



**STATE OF WASHINGTON
DEPARTMENT OF COMMERCE**

NOTICE OF FUNDING OPPORTUNITY (NOFO)

NOFO NO. WSBO 25-002

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: Broadband Digital Navigator Program Funding for Tribes

PROPOSAL DUE: December 6, 2024 at 4:00 p.m., Pacific Time, Olympia, WA

ESTIMATED TIME PERIOD FOR CONTRACT: January 15, 2025 – June 30, 2025

FEDERALLY RECOGNIZED TRIBES ELIGIBILITY: This NOFO is open to those Federally Recognized Tribes which satisfy the minimum qualifications stated herein and are available for work in Washington.

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.

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1. INTRODUCTION

1.1 PURPOSE AND BACKGROUND

The Washington Department of Commerce, hereafter called "COMMERCE," is initiating this Notice of Funding Opportunity (NOFO) to solicit Federally Recognized Tribes from those qualified and interested in grant funding to increase digital equity for all by providing digital navigator services, devices, and subscriptions. These services must include, but are not limited to, one-on-one assistance for people with limited access to services, including individuals seeking work, students seeking digital technical support, families supporting students, English language learners, Medicaid clients, people experiencing poverty, and seniors.

Federally Recognized Tribes will work with COMMERCE to eliminate barriers and provide a path forward in equitable digital inclusion through increased access to supporting services such as Telehealth, employment, education, and training.

This work is tied to specific funding allocated by the Washington State Legislature on March 29, 2024 to promote digital navigator services, devices, and subscriptions:

Engrossed Substitute Senate Bill 5950—\$4,850,000 of the general fund state appropriation for fiscal year 2025 are provided solely for the department to provide grants to entities that provide digital navigator services, devices, and subscriptions. These services must include, but are not limited to, one-on-one assistance for people with limited access to services, including individuals seeking work, students seeking digital technical support, families supporting students, English language learners, medicaid clients, people experiencing poverty, and seniors. Of the amounts provided from the general fund—state appropriation for fiscal year 2025, at least \$3,000,000 must be provided to Tribes.

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

1.2 OBJECTIVES AND SCOPE OF WORK

Federally Recognized Tribes will choose from the following list of objectives based on capacity for work and community needs. All objectives may be included in proposed scope of work, but not all objectives are required. Federally Recognized Tribes must choose at least one objective.

Objective A. Digital Device Distribution

- Approach must include digital devices that will enhance an individual and/or household to connect to resources that will increase access to services through a digital platform. Devices may include, but are not limited to:
 - Laptops
 - Tablets (e.g. iPads, Lenovo, Samsung, etc.)
 - Smartphones (e.g. iPhones, Samsung Galaxy, Google Pixel, etc.)
 - Smartwatches (e.g. Apple, Google, Samsung, etc.)
 - Headsets
 - E-readers
 - Other assistive technology/accessories

Objective B. Digital Educational Services

- Must support services for individuals for real-time assistance with an option to leverage use of digital learning platforms to teach digital curriculum through in-person, webinar-based, and self-paced modalities. Services may include, but are not limited to:
 - Hotline providing phone or chat services offering help navigating online healthcare, where to obtain mobile devices, how to use mobile devices, etc.
 - Digital navigation classes focused on technology help, educational apps, skills training, digital literacy, etc.
 - Employment search support including resources and training for finding and navigating employment

- Videos, slideshows, eLearning courses, and more for building digital navigation skills across multiple levels and demographic needs
- Courses, training, or other support for improving cultural awareness and techniques for underserved and underrepresented people navigating the digital world
- Courses, classes, or other support for basic cybersecurity awareness of digital threats like phishing, spam, malware, etc.

Objective C. Sustainability of Digital Navigation Services

- Identify effective policy and systematic strategies to address the long-term sustainability of digital navigator services that will provide employment opportunities, access to resources, and services across Washington state.
 - Including outreach and partnerships that may include community programs, senior centers, libraries, care centers, food banks, hospitals, fairs/events, etc. to promote program and services

Objective D. Increased Access

- Innovative or proven approach to connect individuals to free Wi-Fi in communities where connectivity is not available due to the lack of infrastructure and geographical or economic challenges.

Minimum data collection elements will include the following:

- Date of Service
- Organization Providing Service (grantee or subgrantee)
- Method of Service (in-person, digital, or phone support)
- Services Provided (digital education, internet connectivity, or device distribution)
- Devices Distributed
- County
- Zip Code
- Populations Served (e.g. people with limited access to services, families supporting students, English language learners, Medicaid clients, people experiencing poverty, seniors)
- Number of Participants Served

Desired, but not required, data collection elements include:

- Race and Ethnicity

1.3 MINIMUM QUALIFICATIONS

Minimum qualifications include:

- Licensed to do business in the state of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Grantee.
- One of the 29 Federally Recognized Tribes within Washington state.

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

1.4 FUNDING

COMMERCE has budgeted a minimum amount of \$167,241 per Tribe. Project amounts may increase depending on the number of proposals received. In the event additional funding becomes available during the period of performance, any contract awarded may be amended on a case-by-case basis to provide for additional related services. Additional funding is not guaranteed.

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

1.5 PERIOD OF PERFORMANCE

The period of performance of any contract resulting from this NOFO is tentatively scheduled to begin on or about January 15, 2025 and to end on June 30, 2025. 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). Federally Recognized Tribes are encouraged to 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 NOFO include:

Apparent Successful Grantee/Bidder/Vendor/Contractor/Awardee: The Federally Recognized Tribes selected to perform the anticipated services, subject to successful completion of contract negotiations and execution of a written contract.

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

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

Digital Equity: The condition in which individuals and communities in Washington have the information technology capacity that is needed for full participation in society and the economy.

Digital Inclusion: (a) The activities that are necessary to ensure that all individuals in Washington have access to, and the use of, affordable information and communication technologies including, but not limited to reliable broadband internet service, internet-enabled devices that meet the needs of the user, and applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration. (b) Obtaining access to digital literacy training, the provision of quality technical support, and obtaining basic awareness of measures to ensure online privacy and cybersecurity.

Digital Literacy: The skills associated with using technology to enable users to use information and communications technologies to find, evaluate, organize, create, and communication information

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

Federally Recognized Tribes: Any one of the 574 American Indian or Alaskan Native tribes, confederations, and nations formally recognized by the United States government. According to the Justice Department, recognition is a legal term meaning that the federal government recognizes a government-to-government relationship with a tribe, and that a tribe exists politically in a domestic dependent nation status. Federally recognized tribes possess certain inherent powers of self-government and are entitled to certain federal benefits, services, and protections because of the special trust relationship.

There is a long and complex history around the issue of federal recognition, including de-recognition of tribes with whom the US government had active treaties (primarily during the Termination Era). Federal recognition is one of the elements Commerce uses in determining whether to follow government-to-government protocols with tribes. When provisos do not distinctly prohibit funding tribes, we consider them eligible.

Grantee: Federally Recognized Tribes whose Proposal has been accepted by COMMERCE and is awarded a fully executed, written contract. Also called Grantee, Awardee, Recipient, or Vendor.

Notice of Funding Opportunity (NOFO): Formal procurement or solicitation document in which a service or need is identified but no specific method to achieve it has been chosen. The purpose of an NOFO is to permit the Federally Recognized Tribes community to suggest various approaches to meet the need at or below a given funding level.

Proposal: A formal offer submitted in response to this Notice of Funding Opportunity.

Proposer: Individual, firm, organization, company, or other entity or group of entities that submits a Proposal to attain a contract with COMMERCE.

1.8 ADA

COMMERCE complies with the Americans with Disabilities Act (ADA). Federally Recognized Tribes may contact the NOFO Coordinator to receive this Notice of Funding Opportunity in Braille or on tape.

2. GENERAL INFORMATION FOR FEDERALLY RECOGNIZED TRIBES

2.1 NOFO COORDINATOR

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

Name	Crystal Schoelkopf
E-Mail Address	crystal.schoelkopf@commerce.wa.gov

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

2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Notice of Funding Opportunity	October 10, 2024
Question & answer period	October 10-31, 2024
Answers to Q&A posted no later than	November 29, 2024
Pre-Proposal Conference	October 17, 2024
Proposals due	December 6, 2024
Evaluate proposals	December 10-December 19, 2024
Conduct virtual presentations with finalists, if required	December 20, 2024
Announce "Apparent Successful Grantee" and send notification via e-mail to unsuccessful Federally Recognized Tribes	December 23-27, 2024
Hold debriefing conferences (if requested)	December 30, 2024 – January 13, 2025
Negotiate contract	December 30, 2024 – January 13, 2025
Earliest date contract may be signed	January 14, 2025

COMMERCE reserves the right to revise the above schedule.

2.3 QUESTION AND ANSWER PERIOD

COMMERCE will accept questions about this NOFO sent to the NOFO 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-PROPOSAL CONFERENCE

A pre-proposal conference will be held on **October 17, 2024 at 3:00 p.m.**, Pacific time. The pre-proposal conference will be virtual only, on Zoom. Register in advance for this meeting: <https://wastatecommerce.zoom.us/meeting/register/tZYkfuGvqDMsHN1oPrIFcVcMPMnl-EY4rpgp>. All prospective Federally Recognized Tribes are encouraged attend; however, attendance is not mandatory.

COMMERCE will be bound only to COMMERCE written answers to questions. Questions arising at the pre-proposal conference will be documented and answered in written form. A copy of the questions and answers will be sent to each prospective Federally Recognized Tribes that has requested the NOFO Coordinator to send them NOFO addenda.

2.5 STATEMENT OF INTENT REQUIRED

A bidder's Statement of Intent must be received by the NOFO Coordinator by the date specified in Section 2.2. **Proposals received by those who did not timely submit a Statement of Intent will be disqualified.** Submitting a Statement of Intent is not binding and the submitter may choose not to propose without penalty. Statements of Intent should be on organization letterhead and include the NOFO number, a statement of intent to submit a proposal to this NOFO, and identify the organization's contact person.

2.6 SUBMISSION OF PROPOSALS

ELECTRONIC PROPOSALS:

The proposal must be **received by the NOFO Coordinator** no later than **5:00 p.m.**, Pacific Time, in Olympia, Washington, on **December 6, 2024**.

Proposals must be submitted electronically as an attachment to an e-mail to the NOFO Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Word format or PDF. Zipped files cannot be received by COMMERCE and cannot be used for submission of Proposals. The 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 Federally Recognized Tribes to the offer. COMMERCE does not assume responsibility for problems with Federally Recognized Tribes' e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Federally Recognized Tribes should allow sufficient time to ensure timely receipt of the proposal by the NOFO Coordinator. **Late proposals will not be accepted and will be automatically disqualified from further consideration**, unless COMMERCE e-mail is found to be at fault at COMMERCE'S sole determination. Proposals 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 Proposals and any accompanying documentation become the property of COMMERCE and will not be returned. Any information received as a result of this NOFO may be collected and considered for continuous improvement purposes.

2.7 PROPRIETARY INFORMATION AND PUBLIC DISCLOSURE

Proposals submitted in response to this NOFO shall become the property of COMMERCE. All Proposals received shall remain confidential until the Apparent Successful Grantee is announced;

thereafter, all Proposals are subject to disclosure as provided for in Chapter 42.56 of the Revised Code of Washington (RCW).

Any information in the proposal that the Federally Recognized Tribe 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 Federally Recognized Tribe is making the claim must be cited. Each page containing the information claimed to be exempt from disclosure must be clearly identified by the words "Proprietary Information" printed on the lower right hand corner of the page. Marking the entire proposal exempt from disclosure or as Proprietary Information will not be honored.

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

2.8 REVISIONS TO THE NOFO

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

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

2.9 DIVERSE BUSINESS INCLUSION PLAN

Federally Recognized Tribes are required to submit a Diverse Business Inclusion Plan with their Proposal 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

2.10 ACCEPTANCE PERIOD

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

2.11 COMPLAINT PROCESS

Potential Federally Recognized Tribes 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 proposal response deadline. The complaint must meet the following requirements:

- a) The complaint must be in writing;
- b) The complaint must be sent to the NOFO 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 NOFO 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.

2.12 RESPONSIVENESS

All Proposals will be reviewed by the NOFO Coordinator to determine compliance with administrative requirements and instructions specified in this NOFO. The Federally Recognized Tribe is specifically notified that failure to comply with any part of this NOFO may result in disqualification of the Proposal as incomplete and/or non-responsive.

Disqualified Federally Recognized Tribes will be notified after the announcement of the Apparent Successful Grantee(s).

Disqualified Federally Recognized Tribes will be informed of the reason for disqualification; this shall constitute a debriefing conference for the purposes of Section 4.6, Protest Procedure.

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

2.13 MOST FAVORABLE TERMS

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

The Apparent Successful Grantee should be prepared to accept this NOFO for incorporation into a contract resulting from this NOFO. Contract negotiations may incorporate some, or all, of the Federally Recognized Tribes' Proposal. The Proposal will become a part of the official procurement file on this matter without obligation to COMMERCE.

2.14 CONTRACT GENERAL TERMS & CONDITIONS

The Apparent Successful Grantee 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 D. This sample contract is for information and review only and should not be returned with your Proposal. In no event is a Federally Recognized Tribe to submit its own standard contract terms and conditions in response to this NOFO. 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.

2.15 COSTS TO PROPOSE

COMMERCE will not be liable for any costs incurred by the Federally Recognized Tribe in preparation of a Proposal submitted in response to this NOFO, travel to or conduct of a presentation, or any other activities related to responding to this NOFO.

2.16 NO OBLIGATION TO CONTRACT

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

2.17 REJECTION OF PROPOSALS

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

2.18 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 NOFO. No services may begin and no cost chargeable to the proposed contract may be incurred before receipt of a fully executed contract.

2.19 ELECTRONIC PAYMENT

The state of Washington prefers to utilize electronic payment in its transactions. The successful Grantee 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.

2.20 INSURANCE COVERAGE

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

The Grantee shall, at its own expense, obtain and keep in force insurance coverage which shall be maintained in full force and effect during the term of the contract. The Grantee shall furnish evidence in the form of a Certificate of Insurance that insurance shall be provided, and, 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 D.

3. PROPOSAL CONTENTS

ELECTRONIC PROPOSALS:

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

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

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

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

3.1 CERTIFICATIONS AND ASSURANCES (MANDATORY)

The Certifications and Assurances form (Exhibit A to this NOFO) must be signed and dated by a person authorized to legally bind the Federally Recognized Tribe 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. Federally Recognized Tribes wishing to submit any proposed contract edits must indicate so on this form (see Section 2.14).

3.2 LETTER OF SUBMITTAL (MANDATORY)

The Letter of Submittal (Exhibit D) must be signed and dated by a person authorized to legally bind the Federally Recognized Tribe to a contractual relationship, e.g., the President or Executive Director if a corporation, the managing partner if a partnership, or the proprietor if a sole proprietorship.

Along with introductory remarks, the Letter of Submittal must include the following information about the Federally Recognized Tribe and any proposed subcontractors or subgrantees:

- A. Name, address, principal place of business, telephone number, and fax number/e-mail address of legal entity or individual with whom contract would be written.
- B. Name, address, and telephone number of each principal officer (President, Vice President, Treasurer, Chairperson of the Board of Directors, etc.)
- C. Legal status of the Federally Recognized Tribe (sole proprietorship, partnership, corporation, etc.) and the year the entity was organized to do business as the entity now substantially exists.
- D. Federal Employer Tax Identification number **and** the Washington Uniform Business Identification (UBI) number issued by the state of Washington. If the Federally Recognized Tribe does not have a UBI number, the Federally Recognized Tribe must state that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparently Successful Grantee.
- E. Location from which the Federally Recognized Tribe would operate.

- F. Identify any state employees or former state employees employed or on the firm's governing board as of the date of the proposal. Include their position and responsibilities within the Federally Recognized Tribes' organization. If following a review of this information COMMERCE determines that a conflict of interest exists, the Federally Recognized Tribe may be disqualified from further consideration.

3.3 TECHNICAL PROPOSAL (SCORED)

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

- A. **Project Approach/Methodology:** Include a complete description of the Federally Recognized Tribes' proposed approach and methodology for the project. This section should convey Federally Recognized Tribes' full understanding of the proposed project.
- B. **Work Plan:** Include all project requirements and the proposed tasks, services, activities, etc. necessary to accomplish the scope of the project defined in this NOFO. This section of the technical proposal must contain sufficient detail to convey to members of the evaluation team the Federally Recognized Tribes' knowledge of the subjects and skills necessary to successfully complete the project. Include any required involvement of COMMERCE staff. The Federally Recognized Tribe may also present any creative approaches that might be appropriate and may provide any pertinent supporting documentation. Identify any work to be completed by subcontractors or subgrantees but do not select subcontractors or subgrantees until all relevant requirements have been reviewed, including the Code of Federal Requirements if applicable.
- C. **Project Schedule:** Include a project schedule indicating when the elements of the work will be completed. Project schedule must ensure that any deliverables requested are met.
- D. **Outcomes and Performance Measurement:** Describe the impacts and outcomes the Federally Recognized Tribe will achieve, including how these impacts and outcomes will be monitored, measured and reported to COMMERCE.
- E. **Risks:** The Federally Recognized Tribe must identify potential risks that are considered significant to the success of the project in sufficient detail to convey to members of the evaluation team the Federally Recognized Tribes' ability correctly assess and manage risk. Include how the Federally Recognized Tribe will effectively monitor and manage these risks, including timely reporting of risks to COMMERCE.
- F. **Deliverables:** Fully describe deliverables to be submitted under the proposed contract. Deliverables must support the purpose of this NOFO described in Section 1.1 and met the requirements set forth in Section 1.2.

3.4 MANAGEMENT PROPOSAL

A. Project Management (SCORED)

- 1. **Project Team Structure and Internal Controls:** Provide a description of the proposed project team structure and internal controls to be used during the course of the project, including any subcontractors. Federally Recognized Tribes are reminded to select subcontractors only after reviewing all relevant requirements. Provide an organizational chart indicating lines of authority for personnel involved in performance of this potential contract and relationships of these staff to other programs or functions of the organization(s). This chart must also show lines of authority to the next senior level of management. Include who will have prime responsibility and final authority for the work.

2. **Staff Qualifications and Experience:** Identify staff, including any subcontractors, who will be assigned to the potential contract, indicating the responsibilities and qualifications of such personnel, and include the amount of time each will be assigned to the project. Provide resumes for the named staff, which include information on the individual's particular skills related to this project, education, experience, significant accomplishments and any other pertinent information. Staff identified in the Proposal must actually perform the assigned work. Any staff substitution must have prior approval from COMMERCE.

B. Experience of the Federally Recognized Tribes (SCORED)

1. Indicate the experience the Federally Recognized Tribe has in the following areas. If the Federally Recognized Tribe does not have the specified experience, explain whether the Federally Recognized Tribe plans to seek a subcontractor with that experience or other mitigation strategy:
 - a. Licensed to do business in the state of Washington or submit a statement of commitment that it will become licensed in Washington within thirty (30) calendar days of being selected as the Apparent Successful Grantee.
 - b. Possess a [Statewide Vendor Number \(SWV\)](#) from the Washington State Office of Financial Management
 - c.
2. Indicate any other relevant experience that shows the qualifications of the Federally Recognized Tribe, and any subcontractors, for the performance of the potential contract.
3. Include a list of contracts the Federally Recognized Tribe has had during the last five years that relate to the Federally Recognized Tribes' ability to perform the services needed under this NOFO. List contract reference numbers, period of performance, contact persons, telephone numbers, and e-mail addresses. COMMERCE may award extra points to entities that are new to state contracting or pass-through funding in its sole discretion.

C. Related Information (MANDATORY)

1. If the Federally Recognized Tribe or any known subcontractor contracted with the state of Washington during the past 24 months, indicate the name of the agency, contract number, project description and/or other information available to identify the contract.
2. If any member of the Federally Recognized Tribes' staff or subcontractor's staff was an employee of the state of Washington during the past 24 months, or is currently a Washington State employee, identify the individual by name, the agency previously or currently employed by, job title or position held and separation date.
3. If the Federally Recognized Tribe has had any contract terminated for default in the last five years, describe such incident. Termination for default, also called termination for cause, is defined as notice to stop contract work for reasons related to contract performance and/or compliance and the termination was either (a) not litigated due to inaction on the part of the Federally Recognized Tribe, or (b) litigated and such litigation determined that the Federally Recognized Tribe was in default.
4. Submit full details of the terms for default including the other party's name, address, and phone number. Present the Federally Recognized Tribes' position on the matter. COMMERCE will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of the past experience. If no such termination for default has been experienced by the Federally Recognized Tribe in the past five years, so indicate.

D. References (MANDATORY)

List names, addresses, telephone numbers, and e-mail addresses of three (3) business references for the Federally Recognized Tribe and three (3) business references for the lead

staff person for whom work has been accomplished and briefly describe the type of service provided. Do not include current COMMERCE staff as references. By submitting a Proposal the Federally Recognized Tribe and any partners or agents authorize COMMERCE to contact these references and any others who, from COMMERCE'S perspective, may have pertinent information. COMMERCE may or may not contact references in its sole discretion.

E. OMWBE and WDVA Certification (OPTIONAL AND NOT SCORED)

Include proof of certification issued by the Washington Office of Minority and Women's Business Enterprises (OMWBE) or Washington Department of Veteran Affairs (WDVA) if certified small, minority-, women-, or veteran-owned business(es) will be participating on this project in any capacity. For more information please see Section 2.9 and visit: www.omwbe.wa.gov or www.wdva.wa.gov.

3.5 COST PROPOSAL

The total amount proposed must not exceed the amount specified in Section 1.4 to be considered responsive to this NOFO.

The evaluation process is designed to award this procurement not necessarily to the Federally Recognized Tribes of least cost, but rather to the Federally Recognized Tribes whose Proposal best meets the requirements of this NOFO. However, Federally Recognized Tribes are encouraged to submit Proposals which are consistent with state government efforts to conserve resources.

Identification of Costs (MANDATORY)

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

Costs for work to be completed by subcontractors or subgrantees are to be broken out separately.

4. EVALUATION AND CONTRACT AWARD

4.1 EVALUATION PROCEDURE

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

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

The NOFO Coordinator may contact the Federally Recognized Tribes for clarification of any portion of their Proposal. Federally Recognized Tribes are not permitted to submit, resubmit, correct, or change any materials of any kind after the date and time stated in Section 2.6 SUBMISSION OF PROPOSALS.

4.2 EVALUATION BREAKDOWN

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

Technical Proposal – 80%

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

Management Proposal – 20%

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

Cost Proposal is scored by dividing the lowest cost received by the Federally Recognized Tribes' total cost and the result is then added to the combined score for the Technical and Management Proposals.

Workers' Rights Certification Those Federally Recognized Tribes that 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 C).

COMMERCE reserves the right to award the contract(s) to the Federally Recognized Tribes(s) whose Proposal is deemed to be in the best interest of COMMERCE and the state of Washington.

4.3 VIRTUAL PRESENTATIONS MAY BE REQUIRED

After evaluating the written proposals COMMERCE may elect to schedule virtual presentations or interviews of top-scoring Federally Recognized Tribes. If so, COMMERCE will contact the top-scoring Federally Recognized Tribes 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 Federally Recognized Tribes 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 Grantee.

4.4 NOTIFICATION TO FEDERALLY RECOGNIZED TRIBES

COMMERCE will notify the Apparent Successful Grantee(s) of their selection in writing upon completion of the evaluation process. Federally Recognized Tribes 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 FEDERALLY RECOGNIZED TRIBES

Any Federally Recognized Tribes who has submitted a Proposal 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 NOFO Coordinator within three (3) business days after the Unsuccessful Federally Recognized Tribes Notification is e-mailed to the Federally Recognized Tribes. 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 Federally Recognized Tribes' Proposal;
- Any written comments from evaluators related to that Federally Recognized Tribe;
- Review of Federally Recognized Tribes' final score in comparison with the other final scores **without** identifying the other Federally Recognized Tribes or reviewing their Proposals.

Comparisons between Proposals or evaluations of the other Proposals 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 Federally Recognized Tribes who submitted a response to this NOFO and who have participated in a debriefing conference. Upon completing the debriefing conference, the Federally Recognized Tribe is allowed five (5) business days to file a protest with the NOFO Coordinator. Protests must be received by the NOFO Coordinator no later than 5:00pm Pacific time on the fifth business day following the debriefing. Protests must be submitted by email. Federally Recognized Tribes may choose to copy COMMERCE'S Central Contracts Office at centralcontracts@commerce.wa.gov. Do not copy any other COMMERCE staff.

Federally Recognized Tribes protesting this NOFO 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 Federally Recognized Tribes under this NOFO.

All protests must be in writing, addressed to the NOFO Coordinator, and signed by the protesting party or an authorized agent. The protest must state the NOFO 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 NOFO 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 proposal, 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 Federally Recognized Tribes, such Federally Recognized Tribes 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 proposals, or
 - Cancel this NOFO 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 Grantee(s). If the protest is determined to have merit, one of the options above will be taken.

5. NOFO EXHIBITS

Exhibit A Certifications and Assurances

Exhibit B Diverse Business Inclusion Plan

Exhibit C Workers' Rights Certification

Exhibit D RFP letter

Exhibit E Example Grant Contract with General Terms and Conditions

CERTIFICATIONS AND ASSURANCES

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

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

Signature of Federally Recognized Tribe Date

Printed Name Title

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 NOFO, 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 NOFO 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 NOFO 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 NOFO 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 NOFO.
- I/We do not plan to make any purchases reimbursable under this NOFO.

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 D

RFP Mandatory Letter include the following:

Name of Business

Address

Principal place of business

Telephone number

Fax number

Email address of legal entity or individual with whom contract will be written

Principal Officer(s):

Name, address, telephone number of each officer

Legal Status of Federally Recognized Tribes (sole proprietorship, partnership, corporation, etc...) and the year the entity was organized to do business as the entity now substantially exists.

Federal Employer Tax Identification and WA Statue Uniform business Identification (UBI) number

Location from which the Federally Recognized Tribes would operate

Identify any state employees or former state employees employed or on the firm's governing board as of the date of the proposal include their position and responsibilities within the Federally Recognized Tribes' organization.

SIGN Letter: by a person authorized to legally bind the Federally Recognized Tribes 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.

Tribal Agreement with

enter Tribal entity name here

through

**enter Name of COMMERCE program issuing/administering
contract here**

For

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

Start date: Month/Day/Year

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Agreement Number: <Insert number>

Face Sheet

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

1. Tribe or Nation <Insert legal name> <Insert mailing address> <Insert physical address> <Insert location>		2. Tribe or Nation Doing Business As (optional) <Insert DBA name> <Insert DBA mailing address> <Insert DBA physical address> <Insert DBA location>	
3. Tribe or Nation Representative <Insert name> <Insert title> <Insert phone> <Insert e-mail>		4. COMMERCE Representative <Insert name> <Insert mailing address> <Insert title> <Insert physical address> <Insert phone> <Insert location> <Insert e-mail>	
5. Agreement Amount <Insert \$ amount>	6. Funding Source Federal: <input type="checkbox"/> State: <input type="checkbox"/> Other: <input type="checkbox"/> N/A: <input type="checkbox"/>	7. Start Date <Insert date>	8. End Date <Insert date>
9. Federal Funds (as applicable) <Insert \$ amount>		Federal Agency: <Insert Agency Name>	
		ALN: <Insert Assistance Listing Number>	
10. Tax ID # <Insert number>	11. SWV # <Insert number>	12. UBI # <Insert number>	13. UEI # <Insert number>
14. Agreement Purpose <Briefly describe Agreement purpose>			
COMMERCE, defined as the Department of Commerce, and the Tribe or Nation, as defined above, acknowledge and accept the terms of this Agreement and attachments and have executed this Agreement on the date below to start as of the date and year referenced above. The rights and obligations of both parties to this Agreement are governed by this Agreement and the following other documents incorporated by reference: Contract Terms and Conditions including Attachment "A" - <insert title>, Attachment "B" - <insert title>, Attachment "C" - <insert title>, <etc.>			
FOR TRIBE OR NATION		FOR COMMERCE	

<insert name>, <insert title>

Date

<insert name>, <insert title>

Date

APPROVED AS TO FORM ONLY
Signature on file.

SPECIAL TERMS AND CONDITIONS

TRIBAL AGREEMENT STATE FUNDS

1. AGREEMENT 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 Agreement.

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

The Representative for the Tribe or Nation and their contact information are identified on the Face Sheet of this Agreement.

2. ACKNOWLEDGEMENT OF CLIMATE COMMITMENT ACT FUNDING

If this Agreement is funded in whole or in part by the Climate Commitment Act, Tribe or Nation 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 Tribe or Nation 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 Tribe or Nation 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 CAA funding through a generally visible decal.**

3. COMPENSATION

COMMERCE shall pay an amount not to exceed (\$) for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. Tribe or Nation's compensation for services rendered shall be in accordance with the terms of Attachment A, Scope of Work and Attachment B, Budget.

EXPENSES

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

Such expenses may include airfare (economy or coach class only), other transportation expenses, and lodging and subsistence necessary during periods of required travel. Tribe or Nation shall receive compensation for travel expenses at state travel reimbursement rates in effect on the date of travel.

4. BILLING PROCEDURES AND PAYMENT

COMMERCE will pay Tribe or Nation upon acceptance 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 Agreement reference 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 Agreement or withhold payments claimed by the Tribe or Nation for services rendered if the Tribe or Nation fails to satisfactorily comply with any term or condition of this Agreement.

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

Duplication of Billed Costs

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

Disallowed Costs

The Tribe or Nation 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, deliverable, or completion of the project.

5. SUBCONTRACTOR DATA COLLECTION

The Tribe or Nation 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 Agreement performed by Subcontractors and the portion of the Agreement funds expended for work performed by subcontractors, including but not necessarily limited to minority-owned, woman-owned, and veteran-owned business subcontractors. "Subcontractors" shall mean subcontractors of any tier.

6. CULTURALLY RELEVANT SERVICES

In performing work pursuant to any Agreement, the Tribe or Nation may develop and operate programs and deliver goods, services, and/or benefits in a manner that is culturally relevant and particularly suited to and/or particularly located for access by members of the Contractor's Nation or other Tribes, in accordance with Tribal Laws and policies.

7. HIRING AND EMPLOYMENT PRACTICES

The Tribe or Nation may give preference in its hiring and employment practices to members of the Contractor, or other Tribes, who have met all requirements for that position, including state requirements, and as may be provided by Tribal Laws and policies.

8. INSURANCE

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

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 Tribe or Nation shall instruct the insurers to give COMMERCE thirty (30) calendar days advance notice of any insurance cancellation, non-renewal or modification.

The Tribe or Nation shall submit a certificate of insurance to COMMERCE which outlines the coverage and limits defined in this insurance section within fifteen (15) calendar days of a written request by COMMERCE. The 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. During the term of this Contract, if requested, the Contractor shall submit renewal certificates not less than thirty (30) calendar days prior to expiration of each policy required under this section.

DO NOT send insurance certificates to COMMERCE unless requested by COMMERCE. Any certificates received by mail will be returned to sender unless the certificate identifies the contract number, contract manager name, and/or program name to which it applies.

The Tribe or Nation shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, 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 Agreement activity but no less than \$1,000,000 per occurrence. Additionally, the Tribe or Nation is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

Cyber Liability Insurance: The Contractor shall maintain Cyber Liability 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.

Automobile Liability. In the event that performance pursuant to this Agreement involves the use of vehicles, owned or operated by the Tribe or Nation 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 Tribe or Nation shall maintain Professional Liability or Errors and Omissions Insurance. The Tribe or Nation shall maintain minimum limits of no less than \$1,000,000 per occurrence to cover all activities by the Tribe or Nation 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 Tribe or Nation 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 Agreement shall be \$100,000 or the highest of planned reimbursement for the Agreement 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 Agreement shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Tribe or Nation as beneficiary.

9. FRAUD AND OTHER LOSS REPORTING

The Tribe or Nation 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.

10. ORDER OF PRECEDENCE

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

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

- **General Terms and Conditions**
- **Attachment A – Scope of Work**
- **Attachment B – Budget**
- **[add any other attachments incorporated by reference on the Face Sheet]**

11. SOVEREIGN IMMUNITY

Nothing whatsoever in this Agreement constitutes or shall be construed as a waiver of the Tribe or Nation's sovereign immunity.

GENERAL TERMS AND CONDITIONS

TRIBAL AGREEMENT STATE FUNDS

1. DEFINITIONS

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

- A. "Agreement" or "Grant" or "Contract" means the entire written Agreement between COMMERCE and the Tribe or Nation, including any Attachments, documents, or materials incorporated by reference. E-mail or facsimile transmission of a signed copy of this Agreement shall be the same as delivery of an original.
- B. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- C. "COMMERCE" shall mean the Washington Department of Commerce.
- D. "Materials" shall mean 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.
- E. "Parties" shall mean the Tribe or Nation and COMMERCE, who are the Parties to this Agreement.
- F. "State" shall mean the state of Washington.
- G. "Subgrantee" or "Subcontractor" shall mean one not an employee of the Tribe or Nation, who is performing all or part of those services under this Agreement under a separate agreement with the Tribe or Nation. The terms "Subgrantee" and "Subgrantees" means Subgrantee(s) in any tier.
- H. "Tribal Law" means the resolutions, law, codes, and/or ordinances enacted by the Tribe or Nation executing this Agreement, and any of the Tribe or Nation's tribal court decisions interpreting the same. All references in this Agreement to Tribal Law shall include any successor, amended, or replacement law, as of the effective date of such successor, amended, or replacement law.
- I. "Tribe or Nation" or "Contractor" or "Grantee" shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Tribe or Nation.
- J. "Vendor" is an entity that agrees to provide the amount and kind of services requested by COMMERCE; provides services under the Agreement only to those beneficiaries individually determined to be eligible by COMMERCE and, provides services on a fee-for-service or per-unit basis with contractual penalties if the entity fails to meet program performance standards

2. ALL WRITINGS CONTAINED HEREIN

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

3. AMENDMENTS

This Agreement 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 Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Tribe or Nation without prior written consent of COMMERCE.

5. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

B. The Tribe or Nation shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Tribe or Nation shall use Confidential Information solely for the purposes of this Agreement 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 Tribe or Nation 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 Tribe or Nation shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Agreement whenever the Grantor reasonably determines that changes are necessary to prevent unauthorized disclosures. The Tribe or Nation shall make the changes within the time period specified by COMMERCE. Upon request, the Tribe or Nation shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Tribe or Nation against unauthorized disclosure.

C. Unauthorized Use or Disclosure. The Tribe or Nation shall notify COMMERCE within twenty-four (24) hours 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. CONFLICT OF INTEREST

In performing under this Agreement, the Tribe or Nation shall comply with applicable state or federal laws related to ethics or conflicts of interest as well as its own ethics policies.

7. COPYRIGHT PROVISIONS

Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Grantor. 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 Tribe or Nation 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 Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Tribe or Nation 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 Tribe or Nation warrants and represents that the Tribe or Nation has all

rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to COMMERCE.

The Tribe or Nation shall exert all reasonable effort to advise COMMERCE, at the time of delivery of Materials furnished under this Agreement, 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 Agreement. The Tribe or Nation shall provide COMMERCE with prompt written notice of each notice or claim of infringement received by the Tribe or Nation with respect to any Materials delivered under this Agreement. COMMERCE shall have the right to modify or remove any restrictive markings placed upon the Materials by the Tribe or Nation.

8. DISPUTES

Except as otherwise provided in this Agreement, when a dispute arises between the Parties and it cannot be resolved by direct negotiation, either party may request a dispute hearing with COMMERCE's Director, 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 Tribe or Nation's name, address, and Agreement number; and
- be mailed to the Director and the other party's (respondent's) Agreement 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 Agreement 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.

9. GOVERNING LAW AND VENUE

This Agreement 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.

10. INDEMNIFICATION

Each party shall be responsible for the acts or omissions of itself and its own officers, employees, and agents acting within the scope of their authority. No party to this Agreement shall be responsible for the acts or omissions of entities or individuals not a party to this Agreement.

11. INDEPENDENT CAPACITY OF THE TRIBE OR NATION

The Parties intend that an independent contractor relationship will be created by this Agreement. The Tribe or Nation and its employees or agents performing under this Agreement are not employees or agents of the state of Washington or COMMERCE. The Tribe or Nation 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 Tribe or Nation 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 Tribe or Nation.

12. LAWS

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

13. NONDISCRIMINATION

A. Nondiscrimination Requirement. During the performance of this Agreement, the Tribe or Nation, including any Subcontractor, shall comply with all applicable tribal, federal, state, and local nondiscrimination laws, regulations and policies, this shall include but not be limited to the following: Tribe or Nation, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, Tribe or Nation, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which Tribe or Nation, or subcontractor, has a collective bargaining or other agreement.

The funds provided under this Agreement shall 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 Agreement.

B. Obligation to Cooperate. Tribe or Nation, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that Tribe or Nation, including any subcontractor, has engaged in discrimination prohibited by this Agreement pursuant to RCW 49.60.530(3).

C. Default. Notwithstanding any provision to the contrary, COMMERCE may suspend Tribe or Nation, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this Contract, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until COMMERCE receives notification that Tribe or Nation, including any subcontractor, is cooperating with the investigating state agency. In the event Tribe or Nation, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), COMMERCE may terminate this Agreement in whole or in part, and Tribe or Nation, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Tribe or Nation or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

D. Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Agreement termination or suspension for engaging in discrimination, Tribe or Nation, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between the original Grant and the replacement or cover Grant and all administrative costs directly related to the replacement Grant, e.g., cost of the competitive bidding, mailing, advertising and staff time, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Tribe or Nation may also be required to repay grant funds pursuant to Section 15 (Recapture) of the General Terms & Conditions if the Agreement is terminated based on a violation of the nondiscrimination requirement. COMMERCE shall have the right to deduct from any monies due to Tribe or Nation or subcontractor, or that thereafter become due, an amount for damages Tribe or Nation or subcontractor will owe COMMERCE for default under this provision.

14. POLITICAL ACTIVITIES

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

15. RECAPTURE

In the event that the Tribe or Nation fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, 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 Tribe or Nation 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 Agreement.

16. RECORDS MAINTENANCE

The Tribe or Nation shall maintain all books, records, documents, data and other evidence relating to this Agreement 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 Agreement.

The Tribe or Nation 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 Agreement, 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.

17. 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 Agreement and prior to normal completion, COMMERCE may terminate the Agreement under the "Termination for Convenience" clause, without the ten business day notice requirement. In lieu of termination, the Agreement may be amended to reflect the new funding limitations and conditions.

18. SEVERABILITY

The provisions of this Agreement 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 Agreement.

19. SUBGRANTING

The Tribe or Nation may only Subgrant work contemplated under this Agreement if it obtains the prior written approval of COMMERCE.

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

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

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

20. SURVIVAL

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

21. TERMINATION FOR CAUSE/SUSPENSION

In the event COMMERCE determines the Tribe or Nation has failed to comply with the conditions of this Agreement in a timely manner, COMMERCE has the right to suspend or terminate this Agreement. Before suspending or terminating the Agreement, COMMERCE shall notify the Tribe

or Nation in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days, the Agreement may be terminated or suspended.

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

COMMERCE reserves the right to suspend all or part of the Agreement, withhold further payments, or prohibit the Tribe or Nation from incurring additional obligations of funds during investigation of the alleged compliance breach and pending corrective action by the Tribe or Nation or a decision by COMMERCE to terminate the Agreement. A termination shall be deemed a "Termination for Convenience" if it is determined that the Tribe or Nation: (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 Agreement are not exclusive and are, in addition to any other rights and remedies, provided by law.

22. TERMINATION FOR CONVENIENCE

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

23. TERMINATION PROCEDURES

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

COMMERCE shall pay to the Tribe or Nation the agreed upon price, if separately stated, for completed work and services accepted by COMMERCE, and the amount agreed upon by the Tribe or Nation 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 Agreement. COMMERCE may withhold from any amounts due the Tribe or Nation 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 Agreement.

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

- A. Stop work under the Agreement on the date, and to the extent specified, in the notice;
- B. Place no further orders or Subgrants for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Agreement that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed the Authorized Representative, all of the rights, title, and interest of the Tribe or Nation under the orders and Subgrants 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 Subgrants;

- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and Subgrants, with the approval or ratification of the Authorized Representative to the extent directed by the Authorized Representative, 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 Agreement 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 Agreement, which is in the possession of the Tribe or Nation and in which COMMERCE has or may acquire an interest.**

24. 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 Agreement unless stated to be such in writing and signed by Authorized Representative of COMMERCE.

Scope of Work

Budget