



**STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE**

**REQUEST FOR PROPOSALS (RFP)**

**RFP NO. 22-63MH0112-003**

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

**PROJECT TITLE: Middle Housing Implementation**

**PROPOSAL DUE: Tuesday, September 6, 2022 at 4:00 p.m.,** Pacific Time, Olympia, WA

**ESTIMATED TIME PERIOD FOR CONTRACT: October 3, 2022 – June 30, 2023**

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

**CONTENTS OF THE REQUEST FOR PROPOSALS:**

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3. Proposal Contents
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  - A. Certifications and Assurances
  - B. Diverse Business Inclusion Plan
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  - D. Service Contract with General Terms and Conditions

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## 1. INTRODUCTION

### 1.1. PURPOSE AND BACKGROUND

#### 1.1.1 Purpose

The Washington State Department of COMMERCE, hereafter called “COMMERCE,” is initiating this Request for Proposal (RFP) to solicit proposals from firms interested in supporting COMMERCE to inform about and assist local governments with middle housing policies, regulations, and programs. For purposes of this RFP, “middle housing” refers to house-scale structures including duplexes, triplexes, fourplexes, fiveplexes, sixplexes, townhouses, courtyard apartments, cottage housing, and stacked flats.

Section 189 of [Engrossed Substitute Senate Bill 5693](#), the 2022 supplemental operating budget, directs COMMERCE to develop a grant program to support the adoption of ordinances authorizing middle housing types, along with a conducting a racial equity analysis.

Grant funding is available only to the eighty-two cities and towns in the central Puget Sound region (“Region”), which consists of King, Snohomish, Pierce, and Kitsap counties. These jurisdictions vary greatly in character and population. The 2022 population of the central Puget Sound region is 4.4 million with approximately 2.3 million jobs. It is estimated that by 2050, the Region’s population will be 5.8 million and 3.4 million jobs. The Region has a backlog of 45,000-50,000 housing units just to accommodate recent growth and will need approximately 800,000 new units by the year 2050.

In response to the budget proviso, COMMERCE created a three-person Middle Housing Technical Team (MHTT) to offer direct assistance to grantees and other communities in the Region. The MHTT has responsibility for providing technical assistance information and best practices to grant-participating cities regarding middle housing comprehensive plan policies, development regulations and entitlement processes, and, as requested, outreach to and engagement with staff, planning commissions, and city councils.

Although the Middle Housing Grant Program applies only to cities and towns in the Region, the materials, best practices and guidance prepared by COMMERCE should be portable to other regions of the state.

This RFP includes three components:

- (1) Assisting the MHTT with communication, outreach, and public engagement strategies to explain:
  - a. Middle housing, including its relationship to Growth Management Act (GMA) goals and requirements, and its role in planning for and accommodating housing for all economic segments of the population.
  - b. Middle housing types available for consideration by cities and towns, and where which types might fit best in each community.

- c. The potential benefits and challenges of adopting middle housing comprehensive plan policies and development regulations, and how middle housing can help meet other state goals such as cost effective infrastructure, transportation and public health benefits, and addressing climate change.
- (2) Preparing examples of recommended development regulation amendments including:
    - a. Objective design standards and graphics,
    - b. Entitlement processes, and
    - c. Other materials to enable and encourage middle housing.
  - (3) Preparing 3-D models, financial cost analysis and pro formas for different middle housing types.

COMMERCE intends to award one contract to provide the services described in this RFP. As the RFP requires expertise from multiple disciplines, sub-contractors may be included in the proposal. The proposer should identify the individual who will be the primary point of contact with the COMMERCE Middle Housing Technical Team (MHTT) and who will also be responsible for managing any sub-contractors. Firms shall submit quotes for entire project and shall identify all sub-contractors.

### 1.1.2 Background

#### Growth Management Act

The Growth Management Act (GMA) passed by the Washington State Legislature in 1990 provides at RCW 36.70A.040(3)(d) that,

“...if the county has a population of fifty thousand or more, the county and each city located within the county **shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan . . .**” **Bold emphasis added.**

RCW 36.70A.030(5) defines comprehensive plan as,

“...a **generalized coordinated land use policy statement** of the governing body of a county or city that is adopted pursuant to this chapter.” **Bold emphasis added.**

RCW 36.70A.030(8) defines development regulations as,

“...the **controls** placed on development or land use activities by a county or city, including, but not limited to, **zoning ordinances**, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto . . .” **Bold emphasis added.**

All four counties and eighty-two cities and towns in the Region are fully planning under the authority of RCW 36.70A.040 and therefore are subject to the above cited definitions and the statutory duty to have development regulations that are consistent with and implement the comprehensive plan.

## Action in Washington's 2021 Legislative Session that addressed Housing

The GMA goals are to guide the adoption and amendment of local government comprehensive plans and regulations. Since 1990, the GMA Housing Goal said that local governments were to “encourage” the availability of affordable housing. As one response to the ongoing housing crisis in the State of Washington, the Legislature passed House Bill 1220 in 2021. Among other things, HB 1220 replaced “encouraged” with “plan for and accommodate” housing, The specific amendment reads as follows,

(4) Housing. (( Encourage the availability of affordable)) Plan for and accommodate housing affordable to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing.

Another original GMA Goal that relates to “accommodation” of housing, reads as follows,

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to **ensure predictability**. Bold emphasis added.

HB 1220 also significantly amended the requirements of the housing element of local government comprehensive plans.<sup>1</sup> Among the additional requirements added (with underling and bolding below\_were,

(2) A housing element ensuring the vitality and character of established residential neighborhoods that:

(a) Includes an inventory and analysis of existing and projected housing needs that identifies the number of housing units necessary to manage projected growth, as provided by the department [of Commerce], including:

(i) Units for moderate, low, very low, and extremely low-income households; and  
(ii) Emergency housing, emergency shelters, and permanent supportive housing;

(b) Includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences, and within an urban growth area boundary, moderate density housing options including, but not limited to, duplexes, triplexes, and townhomes.” Bold emphasis added . . .

(c) Identifies sufficient capacity of land for housing including, but not limited to, government-assisted housing, housing for moderate, low, very low, and extremely low-income households, manufactured housing, multifamily housing, group homes, foster care facilities, emergency housing, emergency shelters, permanent supportive housing, and within an urban growth area boundary, consideration of duplexes, triplexes, and townhomes;

d) Makes adequate provisions for existing and projected needs of all economic segments of the community, including:

(i) Incorporating consideration for low, very low, extremely low, and moderate-income households;

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<sup>1</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=36.70A.070>

- (ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations;
- (iii) Consideration of housing locations in relation to employment location; and
- (iv) Consideration of the role of accessory dwelling units in meeting housing needs;

(e) Identifies local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, . . .

(f) Identifies and implements policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions; . . .

**Action in Washington’s 2022 Legislative Session which addressed housing in a 12-month grant program for cities in a sub part of the state.**

Section 189 of [Engrossed Substitute Senate Bill 5693](#) was adopted as a supplemental operating budget proviso. It directed COMMERCE to develop a grant program to support the adoption of ordinances authorizing middle housing types, along with a conducting a racial equity analysis. Funding is available only to cities and towns in the four counties in the Region (King, Snohomish, Pierce, and Kitsap.)

**Puget Sound Regional Council - Regional Housing Strategy**

In February of 2022, the Puget Sound Regional Council (“PSRC”), adopted a “Regional Housing Strategy” which presents information about housing needs and calls for a number of local government actions to enable middle housing in the four county region. This includes zoning that supports moderate densities in single family zones and increasing development predictability. Cities should adopt polices and regulations which are consistent with the strategy.

Among the guidance provided in the Regional Housing Strategy policy was the following,

**“Encourage more middle density housing to provide greater housing choice for people at all stages of life**

- **Increase zoning that allows for moderate density “missing middle” housing** to increase opportunities for townhomes and multiple units in neighborhoods with infrastructure, services, and amenities. Zoning that supports moderate densities is limited in the region, while these forms of housing have been shown to be less costly than either single-family homes or higher density developments. Moderate density housing can fit well within established neighborhoods and significantly increase housing supply and choices for households at 80–120% Area Median Income.” Page 8, Regional Growth Strategy.

**“Encourage more housing choices within single-family zones to provide greater housing choice and less costly ownership options throughout the region**

- **Reform single-family zoning** to increase opportunities for small lots, zero-lot line, accessory dwelling units, cottage homes, and up to six units per lot that serve a wider range of households, including singles, couples, seniors, and smaller families. The vast majority of zoning in the region is for exclusively single-family development, often

requiring large lots. Due to the extensive amount of single-family zoning, even modestly increasing housing opportunities in single-family zones can have a significant regional impact in both more and less densely developed places. These modest density increases are critical for places farther from job centers and high-capacity transit.” Page 9, Regional Growth Strategy. Bold emphasis added.

### “Reduce the costs to build housing

- **Increase development predictability** through cross-jurisdiction coordination and multi-jurisdiction housing organizations that works to increase regulatory consistency and reduce complexity. Developers report that varying regulations in jurisdictions across the region results in complexity and greater costs for housing.” Page 9, Regional Growth Strategy. Bold emphasis added.

## 1.2. OBJECTIVES AND SCOPE OF WORK

### 1.2.1 Communication, outreach, and public engagement materials and strategies

- The Successful Consultant will: Assist the MHTT in
  1. Preparing **public engagement strategies and messaging** that will help COMMERCE explain, to local governments and the public, what middle housing is (types, benefits, challenges, etc.), timelines, and key middle housing alternatives for cities and towns to consider, along with issues to address as part of the process, and strategies for local governments to use.
  2. Designing and preparing **a series of informational materials** that cities and towns can use to outreach to and solicit input from environmental, planning, and climate interest groups, residential development interests (both nonprofit and for-profit), and the public about middle housing. Materials will include a series of videos, slideshows, handouts, and website information on a variety of middle housing topics.
  3. **A photo library** of existing middle housing types focusing primarily on the cities and towns in the Region and elsewhere in Washington State, with examples in other states only as needed to fill information gaps that cannot be provided by examples in Washington State. The objective is to provide real-world nearby examples that aid in the understanding, communication, and analysis of middle housing types in areas that might also be visited by local government staff when developing their middle housing development regulations. COMMERCE shall use General Term 11, within the contract, in reference to copyright use of photos.
  4. A minimum of **five (5) detailed computer-generated architectural block and lot models** that reflect a range of lot sizes and dimensions that typically exist in cities and towns in the Region. The purpose of these computer-generated architectural models is to provide accurate and detailed three-dimensional illustrations of how new middle housing types would fit into the context, scale, and character of a typical neighborhood of detached single family homes, or options for new neighborhoods. Some of these three-dimensional middle housing models could be patterned after examples from the photo library.

On each of these models, render the following details:

- A residential street which may include on-street parking, planter strips, sidewalks, street trees; and
- On each block face of the residential street, a variety of typical detached houses with pitched or gabled roofs, chimneys, windows, with typical building heights, front, side, and rear yard setbacks, lot coverage maximums, trees, ground cover and landscaping.

5. **Several detailed architectural models for each middle housing type, i.e., duplex, triplex, fourplex, fiveplexes, sixplexes, townhouses, courtyard apartments, cottage housing and stacked flats.** These middle housing computer-generated models shall be capable of being imported into the block and lot context models described above. This item may include animations that can be used by local governments to show how additional housing may be added through time.

**1.2.2 Development regulations amendments.** The Successful Consultant will assist the MHTT in preparation of example middle housing tools:

6. **Definitions of middle housing types** for adoption in local codes.
7. **Zoning code text describing a ministerial or administrative permit process** that would enable a local government to review and issue permits for middle housing projects in a timely, fair, and predictable manner.
8. **A set of objective design standards and graphics** that address scale, form, and character for all middle housing types that can be adopted into development regulations and can be administered by local staff without requiring subjective judgments. These standards shall include or be adaptable to a variety of zoning frameworks and represent typologies such as small towns or neighborhood centers, suburban neighborhoods, transit corridors, and zones adjacent to higher-density station areas.

**1.2.3 Financial cost analysis and pro formas for construction of middle housing types compared to the cost of construction of single family detached houses**

The consultant will assess the general site development and construction costs of middle housing, conduct outreach to the builder and development community to gather information that will inform the preparation of the cost models and pro formas for both middle housing and single family detached housing. The deliverable will be:

- 9 **Project pro formas for all middle housing types, ranking the factors which could be adjusted to make these types more financially viable for developers to build and attainable or affordable as rental or owner-occupied homes. For purposes of comparison, consultant will also prepare **pro formas for typical single family detached housing products.****

COMMERCE has a web page and will post the guidance that is developed and other resources as products are developed.

[https://www.ezview.wa.gov/site/alias\\_1976/37775/middle\\_housing\\_program.aspx](https://www.ezview.wa.gov/site/alias_1976/37775/middle_housing_program.aspx)

COMMERCE will be working with communities that have a 12-month middle housing grant ending June 30, 2023. We would like the communication tools to be completed early in the



process. Final drafts of products should be complete by April 2023 to allow to time to refine the products with the middle housing team, and grantee communities.

### **1.3 MINIMUM QUALIFICATIONS**

Minimum qualifications include:

- Licensed to do business in the State of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Contractor.
- At least eight (8) years of experience with urban design, subarea planning, site planning, form-based codes, drafting narrative and graphics for design standards and permit processes.
- At least five (5) years of experience with digital methodology including geographic information systems, architectural computer modelling, graphic renderings, and telling a story through the use of compelling graphic information.
- At least five (5) years of experience with data analytics including: developing financial models, developing clear and actionable direction from data, and telling a story through the use of compelling data.
- At least five (5) years of experience with statutory planning and development frameworks.
- A key role in public engagement for at least three (3) governmental projects.
- At least three (3) years of experience with federal, state and/or local agency policy and process analysis, and group facilitation.

### **1.3 FUNDING**

COMMERCE has budgeted an amount not to exceed \$500,000.00 for this project. Proposals in excess of this amount will be considered non-responsive and will not be evaluated.

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

### **1.4 PERIOD OF PERFORMANCE**

The period of performance of any contract resulting from this RFP is tentatively scheduled to begin on or about October 3, 2022 and to end on June 30, 2023. Amendments extending the period of performance, if any, shall be at the sole discretion of the COMMERCE.

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

### **1.5 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES**

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

### **1.6 DEFINITIONS**

Definitions for the purposes of this RFP include:

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

**Consultant:** Individual or company interested in the RFP and that may or does submit a proposal in order to attain a contract with the AGENCY.

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

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

**Proposal:** A formal offer submitted in response to this solicitation.

**Proposer:** Individual or company that submits a proposal in order to attain a contract with COMMERCE.

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

## 1.7 ADA

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

## 2. GENERAL INFORMATION FOR CONSULTANTS

### 2.1. RFP COORDINATOR

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

Name	Paul Johnson
E-Mail Address	<a href="mailto:Paul.Johnson@COMMERCE.wa.gov">Paul.Johnson@COMMERCE.wa.gov</a>

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

### 2.2. ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Proposals (RFP)	Aug. 8
RFP Question Submittal period	Aug. 9 to 18
Pre-Proposal Conference	Aug. 17
Answers to Q&A posted no later than	Aug. 19
Proposals due	Sept. 6
Evaluate proposals	Sept. 7 to 13
Conduct oral interviews with finalists, if required	Sept. 16

Announce "Apparent Successful Contractor" and send notification via e-mail to unsuccessful proposers	Sep. 19
Hold debriefing conferences (if requested)	Sep. 21
Negotiate contract	Sep. 26 to 30
Begin contract work	Oct.3, 2022

COMMERCE reserves the right to revise the above schedule.

### 2.3 PRE-PROPOSAL CONFERENCE

A pre-proposal conference is scheduled to be held on *August 17, 2022 at 2 p.m.*, Pacific Time. The pre-proposal conference will be available by tele-conference/online video/audio conference and is scheduled for one hour. Register in advance for this meeting at:

[https://wastateCOMMERCE.zoom.us/meeting/register/tZcvc-upqjlsGda9qL5c75qyworL-M35jiM](https://wastateCOMMERCE.zoom.us/j/91234567890)

All prospective Consultants are encouraged to attend the pre-proposal conference; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-proposal conference or in subsequent communication with the RFP Coordinator will be documented and answered in written form within 3 business days of receipt of the question. A copy of the questions and answers will be sent to each prospective Consultant that has received a copy of the RFP or made the RFP Coordinator aware of its interest in this procurement.

### 2.4 SUBMISSION OF PROPOSALS

#### ELECTRONIC PROPOSALS:

The proposal must be **received by the RFP Coordinator** no later than *4:00 p.m.*, Pacific Time, in Olympia, Washington, on *September 6, 2022*.

Proposals must be submitted electronically as an attachment to an e-mail to the RFP Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. Zipped files cannot be received by COMMERCE and cannot be used for submission of proposals. 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 e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Consultants should allow sufficient time to ensure timely receipt of the proposal by the RFP Coordinator. **Late proposals will not be accepted and will be automatically disqualified from further consideration**, unless COMMERCE e-mail is found to be at fault at COMMERCE'S sole determination. Requests for deadline extensions will not be granted. All proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

### 2.5 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

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

Any information in the proposal that the 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 proposal 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 RFP Coordinator is required. All requests for information should be directed to the RFP Coordinator.

## **2.6 REVISIONS TO THE RFP**

In the event it becomes necessary to revise any part of this RFP, addenda will be provided via e-mail to all individuals who have made the RFP 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 RFP and will be placed on the website. Such addenda will also be published on an Agency page, located at <http://www.COMMERCE.wa.gov/serving-communities/current-opportunities/>.

If you downloaded this RFP from the Agency website located at [www.COMMERCE.wa.gov](http://www.COMMERCE.wa.gov), you are responsible for sending your name, e-mail address, and telephone number to the RFP Coordinator in order for your organization to receive any RFP addenda.

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

## **2.7 DIVERSE BUSINESS INCLUSION PLAN**

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

COMMERCE has the following agency goals:

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

## **2.8 ACCEPTANCE PERIOD**

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

## **2.9 COMPLAINT PROCESS**

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

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

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

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

## **2.10 RESPONSIVENESS**

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

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

## **2.11 MOST FAVORABLE TERMS**

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

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

## **2.12 CONTRACT GENERAL TERMS & CONDITIONS**

The apparent successful contractor 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 form, Exhibit A to this solicitation. All exceptions to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

## **2.13 COSTS TO PROPOSE**

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

#### **2.14 NO OBLIGATION TO CONTRACT**

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

#### **2.15 REJECTION OF PROPOSALS**

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

#### **2.16 COMMITMENT OF FUNDS**

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

#### **2.17 ELECTRONIC PAYMENT**

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

#### **2.18 INSURANCE COVERAGE**

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

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

### **3. PROPOSAL CONTENTS**

#### **ELECTRONIC PROPOSALS:**

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

1. Letter of Submittal, including signed Certifications and Assurances (Exhibit A to this RFP)
2. Technical Proposal
3. Management Proposal
4. Cost Proposal
5. Diverse Business Inclusion Plan (Exhibit B to this RFP)
6. Workers' Rights Certification (Exhibit C to this RFP)

Proposals 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 proposal, but should assist the Consultant in preparing a thorough response.

Items marked “mandatory” must be included as part of the proposal for the proposal 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 RFP) 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:

- A. 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.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
- C. 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.
- D. 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 state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Contractor.
- E. Location of the facility from which the Consultant would operate.
- F. Identify any state employees or former state employees employed or on the firm’s governing board as of the date of the proposal. 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.

### 3.2. TECHNICAL PROPOSAL (SCORED)

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

- A. **Project Approach/Methodology:** Include a complete description of the Consultant’s proposed approach and methodology for the project. This section should convey Consultant’s understanding of the proposed project.
- B. **Work Plan:** Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this RFP. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Consultant’s knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff. The Consultant may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation.
- C. **Project Schedule:** Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
- D. **Outcomes and Performance Measurement:** Describe the impacts/outcomes the Consultants propose to achieve as a result of the delivery of these services including how these outcomes would be monitored, measured and reported to the state agency.

- E. **Risks:** The Consultant must identify potential risks that are considered significant to the success of the project. Include how the Consultant would propose to effectively monitor and manage these risks, including reporting of risks to the COMMERCE contract manager.
- F. **Deliverables:** Fully describe deliverables to be submitted under the proposed contract. Deliverables must support the requirements set forth in Section 1.2, Objectives and Scope of Work.

### 3.3. MANAGEMENT PROPOSAL

#### A. Project Management (SCORED)

1. **Project Team Structure and Internal Controls:** Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Provide an organizational chart of your firm indicating lines of authority for personnel involved in performance of this potential contract and relationships of this staff to other programs or functions of the firm. This chart must also show lines of authority to the next senior level of management. Include who within the firm will have prime responsibility and final authority for the work.
2. **Staff Qualifications and Experience:** Identify staff, including subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. The Consultant must commit that staff identified in its proposal will actually perform the assigned work. Any staff substitution must have the prior approval of the AGENCY.

#### B. Experience of the Consultant (SCORED)

1. Clearly indicate the experience the Consultant and any subcontractors have as detailed in Section 1.3.
2. Indicate other relevant experience that indicates the qualifications of the Consultant, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Consultant has had during the last five years that relate to the Consultant's ability to perform the services needed under this RFP. List contract reference numbers, contract period of performance, contact persons, telephone numbers, and fax numbers/e-mail addresses.

#### C. Related Information (MANDATORY)

1. If the Consultant or any subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, the contract number and project description and/or other information available to identify the contract.
2. 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.
3. 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.



4. 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 proposal 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.

#### **D. References (MANDATORY)**

List names, addresses, telephone numbers, and fax numbers/e-mail addresses of three (3) business references for the Consultant and three (3) business references for the lead staff person for whom work has been accomplished and briefly describe the type of service provided. Do not include current COMMERCE staff as references. By submitting a proposal 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. COMMERCE may evaluate references at COMMERCE'S discretion.

#### **E. OMWBE Certification (OPTIONAL AND NOT SCORED)**

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

### **3.4. COST PROPOSAL**

The maximum fee for this contract must not exceed the amount specified in section 1.4 to be considered responsive to this RFP.

The evaluation process is designed to award this procurement not necessarily to the Consultant of least cost, but rather to the Consultant whose proposal best meets the requirements of this RFP. However, Consultants are encouraged to submit proposals which are consistent with state government efforts to conserve state resources.

#### **A. Identification of Costs (SCORED)**

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

Costs for subcontractors are to be broken out separately. Please note if any subcontractors are certified by the Office of Minority and Women's Business Enterprises.

#### **B. Computation**

The score for the cost proposal will be computed by dividing the lowest cost bid received by the Consultant's total cost.

## **4. EVALUATION AND CONTRACT AWARD**

### **4.1. EVALUATION PROCEDURE**

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

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

The RFP Coordinator may contact the Consultant for clarification of any portion of the Consultant's proposal.

#### **4.2. EVALUATION BREAKDOWN**

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

##### **Technical Proposal – 80%**

- Project Approach/Methodology
- Work Plan
- Project Schedule
- Outcome and Performance Measurement
- Risks
- Deliverables

##### **Management Proposal – 20%**

- Project Team Structure
- Internal Controls
- Staff Qualifications and Experience

**Cost Proposal** is computed in accordance with section 3.4(B) and the result is then added to the combined score for the Technical and Management Proposals.

**Workers' Rights Certification** – Those firms which certify they **do not** require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 5% added to their score (see Attachment C).

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

#### **4.3. ORAL PRESENTATIONS MAY BE REQUIRED**

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

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

#### **4.4. NOTIFICATION TO PROPOSERS**

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

#### **4.5. DEBRIEFING OF UNSUCCESSFUL PROPOSERS**

Any Consultant who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the RFP Coordinator within three (3) business days after the Unsuccessful Consultant Notification is e-mailed

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

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

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

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

#### **4.6. PROTEST PROCEDURE**

Protests may be made only by 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 RFP Coordinator. Protests must be received by the RFP Coordinator no later than 5:00 PM, local time, in Olympia, Washington on the fifth business day following the debriefing. Protests may be submitted by e-mail or facsimile, but must then be followed by the document with an original signature.

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

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

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

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

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

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

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or

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

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

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

### EXHIBIT A

#### CERTIFICATIONS AND ASSURANCES

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

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

10. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

**We (*check one*):**

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

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

---

Signature of Proposer Date

---

Printed Name Title

**DIVERSE BUSINESS INCLUSION PLAN**

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

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

---

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

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

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

Name: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**CONTRACTOR CERTIFICATION  
EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS  
WASHINGTON STATE GOODS & SERVICES CONTRACTS**

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

Solicitation No.: 22-63323-001

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

NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. This firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. This firm requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

This firm certifies it has no employees.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

FIRM NAME: \_\_\_\_\_  
Name of Contractor/Bidder – Print full legal entity name of firm

By: \_\_\_\_\_  
Signature of authorized person Printed Name

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

Date: \_\_\_\_\_

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



**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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**Attachment A, Scope of Work**

**Attachment B, Budget**

# 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)>

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

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

**1. CONTRACT MANAGEMENT**

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

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

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

**2. COMPENSATION**

COMMERCE shall pay an amount not to exceed \$ \_\_\_\_\_ for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Contractor's compensation for services rendered shall be based *on satisfactory reports and documentation of work performed that meets the objectives and scope of work.*

**3. BILLING PROCEDURES AND PAYMENT**

COMMERCE will pay Contractor upon acceptance of deliverables provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE upon satisfactory completion of each deliverable, but not more often than monthly.

The parties agree this is a performance-based contract intended to produce the deliverables identified in Scope of Work (Attachment A). Payment of any invoice shall be dependent upon COMMERCE'S acceptance of Contractor's performance and/or deliverable. 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 \_\_\_\_\_.

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

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

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

**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.

**4. SUBCONTRACTOR DATA COLLECTION**

Contractor will submit reports, in a form and format to be provided by COMMERCE and at intervals as agreed by the parties, regarding work under this Contract performed by subcontractors and the portion of Contract 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.

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

**5. INSURANCE**

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

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

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

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

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

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

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

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

- A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.

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**B. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.**

**6. 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**

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**1. DEFINITIONS**

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

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

**2. 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**

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**



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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. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

A. "Confidential Information" as used in this section includes:

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

B. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**10. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, 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 with the COMMERCE program executing this Contract, including but not limited to formulating or drafting the legislation, participating in grant procurement planning and

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execution, awarding grants, and monitoring grants, during the 24-month period preceding the start date of this Contract. 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 Contract.

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.

**11. COPYRIGHT**

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

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

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

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

**12. DISPUTES**

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

The request for a dispute hearing must:

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

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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.

**13. 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.

**14. 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.

**15. 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 Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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

**16. 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.

**17. 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

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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.

**18. 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.

**19. 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.

**20. 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 of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

**21. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

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

**22. 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.

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(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.

**23. 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.

**24. 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.

**25. 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.

**26. 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 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.

**27. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**28. 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.

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**29. SAVINGS**

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

**30. 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.

**31. SITE SECURITY**

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

**32. 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.

**33. SURVIVAL**

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

**34. 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.

**35. 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

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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.

**36. 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.

**37. 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 the Authorized Representative. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. COMMERCE may withhold from any amounts due the Contractor such sum as the Authorized Representative determines to be necessary to protect COMMERCE against potential loss or liability.

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

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

1. Stop work under the contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
3. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;

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5. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

**38. 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.

**39. WAIVER**

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



**Scope of Work**

Budget