



**STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE**

**REQUEST FOR APPLICATIONS**

**RFA NO. RDD2023**

**NOTE:** *If you download this RFA from the Department of Commerce website, you are responsible for following section 2.7 REVISIONS TO THE RFA*

**PROJECT TITLE:** 2023 Clean Energy Fund Research, Development and Demonstration

**PHASE ONE APPLICATION DUE:** November 21, 2023 5:00 pm Pacific Time, Olympia, WA

**PHASE TWO FULL APPLICATION DUE:** March 25, 2024 5:00 pm Pacific Time, Olympia, WA

**ESTIMATED TIME PERIOD FOR CONTRACT:** September 2024 – September 2026

**FUNDING SOURCE AND METHOD:** This is State funding. Payments will be made on a reimbursement basis for deliverables accepted and/or allowable time and expenses.

**APPLICANT ELIGIBILITY:** This RFA is open to those Applicants which satisfy the minimum qualifications stated herein (section 1.3) and are available for work in Washington State.

**CONTENTS OF THE REQUEST FOR APPLICATIONS:**

1. Introduction
2. General Information for Applicants
3. Application Contents
4. Evaluation and Award
5. Exhibits

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## 1. INTRODUCTION

### 1.1 PURPOSE AND BACKGROUND

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

The Washington State Legislature created the Clean Energy Fund to fund projects that provide a public benefit through the deployment of clean energy technologies that save energy and reduce energy costs, reduce harmful air emissions, or increase energy independence for the state. The RD&D program within the Clean Energy Fund 5 (CEF 5) is authorized in subsection (a) 9 of [1064 of the Substitute House Bill 1080](#) to distribute \$3.9 million through competitive grants. Where the department deems applicable, Commerce also reserves the right to award funding under sub-section 11 of 1017 of [Substitute Senate Bill 5200](#), and previous funding from the legislature.

Proviso language mandates that projects must be consistent with the *2021 State Energy Strategy* adopted under chapter 43.21F RCW and policies under chapter 19.405 RCW (Clean Energy Transformation Act). The [2021 State Energy Strategy](#) (2021 SES) provides guidelines and a roadmap for meeting the state’s greenhouse gas emission limits required under the Energy Independence Act ([RCW 19.285](#)). Other policies such as the Clean Energy Transformation Act (CETA), signed into law in 2019, requires Washington to develop an electricity supply that is 100% renewable or non-emitting by 2045.

The State Energy Strategy acknowledges the need for continued investment in research and development of new technologies to contribute to the state’s climate policy goals. This program funds projects that support these goals through strategic research and development for new and emerging clean energy generation and storage technologies and climate change mitigation technologies, which may include greenhouse gas removal. Both the State Energy Strategy and CETA also support the equitable distribution of benefits, and an inclusive transition, which this program has attempted to incorporate through the program design (see 1.2 Objectives and Scope of Work).

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

This solicitation will utilize a two-phase application process (see [RFA Section 3.1 TWO PHASE APPLICATION PROCESS](#) for more detail).

### 1.2 OBJECTIVES AND SCOPE OF WORK

Grants should be used to leverage federal or non-state funds to research, develop, and demonstrate clean energy technologies, that are new or emerging, have demonstrated viability, but not commercialization, and have expanded existing technologies through innovation, such as novel configurations or increased efficiencies. The funds are intended to catalyze diverse new technologies that change the production, use, storage, and transportation of energy.

Desired program outcomes include increasing investment in innovation and strategic research of eligible new and emerging clean energy technologies that help meet state and broader climate goals, reduce reliance on fossil fuels, reduce risk of irregularities in power supply, offer opportunities for economic and job growth, and strengthen technology supply chains. These technologies should also reduce harmful air emissions, reduce energy costs, or increase energy independence for the state. Goals for this solicitation include:

- Increasing opportunity for Washington-based organizations to participate in federal opportunities by providing cost share or match funding assistance,
- Leveraging non-state funding to help grow Washington’s clean technology sector, and
- Developing and strengthening partnerships and new technologies in the clean energy sector.

The 2021 State Energy Strategy, a Request for Information, and recommendations from the [Energy and Climate Policy Advisory Committee \(ECPAC\)](#) have informed and guided the design of the 2023 RD&D program. This program also aligns with state and federal energy priorities by funding advancements in research, innovation, demonstration, and industrial efficiencies to meet clean energy goals around decarbonization. Washington state entities could leverage funding to match upcoming federal opportunities available through the Infrastructure Investment & Jobs Act (IIJA) and/or the Inflation Reduction Act (IRA.)

In accordance with the proviso and state policy goals, Commerce will prioritize projects that benefit vulnerable populations and overburdened communities, including Tribes and communities with high environmental or energy burdens. Equity outcomes will be prioritized through application scoring. To encourage equitable and beneficial impacts for Tribes and communities with high environmental or energy burdens, this solicitation will prioritize projects that:

- Establish a partnership, include co-creation, or ensure a formal advisory role for Tribes or organizations serving overburdened communities.
- Create new economic development opportunities.
- Develop a community benefits plan that reflects community desires and needs through demonstrated outreach, engagement, and consultation.
- Reduce emissions; increase access to clean energy, and/or resilience for communities or Tribes.
- Include risk mitigation plans that also address adverse consequences to communities and the environment.

Commerce may also prioritize projects that build on Washington's strengths in communities, aerospace, maritime, information and communications technology, grid modernization, advanced materials, and decarbonizing the built environment. Commerce also reserves the right to prioritize projects and make award recommendations that increase geographic diversity of clean energy projects.

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

#### Eligible Technologies

This program funds research, development and demonstration of new and emerging clean energy generation and storage technologies and climate change technologies including greenhouse gas removal. Eligible projects must be consistent with the recommendations put forth in the 2021 *State Energy Strategy* and Washington state clean energy policies including [Chapter 19.405 RCW](#). If you apply to fund a technology or research that is not explicitly supported by the 2021 SES or other policy goals, please be prepared to explain how it supports state clean energy policy.

Where the department deems applicable and aligned with the 23-25 RDD proviso, the department may make awards that meet the intent of the following,

*“grants for strategic research, development, and demonstration of new and emerging clean energy generation and storage technologies and climate change mitigation technologies, including greenhouse gas removal. Grants awarded under this subsection must reduce reliance on fossil fuels, reduce risk of irregularities in power supply, offer opportunities for economic and job growth, and strengthen technology supply chains. Grant funds are intended to catalyze diverse new technologies that change the production, use, storage, and transportation of energy. The department may provide funding to projects at various stages of readiness, including early-stage research, pilot and demonstration projects, and dual-use projects that produce clean energy and additional benefits.”*

The following technologies will be prioritized through the scoring criteria (listed in alphabetical order):

- Advanced Bioenergy, Biofuels, and Biorefining
- Advanced Energy Storage, Battery Recycling, and Battery Technologies
- Development of New Earth Abundant, and Lightweight Materials

- Energy Efficiency
- Greenhouse Gas Removal and Sequestration Technologies
- Renewable Energy
- Recycling Energy System Components
- Renewable Hydrogen Storage, Distribution, and Dispensing

**Other technologies beyond what is listed above that meet state policy goals including [Chapter 19.405 RCW](#) and align with the 2021 State Energy Strategy are eligible.** These other technologies will receive fewer points than the prioritized technologies.

Technology Readiness Level (TRL) (Please refer to Exhibit E of the RFA).

Grants under this program aim to support technologies between the pilot or prototype stage and commercialization and are not meant to support commercialized technologies. Projects between TRL range of 4-7 will receive additional points.

Examples of Ineligible Projects that are inconsistent with state policy goals include:

- Coal, oil, natural gas, or projects in which the primary focus involves these fossil fuels are ineligible.
- Nuclear is ineligible.
- Projects that do not illustrate research, development or demonstration of a new technology or improve on proven technologies are ineligible.
- Projects that install available systems infrastructure or implement systems of proven, commercial technologies, without improving on those technologies are ineligible.
- Conventional and commercially available technology is ineligible unless there is an inherent innovative application and such technology is integral to this approach).

Examples of Ineligible Expenses

- Property purchases and leases, or activities related to site selection or acquisition;
- Equipment purchases for capital assets that would not be completed during the grant performance period (see Section 1.5 PERIOD OF PERFORMANCE);
- Buildings and structures;
- Rolling stock and other non-capital assets;
- Software upgrades and maintenance agreements;
- Standalone software not developed as part of the integration of aforementioned technologies.
- Maintenance and or replacement of existing assets that are not integral to the integration of aforementioned technologies.
- Grant Application development for future State or other funding applications.

Applicant pools will be divided into two tracks (Track 1 and Track 2) (see Section 1.4 for more detail on each track including eligibility). Both tracks will utilize a two-phase process to alleviate the administrative burden on less-resourced applicants and to encourage new applicants. Each primary Applicant may only submit one application for each Track and in turn may only receive one grant award as the primary grantee per Track. There is no limit to the number of applications that an Applicant can apply to as a secondary partner.

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

### **1.3 MINIMUM QUALIFICATIONS**

**Before applying to this solicitation, please read the list of minimum qualifications below.**

#### **Applicant Eligibility**

1. Research institutions, non-profit organizations, local governments, federally recognized Tribal governments and Tribes' contracted service providers, higher education institutions, state



- agencies, public and private utilities that serve retail customers in the state and for-profit entities pursuing clean energy technology.
2. Must demonstrate significant in-state presence and investment by conducting primary research, development, demonstration, and deployment in Washington state.
  3. Must be licensed to do business in the state of Washington or if selected as an Apparently Successful Contractor, become licensed within thirty (30) calendar days of being selected.

#### **Eligible Activities/Projects**

4. Research, develop, and demonstrate eligible clean energy technologies (please see SECTION 1.2 OBJECTIVES AND SCOPE OF WORK) which:
  - a. Have demonstrated viability, but not commercialization,
  - b. Are new and emerging or have expanded existing technologies through innovation, such as novel configurations or increased efficiencies.
5. Develop or acquire capital assets with a minimum of thirteen-year lifespan AND be located in the State of Washington.
6. Be consistent with the [2021 State Energy Strategy](#) adopted under chapter 43.21F RCW and policies under chapter 19.405 RCW.

Applications that do not clearly meet or exceed these minimum qualifications will be rejected as non-responsive and will not receive further consideration. Any Application that is rejected as non-responsive will not be evaluated or scored.

## **1.4 FUNDING**

This program has an estimated \$3.9 million in state funds from CEF 5. This amount reflects the deduction of the 3% administrative costs as approved by the Office of Financial Management and funds that have been distributed or committed in previous solicitations.

<b>Funding Source</b>	<b>Amount</b>
2021-2023 Capital Budget	\$5,000,000 for competitive solicitation
Less 3% Commerce administration	(\$150,000)
Less Funds previously awarded	(\$884,245) previously awarded in CEF 4
<b>Total awardable funds</b>	<b>\$3.9 million</b>
Additional funds	To be determined

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

- State funds available from previous grant rounds (to be determined)
- Additional funding as authorized by the legislature including the potential to make awards with [2023-2025 CEF RDD](#) appropriation (approximately \$11,640,000 after the 3% administrative deduction)

There will be one competitive solicitation, opening on the date noted in RFA Section 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES in which the amount above will be awarded. Additional funds may be available at the time of the award announcement or after awards have been issued.

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

#### **Minimum and Maximum Award Amounts**

The minimum and maximum allowable requests are outlined in the table below. Applications less than \$150,000 or greater than \$2,000,000 will be considered non-responsive and will not be evaluated.

This round of funding will be divided as follows:

Track	Funding Available	Eligible Applicants	Match Requirement
1	Funding goal of \$1.0 million	Non-profits; local governments; *Non-R1 research institutions;  *(Note: <i>National labs are considered Track 2 and are <u>not</u> eligible for carve-out or reduced match.</i> )	1:4 (\$1 match for every \$4 from Commerce)
		Tribes (tribal governments; designated subdivisions, colleges, and agencies.)	1:9 (\$1 of match for every \$9 from Commerce)
2	Remainder of available funds	Private sector applicants, national labs, higher education institutions, and established research institutions	1:1 (\$1 of match for every \$1 from Commerce)
		State agencies (higher education institutions are treated independently of a state agency)	May be eligible for no match (Match from state agencies is allowed to come from state funded sources).

- All applicants may request a minimum of \$150,000 and a maximum of \$2,000,000. Applications less than the minimum and greater than the maximum will be considered non-responsive and will not be evaluated.
- There is a funding goal of \$1,000,000 for Track 1. Commerce reserves the right to evaluate all Track 1 applications with available funding sources from Track 2.
- Commerce expects to award no more than 5 awards between \$150,000 and \$500,000 and the remaining awards between \$500,000 and \$2,000,000.

Commerce reserves the right to adjust and move funding across tracks.

### **MATCHING REQUIREMENTS**

A minimum match for the applicant's respective track is required. Matching funds may be sought from lending institutions, investors, federal awards, private loans, non-state awards, or applicant funds.

- Applicants are expected to notify COMMERCE of all applicable non-state award decisions.
- Applicants who do not receive their non-state match funding within six (6) months of receipt of their RD&D conditional award letter may have their award withdrawn but may apply for future funding pending new opportunity announcements.
  - An additional six months to secure the required match, for a total of 12 months following the date on the award letter, may be provided on a case-by-case basis.

Grant funding provided under this solicitation must not be used to supplant or displace previous, current, or future funding.

Applicants must disclose all sources of public funds in the budget.

Along with other priorities, Commerce will prioritize projects that leverage the greatest amount of matching funds, such local levy funding.

In-kind or cash claimed as match for this program cannot be claimed as match for any other funding sources. Match cannot be originally paid from any state sources, unless the applicant is a state agency. Match funds may be cash or in-kind costs, incentives, or rebates for the project and should be available at the time of contract execution and may not be incurred prior to the award date.

COMMERCE reserves the right to reduce award amounts to ensure minimum match requirements are met. Funds from other state grants cannot be commingled in the project Scope of Work. Funds from

Federal grants and incentives may be considered as matching funds. All costs must be necessary and reasonable to accomplish the proposed project as described in SECTION 1.2, OBJECTIVES AND SCOPE OF WORK.

Any contract awarded as a result of this RFA is contingent upon the availability of funding. Contracts will be performance based, with final payment made upon successful completion of the scope of work. Progress payments for completed milestones can be negotiated during contract development. Any contract awarded as a result of this competitive process is contingent upon no successful process protests. In the event additional funding becomes available, any contract awarded may be amended to provide for additional related services. Additional funding is not guaranteed.

## 1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this RFA is tentatively scheduled to begin on or about September 2024 and to end on September 2026. Amendments extending the period of performance, if any, shall be at the sole discretion of COMMERCE.

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

## 1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington (RCW). Applicants are encouraged to familiarize themselves with the requirements prior to submitting a Application that includes current or former state employees.

## 1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

**Apparent Successful Applicant/Bidder/Contractor/Vendor/Grantee/Awardee:** The Applicant(s) selected to enter into negotiations leading to a fully executed contract for the work described in this procurement document.

**Applicant:** Eligible Individual, company, organization, or firm submitting an Application in order to attain a contract with COMMERCE.

**Application:** A complete, formal offer submitted in response to this Request for Applications.

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

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

**Contract:** A written, legally binding agreement to perform the services proposed, also called a Grant or Interagency Agreement.

**Contractor:** Individual or organization whose Application has been accepted by COMMERCE and is awarded a fully executed, written contract. Also called Grantee, Awardee, Recipient, or Vendor.

**Exhibit:** Document attached to this RFA, also referred to as Attachment.

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

**Exhibit:** Document attached to this RFA, also referred to as Attachment.

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

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

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

**Overburdened Community:** "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects, and includes, but is not limited to, highly impacted communities as defined in RCW

[19.405.020;](#)

**Renewable Energy:** a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (i) biomass energy. [RCW 19.405.020: Definitions. \(wa.gov\);](#)

**Request for Applications (RFA):** Formal procurement document in which needed services are identified and entities are invited to submit their Application to provide those services; this procurement document.

**Small business:** An in-state business, including a sole proprietorship, corporation, partnership, or other legal entity, that: (a) Certifies, under penalty of perjury, that it is owned and operated independently from all other businesses and has either: (i) Fifty or fewer employees; or (ii) A gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the Department of Revenue over the previous three consecutive years; or (b) Is certified with the Office of Women and Minority Business Enterprises under chapter 39.19 RCW.

**Track 1 Applicant:** Non-profits; local governments; Non-R1 research institutions; Tribes (tribal governments; designated subdivisions, colleges, and agencies).

**Track 2 Applicant:** All other applicants not listed in Track 1 including but not limited to national labs, established research institutions, state agencies and private sector applicants.

**Veteran-owned business:** A business certified by the Washington Department of Veteran Affairs.

**Vulnerable Populations:** "Vulnerable populations" means communities that experience a disproportionate cumulative risk from environmental burdens due to (a) Adverse socioeconomic factors, including unemployment, high housing and transportation costs relative to income, access to food and health care, and linguistic isolation; , and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and

(b) Sensitivity factors, such as low birth weight and higher rates of hospitalization. [RCW 19.405.020: Definitions. \(wa.gov\)](#)

## 1.8 ADA

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



## 2. GENERAL INFORMATION FOR APPLICANTS

### 2.1 RFA COORDINATOR

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

Name	Brianna Gomez-Catalan
E-Mail Address	<a href="mailto:CEF@commerce.wa.gov">CEF@commerce.wa.gov</a>
Website	<a href="https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-rdd-clean-energy-fund/">https://www.commerce.wa.gov/growing-the-economy/energy/clean-energy-fund/energy-rdd-clean-energy-fund/</a>

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

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Applications	October 05, 2023
Applicants' Conference	October 12, 2023 at 10:30am Pacific Time
Question & answer period 1	October 12, 2023- November 09, 2023
Answers issued no later than	Posted periodically through November 13, 2023
<b>PHASE ONE</b> Applications due	<b>November 21, 2023 5:00 pm Pacific Time</b>
PHASE ONE Evaluation	November 22, 2023 – January 09, 2024
Encourage and Discourage Emails Sent	January 19, 2024
PHASE TWO Opens	January 19, 2024
Question & answer period 2	January 26, 2024 – March 13, 2024
<b>PHASE TWO</b> Applications due	<b>March 25, 2024 5:00 pm Pacific Time</b>
PHASE TWO Evaluation	March 25 – May 06, 2024
Conduct virtual presentations with finalists, if required	Scheduled as needed
Announce “Apparent Successful Applicant” and send notification via e-mail to unsuccessful Applicants	May 14, 2024
Hold debriefing conferences (if requested)	May 15, 2024 – May 23, 2024
Negotiate contract	May 14, 2024 – October 15, 2024
Earliest date contract may be signed	May 30, 2024

COMMERCE reserves the right to revise the above schedule.

### 2.3 QUESTION AND ANSWER PERIOD

COMMERCE will accept questions about this RFA sent to the RFA Coordinator at the email address listed in Section 2.1 during this period. Questions should not identify the submitting person or organization. COMMERCE will answer all questions in a Q&A document posted no later than the date identified in Section 2.2.

### 2.4 PRE-APPLICATION CONFERENCE

A pre-application conference is scheduled to be held at the date and time listed in RFA SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES. The pre-application conference will be virtual only. The meeting link is available on the Program Website listed in SECTION 2.1 RFA COORDINATOR. All prospective Applicants are encouraged attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-Application conference will be documented and answered in written form. A copy of the questions and answers will be posted to the website.

### 2.5 SUBMISSION OF APPLICATIONS

#### ELECTRONIC APPLICATIONS:

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

Applications must be submitted electronically as an attachment to an e-mail to the RFA Coordinator, at the e-mail address listed in Section 2.1. 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 Applications. The Submittal Letter and the Certifications and Assurances form must have a scanned or digital signature of the individual within the organization authorized to bind the Applicant to the offer. COMMERCE does not assume responsibility for problems with Applicant's e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Applications may not be transmitted using facsimile transmission.

Applicants should allow sufficient time to ensure timely receipt of the Application by the RFA Coordinator. **Late Applications 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. Applications should be sent in one email, however if more than one email is needed all must be received by the due date and time. Exceptions will not be made for partial submissions. Requests for deadline extensions will not be granted. All Applications and any accompanying documentation become the property of COMMERCE and will not be returned.

All applicants will receive an email confirming receipt of all applications submitted before the deadlines specified in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES within two (2) business days of receipt. If applicants do not receive a confirmation email within two (2) business days of submission, they should contact the RFA coordinator using the information provided in SECTION 2.1 RFA COORDINATOR.

### 2.6 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Applications submitted in response to this RFA shall become the property of COMMERCE. All Applications received shall remain confidential until the Apparent Successful Contractor is announced; thereafter, all Applications are subject to disclosure as provided for in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the Application that the Applicant desires to claim as proprietary and exempt from disclosure under the provisions of Chapter 42.56 RCW, or other state or federal law that provides for the nondisclosure of your document, must be clearly designated. The information must be clearly identified and the particular exemption from disclosure upon which the Applicant is making the claim

must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire Application exempt from disclosure or as Proprietary Information will not be honored.

If a public records request is made for the information that the Applicant has marked as "Proprietary Information," COMMERCE will notify the Applicant of the request and of the date that the records will be released to the requester unless the Applicant obtains a court order enjoining that disclosure. If the Applicant fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If a Applicant obtains a court order from a court of competent jurisdiction enjoining disclosure pursuant to Chapter 42.56 RCW, or other state or federal law that provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping as allowed by law. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFA Coordinator is required. All requests for information should be directed to the RFA Coordinator.

## **2.7 REVISIONS TO THE RFA**

*In the event it becomes necessary to revise any part of this RFA, addenda will be updated on the website listed in SECTION 2.1 RFA COORDINATOR. Addenda will also be published on Washington's Electronic Bid System (WEBS), 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 RFA and will be placed on the website.*

Such addenda will also be published anywhere the RFA is posted, including on COMMERCE'S public webpage, located at <http://www.commerce.wa.gov/serving-communities/current-opportunities/>.

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

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

## **2.8 DIVERSE BUSINESS INCLUSION PLAN**

Applicants are required to submit a Diverse Business Inclusion Plan with their Application describing in good faith their aspirational goals for subcontractor types. 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. No minimum level of minority- or women-owned business, Washington Small Businesses, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal governmental rules included or referenced in the contract documents will apply.

COMMERCE has the following agency goals:

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

## **2.9 ACCEPTANCE PERIOD**



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

## **2.10 COMPLAINT PROCESS**

Potential Applicants may submit a complaint to COMMERCE based on any of the 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 Application response deadline. The complaint must meet the following requirements:

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

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

## **2.11 RESPONSIVENESS**

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

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

Disqualified Applicants will be informed of the reason for disqualification.

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

## **2.12 MOST FAVORABLE TERMS**

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

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

## **2.13 CONTRACT GENERAL TERMS & CONDITIONS**

The Apparent Successful Contractor will be expected to enter into a contract which is substantially the same as the example contract and its general terms and conditions attached as Exhibit G. This sample contract is for information and review only and should not be returned with your Application. In no event is a Applicant to submit its own standard contract terms and conditions in response to this RFA. All proposed edits to the contract terms and conditions must be submitted as an attachment to Exhibit A, Certifications and Assurances form. COMMERCE will review requested edits and accept or reject the same at its sole discretion.

## **2.14 COSTS TO PROPOSE**

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

#### **2.15 NO OBLIGATION TO CONTRACT**

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

#### **2.16 REJECTION OF APPLICATIONS**

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

#### **2.17 COMMITMENT OF FUNDS**

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

#### **2.18 ELECTRONIC PAYMENT**

The state of Washington prefers to utilize electronic payment in its transactions. The successful Contractor must have or obtain a Statewide Vendor Number (SWV) from the Office of Financial Management to be paid by COMMERCE. For more information, visit: [www.ofm.wa.gov](http://www.ofm.wa.gov).

#### **2.19 INSURANCE COVERAGE**

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

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, if requested, a copy shall be forwarded to COMMERCE within fifteen (15) days of the contract effective date. Standard insurance requirements are included within the example contract and its special terms and conditions attached as Exhibit G.

#### **2.20 DISCLAIMER**

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

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

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

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

### 3. APPLICATION PROCESS AND CONTENTS

Applications should be submitted following the process found in SECTION 2.5 SUBMISSION OF APPLICATIONS. Additional details can be found in the application documents.

Application questions and detailed instructions are provided in the application forms located on the Research, Development and Demonstration webpage listed in SECTION 2.1 RFA COORDINATOR.

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

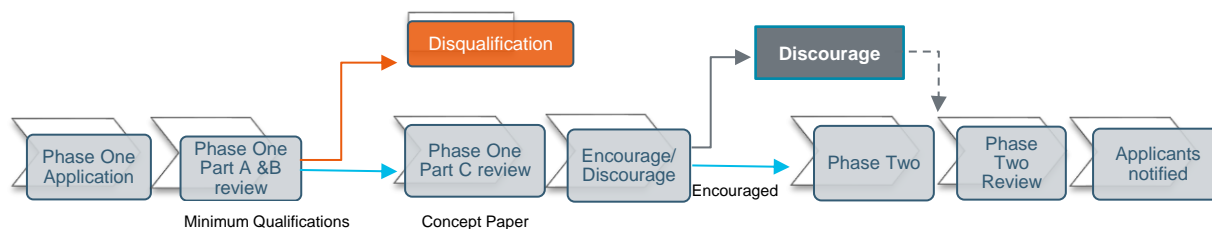
The Applicant must use the provided Application form and required attachments to provide all project information -- the evaluation team will review no other documents or attachments. Applications must provide information in the same order as presented in the application documents with the same headings. This will not only be helpful to the evaluators of the Application, but should also assist the Applicant in preparing a thorough response.

#### 3.1 TWO-PHASE APPLICATION PROCESS

Phase	Application Phase
Phase One	Part A: Applicant Information
	Part B: Minimum Qualifications
	Part C: Concept Paper
	Part D: Optional Information
	Part E: Exhibits/Attachments
Phase Two	Part A: Applicant and Project Information
	Part B: Partnerships and Equity
	Part C: Technical and Budget
	Part D: Team/Management Application
	Part E: Exhibits/Attachments

Both Track 1 and Track 2 will use the same Two-Phase application process and application forms. Applications and forms are different for each phase. Please refer to the application documents for details.

#### Two-Phase Application Process Overview



#### Phase One Process:

- PHASE ONE: Part A and Part B will be screened for minimum qualifications. COMMERCE staff will review PHASE ONE: Part A and Part B to determine whether it was properly completed, submitted on time, and whether it addresses and aligns with the minimum qualifications described in RFA SECTION 1.3 MINIMUM QUALIFICATIONS.

- PHASE ONE: Part A and Part B applications that do not pass the minimum qualifications screening will receive an email indicating they were administratively disqualified. If the project meets the minimum thresholds, the PHASE ONE: Part C application will be evaluated.
- An evaluation Team will review PHASE ONE applications in their entirety and assign a numerical score based on the criteria listed in SECTION 4.2 EVALUATION BREAKDOWN. COMMERCE staff will use the scores to issue “ENCOURAGE” or “DISCOURAGE” notices to applicants but will not release individual scores as part of the determination.
  - Favorably reviewed applicants will be notified via email with a recommendation of “Encouraged to submit PHASE TWO Application”
  - Unfavorably reviewed applicants will be notified via email a recommendation of “Discouraged to submit PHASE TWO Application.”
- Applicants will not receive feedback on the recommendation. Applicants will not receive an indication of the level of anticipated award since this will be determined in the Phase Two review. Applicants will not be provided an opportunity for project presentations or to request meetings or phone calls to discuss the projects at this stage. Applicants who were “Discouraged” can submit a PHASE TWO Application. However, the Evaluation Team will only review a limited number of PHASE TWO applications, and will prioritize reviewing the applicants receiving an “Encouraged” recommendation.
- Discouraged applicants who chose to submit an application are not guaranteed an application review. The “Encouraged” or “Discouraged” decision is intended to minimize the time and effort to develop a PHASE TWO Application for projects that do not meet the intent of the program or have a low chance of success.

#### **Phase Two Process:**

- Applicants will have approximately 65 calendar days from the receipt of the “Encouraged” or “Discouraged” email to submit a PHASE TWO Application. As stated in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES, COMMERCE reserves the right to revise the schedule at any time, and applicants may have fewer than 65 calendar days to prepare the PHASE TWO Application. Submitting a PHASE ONE Application does not obligate the applicant to submit a PHASE TWO Application. However, applicants must submit a PHASE ONE Application to be eligible for consideration for the PHASE TWO application.
- An Evaluation Team will evaluate PHASE TWO of Encouraged Applicants, including reviewing PHASE ONE part C for context.
- Scores, comments, and recommendations will be provided to COMMERCE for consideration when determining awards. COMMERCE will make all final funding decisions. Notification of Research, Development and Demonstration Program grant awards, along with notification of unsuccessful applications, will take place approximately according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.
- Successful applicants will enter into contract negotiations starting according to the schedule in SECTION 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES.

### **3.2 PHASE ONE APPLICATION CONTENTS**

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

#### **A. Part A: Application Information (Mandatory)**

- Application Title (Mandatory, Not Scored)
- Full Legal Name of Organization (Mandatory, Not Scored)
- Year Incorporated (Mandatory, Not Scored)
- Entity Type (Mandatory, Not Scored)
- Organization Mailing Address (Mandatory, Not Scored)
- Project Address (Mandatory, Not Scored)
- Project Address County (Mandatory, Not Scored)
- First Time CEF Applicant (Mandatory, Not Scored)
- Number of Employees (Mandatory, Not Scored)

- Supporting Applicant(s) (Mandatory, Not Scored)
- Primary contact person for this application (Mandatory, Not Scored)
- Executive (Person with authority to bind organization) (Mandatory, Not Scored)
- Additional Contacts (Please provide name, email and phone) (Mandatory, Not Scored)
- Principle Investigator(s) (Mandatory, Not Scored)
- Applicant Universal Business Identifier (UBI) (Mandatory, Not Scored)
- Statewide Vendor Number (SWV) (Mandatory, Not Scored)
- Research Stage (Mandatory, Not Scored)
- Funding Track (Mandatory, Not Scored)
- Grant Amount Requested (Mandatory, Not Scored)
- Match Ratio (Mandatory, Not Scored)
- Reduced Match Applicant (Mandatory, Not Scored)

**B. Part B: Minimum Qualifications (Mandatory)**

- Applicant Eligibility (Mandatory, Pass/Fail)
  - Lead applicant eligibility (Mandatory, Pass/Fail)
  - Demonstration of significant in-state presence and investment by conducting primary, research, development, demonstration and deployment in Washington. (Mandatory, Pass/Fail)
  - Business License status (Mandatory, Pass/Fail)
- Eligible Activities/Projects (Mandatory, Pass/Fail)
  - Research, development and demonstration of eligible clean energy technology (Mandatory, Pass/Fail)
  - Capital asset with a minimum of thirteen-year lifespan (Mandatory, Pass/Fail)
  - Consistency with the 2021 State Energy Strategy and policies under 19.405 RCW (Pass/Fail)

**C. Part C: Concept Paper (Mandatory, Scored)**

- Project Title (Mandatory, Not Scored)
- Project Summary (Mandatory, Scored)
- Impact on State and Federal Policies and Goals (Mandatory, Scored)
- Equity, Community Benefits and Partnerships (Mandatory, Scored)
- Funding Need And Match (Mandatory, Scored)
- Team and Facilities (Mandatory, Scored)
- Eligible Technology (Mandatory, Scored)
- Technology Readiness Level (Mandatory, Scored)

**D. Part D: Optional Questions (Optional)**

- Image (Optional)
- Bibliography and Citations (Optional)

**E. Part E: Exhibits/Attachments (Mandatory)**

- Biographical Sketches (Mandatory, Scored)

### **3.3 PHASE TWO APPLICATION CONTENTS**

Phase Two Application must be received by the RFA Coordinator by the date specified in SECTION 2.2. PHASE TWO Applications not received by the deadline will be disqualified. The application and required supplemental forms are on the website and/or in EXHIBITS of the RFA. Refer to the application for detailed instructions and contents.

**A. Part A: Application Information (Mandatory)**

- Application Title (Mandatory, Not Scored)
- Full Legal Name of Organization (Mandatory, Not Scored)
- Supporting Applicant(s) (Mandatory, Not Scored)
- Primary Contact person for application (Mandatory, Not Scored)
- Additional Contacts (Mandatory, Not Scored)
- Funding Track (Mandatory, Not Scored)
- Bonus Points: New Awardees (Mandatory, Scored)

**B. Part B: Partnerships and Equity (Mandatory, Scored)**

1. Partnerships Narrative (Mandatory, Scored)
2. Diversity, Equity, and Inclusion (Mandatory, Scored)
3. Job creation and workforce development (Mandatory, Scored)

4. Community and Tribal Benefits (Mandatory, Scored)
5. Community and Tribal Engagement (Mandatory, Scored)
6. Emissions Reductions (Mandatory, Scored)
- C. Part C: Technical Application and Budget (Mandatory, Scored)**
  7. Project Overview (Mandatory, Scored)
  8. Building on Existing Strengths in Washington (Mandatory, Scored)
  9. Background (Mandatory, Scored)
  10. Outcomes/Broader Impacts (Mandatory, Scored)
  11. Methodology (Mandatory, Scored)
  12. Risks (Mandatory, Scored)
  13. Work Plan (Mandatory, Scored)
  14. Scalability (Mandatory, Scored)
  15. Budget (Mandatory, Scored)
- D. Part D: Team and Management Application (Mandatory)**
  16. Facility and Organization (Mandatory, Scored)
  17. Team (Mandatory, Scored)
  18. Roles and Responsibilities (Mandatory, Scored)
  19. Related Information (Mandatory, Not Scored)
- E: Part E: Exhibits/Attachments (Mandatory and Optional)**
  - Exhibit A to RFA: Certifications and Assurances form (Mandatory, Not Scored)
  - Exhibit B to RFA: Diverse Business Inclusion Plan (Mandatory, Not Scored)
  - Exhibit C to RFA: Workers Rights Certification (Mandatory, Scored)
  - Exhibit D to RFA: Assurances or Documentation of Secured Match (Optional, Scored)
  - Memorandum of Understanding/Partnership Letter (Optional, Scored)
  - Budget Sheet (Mandatory, Scored)
  - Community Input (Optional, Scored)
  - Certification from Washington State Office of Minority and Women's Business Enterprises (OMWBE) (Optional, Not Scored)

## 4. EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

Complete and responsive Applications will be evaluated strictly in accordance with the requirements stated in this RFA and any addenda issued. The evaluation of Applications will be accomplished by an evaluation team to be designated by COMMERCE, which will determine the ranking of the Applications. COMMERCE staff will review the Application to determine whether it a) was properly completed, b) submitted on time, and c) whether it addresses and aligns with the minimum qualifications described in RFA Section 1.3 MINIMUM QUALIFICATIONS. If the application does not meet threshold criteria, it will not be scored.

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

COMMERCE, in its sole discretion, may elect to invite top-scoring Applicants as finalists for a virtual presentation or interview.

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

### 4.2 EVALUATION BREAKDOWN

The following weighting will be assigned to each Application section for evaluation purposes. Subsections may or may not be of equal weight.

Additionally, those organizations which certify they do not require their employees to sign an individual arbitration clause as a condition of employment will receive an extra 3% of their awarded points added to their final score (see Exhibit C).

#### **Phase One: Weighting**

<b>Application Section</b>	<b>Criteria</b>	<b>Weight</b>
Part A: Applicant Information	Applicant and Project Information	Not Scored
Part B: Minimum Qualifications	Applicant Eligibility	Pass/Fail
	Eligible Activities/Projects	Pass/Fail
Part C: Concept Paper Project Narrative	1. Project Summary	20
	2. Impact on State and Federal Policies and Goals	10
	3. Equity, Community Benefits, and Partnerships	20
	4. Funding Need and Match Requirement	10
	5. Team and Facilities	20
	6. Eligible Technology	10
	7. Technology Readiness Level	10
Part D: Optional Information	8. Image (Optional)	Not Scored
	9. Bibliography and Citations	Not Scored
<b>Phase One Total</b>		<b>100 points</b>

The weights for PHASE ONE are guidelines for applicants on which questions the review team will prioritize. PHASE ONE will have a numerical score determined by reviewers and not shared publicly, but used to issue an “Encouraged” or “Discouraged” determination.

#### **Phase Two Weighting**

<b>Application Section</b>	<b>Criteria</b>	<b>Weight</b>
Part A: Applicant Information	Applicant Information	Not Scored
	Additional Evaluation Points: New awardees	10 points added to score
Part B: Partnerships and Equity 30%	1. Partnerships	15 points
	2. Diversity, Equity and Inclusion	5 points
	3. Job Creation and Workforce Development	10 points
	4. Community and Tribal Benefits	15 points
	5. Community and Tribal Engagement	10 points
	6. Emissions Reductions	5 points
Part C: Technical and Budget 50%	7. Project Overview	10 points
	8. Building on Washington's Strengths	5 points
	9. Background	10 points
	10. Outcomes/Broader Impacts	10 points
	11. Methodology	15 points
	12. Risks	10 points
	13. Work Plan	15 points
	14. Scalability	5 points
	15. Budget -Budget -Additional match -Secured match	20 points
Part D: Team and Management Application 20%	16. Facility and Organization	15 points
	17. Team	15 points
	18. Roles and Responsibilities	10 points
	19. Related Information	Not Scored
Phase Two Total		<b>200 points</b>  210 points with new awardee additional points
Part E: Exhibits/Attachments	Worker's Rights Certification without individual arbitration clause	3% added to applicant's overall score

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

COMMERCE reserves the right to consider geographic location when awarding funding.



### **4.3 VIRTUAL PRESENTATIONS MAY BE REQUIRED**

After evaluating the written Applications COMMERCE may elect to schedule virtual presentations or interviews of top-scoring Applicants. If so, COMMERCE will contact the top-scoring Applicants from the written evaluation to schedule a date and time to meet on a platform such as Zoom or Microsoft Teams. Any commitments made by the Applicant during a virtual presentation or interview will be considered binding.

The scores from the written evaluation and the virtual presentation combined together will determine the Apparent Successful Contractor.

### **4.4 NOTIFICATION TO APPLICANTS**

COMMERCE will notify the Apparent Successful Contractor(s) of their selection in writing upon completion of the evaluation process. Applicants who were not selected for further negotiation or award will be notified separately. Notification may also be made to the COMMERCE public website, Washington Electronic Business Solution (WEBS), or other publically accessible locations.

### **4.5 DEBRIEFING OF UNSUCCESSFUL APPLICANTS**

Any Applicant who has submitted a Application and received notice that they were not selected for contract negotiation may request a debriefing. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Unsuccessful Applicant Notification is e-mailed to the Applicant. The debriefing must be scheduled within three (3) business days of the request.

Discussion at the debriefing conference is strictly limited to the following:

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

Comparisons between Applications or evaluations of the other Applications is not allowed. COMMERCE will not discuss any items other than the three bullet points above. Debriefing conferences may be conducted on the telephone or by other electronic means and will be scheduled for a maximum of thirty (30) minutes. COMMERCE reserves the right to end a debriefing for any reason.

### **4.6 PROTEST PROCEDURE**

Protests may be filed only by Applicants who submitted a response to this RFA and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest with the RFA Coordinator. Protests must be received by the RFA Coordinator no later than 5:00pm Pacific time on the fifth business day following the debriefing. Protests must be submitted by email. Applicants may choose to copy COMMERCE'S Central Contracts Office at [comcustserv@commerce.wa.gov](mailto:comcustserv@commerce.wa.gov). Do not copy any other COMMERCE staff.

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

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

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

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

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

Scores received are not a valid basis of protest and will be dismissed as without merit unless included with facts supporting bias, discrimination, or conflict of interest on the part of an evaluator.

Upon receipt of a protest, a protest review will be held by COMMERCE. COMMERCE'S Chief Contracts Officer, or other employee delegated by the Director who was not involved in the award process, will consider the record along with 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 directly impact the actual interest of another Applicant, such Applicant may be given an opportunity to submit its views and any relevant information on the protest.

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action; or
- Find only technical or harmless errors in COMMERCE'S process and determine COMMERCE to be in substantial compliance and reject the protest; or
- Find merit in the protest and provide COMMERCE options which may include:
  - Correct the error(s) and re-evaluate all Applications, or
  - Cancel this RFA and begin a new process, or
  - Make other findings and determine other courses of action as appropriate.

If COMMERCE does not find merit in the protest, COMMERCE may enter into a contract with the Apparent Successful Contractor(s). If the protest is determined to have merit, one of the options above will be taken.

## **5. RFA EXHIBITS**

Exhibit A	Certifications and Assurances
Exhibit B	Diverse Business Inclusion Plan
Exhibit C	Workers' Rights Certification
Exhibit D	Assurances or Documentation of Secured Match
Exhibit E	Technology Readiness Level
Exhibit F	2021 State Energy Strategy
Exhibit G	Capital 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 Application to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:**

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

**I/We have reviewed the Contract and General Terms and Conditions and I/we: *(check one)***

- ☐ **are** submitting proposed contract edits. If proposed contract edits are being submitted for consideration, I/we have attached them to this form. *(See Section 2.14)*
- ☐ **are not** submitting proposed contract edits. *(Default if neither are checked)*

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

---

Signature of Applicant

---

Date

---

Printed Name

---

Title

## EXHIBIT B: DIVERSE BUSINESS INCLUSION PLAN

Please see Section 2.9 for more information regarding the Diverse Business Inclusion Plan.

### If awarded a contract as a result of this RFA,

	Yes	No
Do you anticipate subcontracting* with State Certified Minority Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate subcontracting with State Certified Women's Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate subcontracting with State Certified Veteran Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
Do you anticipate subcontracting with Washington State Small Businesses?	<input type="checkbox"/>	<input type="checkbox"/>

### Applicant's Goals:

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

Minority-owned businesses: \_\_\_\_\_%

Woman-owned businesses: \_\_\_\_\_%

Veteran-owned businesses: \_\_\_\_\_%

Small businesses: \_\_\_\_\_%

### If you plan to subcontract and answered 'No' to all questions above, please explain:

[Click or tap here to enter text.](#)

☐ I/We do not plan to subcontract any of the work described in this RFA.

Please identify the person in your organization who will manage your Diverse Business Inclusion Plan related to this project:

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

Title: \_\_\_\_\_

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

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

**\* Please note that subcontracting must be done in accordance with contractual terms and conditions which may include specific subcontractor selection requirements. Do not select subcontractors until you have reviewed all applicable requirements.**

## EXHIBIT C: Workers' Rights Certification

**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 Department of Commerce is seeking to contract with qualified organizations which certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers. See Section 4.2.

RFA Number: RDD2023

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

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

**OR**

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

**OR**

- ☐ This organization certifies it has no employees.

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

NAME: \_\_\_\_\_  
Print full legal entity name of organization

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

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

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

Return to Procurement Coordinator as part of your complete response.

**Exhibit D: ASSURANCES OR DOCUMENTATION OF REQUIRED MATCH SAMPLE**

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

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

---

Non-state Funding Letter of Intent to Commit

*(date)*

*(applicant name, title and address)*

Dear (applicant chief executive officer),  
I am pleased to confirm our commitment of (\$xxxxxx) towards *(project title)*.

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

1. Please notify us once the match is fulfilled. You may subsequently draw upon our committed funds in whole or in part (revise per standard practice of funding organization).
2. (Add any unique conditions and/or expectations of non-state funding source here such as subject to completion of due diligence.)
3. Please sign and return a copy of this intent to commit letter to verify your acceptance of this offer and the conditions herein.

Sincerely,

(name and title of person authorized to make offer)

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

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

## **Exhibit E: Technology Readiness Level**

Technology Readiness Level (TRL) is a method of measuring the maturity of a technology, with respect to commercialization, originally developed by NASA. While there are many TRL definitions and scales, please refer to Table 1. “Technology Readiness Levels” under the [Department of Energy Technology Readiness Assessment Guide](#).



## **Exhibit F: 2021 State Energy Strategy**

[Executive Summary of 2021 State Energy Strategy](#)

**Exhibit G: Capital Contract Template**



**Capital Agreement with**

Please enter the Local Government /Business Name of Recipient Organization

**through**

Click or tap here to enter text.

**Contract Number:**

Please enter Contract Number

**For**

Provide Project Title/ Primary Contract Purpose in 25 words or less

**Dated: Please enter start date of contract**

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**Face Sheet**

Contract Number: &lt;Insert Number&gt;

Energy Division, Energy Programs in Communities  
Research, Development and Demonstration Program

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (as applicable) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Contractor Representative <Insert name> <Insert title> <Insert phone> <Insert FAX> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert FAX> <Insert e-mail>	
5. Contract Amount <Insert \$ Total>	6. Funding Source Federal: <input type="checkbox"/> State: <input checked="" type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>		Federal Agency: <u>ALN</u> <Insert name> <Insert number>	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # <Insert number>
14. Contract Purpose <Briefly describe contract purpose>			
<p>COMMERCE, defined as the Department of Commerce, and Contractor acknowledge and accept the terms of this Contract and attachments and have executed this Contract on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Contract are governed by this Contract and the following other documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" – Scope of Work, Attachment "B" – Budget, Attachment "C" – Reporting.</p>			
<p>FOR CONTRACTOR</p>  <p>_____ &lt;insert name&gt;, &lt;insert title&gt;</p> <p>_____ Signature</p> <p>_____ Date</p>		<p>FOR COMMERCE</p>  <p>_____ &lt;insert name&gt;, &lt;insert title&gt;</p> <p>_____ Date</p> <p>APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE</p>	

**DECLARATIONS**

The Washington State Department of Commerce (Commerce) has appropriated state funds under SECTION 1005 of Engrossed Substitute Senate Bill 6248, SECTION 1028 of the Second Engrossed House Bill 1115, SECTION 1013 of Substitute Senate Bill 6090, SECTION 1064 of the Substitute House Bill 1080 and Section 1017 of Substitute Senate Bill 5200, to provide grants for the Research, Development And Demonstration program.

## CLIENT INFORMATION

Legal Name:  
Contract Number:  
Award Year:  
State Wide Vendor Number:

## PROJECT INFORMATION

Project Title:  
Project Address:  
Project City:  
Project State:  
Project Zip Code:

## GRANT INFORMATION

Grant Amount:  
Non-State Match  
Type of Match Accepted:  
Earliest Date for Reimbursement:  
Time of Performance:

## PROGRAM SPECIFIC TERMS AND CONDITIONS GOVERNING THIS GRANT

### **Program Specific Terms and Conditions**

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

#### **1. BILLING AND COMPENSATION FOR PERFORMANCE BASED CONTRACT (REPLACES SPECIAL TERMS AND CONDITIONS #3 BILLING PROCEDURES AND PAYMENT )**

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

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

The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed and the milestone number(s) achieved.

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

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

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

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

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

### **Invoices and End of Fiscal Year**

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

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

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

### **Duplication of Billed Costs**

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

### **Disallowed Costs**

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

## **2. INSURANCE (REPLACES SPECIAL TERMS AND CONDITIONS #6 INSURANCE)**

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

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

The Grantee shall submit to COMMERCE within fifteen (15) calendar days of the Contract start date, a certificate of insurance which outlines the coverage and limits defined in this insurance SECTION.

The Grantee shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation. The Grantee shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

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

## **3. SUBCONTRACTING (REPLACES GENERAL TERMS AND CONDITIONS #37 SUBCONTRACTING)**

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

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



from subcontracting with a particular person or entity; or (c) require the Grantee to rescind or amend a subcontract.

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

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

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

## Special Terms and Conditions

### 1. CONTRACT MANAGEMENT

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

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

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

### 2. COMPENSATION

COMMERCE shall pay an amount not to exceed the amount shown as grant amount on the Contract Face Sheet for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Grantee's compensation for services rendered shall be based on the schedule set forth in Attachment "B" – Budget.

### 3. BILLING PROCEDURES AND PAYMENT (REPLACED BY PROGRAM SPECIFIC TERMS AND CONDITIONS #1)

~~COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE not more often than monthly nor less than quarterly.~~

~~The invoices shall describe and document, to COMMERCE's satisfaction, a description of the work performed, the progress of the project, and fees. The invoice shall include the Contract Number \_\_\_\_\_. If expenses are invoiced, provide a detailed breakdown of each type. A receipt must accompany any single expenses in the amount of \$50.00 or more in order to receive reimbursement. Payment shall be considered timely if made by COMMERCE within thirty (30) calendar days after receipt of properly completed invoices. Payment shall be sent to the address designated by the Contractor.~~

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

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

#### Invoices and End of Fiscal Year

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

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

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

#### Duplication of Billed Costs

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

#### Disallowed Costs

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

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

#### 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.

#### 5. HISTORICAL OR CULTURAL ARTIFACTS

Prior to approval and disbursement of any funds awarded under this Contract, Contractor shall complete the requirements of Governor's Executive Order 21-02, where applicable, or Contractor shall complete a review under Section 106 of the National Historic Preservation Act, if applicable. Contractor agrees that the Contractor is legally and financially responsible for compliance with all laws, regulations, and agreements related to the preservation of historical or cultural resources and agrees to hold harmless COMMERCE and the state of Washington in relation to any claim related to such historical or cultural resources discovered, disturbed, or damaged as a result of the project funded by this Contract.

In addition to the requirements set forth in this Contract, Contractor shall, in accordance with Governor's Executive Order 21-02 coordinate with Commerce and the Washington State Department of Archaeology and Historic Preservation ("DAHP"), including any recommended consultation with any affected Tribe(s), during Project design and prior to construction to determine the existence of any tribal cultural resources affected by Project. Contractor agrees to avoid, minimize, or mitigate impacts to the cultural resource as a continuing prerequisite to receipt of funds under this Contract.

The Contractor agrees that, unless the Contractor is proceeding under an approved historical and cultural monitoring plan or other memorandum of agreement, if historical or cultural artifacts are discovered during construction, the Contractor shall immediately stop construction and notify the local historical preservation officer and the state's historical preservation officer at DAHP, and the Commerce Representative identified on the Face Sheet. If human remains are uncovered, the Contractor shall report the presence and location of the remains to the coroner and local enforcement immediately, then contact DAHP and the concerned Tribe's cultural staff or committee.

The Contractor shall require this provision to be contained in all subcontracts for work or services related to the Scope of Work attached hereto.

In addition to the requirements set forth in this Contract, Contractor agrees to comply with RCW 27.44 regarding Indian Graves and Records; RCW 27.53 regarding Archaeological Sites and Resources; RCW 68.60 regarding Abandoned and Historic Cemeteries and Historic Graves; and WAC 25-48 regarding Archaeological Excavation and Removal Permit.

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

In the event that the Contractor finds it necessary to amend the Scope of Work the Contractor may be required to re-comply with Governor's Executive Order 21-02 or Section 106 of the National Historic Preservation Act.

#### 6. INSURANCE (REPLACED BY PROGRAM SPECIFIC TERMS AND CONDITIONS #2)

~~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 the Contract start date OR a written request by COMMERCE, a certificate of insurance which outlines the coverage and limits defined in this insurance section. During the term of the Contract, if required or requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.~~

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

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

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

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

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

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

- ~~A. The amount of fidelity coverage secured pursuant to this Contract shall be \$100,000 or the highest of planned reimbursement for the Contract period, whichever is lowest. Fidelity insurance secured pursuant to this paragraph shall name COMMERCE as beneficiary.~~
- ~~B. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.~~

## **7. FRAUD AND OTHER LOSS REPORTING**

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

## 8. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Attachment D - Proviso
- Program Specific Terms and Conditions
- Special Terms and Conditions
- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Attachment C - Reporting

## General Terms and Conditions

### 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 Washington Department of Commerce.
- C. "Contract" or "Agreement" or "Grant" 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" or "Grantee" 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 and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).
- F. "State" shall mean the state of Washington.
- G. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

### 2. ALLOWABLE COSTS

Costs allowable under this Contract are actual expenditures according to an approved budget up to the maximum amount stated on the Contract Award or Amendment Face Sheet.

### 3. ALL WRITINGS CONTAINED HEREIN

This Contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

### 4. AMENDMENTS

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

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

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### 6. APPROVAL

This contract shall be subject to the written approval of COMMERCE's Authorized Representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment executed by both parties.

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

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

**9. CODE REQUIREMENTS**

All construction and rehabilitation projects must satisfy the requirements of applicable local, state, and federal building, mechanical, plumbing, fire, energy and barrier-free codes. Compliance with the Americans with Disabilities Act of 1990 28 C.F.R. Part 35 will be required, as specified by the local building Department.

**10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

- i.** All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
- ii.** All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
- iii.** All Personal Information in the possession of the Contractor that may not be disclosed under state or federal law.

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

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

**11. CONFORMANCE**

If any provision of this contract violates any statute or rule of law of the state of Washington, it is considered modified to conform to that statute or rule of law.

**12. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, 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 procurement planning and execution, awarding contracts, and monitoring contract, 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.

### **13. COPYRIGHT**

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

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

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

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

### **14. DISALLOWED COSTS**

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

### **15. DISPUTES**

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

The request for a dispute hearing must:



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

The respondent shall send a written answer to the requestor's statement to both the Director or the Director's designee and the requestor within five (5) working days.

The Director or designee shall review the written statements and reply in writing to both parties within ten (10) working days. The Director or designee may extend this period if necessary by notifying the parties.

The decision shall not be admissible in any succeeding judicial or quasi-judicial proceeding.

The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Contract shall be construed to limit the parties' choice of a mutually acceptable alternate dispute resolution (ADR) method in addition to the dispute hearing procedure outlined above.

#### **16. DUPLICATE PAYMENT**

Contractor certifies that work to be performed under this contract does not duplicate any work to be charged against any other contract, subcontract, or other source.

#### **17. GOVERNING LAW AND VENUE**

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

#### **18. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, 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's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Contractor, its subcontractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Contractor or its subcontractors, agents, or employees.

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

#### **19. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the

Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

**20. INDUSTRIAL INSURANCE COVERAGE**

The Contractor shall comply with all applicable provisions of Title 51 RCW. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, COMMERCE may collect from the Contractor the full amount payable to the Industrial Insurance Accident Fund. COMMERCE may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by COMMERCE under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

**21. LAWS**

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

**22. LICENSING, ACCREDITATION AND REGISTRATION**

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

**23. LIMITATION OF AUTHORITY**

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

**24. LOCAL PUBLIC TRANSPORTATION COORDINATION**

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

**25. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

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

**26. PAY EQUITY**

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

- A.** Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;
- B.** Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:
  - i.** A seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference

in compensation levels.

- ii. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: Consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential.
- iii. A bona fide regional difference in compensation level must be: Consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential.

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

## **27. POLITICAL ACTIVITIES**

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

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

## **28. PREVAILING WAGE LAW**

The Contractor certifies that all contractors and subcontractors performing work on the Project shall comply with state Prevailing Wages on Public Works, Chapter 39.12 RCW, as applicable to the Project funded by this contract, including but not limited to the filing of the "Statement of Intent to Pay Prevailing Wages" and "Affidavit of Wages Paid" as required by RCW 39.12.040. The Contractor shall maintain records sufficient to evidence compliance with Chapter 39.12 RCW, and shall make such records available for COMMERCE's review upon request.

## **29. PROHIBITION AGAINST PAYMENT OF BONUS OR COMMISSION**

The funds provided under this Contract shall not be used in payment of any bonus or commission for the purpose of obtaining approval of the application for such funds or any other approval or concurrence under this Contract provided, however, that reasonable fees or bona fide technical consultant, managerial, or other such services, other than actual solicitation, are not hereby prohibited if otherwise eligible as project costs.

## **30. PUBLICITY**

The Contractor agrees not to publish or use any advertising or publicity materials in which the state of Washington or COMMERCE's name is mentioned, or language used from which the connection with the state of Washington's or COMMERCE's name may reasonably be inferred or implied, without the prior written consent of COMMERCE.

## **31. RECAPTURE**

In the event that the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, COMMERCE reserves the right to recapture funds in an amount to compensate COMMERCE for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by COMMERCE. In the alternative, COMMERCE may recapture such funds from payments due under this Contract.

## **32. RECORDS MAINTENANCE**

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

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.

**33. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**34. RIGHT OF INSPECTION**

At no additional cost all records relating to the Contractor's performance under this Contract shall be subject at all reasonable times to inspection, review, and audit by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, in order to monitor and evaluate performance, compliance, and quality assurance under this Contract. The Contractor shall provide access to its facilities for this purpose.

**35. SAVINGS**

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

**36. SEVERABILITY**

The provisions of this contract are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the contract.

**37. SUBCONTRACTING (REPLACED BY PROGRAM SPECIFIC TERMS AND CONDITIONS #4)**

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

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

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

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

**38. SURVIVAL**

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

### **39. TAXES**

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

### **40. TERMINATION FOR CAUSE**

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

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

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

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

### **41. TERMINATION FOR CONVENIENCE**

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

### **42. TERMINATION PROCEDURES**

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

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

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

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

- A.** Stop work under the contract on the date, and to the extent specified, in the notice;
- B.** Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;

- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

#### 43. TREATMENT OF ASSETS

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

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

#### 44. WAIVER

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

**Attachment A: Scope of Work**

**Attachment B: Budget**



### **Attachment C: Reporting**

The Grantee must provide quarterly written reports and/or host a regular quarterly video and/or phone call with COMMERCE for project update purposes. Phone contact should cover current status of the project and any barriers that are potentially affecting the project schedule.

The Grantee shall provide a quarterly report to COMMERCE, no later than 15 days after the end of each quarter. The report form will be provided by Commerce. The report should describe the project activity that occurred during the quarter, including but not limited to:

1. A narrative summarizing project activities, risks and issues mitigated, and lessons learned;
2. The project milestones met to date and anticipated in the subsequent quarter (such as through a project Gantt Chart schedule provided quarterly in Microsoft Project format showing actual progress to date along with the baseline schedule developed at project kickoff etc.); and,
3. Any additional metrics required from the capital budget proviso, legislature, governor's office, or COMMERCE.
4. Quarterly updated invoice projection sheet for grant expenditures. Commerce will provide the invoice projection sheet;

Submit a fact sheet at the end of the contract period. Commerce may request the fact sheet be updated as conditions warrant.

**Attachment D: Proviso**

**Substitute House Bill 1080, Sec. 1064,**

**2021-23 Clean Energy V - Investing in Washington's Clean Energy**

(9) \$10,830,000 of the state building construction account—state  
22 appropriation is provided solely for grants for strategic research  
23 and development for new and emerging clean energy technologies. These  
24 grants must be used to match federal or other nonstate funds to  
25 research, develop, and demonstrate clean energy technologies,  
26 focusing on areas that help develop technologies to meet the state's  
27 climate goals, offer opportunities for economic and job growth, and  
28 strengthen technology supply chains. The program may include, but is  
29 not limited to: Solar technologies, advanced bioenergy and biofuels,  
30 development of new earth abundant materials or lightweight materials,  
31 advanced energy storage, recycling energy system components, and new  
32 renewable energy and energy efficiency technologies.

33       (a) \$5,000,000 of the appropriation in this section is provided  
34       solely for competitive grants.

**Engrossed Substitute Senate Bill 5200, Sec. 1017**

**2023-2025**

(11) \$12,000,000 of the appropriation in the section is provided solely for grants for strategic research, development, and demonstration of new and emerging clean energy generation and storage technologies and climate change mitigation technologies, including greenhouse gas removal. Grants awarded under this subsection must reduce reliance on fossil fuels, reduce risk of irregularities in power supply, offer opportunities for economic and job growth, and strengthen technology supply chains. Grant funds are intended to catalyze diverse new technologies that change production, use, storage, and transportation of energy. The department may provide funding to projects at various stages of readiness, including early-stage research, pilot and demonstration projects, and dual use projects that produce clean energy and additional benefits.