



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE
OLYMPIA, WASHINGTON**

**REQUEST FOR QUALIFICATIONS AND QUOTATIONS
RFQQ NO. ICSMES2022**

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

PROJECT TITLE: Innovation Cluster Subject Matter Expert Support

RESPONSE DUE DATE: July 6, 2022 at 11:59 PM, PST, Olympia, WA

EXPECTED TIME PERIOD FOR CONTRACT: August 12, 2022 – September 30 2024

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

CONTENTS OF THE REQUEST FOR QUALIFICATIONS AND QUOTATIONS:

- 1. Introduction**
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- 4. Evaluation and Award**
- 5. Exhibits**
 - A. Certifications and Assurances**
 - B. Diverse Business Inclusion Plan**
 - C. Workers' Rights Certification**
 - D. Service Contract with General Terms and Conditions**

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1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

Washington state is dedicated to building an economic future that is as inclusive, diverse and resilient as the people who live here. We are looking beyond our borders for economic models that will strengthen our legacy industries, help communities create new sectors, fuel innovation and entrepreneurship, and ensure meaningful job opportunities for generations to come.

One of the most promising models is the innovation cluster. This industry-led strategy has evolved over the last 20 years, spurring more than 7,000 innovation clusters in places such as Norway, Denmark, Costa Rica and Canada.

In 2021, the Washington Department of Commerce (Commerce) launched the Innovation Cluster Accelerator (ICAP). The program is the first statewide innovation cluster development program in the United States, leveraging modern innovation cluster strategy to strengthen industry ecosystems and accelerate growth in key sectors.

This model is a shift from most traditional economic development efforts. It brings key players together – business, entrepreneurs, academia, investors and government – to solve industry challenges that may be limiting growth and innovation. Around the world, government leaders and private industry executives look to industry-led innovation clusters to create trust-based collaboration platforms, speed up the pace of innovation, solve industry-level challenges and compete in new markets. ICAP draws on learnings and best practices of successful innovation cluster development across the globe, including the Norwegian Innovation Cluster program, Canada’s Superclusters Initiative, and the TCI Network.

Commerce is supporting nine innovation clusters through September 30, 2023 as part of a \$15 million Safe Start Economic Recovery Grant from the U.S. Economic Development Administration (EDA). Cluster organizations receive administrative and operating funding as well as strategic guidance to help them develop and implement their cluster strategy, grow their membership, and mature their cluster over time.

The current cohort is made up of clusters that are classified in the following cluster maturity levels based on the listed factors:

- **Potential clusters**
 - Early stage network
 - May be locally focused by design (town, county, etc.)
 - Led by a few champions
 - 0-20 members
 - Cluster Board of Directors may not yet be formed
- **Emerging clusters**
 - Incomplete ecosystem
 - May be locally focused by design (town, county, etc.)
 - Has 50-100 members
 - Cluster Board of Directors in place
 - Cluster is beginning to take on innovation projects
- **Growth clusters**
 - Centered around key industries in the state
 - Generating strong value creation for the industry
 - Regionally focused

- Has 101-500 members
- Cluster Board of Directors is actively involved in cluster activities, Board includes industry CEOs
- Cluster is leading innovation projects

With support from an additional \$1 million EDA planning grant, Commerce is working to expand and scale the program to provide long-term support for clusters in the first ICAP cohort, build additional clusters in key sectors over time, and explore how this model might be used to support regional and rural economic development.

Visit www.icapwashington.org for more information about the program, innovation cluster strategy, and the first cohort clusters. The “Clusters,” “News,” and “What is a cluster” pages will be most helpful.

COMMERCE intends to award one contract to provide the services described in this RFQQ.

1.2 OBJECTIVE

The objective of this contract is to provide subject matter expertise and guidance and collaborate with the Innovation Cluster Accelerator Program (ICAP) team as Commerce builds out and scales the program during the contract period.

The Contractor will support Commerce staff by:

- Developing cluster strategy and leadership development curriculum
- Training and coaching Commerce staff
- Providing subject matter expert guidance on program design and other services to support build out and long-term program planning.

The services to be provided under this contract are:

1. Work with ICAP Director to plan and design curriculum and develop tools and content for the following interactive cluster leadership development workshops for cluster managers, including:
 - Innovation cluster ecosystems
 - Strategic cluster growth and development
 - Developing cluster project portfolios
 - Developing market opportunities for your cluster members

Cluster leadership development sessions are conducted collectively with the 9 cluster managers once per quarter. Sessions will be scheduled on mutually agreed upon dates through the end of September, 2023. Sessions are currently structured in a 4 hour condensed virtual format and may transition to full-day, in person in the later part of 2022. The consultant would not be required to attend in person.

Deliverables:

- Curriculum/materials for 4 leadership development sessions
 - PowerPoint slide deck, Miro Board, or similar for each workshop
 - Handouts and other materials as needed
2. Work with ICAP Director to plan and design curriculum and develop tools and content strategy workshops for each of the 9 innovation clusters to help them:

- Scale cluster strategy long-term
- Identify, fund, and implement high-impact cluster projects
- Develop go-to-market strategies for their sector
- Build out long term cluster organizational funding plans

Cluster strategy sessions are conducted individually with each of the 9 clusters' management team, Board of Directors, and key partners once per quarter. They are designed to meet each cluster where they are at, with content selected for each session based on the cluster organization's current progress, challenges, and goals. Sessions will be scheduled on mutually agreed upon dates through the end of September, 2023. Sessions are currently structured in a 3 hour condensed virtual format and may transition to full-day, in person in the later part of 2022. The consultant would not be required to attend in person.

Deliverables:

- PowerPoint slide deck, Miro Board, or similar for each workshop
 - Handouts and other materials as needed
3. Train and coach Commerce staff to deliver the curriculum developed for the program (as outlined in 1.2.1 and 1.2.2) through a combination of co-facilitation and one-on-one or group training and coaching.

This training will help Commerce continue to deliver the curriculum with future cohorts.

Deliverables:

- a. Co-facilitate a minimum of 20, up to 45 Cluster Strategy Workshops and/or Cluster Leadership development sessions (as outlined in 1.2.1 and 1.2.2) with Commerce staff. Final number to be negotiated during contracting. See question in section 3.2.2.1.F for opportunity to provide recommendations.
 - b. Coach and support core team to run all Cluster Strategy Workshops and Cluster Leadership Development Program sessions through meetings and train-the-trainer workshops
4. Work with ICAP Director to plan, design, and co-facilitate three workshops to support knowledge transfer and training for appropriate Commerce staff about innovation cluster strategy. Attendees may include Commerce Industry Sector Leads, Business Development, Recruitment/Retention, and International Development teams, anticipate 10-15 people.

Deliverables:

- Co-facilitate 3 virtual workshops – 2-3 hours in length each
 - PowerPoint slide deck, Miro Board, or similar for each workshop
 - Handouts and other materials as needed
5. Commerce will develop a long-term strategy for ICAP as a deliverable for a planning grant with the Economic Development Administration. Consultant will provide subject matter expert guidance to inform Commerce's long-term strategy for the program, including:

- Statewide industry ecosystem engagement
- State policy
- Impact targets
- Program governance
- Long-term strategy
- Program design and development
- Long-term funding strategy

Deliverables:

- Consulting meetings twice per month to review, discuss, and advise on long-term strategy
- Review and subject matter expert guidance on the ICAP long-term strategy

1.3 MINIMUM QUALIFICATIONS

The consultant must:

- Be licensed to do business in the state of Washington with the Secretary of State or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful bidder. Eligible agencies must comply with applicable federal, state, and local nondiscrimination laws and standards, including having non-discrimination hiring practices in place. Consultants are required to collect and pay Washington State taxes as applicable
- The Consultant must have at least five (5) years of experience in industry-led innovation cluster development.

Bidders who do not meet these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any Response that is rejected as non-responsive will not be evaluated or scored.

1.4 FUNDING

Responses in excess of \$425,000 will be rejected as non-responsive and will not be evaluated. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

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

This procurement will be supported by federal funds and any transactions for the purchase of goods and services under this Request for Qualifications & Quotations (RFQQ) must adhere to federal procurement standards. If the goods and services are anticipated to be acquired from a subcontractor, the procurement method utilized must be in compliance with federal grants management regulations governing procurement requirements that are found within 2 C.F.R. Part 200.

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about **August 12, 2022** and to end on **September 30, 2024**. COMMERCE reserves the option at its sole discretion to extend the contract for two additional one-year periods.

1.6 DEFINITIONS

Definitions for the purposes of this RFQQ include:

Apparently Successful Bidder (ASB). The Consultant(s) selected to enter into negotiations leading to a fully executed contract for the work described in this procurement document.

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

Consultant. Individual, company, or firm submitting a Response in order to attain a contract with COMMERCE.

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

Request for Qualifications and Quotations (RFQQ). Formal procurement document in which needed services are identified and firms are invited to submit their qualifications via a written Response to provide the services and their hourly rates; this procurement document.

Response. A formal offer submitted in response to this solicitation.

1.7 ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Consultants may contact the RFQQ Coordinator to receive this Request for Qualifications and Quotations in Braille or on tape.

2 GENERAL INFORMATION FOR CONSULTANTS

2.1 RFQQ COORDINATOR

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

Name	Lauren Annette Boyan
E-Mail Address	OEDCProcurement@commerce.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	June 14, 2022
Question & answer period	June 14 - 17, 2022
Answers issued no later than	June 22, 2022
Responses due	July 6, 2022 at 11:59 PM PST
Evaluate responses	July 7 - 21, 2022
Conduct oral interviews with finalists, if required	July 26, 2022
Announce "Apparent Successful Bidder" and send notification via e-mail to unsuccessful proposers	July 27, 2022
Hold debriefing conferences (if requested)	July 28 – August 3, 2022
Negotiate contract	July 28 – August 11 , 2022
Begin contract work	August 12, 2022

COMMERCE reserves the right to revise the above schedule.

2.3 SUBMISSION OF RESPONSES

ELECTRONIC RESPONSES:

The Response must be **received by the RFQQ Coordinator** no later than 11:59pm Pacific Standard Time, in Olympia, Washington, on **July 6, 2022**.

Responses must be submitted **electronically** through our submissions portal located: <https://bit.ly/ICSMES2022>. Attachments to e-mail shall be in **Microsoft Word format or PDF**. Zipped files cannot be received by COMMERCE and cannot be used for submission of responses.. The cover submittal letter and the Certifications and Assurances form **must have a scanned signature** of the individual within the organization authorized to bind the Consultant to the offer. COMMERCE does not assume responsibility for problems with Consultant's system. If COMMERCE submission portal is not working, appropriate allowances will be made. However, the Consultant should know submittals must be done ahead of time in our portal and not just submitted as an attachment and emailed to the RFP

Coordinator. No Responses will be accepted through email, fax or mail. **Only Responses submitted through the portal located at: <https://bit.ly/ICSMES2022> will be accepted.**

Consultants should allow sufficient time to ensure timely receipt of the Response by the RFQQ Coordinator. **Late Responses will not be accepted and will be automatically disqualified from further consideration**, unless COMMERCE e-mail is found to be at fault. All Responses and any accompanying documentation become the property of COMMERCE and will not be returned.

2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

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

Any information in the Response that the Consultant 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 Consultant 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 Response exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Consultant has marked as "Proprietary Information" COMMERCE will notify the Consultant of the request and of the date that the records will be released to the requester unless the Consultant obtains a court order enjoining that disclosure. If the Consultant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If a Consultant 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 Consultant'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 RFQQ Coordinator is required. All requests for information should be directed to the RFQQ Coordinator.

2.5 REVISIONS TO THE RFQQ

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

If you downloaded this RFQQ from the Agency website located at www.commerce.wa.gov, you are responsible for sending your name, e-mail address, and telephone number to the RFQQ Coordinator in order for your organization to receive any RFQQ addenda.

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

2.6 DIVERSE BUSINESS INCLUSION PLAN

Responders will be required to submit a Diverse Business Inclusion Plan with their Response. In accordance with legislative findings and policies set forth in RCW 39.19, the state of Washington encourages participation in all contracts by firms certified by the office of Minority and Women's

Business Enterprises (OMWBE), set forth in RCW 43.60A.200 for firms certified by the Washington State Department of Veterans Affairs, and set forth in RCW 39.26.005 for firms that are Washington Small Businesses. Participation may be either on a direct basis or on a subcontractor basis. However, no preference on the basis of participation is included in the evaluation of Diverse Business Inclusion Plans submitted, and no minimum level of minority- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal Governmental Rules included or referenced in the contract documents will apply.

COMMERCE has the following agency goals:

- 10% participation by Minority Owned Business
- 6% participation by Women Owned Business
- 5% participation by Veteran Owned Business
- 5% participation by Small Businesses

Note: This procurement will be supported by funding awarded by the federal government. Consequently, the procurement of subcontractors must be compliant with federal procurement standards. Therefore, the transaction must be completed as the result of a full and open competition. Responses submitted in response to this RFQQ require the disclosure of whether the consultant intends to procure subcontractors, however the identification or preselection of any entity to be subcontracted is prohibited under federal procurement rules. This requirement must be considered when completing the mandatory Diverse Business Inclusion Plan.

Any Response that identifies subcontractors that will perform work is not in compliance with federal procurement rules. This may result in disqualification of the Consultant from consideration to be awarded a contract.

2.7 ACCEPTANCE PERIOD

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

2.8 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 RFQQ 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 RFQQ 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 is no appeal process.

2.9 RESPONSIVENESS

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

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

2.10 MOST FAVORABLE TERMS

COMMERCE reserves the right to make an award without further discussion of the Response submitted. Therefore, the Response should be submitted initially on the most favorable terms which the Consultant can propose. COMMERCE does reserve the right to contact a Consultant for clarification of its Response.

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

2.11 CONTRACT AND GENERAL TERMS & CONDITIONS

The apparent successful bidder 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 C. In no event is a Consultant to submit its own standard contract terms and conditions in response to this solicitation. The Consultant may submit exceptions as allowed in the Certifications and Assurances section, Exhibit A to this solicitation. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

It is anticipated the first deliverable under the contract will be a scoping plan, which will define the specific services to be provided by the CONTRACTOR based upon agreement between COMMERCE and the CONTRACTOR.

2.12 COSTS TO PROPOSE

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

2.13 NO OBLIGATION TO CONTRACT

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

2.14 REJECTION OF RESPONSES

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

2.15 COMMITMENT OF FUNDS

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

2.16 INSURANCE COVERAGE

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

The Contractor shall, at Contractor's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Contractor shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date.

Liability Insurance

Commercial General Liability Insurance (CGL): Contractor shall maintain general liability insurance and, if necessary, commercial umbrella insurance, with a limit of not less than \$1,000,000 per each occurrence. If CGL insurance contains aggregate limits, the general aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit. CGL insurance shall be written on ISO occurrence from CG 00 01 (or a substitute form providing equivalent coverage). All insurance shall cover liability assumed under an insured contract (including the tort liability of another assumed in a business contract), and contain separation of insureds (cross liability) condition.

Additionally, the Contractor is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Business Auto Policy: As applicable, the Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a limit not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of "Any Auto." Business auto coverage shall be written on ISO form CA 00 01, 1990 or later edition, or substitute liability form providing equivalent coverage.

Employers Liability ("Stop Gap") Insurance

In addition, the Contractor shall buy employers liability insurance and, if necessary, commercial umbrella liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease.

Additional Provisions

Above insurance policy shall include the following provisions:

- **Additional Insured.** COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** COMMERCE shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the COMMERCE contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and approved by COMMERCE, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

- **Excess Coverage.** By requiring insurance herein, the state does not represent that coverage and limits will be adequate to protect Contractor, and such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the state in this contract.

Workers' Compensation Coverage

The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. The state will not be held responsive in any way for claims filed by the Contractor or their employees for services performed under the terms of this contract.

3 RESPONSE CONTENTS

ELECTRONIC RESPONSES:

Responses must be written in English and submitted electronically through our submissions portal located: <https://bit.ly/ICSMES2022> in the order noted below:

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFQQ)
2. Qualifications
3. Quotation
4. Diverse Business Inclusion Plan (Exhibit B to this RFQQ)
5. Workers' Rights Certification (Exhibit C to this RFQQ)

Responses must provide information in the same order as presented in this document with the same headings. This will not only be helpful to the evaluators of the Response, but should assist the Consultant in preparing a thorough response.

Items in this section marked "mandatory" must be included as part of the Response for the Response to be considered responsive, however, these items are not scored. Items marked "scored" are those that are awarded points as part of the evaluation conducted by the evaluation team.

3.1 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal and the attached Certifications and Assurances form (Exhibit A to this RFQQ) must be signed and dated by a person authorized to legally bind the Consultant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Along with introductory remarks, the Letter of Submittal is to include by attachment the following information about the Consultant and any proposed subcontractors:

1. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
2. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
3. Legal status of the Consultant (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
4. Federal Employer Tax Identification number, or Social Security number, **and** the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue. If the Consultant does not have a UBI number, the Consultant must submit a statement that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
5. Location of the facility from which the Consultant would operate.
6. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the Response. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
7. Explain how the Response meets the minimum qualifications as outlined in section 1.3

3.2 QUALIFICATIONS SECTION

The services to be provided under this project are:

The services to be provided under this contract are:

1. Work with ICAP Director to plan and design curriculum and develop tools and content for the following interactive cluster leadership development workshops for cluster managers, including:
 - Innovation cluster ecosystems
 - Strategic cluster growth and development
 - Developing cluster project portfolios
 - Developing market opportunities for your cluster members

Cluster leadership development sessions are conducted collectively with the 9 cluster managers once per quarter. Sessions will be scheduled on mutually agreed upon dates through the end of September, 2023. Sessions are currently structured in a 4 hour condensed virtual format and may transition to full-day, in person in the later part of 2022. The consultant would not be required to attend in person.

2. Work with ICAP Director to plan and design curriculum and develop tools and content strategy workshops for each of the 9 innovation clusters to help them:
 - Scale cluster strategy long-term
 - Identify, fund, and implement high-impact cluster projects
 - Develop go-to-market strategies for their sector
 - Build out long term cluster organizational funding plans

Cluster strategy sessions are conducted individually with each of the 9 clusters' management team, Board of Directors, and key partners once per quarter. They are designed to meet each cluster where they are at, with content selected for each session based on the cluster organization's current progress, challenges, and goals.

3. Train and coach Commerce staff to deliver the curriculum developed for the program (as outlined in 1.2.1 and 1.2.2) through a combination of co-facilitation and one-on-one or group training and coaching. This training will help Commerce continue to deliver the curriculum with future cohorts.
4. Work with ICAP Director to plan, design, and co-facilitate three workshops to support knowledge transfer and training for appropriate Commerce staff about innovation cluster strategy. Attendees may include Commerce Industry Sector Leads, Business Development, Recruitment/Retention, and International Development teams, anticipate 10-15 people.
5. Commerce will develop a long-term strategy for ICAP as a deliverable for a planning grant with the Economic Development Administration. Consultant will provide subject matter expert guidance to inform Commerce's long-term strategy for the program, including:
 - Statewide industry ecosystem engagement

- State policy
- Impact targets
- Program governance
- Long-term strategy
- Program design and development
- Long-term funding strategy

The qualifications section of the Response must contain information that will demonstrate to the evaluation committee the Consultant's understanding of the types of services proposed, the firm's ability to accomplish them, and the ability to meet tight timeframes.

The qualifications response is to be submitted in three sections as follows: 1) Business Information, 2) Experience and Staffing, and 3) Schedule. The optional fourth section would include proof of certification for minority and women-owned businesses participating on the project.

3.2.1 BUSINESS INFORMATION (MANDATORY)

1. State the name of the company, address, phone number, fax number, e-mail address, legal status of entity (ownership) and year entity was established as it now substantially exists.
2. Provide the firm's Federal Employer Tax Identification number or Social Security number and the Washington Uniform Business Identification (UBI) number issued by the state of Washington Department of Revenue.
3. Indicate how many employees are with the firm. Name the firm principles and their roles.
4. Identify any state employees or former state employees employed by the Consultant or on the Consultant's governing board as of the date of the Response. Include their position and responsibilities within the Consultant's organization. If following a review of this information, it is determined by COMMERCE that a conflict of interest exists, the Consultant may be disqualified from further consideration for the award of a contract.
5. If the Consultant's staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date.
6. If the Consultant has had a contract terminated for default in the last five years, describe such incident. Termination for default is defined as notice to stop performance due to the Consultant's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and such litigation determined that the Proposer was in default.
7. Submit full details of the terms for default, including the other party's name, address, and phone number. Present the Consultant's position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the Response on the grounds of the past experience. If no such termination for default has been experienced by the Consultant in the past five years, so indicate.

3.2.2 QUALIFICATIONS

1. EXPERIENCE (SCORED) – 10 page limit

- A. Describe the firm's approach to innovation cluster development.
- B. Describe services provided by the Consultant that indicate the firm's ability to provide the services described in this RFQQ.

- C. Describe the firm's recent experience guiding organizations in innovation cluster development.
- D. Describe the firm's recent experience facilitating "train the trainer" style knowledge transfer and training.
- E. Describe the firm's recent experience working with Washington State industry ecosystems.
- F. Optional: Describe your recommendations for the workshops outlined in Section 1.2 Objectives (Cluster leadership development, cluster strategy sessions, and Commerce training). Commerce desires a combination of curriculum development, co-facilitation, and train-the-trainer partnership and is open to contractor recommendations to complete the scope of work within the allocated budget. *(Responses to this question are unscored and will be taken into consideration during contract negotiations).*
- G. Optional: If you believe there are any components missing from the Scope of Work of this RFQ essential to completing this work, please describe them here *(Responses to this question are unscored and will be taken into consideration during contract negotiations).*

2. STAFFING (SCORED) – 3 page limit

- A. Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors.
- B. Provide the name and a resume' of the person who will be the lead contact for the project. Provide names and resumes' for other staff, which includes information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. (Resumes not included in page limit).
- C. Describe any services you may want to subcontract to complete your roster of services. Do not identify subcontractors by name.

As stated in Paragraph 1.4 Funding of this Request for Qualifications & Quotations (RFQQ), this procurement will be supported by funding awarded by the federal government. Consequently, the procurement of subcontractors must be compliant with federal procurement standards. Therefore, the transaction must be completed as the result of a full and open competition. The Response that is submitted in requires the disclosure of whether the Consultant intends to procure subcontractors. Despite the requirement to declare this intention, the identification or preselection of any entity to be subcontracted is prohibited under federal procurement rules.

Any Response that indicates work will be performed by subcontractors and the procurement of any subcontractor that is not in compliance with federal procurement rules may result in disqualification of the Consultant from consideration to be awarded a contract.

3. SCHEDULE (SCORED) – 2 page limit

A. Review the provided schedule and confirm your firm’s ability to meet deadlines or make recommendations for changes to the schedule.

MONTH	A-22	S-22	O-22	N-22	D-22	J-23	F-23	M-23	A-23	M-23	J-23	J-23	A-23	S-23	O-23	N-23	D-23	J-24	F-24	M-24	A-24	M-24	J-24	
Curriculum and materials for clusters																								
Kick-off meeting																								
Leadership development sessions																								
Cluster strategy sessions with 9 clusters																								
SME Contractor, internal team develop final																								
Coaching/training and co-facilitating with ICAP																								
Prep ICAP team for sessions																								
Co- facilitate sessions																								
Training broader Commerce team																								
Co-facilitate workshops																								
Long-term strategy support																								
Consulting meetings twice per month (virtual)																								
Review and SME guidance on long-term strategy																								

4. REFERENCE (MANDATORY)

List names, addresses, telephone numbers, fax numbers and e-mail addresses of three business references for whom work has been accomplished and briefly describe the type of service provided for them. By submitting a Response in response to this Work Request, the vendor and team members grant permission to COMMERCE to contact these references and others, who from COMMERCE’S perspective, may have pertinent information. COMMERCE may or may not, at COMMERCE’S discretion, contact references. Do not include current COMMERCE staff as references.

5. OMWBE CERTIFICATION (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington State Office of Minority and Women’s Business Enterprises if certified minority-owned firm and/or women-owned firm(s) will be participating on this project.

3.3 QUOTATIONS SECTION

3.3.1 IDENTIFICATION OF COSTS (MANDATORY AND NOT SCORED)

The Quotations section must list all hourly rates, estimated hours, and estimated materials cost for services anticipated under the proposed contract. The hourly rates are to represent fully weighted costs. This includes the hourly rates of staff that would be assigned to the project, administrative costs, local travel costs, or any other applicable fees that would be charged under this contract. Hourly rates will be used to calculate maximum hours during contract negotiations.

Activity/deliverables	Estimated hours	Hourly rate	Estimated materials cost (if applicable)
1. Cluster leadership development workshop content Deliverables: <ul style="list-style-type: none">• 4 leadership development sessions• PowerPoint slide deck, Miro Board, or similar for each workshop• Handouts and other materials as needed			
2. Cluster strategy workshops Deliverables: <ul style="list-style-type: none">• PowerPoint slide deck, Miro Board, or similar for each workshop• Handouts and other materials as needed			

<p>3. Train-the trainer</p> <p>Deliverables:</p> <ul style="list-style-type: none"> • Co-facilitate a minimum of 20, up to 45 Cluster Strategy Workshops and/or Cluster Leadership development sessions with Commerce staff (specify number) • Coach and support core team to run all Cluster Strategy Workshops and Cluster Leadership Development Program sessions through meetings and train-the-trainer workshops 			
<p>4. Workshops for Commerce staff</p> <p>Deliverables:</p> <ul style="list-style-type: none"> • 3 virtual workshops – 2-3 hours in length each • PowerPoint slide deck, Miro Board, or similar for each workshop • Handouts and other materials as needed 			
<p>5. Consulting on long-term strategy</p> <p>Deliverables:</p> <ul style="list-style-type: none"> • Consulting meetings twice per month to review, discuss, and advise on long-term strategy • Review and subject matter expert guidance on the ICAP long-term strategy 			

Costs for any services to be performed by subcontractors are to be broken out separately, however subcontractors must be competitively procured and may not be named in your RFQQ response.

Consultants are required to collect and pay Washington State taxes as applicable.

The evaluation of the Quotation section is not scored to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose Response best meets the requirements of this RFQQ. Consultants are encouraged, however, to submit Responses which are consistent with state government efforts to conserve state resources.

As stated in Paragraph 1.4 Funding of this Request for Qualifications & Quotations (RFQQ), this procurement will be supported by funding awarded by the federal government. Consequently, the procurement of subcontractors must be compliant with federal procurement standards. Therefore, the transaction must be completed as the result of a full and open competition. The Response that is submitted in requires the disclosure of whether the Consultant intends to procure subcontractors. Despite the requirement to declare this intention, the identification or preselection of any entity to be subcontracted is prohibited under federal procurement rules.

Any Response that indicates work will be performed by subcontractors and the procurement of any subcontractor that is not in compliance with federal procurement rules may result in disqualification of the Consultant from consideration to be awarded a contract.

4 EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

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

COMMERCE, at its sole discretion, may select the top-scoring firms as finalists for an oral presentation.

4.2 CLARIFICATION OF RESPONSE

The RFQQ Coordinator may contact the Consultant for clarification of any portion of the Consultant's Response.

4.3 EVALUATION AND SCORING

The following weighting and points will be assigned to the Response for evaluation purposes:

Qualifications Section – 100%	100 points
Firm Experience.....50 points (maximum)	
Staff Qualifications.....40 points (maximum)	
Schedule.....10 points (maximum)	
Quotation Section – 0%	<u>not scored</u>
Grand Total	<u>100 Points</u>

Additionally, those firms which certify they **do not** require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 5% added to their score (see Attachment C).

4.4 ORAL PRESENTATIONS MAY BE REQUIRED

Oral presentations, if considered necessary by COMMERCE, may be utilized in selecting the winning Response. COMMERCE, at its sole discretion, may select the top-scoring firm(s) from the written evaluation for an oral presentation and contact the top-scoring firm(s) to schedule a date, time and location for an oral presentation. Commitments made by the Consultant at the oral interview, if any, will be considered binding.

If held, the oral presentation shall determine the apparently successful bidder.

4.5 NOTIFICATION TO PROPOSERS

Firms whose Responses have not been selected for further negotiation or award will be notified by e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL PROPOSERS

Upon request, a debriefing conference will be scheduled with an unsuccessful Proposer. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Consultant notice is emailed to the Consultant. The debriefing must be scheduled within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Consultant's Response. *Comparisons between Responses or evaluations of the other Responses will not be allowed.* Debriefing conferences may be conducted in person or by telephone and will be scheduled for a maximum of thirty (30) minutes.

4.7 PROTEST PROCEDURE

This procedure is available to Consultants who submitted a response to this solicitation document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Consultant is allowed five (5) business days to file a protest of the acquisition with the RFQQ Coordinator. Protests may be submitted by facsimile, but should be followed by the original document.

Consultants 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 Consultants under this procurement.

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

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 the evaluator
- Errors in computing the score
- Non-compliance with procedures described in this procurement document or current 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 or assessment of the quality of a Response, 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 the COMMERCE. The COMMERCE Director or an employee designated 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 Consultant that submitted a Response, such Consultant will be given an opportunity to submit its views and any relevant information on the protest to the RFQQ Coordinator.

The final determination of the protest shall:

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

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

5 RFQQ EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Diverse Business Inclusion Plan
- Exhibit C Workers' Rights Certification
- Exhibit D Service Contract Format including General Terms and Conditions (GT&Cs)

CERTIFICATIONS AND ASSURANCES

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

We (circle one) **are / are not** 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.

On behalf of the Consultant submitting this Response, my name below attests to the accuracy of the above statement. We are submitting a scanned signature on this form with our Response.

Signature of Proposer

Title

Date

DIVERSE BUSINESS INCLUSION PLAN

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

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

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

Minority	___%
Women	___%
Veteran	___%
Small Business	___%

Please identify the person in your organization to manage your Diverse Inclusion Plan responsibility.

Name: _____
Phone: _____
E-Mail: _____

Services Contract with

<Individual or contractor organization here>

through

<Name of COMMERCE **program** issuing/administering contract here>

For

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

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

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FACE SHEET

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>	Federal Agency: <Insert agency name>	CFDA Number: <Insert number>	Indirect Rate (if applicable): <Insert indirect rate>
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # <Insert number>
14. Contract Purpose <Briefly describe contract purpose>			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, 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: Contract 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

**SPECIAL TERMS AND CONDITIONS
SERVICES CONTRACT
FEDERAL FUNDS**

1. ACKNOWLEDGEMENT OF FEDERAL FUNDING

Federal Award Date: XXXX

Federal Award Identification Number (FAIN): XXXX

Total amount of the federal award: \$XXXXXX

Awarding official: XXXX (XXX) XXX-XXXX

The Contractor agrees that any publications (written, visual, or sound) but excluding press releases, newsletters, and issue analyses, issued by the Contractor describing programs or projects funded in whole or in part with federal funds under this Contract, shall contain the following statements:

“This project was supported by Grant No. < > awarded by <Federal Granting Agency> . Points of view in this document are those of the author and do not necessarily represent the official position or policies of the <Federal Granting Agency> . Grant funds are administered by the <COMMERCE Program> , Washington State Department of Commerce.”

2. 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.

3. COMPENSATION

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

EXPENSES

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

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

4. BILLING PROCEDURES AND PAYMENT

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

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

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

**SPECIAL TERMS AND CONDITIONS
SERVICES CONTRACT
FEDERAL FUNDS**

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

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

Invoices and End of Fiscal Year

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

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

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

Duplication of Billed Costs

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

Disallowed Costs

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

COMMERCE may, in its sole discretion, withhold ten percent (10%) from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).

5. 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.

6. INSURANCE

The Contractor shall maintain 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.

**SPECIAL TERMS AND CONDITIONS
SERVICES CONTRACT
FEDERAL FUNDS**

The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certificates from the insurance issuing agency. The instruments or certificates 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 secure 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.
- 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. FRAUD AND OTHER LOSS REPORTING

Contractor/Grantee shall report in writing all known or suspected fraud or other loss of any funds or other property furnished under this Contract immediately or as soon as practicable to the Commerce Representative identified on the Face Sheet.

8. ORDER OF PRECEDENCE

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

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

**SPECIAL TERMS AND CONDITIONS
SERVICES CONTRACT
FEDERAL FUNDS**

**GENERAL TERMS AND CONDITIONS
SERVICES CONTRACT
FEDERAL FUNDS**

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. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- F. "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.
- G. "State" shall mean the state of Washington.
- H. "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. ACCESS TO DATA

In compliance with RCW 39.26.180, the Contractor shall provide access to data generated under this Contract to COMMERCE, the Joint Legislative Audit and Review Committee, and the Office of the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and the methodology for those models.

3. ADVANCE PAYMENTS PROHIBITED

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

4. 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.

5. 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.

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

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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.

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. AUDIT

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

1. Submit to COMMERCE the reporting package specified in Uniform Guidance 2 CFR 200, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor.
2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings.

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

The Grantee shall send all single audit documentation to the [Federal Audit Clearinghouse](#).

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

- A.** Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief they:
- i.** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
 - ii.** Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
 - iii.** Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
 - iv.** Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- B.** Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
- C.** The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.

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

LOWER TIER COVERED TRANSACTIONS

- i) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
 - ii) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- E. The terms **covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded**, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact COMMERCE for assistance in obtaining a copy of these regulations.

11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

- A. "Confidential Information" as used in this section includes:
- 1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
 - 2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
 - 3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- 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.

12. CONFLICT OF INTEREST

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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 PROVISIONS

Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by COMMERCE. COMMERCE shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the 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. DISPUTES

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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.

15. DUPLICATE PAYMENT

COMMERCE shall not pay the Contractor, if the Contractor has charged or will charge the State of Washington or any other party under any other contract or agreement, for the same services or expenses.

16. 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.

17. 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, 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. The Contractor's obligation to indemnify, defend, and hold harmless the State shall not be

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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.

18. 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.

19. INDIRECT COSTS

The Grantee shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

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 the Authorized Representative's delegate by writing (delegation 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. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

24. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS

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

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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.

25. 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.

26. POLITICAL ACTIVITIES

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

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

27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

All Contractors must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
 - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
 - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.

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- iii. Positive efforts shall be made to use small and minority-owned businesses.
 - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
 - v. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
 - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
 - vii. Procurement records and files for purchases shall include all of the following:
 - 1) Contractor selection or rejection.
 - 2) The basis for the cost or price.
 - 3) Justification for lack of competitive bids if offers are not obtained.
 - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or response is received when value of this Contract is expected to exceed \$5,000.

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

28. 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.

29. 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.

30. RECORDS MAINTENANCE

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

The Contractor shall retain such records for a period of six 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

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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.

31. REGISTRATION WITH DEPARTMENT OF REVENUE

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

32. RIGHT OF INSPECTION

The Contractor shall provide right of access to its facilities to COMMERCE, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

33. SAVINGS

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

34. 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.

35. SITE SECURITY

While on COMMERCE premises, the Contractor, its agents, employees, or subcontractors shall conform in all respects with physical, fire or other security policies or regulations.

36. SUBCONTRACTING

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

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

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

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

37. SURVIVAL

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

38. TAXES

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

39. TERMINATION FOR CAUSE

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

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

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

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

40. TERMINATION FOR CONVENIENCE

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

41. TERMINATION PROCEDURES

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

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

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

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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.

42. TREATMENT OF ASSETS

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

- 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.

43. WAIVER

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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

Specific Scope of Work activities will be negotiated.

Reporting. Contractor will provide reports to COMMERCE with each invoice request. Commerce will provide the reporting format and invoicing procedure to request payment. Reports will be required at least on a quarterly basis, if there hasn't been any request for reimbursement within the quarter. Commerce quarterly reporting is based upon the calendar year, as outlined below.

Progress/Quarterly Reports. Contractor will submit based on the Deliverable Timeline and Fee Schedule or as follows:

Quarterly Reports will be submitted by the following dates, if a request for reimbursement hasn't been made since the previous quarter:

October 15
January 15
April 15
July 15
October 15
January 15
April 15
July 15
October 15

Annual and Final Report due dates:

October 15, 2023
October 15, 2024

Commerce Required:

- Provide Commerce with a copy of signed subcontracts, which includes required state and federal provisions, as applicable.
- Verify subcontractors do not have an active exclusion record in the federal award system (SAM.gov), as applicable.
- Monitor program progress and compliance with applicable federal and state regulations.
- Collect and analyze data relevant to the plan and project.

Budget

Specific Budget will be negotiated.

Special Budget Provisions:

- A. The total amount of transfers of funds between line item budget categories shall not exceed ten (10) percent of the total budget. If the cumulative amount of these transfers exceeds or is expected to exceed ten (10) percent, the total budget shall be subject to justification and negotiation of a GRANT/CONTRACT amendment by the GRANTEE/CONTRACTOR and COMMERCE.

- B. A sum of ten (10) percent of funds shall be withheld until activities and final products defined in Attachment "A" have been successfully completed by the GRANTEE/CONTRACTOR and accepted fully by COMMERCE.