

(d) For school district applicants, priority consideration must be given to school districts that demonstrate improved health and safety through reduced exposure to polychlorinated biphenyl. Priority consideration must be given to applicants that have not received grant awards for this purpose in prior biennia.

**Enacted Substitute House Bill 1080, Capital Budget
Chapter 332, Laws of 2021
Sec. 1022. Energy Efficiency and Solar Grants (30000882)**

The reappropriations in this section are subject to the following 4 conditions and limitations: The reappropriations are subject to the 5 provisions of section 6007, chapter 413, Laws of 2019.

**Enacted Substitute House Bill 1080, Capital Budget
Chapter 332, Laws of 2021
Section 1065, Subsection 1.**

(1) \$4,000,000 of the appropriation in this section is provided solely for grants to local governments, public higher education institutions, school districts, federally recognized tribal governments, and state agencies for operational cost savings improvements to facilities and related projects that result in energy and operational cost savings.

(a) (i) \$3,000,000 of the appropriation in this section is provided solely for grants awarded in competitive rounds.

(ii) At least 20 percent of each competitive grant round is designated for award to eligible projects in small cities or towns with a population of 5,000 or fewer residents.

(iii) In each competitive round, a higher energy savings to investment ratio must result in a higher project ranking. Priority consideration must be given to applicants that have not received grant awards for this purpose in prior biennia.

(iv) The department must determine a minimum match ratio to maximize the leverage of nonstate funds.

(b) \$450,000 of the appropriation in this section is provided solely for a grant to Western Washington University for the heating system conversion feasibility study.

(c) \$550,000 of the appropriation in this section is provided solely for a grant to Whidbey Island Public Hospital District for energy upgrades at Whidbey Health Medical Center in Coupeville.

(6) If a grant is provided in subsection (1) or (3) of this section to purchase heating devices or systems, the agency must, whenever possible and most cost effective, select devices and systems that do not use fossil fuels.