



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

**REQUEST FOR APPLICATIONS (RFA)
RFA NO. EE-024**

NOTE: Please read this entire document before submitting a response. Responses that do not meet one or more requirement stated herein may be disqualified and not scored.

PROJECT TITLE: Energy Efficiency Grants Solicitation (EE-024)

RESPONSE DUE DATE: Accepted August 26 – September 25, 2024 by 4pm Pacific time

EXPECTED TIME PERIOD FOR CONTRACT:

Ends June 30, 2025. Pending legislative approval this funding may be appropriated to extend the contract end date. Extensions and/or additional funding are not guaranteed.

CONTRACTOR ELIGIBILITY: This procurement is open to those entities which satisfy the minimum qualifications stated herein and are available for work in Washington.

Applicants must be public entities in the state of Washington, such as:

- Local agencies, including any city, town, county, special district, municipal corporation, agency, port district or authority
- Public higher education institutions
- K-12 public school districts
- State agencies
- Federally-recognized Tribal government

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.

CONTENTS OF THE REQUEST FOR APPLICATIONS:

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

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- Exhibit B Applicant Information
- Exhibit C Diverse Business Inclusion Plan
- Exhibit D Workers' Rights Certification
- Exhibit E Example Contract with General Terms and Conditions

1 INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington State Department of Commerce hereafter called "COMMERCE," is initiating this Request for Applications (RFA) to solicit proposals from those qualified and interested in grant funding for retrofitting existing facilities and related projects that achieve energy and operational cost savings.

The Energy Retrofits and Solar Power for Public Buildings grants are open to local governments, public higher education institutions, school districts, federally recognized Tribal governments, and state agencies.

Engrossed Substitute Senate Bill 5949 as Amended by the House in Section 1002, authorizes \$14,500,000 for Energy Efficiency Grants in the 2023-25 Energy Retrofits and Solar Power for Public Buildings proviso.

1.2 OBJECTIVES

The proviso provides for at least 20 percent of the funds awarded be designated for award to eligible projects in small cities or towns with a population of 5,000 or fewer residents. A higher energy savings to investment ratio must result in a higher project ranking. Priority consideration must be given to applicants that have not received grant awards for this purpose in prior biennia. Whenever possible and the most cost effective, projects should select the use of non-fossil fuel systems.

40% of the funds will be reserved for K-12 public school districts. School districts that submit a concept paper with estimated budget by the close of the initial application period, will have an additional 30 days to submit the full application. Concept papers must be reviewed and accepted by Commerce.

Another primary objective of this funding is to support the retrofit of publicly owned buildings that are pursuing compliance with Washington's Clean Buildings Performance Standard. Tier 1 buildings in this process will receive priority consideration.

Priority will also be given to applicants with a developed community engagement plan for gauging community needs and impacts related to the proposed project.

COMMERCE may award multiple contract(s) as a result of this RFA.

1.3 MINIMUM QUALIFICATIONS

All applications that meet these minimum qualifications will be reviewed and scored. It is not necessary for a project to meet all of the program objectives (Sec. 1.2) to be considered.

Minimum qualifications for the applicant include:

- Licensed to do business in Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Applicant.
- Applicants must be public entities in the state of Washington, such as:
 - Local agencies, including any city, town, county, special district, municipal corporation, agency, port district or authority
 - Public higher education institutions
 - K-12 public school districts
 - State agencies
 - Federally-recognized Tribal government
- Must submit an energy audit that meets the standards of a level 1, level 2, or targeted level 2 audit conducted no earlier than January 1, 2019. (Cost is reimbursable if the audit was done after July 1, 2023 and the application is funded.)
- Must submit a complete application in the format, within the timeframe, and per the method of submission as outlined in this RFA. (Sections 2 and 3)

Minimum qualifications of the project include:

- Applicant must either own the facilities proposed for retrofit, or hold a lease that extends beyond the time of the expected life of the proposed energy efficiency measure.
- The project must be for improvements to existing facilities and related projects that result in energy and operational cost savings. All aspects of the project must be directly related to the proposed primary improvement measure.
- Projects must have a simple payback of fewer than 35 years using statewide average utility rates.
- Projects must use non-fossil fueled equipment or demonstrate why that is not possible or cost effective.
- The project must include a continuous commissioning plan to maintain the efficiency gains.

Applications which 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

Commerce has budgeted an amount not to exceed \$14,065,000 for this competitive solicitation. This amount represents the deduction of 3% for administrative costs as approved by the Office of Financial Management.

Applications in excess of \$1,000,000 or less than \$100,000 will be rejected as non-responsive and will not be evaluated. The same applicant can apply for more than one award with the combined maximum totaling no more than \$1,000,000.

Minimum match requirements of 15% for all eligible applicants EXCEPT

- 5% for applicants proposing projects in locations shown on the [CEJEST Map of overburdened and disadvantaged communities](#) . (Applicants whose communities are not shown on the map, may self-attest to a specific environmental disparity by attaching a description of the specific situation.)
- 0% for state agencies including higher education
- State funds may not be used as match

In the event additional funding becomes available, any contract awarded may be amended to provide for additional related services. Additional funding is not guaranteed.

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

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

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract(s) resulting from this RFA is tentatively scheduled to begin on or about October 1, 2024 and to end on June 30, 2025. Pending legislative approval this funding may be appropriated to extend the contract end date. Extensions and/or additional funding are not guaranteed.

1.6 CONTRACTING WITH CURRENT OR FORMER STATE EMPLOYEES

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

1.7 DEFINITIONS

Definitions for the purposes of this RFA include:

Apparent Successful Applicant/Bidder/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: 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 RFA.

Clean Buildings Performance Standard: The Clean Buildings Performance Standard consists of ASHRAE Standard 100-2018 and state amendments to ASHRAE Standard 100-2018, WAC194-50. Use the following link to access the integrated document: <https://www.commerce.wa.gov/growing-the-economy/energy/buildings/clean-buildings-performance-standard/>

COMMERCE: 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.

Applicant or Grantee: Individual or organization whose Application has been accepted by COMMERCE and is awarded a fully executed, written contract.

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

Qualified Energy Auditor: A person acting as the auditor of record having training, expertise and three years professional experience in *building* energy auditing and any one of the following:

- (a) A licensed professional architect or engineer;
- (b) A [building energy assessment professional \(BEAP\)](#) certified by the [American Society of Heating, Refrigerating and Air-Conditioning Engineers](#) (ASHRAE);
- (c) A certified energy auditor (CEA) certified by the [Association of Energy Engineers](#) (AEE).
- (d) [A certified energy manager \(CEM\) in current standing, certified by the Association of Energy Engineers \(AEE\).](#)
- (e) [An energy management professional \(EMP\) certified by the Energy Management Association \(EMA\).](#)

Qualified Person: A person having training, expertise and three years professional experience in *building* energy use analysis and any of the following:

- (a) A licensed professional architect or engineer in the state of Washington;
- (b) A person with Building Operator Certification (BOC) Level II by [Building Potential](#);
- (c) A building commissioning professional certified by an ANSI/ISO/IEC 17024:2012 accredited organization;
- (d) *A qualified energy auditor*;
- (e) A certified energy manager (CEM) in current standing, certified by the [Association of Energy Engineers \(AEE\)](#);
- (f) An energy management professional (*EMP*) certified by the [Energy Management Association \(EMA\)](#);
- (g) (g) A person with South Seattle College Sustainable Building Science Technology Bachelor of Applied Science degree, or as approved as equivalent by the *AHJ*.

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.

1.8 ADA

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

2 GENERAL INFORMATION

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	Paul Currington
Email	energyretrofits@commerce.wa.gov
Program webpage	https://www.commerce.wa.gov/growing-the-economy/energy/energy-efficiency/

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	July 16, 2024
Applicants' Conference	July 23, 2024
Question & answer period	July 23 – August 16, 2024
Answers issued no later than	August 19, 2024
Applications Accepted	Beginning August 26, 2024 – September 25, 2024 by 4pm Pacific time*
Evaluation	August 27 – Sept. 17, 2024
Announce "Apparent Successful Applicant" and send notification via e-mail to unsuccessful Applicants	September 19, 2024
Hold debriefing conferences (if requested)	September 20-27, 2024
Negotiate contract	October 7 – 28, 2024
Earliest date contract may be signed	October 28, 2024

*K-12 School Districts may submit concept papers for review with full applications by September 25.

COMMERCE reserves the right to revise the above schedule.

2.3 APPLICANTS' PRE-APPLICATION CONFERENCE

Commerce will offer online sessions following the release of this RFA to enable prospective applicants to ask initial questions. A transcript of the All-Applicant session will be posted to the program webpage both in English and in Spanish.

A pre-application conference for all applicants will be held on *Monday August 5 at 10 a.m.*, Pacific time. The conference will be virtual only on a platform such as Zoom or Microsoft Teams. Email the RFA Coordinator to receive the meeting link. All prospective Applicants are encouraged attend; however, attendance is not mandatory.

A pre-application conference for tribal applicants only will be held on *Monday August 5 at 3 p.m.*, Pacific time. The conference will be virtual only on a platform such as Zoom or Microsoft Teams. Email the RFA Coordinator to receive the meeting link.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the Applicants' conference will be documented and answered in written form and posted to the program webpage, with updates at least weekly.

Questions may be submitted in English or Spanish. If Spanish, answers will be posted in both languages. Requests for a copy of the complete Q&A in Spanish, may be requested by contacting the Solicitation Coordinator. (Sec. 2.1)

2.4 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.

2.5 SUBMISSION OF RESPONSES

ELECTRONIC RESPONSES:

Applications may be submitted to the RFA Coordinator beginning *Monday, August 26, 2024 to 4:00pm PST, September 25, 2025.*

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 Certifications and Assurances form must have a signature of the individual within the organization authorized to bind the organization to the offer. COMMERCE does not assume responsibility for problems with non-COMMERCE 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.** All Applications and any accompanying documentation become the property of COMMERCE and will not be returned.

2.6 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE

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

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

provides for nondisclosure, COMMERCE shall maintain the confidentiality of the Applicant's information per the court order.

A charge will be made for copying and shipping, as outlined in RCW 42.56. No fee shall be charged for inspection of contract files, but twenty-four (24) hours' notice to the RFA Coordinator is required. All requests for information should be directed to the RFA Coordinator.

2.7 REVISIONS TO THE RFA

In the event it becomes necessary to revise any part of this RFA, addenda will be provided via e-mail to all individuals who have made the RFA Coordinator aware of their interest. Addenda is also published on Washington's Electronic Business Solution (WEBS), located at <https://fortress.wa.gov/ga/webs/>. 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/>.

You may also send your name and e-mail address to the RFA Coordinator to request to receive any RFA addenda.

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 ACCEPTANCE PERIOD

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

2.9 COMPLAINT PROCESS

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

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

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

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

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

2.10 RESPONSIVENESS

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

Disqualified Applicants will be notified after the announcement of the Apparently Successful Applicant(s).

Disqualified Applicants will be informed of the reason for disqualification; this shall constitute a debriefing conference for the purposes of Section 4.7, Protest Procedure.

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

2.11 MOST FAVORABLE TERMS

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

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

2.12 CONTRACT AND GENERAL TERMS & CONDITIONS

The Apparent Successful Applicant will be expected to enter into a contract which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit E. In no event is an Applicant to submit its own standard contract terms and conditions in response to this solicitation. The Applicant may submit proposed edits as allowed in the Certifications and Assurances section, Exhibit A to this RFA. COMMERCE will review requested edits and accept or reject the same at its sole discretion.

2.13 COSTS TO PROPOSE

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

2.14 NO OBLIGATION TO CONTRACT

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

2.15 REJECTION OF RESPONSES

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

2.16 COMMITMENT OF FUNDS

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

2.17 ELECTRONIC PAYMENT

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

2.18 INSURANCE COVERAGE

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

The Applicant shall, at Applicant's own expense, obtain and keep in force insurance coverage, which shall be maintained in full force and effect during the term of the contract. The Applicant 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 sample contract and its special terms and conditions attached as Exhibit E.

3 RESPONSE CONTENTS

ELECTRONIC RESPONSES:

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

1. Certifications and Assurances (Exhibit A)
2. Applicant Information (Exhibit B) and attachments
 - a. Exhibit B form completed in its entirety
 - b. Energy Audit
 - c. Scope of Work
 - d. Budget
3. Diverse Business Inclusion Plan (Exhibit C)
4. Workers' Rights Certification (Exhibit D)

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

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

3.1 CERTIFICATIONS AND ASSURANCES (MANDATORY)

The Certifications and Assurances form (Exhibit A) must be signed and dated by a person authorized to legally bind the Applicant to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship. Those wishing to submit any proposed contract edits must indicate so on this form (see Section 2.12).

3.2 APPLICANT INFORMATION (SCORED)

The Applicant Information form (Exhibit B) must be completed in its entirety with all its requested attachments. If any question or section does not apply, please enter "N/A" or "None".

3.3 DIVERSE BUSINESS INCLUSION PLAN (MANDATORY)

The Diverse Business Inclusion Plan (Exhibit C) is a communication tool allowing Applicants to inform COMMERCE if diverse business will be involved in the contract if awarded. Participation includes directly (the Applicant) and indirectly, such as any subcontractors or subgrantees who might carry out services chargeable to the contract. 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- and women-owned business enterprise (MWBE), Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award. Any affirmative action requirements set forth in any federal rules included or referenced in the contract documents will apply.

3.4 WORKERS' RIGHTS CERTIFICATION (MANDATORY)

The Workers' Rights Certification (Exhibit D) must be signed and dated as described in Section 3.1. Some employers require their employees to waive certain rights. While this is legally permitted, the

Washington Governor's Office considers it a harmful and disfavored practice. Executive Order 18-03 requires all state agencies to award bonus points in competitive processes to increase contracting with employers that do not require their employees to sign an individual arbitration clause or waiver of collective or class action. Those Applicants which certify they do not require their employees to waive such rights as a condition of employment will receive an extra 5% of their awarded points added to their final score.

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.

4.2 CLARIFICATION OF RESPONSE

The RFA Coordinator may contact Applicants for clarification of any portion of the Applicant's Application. Submission or alteration of any materials after the due date is prohibited.

4.3 EVALUATION AND SCORING

A. SCORING

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

Technical 80%:

An energy audit that meets the standards of a level 1, level 2, or targeted level 2 audit

Energy Savings to Investment Ratio is greater than 1
Simple payback is fewer than 35 years
Fossil fuels are not used or satisfactorily explained
Continuous Commissioning plan is provided (1-5 pts)

Management 20%:

Narrative description of objectives, situation/needs, process in choosing this approach
Project timeline aligns with period of performance ending June 30, 2025
A plan for community engagement is provided (1-5 pts)

Cost:

Project budget falls between \$100,000 and \$1,000,000
Budget presented is adequately justified (1-5 pts)

Additional considerations:

Project in small city or town of < 5000 residents
Applicant has not received this grant previously (5 pts)
Is this a Tier 1 building pursuing compliance – Y/N (10 pts)
Project is located on the [CEJEST Map of overburdened and disadvantaged communities](#) or self-attestation – Y/N
Is the applicant a K-12 public school district
Exhibit A rcvd signed

Exhibit C rcvd signed
Exhibit D – no arbitration clause required (5 pts)

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 5% of their awarded points added to their final score (see Exhibit D).

B. APPLICATION INCLUSIONS:

ENERGY AUDIT

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

The Energy Audit must have been completed or updated no earlier than July 2022. The audit information must be used to complete the Audit Template.

- If working through the [DES Energy Savings Performance Contracting](#) program (ESPC), the audit must be in compliance with the [ESPC guidelines](#).
- If not working through DES, an energy audit that meets the standards of a level 1, level 2, or targeted level 2 audit must be conducted in compliance with [ASHRAE Standard 211-2018](#), Standard for Commercial Building Energy Audits - 2018.

The Audit Template

Form D, DOE Building Energy Asset Score/Audit Template required Audit Template is a web based tool developed to standardize energy audit reporting consistent with ASHRAE Standard 211 requirements. It contains automated error checking and can be exported in various formats.

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

Building Energy Audit Template Instructions:

1. Copy and paste into your browser, the U.S. Department of Energy webpage:
<https://buildingenergyscore.energy.gov/>
2. Register
3. Choose the Audit Template, next "add audit report".
4. Select from the drop-down menu, "WA Commerce Grants Report". If the building is over 50,000 square feet, consider selecting "WA Commerce Clean Buildings – Form D Report."

Completing the Audit Template:

- Complete an Audit Template for each building in the project. Give each building a unique name with a maximum of 10 characters.
- Complete the report type "WA Commerce Grants". Complete all mandatory fields.

- Use optional audit fields to provide more detail about the baseline building condition. These should be completed for all elements of the buildings that will be impacted by the energy savings opportunities proposed for this project.
 - For example, if the energy efficiency improvement project proposes changes to the mechanical system, the audit of the base case mechanical system should be documented.
 - Other optional sections of the audit may be omitted or included.
- Populate the base case energy use fields required by the audit form. This should include at least one year of energy consumption data.
- 1 year of consecutive data must begin no earlier than July 1, 2022. If the available utility data has gaps, estimates from the utility may be substituted or with the approval of Commerce, monthly rates may be averaged.
- Complete each field required to document the energy savings opportunities, cost and benefits.
- This will be used for scoring and to determine if the project will have a simple payback of fewer than 35 years. See Table 1 (below): AVERAGE STATE ENERGY RATES.

Table 1: AVERAGE STATE ENERGY RATES

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

	Average Cost	Unit
Electricity	\$0.1063	kWh
Natural Gas	\$0.7757	therm
Propane	\$1.60	Gal.
Heating Oil	Provide utility bill that shows rates and units	
Other Utilities	Provide utility bill that shows rates and units	
Water	Provide utility bill that shows rates and units	

SCOPE OF WORK

1. Must align with the energy audit and with the budget.
2. Must include a continuous commissioning plan.
3. Detailed instructions included in this RFA’s Exhibit B, Applicant Information.

BUDGET

1. Must include utility incentives and the match funds to be contributed by the applicant.
2. Includes template budget and scope of work, what else?
3. Detailed instructions included in this RFA’s Exhibit B, Applicant Information.

4.4 VIRTUAL PRESENTATIONS MAY BE REQUIRED

COMMERCE, at its sole discretion, may select the top-scoring Applicant(s) from the written evaluation for a virtual presentation. If so, COMMERCE will contact the top-scoring Applicant(s) to schedule a date and time to meet on a platform such as Zoom or Microsoft Teams. Commitments made by the Applicant at the virtual presentation, if any, will be considered binding.

If held, the virtual presentation shall determine the Apparent Successful Applicant(s).

4.5 NOTIFICATION TO APPLICANTS

Applicants that are not selected for further negotiation or award will be notified by e-mail.

4.6 DEBRIEFING OF UNSUCCESSFUL APPLICANTS

Upon request, a debriefing conference will be scheduled with an unsuccessful Applicant. The request for a debriefing conference must be received by the RFA Coordinator within three (3) business days after the Notification of Unsuccessful Applicant notice is emailed 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 organization's Application;
- Any written comments from evaluators related to that Applicant;
- Review of their final score in comparison with the other final scores **without** identifying the other participants or reviewing their Applications.

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

4.7 PROTEST PROCEDURE

This procedure is available to Applicants who submitted an Application in response to this RFA document and who have participated in a debriefing conference. Upon completing the debriefing conference, the Applicant is allowed five (5) business days to file a protest of the RFA process 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 centralcontracts@commerce.wa.gov. Do not copy any other COMMERCE staff.

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

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

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

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

Protests not based on procedural matters will not be considered. Protests will be rejected as without merit if they address issues such as: 1) An evaluator's professional judgment on or assessment of the quality of an Application, or 2) 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 and all available facts and issue a decision within ten (10) business days of receipt of the protest. If additional time is required, the protesting party will be notified of the delay.

In the event a protest may 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 acquisition process and determine COMMERCE to be in substantial compliance and reject the protest, or
- Find merit in the protest and provide COMMERCE options which may include:
 - Correct the error(s) and re-evaluate all Applications
 - Reissue the solicitation document and begin a new process
 - Make other findings and determine other courses of action as appropriate

If COMMERCE determines that the protest is without merit, COMMERCE may enter into a contract with the Apparent Successful Applicant(s). If the protest is determined to have merit, one of the options above will be taken.

4.8 SUCCESSFUL APPLICANTS

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

A. SUCCESSFUL APPLICANT REQUIREMENTS:

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

B. PROJECT REQUIREMENTS:

- Must serve the intended purpose of the contract for the duration of the performance period.
- By the end of the performance period, the Applicant must have completed all mandatory activities as described in Section 1.2 OBJECTIVES.

- Project must be owned by the Applicant and be located in the State of Washington, or the Applicant must demonstrate that they hold a lease extending beyond the expected lifetime of the improvements to be funded.
- The project must not begin prior to COMMERCE receiving the signed award letter from the Awardee.
- All entities involved must comply with [Washington State Prevailing Wage](#).
- Comply with [Washington State Environmental Policy Act \(SEPA\)](#).
- Project construction and operation must comply with applicable federal, state, local, and utility laws and requirements.
- Project construction and operation must comply with State Cultural and Historic Resource requirements and Tribal consultation as required by [Governor's Executive Order 21-02](#).

C. REPORTING REQUIREMENTS:

- Report on all pass-through funding using the provided reportable expense template under the [Governor's Diverse Spend Initiative](#).
- Recipients of funding must report to COMMERCE no less than quarterly regarding progress of the funded project, project outcomes upon completion of the project, budget projections, and other information upon request by COMMERCE. Upon project completion, a final summary of the project is required.

D. FUNDING REQUIREMENTS:

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

5 RFA EXHIBITS

- Exhibit A Certifications and Assurances
- Exhibit B Applicant Information
- Exhibit C Diverse Business Inclusion Plan
- Exhibit D Workers' Rights Certification
- Exhibit E Example Grant Contract including General Terms and Conditions

CERTIFICATIONS AND ASSURANCES

I/we make the following certifications and assurances as a required element of my/our Application, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

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 Application or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
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 that have been submitted have not been knowingly disclosed by the Applicant and will not knowingly be 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 solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
8. No attempt has been made or will be made by the Applicant to induce any other person or organization to submit or not to submit an Application for the purpose of restricting competition.
9. I/we grant COMMERCE the right to contact references and others, who may have pertinent information regarding the Applicant's prior experience and ability to perform the services contemplated in this procurement.
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.

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

- are** submitting proposed Contract edits. If proposed Contract edits are being submitted, I/we have attached them to this form. (See Section 2.12)
- are not** submitting proposed Contract edits. (*Default if neither are checked*)

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

Signature

Printed Name and Title

Date

APPLICANT INFORMATION

Full Legal Name of Organization			Licensed to do Business in Washington		
			<input type="checkbox"/> Yes <input type="checkbox"/> Will become licensed within 30 days of award <input type="checkbox"/> Tribal entity not required to be licensed		
Year Incorporated	Entity Type	Applicant Type	Number of Employees		
	Choose an item.	Choose an item.	Choose an item.		
Additional Detail:					
Mailing Address			Physical Address (if different than mailing address)		
Street:			Street:		
City:	State:	Zip Code:	City:	State:	Zip Code:
Statewide Vendor Number (SWV):	Uniform Business Identifier (UBI):	Clean Buildings ID (If Applicable)	Portfolio Manager ID		

GRANT AMOUNT REQUESTED: _____

Key Staff

Primary contact person for this Application			Other Application contact		
Name and Title:			Name and Title:		
Phone:			Phone:		
Email:			Email:		
Executive (Person with authority to bind organization)			Grant Manager (Primary contact for grant activities)		
Name/Title:			Name/Title:		
Phone:			Phone:		
Email:			Email:		
Finance (Primary contact for invoices and payment)			Data Manager (Primary contact for data security)		
Name/Title:			Name/Title:		
Phone:			Phone:		
Email:			Email:		

Current or former state employees

Identify any state employees or former state employees employed by the Applicant or on the Applicant's governing board as of the date of submission. Include their position and responsibilities within the Applicant's organization. If, following a review of this information, it is determined by Commerce that a conflict of interest exists, the Applicant may be disqualified from further consideration for the award of a contract.

Name	Title	Responsibilities	State Agency	Last Year Worked

I/we certify no current or former state employees are employed by this organization nor serve on the governing board.

Past Contracts

If the Applicant has had any contract terminated for default in the last five years, describe below. Termination for default means notice to stop performance due non-performance or poor performance. It does not mean contracts terminated for loss of funding or any other non-performance issue. Submit full details of the terms for default, including the other party's name, address, and phone number. Include your position on the matter. Commerce will evaluate the facts and may, in its sole discretion, reject the Application on these grounds.

Other Party	Contract Purpose	Date of Termination	Details

I/we certify the Applicant has had no contracts of any kind terminated for default in the last five years.

If the Applicant has held any contract (including grants, work orders, purchase requests, MOUs, etc.) with the state of Washington, whether an Agency, Department, Board, Office, Council, Institution of Higher Education, or other entity of the state, within the past 36 months, describe each contract below:

State Agency and Contract Manager Name	Contract Number	Total Amount	Start Date	End Date

I/we certify the Applicant has not held any contract with the state of Washington in the past 36 months.

Contributors

Please list all those who worked on the development of this Application, whether or not employed by the Applicant.

Name and Title	RFA Section(s)

PROJECT MANAGEMENT QUESTIONS

Please answer each question in enough detail to convey to the evaluation team the Applicant’s understanding of the services, the needs of the communities to be served, and the Applicant’s organizational priorities and practices.

<p>1. Please see Section 1.1 and 1.2 for the purpose and objectives of this RFA. Describe the situation and needs, and the process used in choosing the proposed project to address them. <small>Click or tap here to enter text.</small></p>
<p>2. What are key stages in project implementation and when is it expected to be complete? <small>Click or tap here to enter text.</small></p>

3. Describe the community engagement plan used for gauging community needs, impacts and priorities.

Click or tap here to enter text.

4. If you are partnering with the Department of Enterprise Services, provide the name and email of your project manager. If you are not working with DES, submit names and qualifications used in selection of your energy auditor and engineer.

Click or tap here to enter text.

5. List name and address of each building/facility you are proposing to retrofit.

Click or tap here to enter text.

TECHNICAL QUESTIONS

6. What is the Energy Savings to Investment Ratio? Click or tap here to enter text.

7. What is the simple payback in years?

Click or tap here to enter text.

8. Are fossil fuels used for any of the proposed equipment or systems?

Click or tap here to enter text.

Explain why it is not possible or cost effective to utilize non-fossil fuel alternatives.

Click or tap here to enter text.

9. What is the plan for continuous commissioning once the proposed project is completed?

Click or tap here to enter text.

Additional Considerations - this Applicant or the community it serves: (check all that apply)

- Applicant is a small city or town under 5000. Population size:** Click or tap here to enter text.
- Has never received an Energy Efficiency grant from Commerce previously.**
- Project is for a Tier 1 building and pursuing Clean Building Performance Standard.**
- Is a K-12 School District.**
- Project is located in a community on the [CEJEST Map of overburdened and disadvantaged communities](#). Or if not, and an environmental health disparity exists, applicant may qualify by attaching a letter describing the situation.** (Enter address of the facility, click on it to identify the census tract, and in the right margin, it will state “Yes” or “No” to its being considered disadvantaged. **Map or Letter?:** Click or tap here to enter text.

SCOPE OF WORK

Ensure that the information provided in the Energy Services Proposal or Scope of Work aligns with the Energy Audit. Include the audit in the Scope of Work if you will be seeking reimbursement. In the Executive Summary, use the same terminology as in the audit and reference each of the key figures of the audit.

- Total energy saved
- Project costs
- Simple payback (use statewide average utility rates to calculate the simple payback for each. See Table 1, Sec. 4.3B)
- Baseline energy consumption for the building/facility
- Peak demand savings

Provide full supporting details.

- In the narrative, describe the base case building condition and the proposed energy savings opportunities. Support all energy savings opportunities reported in the audit template.
- Include in the narrative the methods used to estimate energy savings for each energy efficiency measure. Include accounting for efficiency measure energy interaction effects.
- If baseline energy use is estimated rather than measured, include a description of the methodology used to develop the baseline energy use estimate.
- Include in the narrative any actions taken to assure the estimated energy savings will be realized, including measurement and verification, extended service contracts, building operator training and energy savings guarantees.
- Include in the narrative the method used to estimate the cost of energy efficiency measures.
- This should be consistent with an investment grade audit as required by DES or a level 2 audit as described in ASHRAE standard 211. Elements of the level 3 audit should be considered by the applicant. In particular, detailed auditing or metering that creates the base case required to successfully implement the measurement and verification plan.
- Total estimated costs of implementing the project.

BUDGET

Project Costs.

Provide total project costs divided into the cost categories below. The Budget must align with the Scope of Work and not exceed the amount in Section 1.4. Commerce contracts are based on milestones for completed.

Funding Sources.

Grantee Match – enter planned source under *Description*. Before a grant contract is issued, a letter will be required from authorized signatory confirming availability of the match funds.

Utility Incentives - Awardees must use any available utility incentives. If the incentive amount has not been finalized, use a low-end estimate for the incentive. The EE-024 award amount can be reduced if the utility incentive is higher than estimated, however, it cannot be increased.

Project Budget

Activity	Description	Cost
Project Design/Engineering		\$
Project Materials		\$
Cost of Construction		\$
Project Cost		\$
Grantee Match (source of funds?)		(\$)
Utility Incentives		(\$)
This Grant Request		\$

DIVERSE BUSINESS INCLUSION PLAN

Please see Section 3.3 for more information regarding the Diverse Business Inclusion Plan.

If awarded a contract as a result of this RFA, do you anticipate subcontracting* with or purchasing from any of the following:

	Yes	No
State Certified Minority Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
State Certified Woman Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
State Certified Veteran Owned Businesses?	<input type="checkbox"/>	<input type="checkbox"/>
Washington Small Businesses?	<input type="checkbox"/>	<input type="checkbox"/>

Organizational Goals:

Please list the approximate percentage of funding received through this RFA which is expected to be subcontracted to each subcontractor category:

For example, say the total funding is \$10,000. Of that, \$1,000 will be subcontracted to a business to create one of the deliverables and the organization plans to use a Washington Small Business. They would enter "10%" on the appropriate line below. On the other hand, if all subcontracts will be with nonprofit organizations or with businesses not described below, they would enter "0%".

State Certified Minority Owned Businesses: _____%

State Certified Woman Owned Businesses: _____%

State Certified Veteran Owned Businesses: _____%

Washington Small Businesses: _____%

Please list the approximate percentage of purchases reimbursed by funding received as a result of this RFA that will be made from each category:

For example, say allowable expenses are estimated to be \$1000, most of which will reimburse the cost of supplies purchased from various sources. If the organization plans to make half of those purchases from a Certified Woman-Owned Business, they would enter "50%" on the appropriate line below.

State Certified Minority Owned Businesses: _____%

State Certified Woman Owned Businesses: _____%

State Certified Veteran Owned Businesses: _____%

Washington Small Businesses: _____%

If you plan to subcontract and/or purchase with funding received as a result of this RFA 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.
- I/We do not plan to make any purchases reimbursable under 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.**

**Applicant Certification
Executive Order 18-03 – Workers’ Rights**

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

RFA Number: EE-024

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

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

OR

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

OR

This organization certifies it has no employees.

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

Organization Name: _____
Print full legal entity name of organization

Signed: _____ Printed Name: _____

Title: _____ Place: _____
Print city and state where signed

Date: _____

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



Interagency Agreement with

Enter Name of Governmental Entity

through

Choose an item.

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: <Insert Number>

**<Select Division, Board, or Commission> <Insert Unit or Office>
<Insert Program(s) and/or Project(s)>**

1. Contractor <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Contractor Doing Business As (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 FAX> <Insert e-mail> <Insert location>	
5. Contract Amount <Insert \$ Total>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/> <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>		Federal Agency: <Insert name>	
9. Federal Funds (as applicable) <Insert \$ amount>		ALN <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>			
COMMERCE, defined as the Department of Commerce, and the Contractor, as defined above, acknowledge and accept the terms of this Contract and Attachments and have executed this Contract on the date below and warrant they are authorized to bind their respective agencies. The rights and obligations of both parties to this Contract are governed by this Contract and the following documents incorporated by reference: Contractor Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" – <insert title>, Attachment "C" – <insert title>, <etc.>			
FOR CONTRACTOR _____ <insert name>, <insert title> _____ Date		FOR COMMERCE _____ <insert name>, <insert title> _____ Date APPROVED AS TO FORM ONLY BY ASSISTANT ATTORNEY GENERAL APPROVAL ON FILE	

6 Special Terms and Conditions

1. AUTHORITY

COMMERCE and Contractor enter into this Contract pursuant to the authority granted by Chapter 39.34 RCW.

2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING

If this Agreement is funded in whole or in part by the Climate Commitment Act, Grantee agrees that any website, announcement, press release, and/or publication (written, visual, or sound) used for media-related activities, publicity, and public outreach issued by or on behalf of Grantee which reference programs or projects funded in whole or in part with Washington's Climate Commitment Act (CCA) funds under this Grant, shall contain the following statement:

"The [PROGRAM NAME / GRANT / ETC.] is supported with funding from Washington's Climate Commitment Act. The CCA supports Washington's climate action efforts by putting cap-and-invest dollars to work reducing climate pollution, creating jobs, and improving public health. Information about the CCA is available at www.climate.wa.gov."

The Grantee agrees to ensure coordinated Climate Commitment Act branding on work completed by or on behalf of the Grantee. The CCA logo must be used in the following circumstances, consistent with the branding guidelines posted at [CCA brand toolkit](#), including:

- A. Any project related website or webpage that includes logos from other funding partners;
- B. Any publication materials that include logos from other funding partners;
- C. Any on-site signage including pre-during Construction signage and permanent signage at completed project sites; and
- D. Any equipment purchased with CCA funding through a generally visible decal.

3. 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.

4. COMPENSATION

COMMERCE shall pay an amount not to exceed \$ _____, for the performance of all things necessary for or incidental to the performance of work under this Contract as set forth in the Scope of Work.

5. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Contractor upon acceptance of services provided and receipt of properly completed invoices, which shall be submitted to the Representative for COMMERCE via the Commerce Contracts Management System, which is available through the Secure Access Washington (SAW) portal.

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.).

6. 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.

7. INSURANCE

Each party certifies that it is self-insured under the State's or local government self-insurance liability program, and shall be responsible for losses for which it is found liable.

8. 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.

9. ORDER OF PRECEDENCE

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

- Applicable federal and state of Washington statutes and regulations
- Special Terms and Conditions

- General Terms and Conditions
- Attachment A – Scope of Work
- Attachment B – Budget
- Add any other attachments incorporated by reference from the Face Sheet

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 Attachments, 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. 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.

3. 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.

4. ASSIGNMENT

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

5. CONFIDENTIALITY AND 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.

6. **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.

7. **DISPUTES**

In the event that a dispute arises under this Agreement, it shall be determined by a Dispute Board in the following manner: Each party to this Agreement shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, Agreement terms and applicable statutes and rules and make a determination of the dispute. The Dispute Board shall thereafter decide the dispute with the majority prevailing. The determination of the Dispute Board shall be final and binding on the parties hereto. As

an alternative to this process, either of the parties may request intervention by the Governor, as provided by RCW 43.17.330, in which event the Governor's process will control.

8. 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.

9. INDEMNIFICATION

Each party shall be solely responsible for the acts of its employees, officers, and agents.

10. 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.

11. 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.

12. 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.

13. SAVINGS

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

14. 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.

15. SUBCONTRACTING

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

If COMMERCE approves subcontracting, the Contractor shall maintain written procedures related to subcontracting, as well as copies of all subcontracts and records related to subcontracts. For cause,

COMMERCE in writing may: (a) require the Contractor to amend its subcontracting procedures as they relate to this Contract; (b) prohibit the Contractor from subcontracting with a particular person or entity; or (c) require the Contractor to rescind or amend a subcontract.

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

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

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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 A

Attachment B: Budget