



# Department of Commerce

STATE OF WASHINGTON  
DEPARTMENT OF COMMERCE  
OLYMPIA, WASHINGTON

**REQUEST FOR QUALIFICATIONS AND QUOTATIONS  
RFQQ NO. S18-HSNW-RFQQ**

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

**PROJECT TITLE:** HousingSearchNW.org

**PROPOSAL DUE DATE:** January 17, 2016

**EXPECTED TIME PERIOD FOR CONTRACT:** July 1, 2017 through June 30, 2019,  
with up to three two-year contract extensions

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

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## **1 INTRODUCTION**

### **1.1 PURPOSE AND BACKGROUND**

The purpose of this contract is to provide the state with the software application (software as a service) to provide search and list features currently available on the website <http://housingsearchnw.org>, which is an affordable housing search and listing site required by [RCW 43.185C.240](#). The site is also used for residential facilities search and listing for the federal Non-Elderly Disabled Voucher and Roads to Community Living programs. Finally, the site is also used in the event of disaster for emergency housing recovery efforts.

The Washington State Department of Commerce (“Commerce”), along with the Department of Social and Health Services Roads to Community Living Program (“DSHS”), entered into an agreement in December of 2012 to purchase software to assist community workers supporting housing search efforts for their clients, and for other individuals in need of affordable housing. After a survey of community efforts in operation throughout the state, a decision was made to expand the software already in use by service providers and people in King County (through a partnership between King County Housing Authority, Seattle Housing Authority, King County, City of Seattle, and the United Way of King County) for housing search software, call center support, and disaster recovery housing search.

The current software contract with Non Profit Industries (dba SocialServe.com) for the software powering the website <http://housingsearchnw.org/> expires on June 30, 2017.

### **1.2 OBJECTIVE**

The objective of this procurement is to contract with a software vendor to provide services starting July 1, 2017 through the end of the contract term under a scope of work described below and at a cost not to exceed one hundred and twenty six thousand dollars (\$126,000) per year.

COMMERCE may award one or more contracts to Vendors who submit proposals as a result of this RFQQ.

### **1.3 MINIMUM QUALIFICATIONS**

- The vendor must be licensed to do business in the state of Washington and have at least five years of experience implementing software-as-a-service (SAAS) solutions, including two years of experience in providing SAAS solutions specifically to power affordable housing and residential facilities search and locator websites for state- and county-wide jurisdictions.
- The vendor must have at least five years of experience in data hosting, data storage, data security, network operations, backup and uptime, as well as redundancy of all systems, for a large jurisdiction with multiple users in multiple agencies.
- The vendor must also provide at least one reference that can attest to either: a) the vendor's successful integration into disaster housing recovery planning in the event that no disaster occurred during the vendor's tenure; or b) the successful use of the vendor's software product to house some number of people experiencing a housing loss after a disaster.
- The vendor must be able to show demonstrated success in legacy data migration, ongoing data integration, and the ability to incorporate two-factor authentication into the proposed solution if required.

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

### **1.4 FUNDING**

The overall budget for this project shall not exceed one hundred and twenty six thousand dollars (\$126,000) per year. Proposals in excess of \$126,000 will be rejected as non-responsive and will not

be evaluated. In the event additional funding becomes available, any contract awarded may be renegotiated to provide for additional related services.

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

### **1.5 PERIOD OF PERFORMANCE**

The period of performance of any contract(s) resulting from this RFQQ is tentatively scheduled to begin on or about July 1, 2017 and to end on June 30, 2019. COMMERCE reserves the option at its sole discretion to extend the contract for three additional two-year periods.

### **1.6 DEFINITIONS**

Definitions for the purposes of this RFQQ include:

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

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

**CUSTOMER.** Commerce or DSHS or any associated partner agency of theirs, or an interested landlord or project manager, or a renter/buyer, depending on the context.

**DISASTER.** A sudden natural, technological, or human-caused occurrence that has resulted in property damage or loss of use, deaths, and/or injuries within a community.

**DSHS.** The Department of Social and Health Services, a Washington state agency that is jointly issuing this RFQQ with Commerce.

**PROPOSAL.** A formal offer submitted in response to this solicitation.

**RFQQ.** Request for Qualifications and Quotations. Formal procurement document in which services needed are identified and firms are invited to provide their qualifications to provide the services and their hourly rates.

**VENDOR.** The individual, company, or firm submitting a proposal in order to attain a contract with COMMERCE.

### **1.7 ADA**

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

## 2 GENERAL INFORMATION FOR VENDORS

### 2.1 RFQQ COORDINATOR

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

Name	Randy Ayers, IT Applications Manager
Mailing Address	PO Box 42525, Olympia WA 98504-2525
Phone Number	360-725-2693
E-Mail Address	Randy.Ayers@commerce.wa.gov

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

### 2.2 ESTIMATED SCHEDULE OF PROCUREMENT ACTIVITIES

Issue Request for Qualifications and Quotations	December 15, 2016
Question & answer deadline	January 3, 2017
Issue answers to all questions and any addendum to RFQQ (if applicable)	January 5, 2017
Proposals due	January 17, 2017
Evaluate proposals	January 17 – February 28, 2017
Conduct oral interviews with finalists, if required	February 21 – 28, 2017
Announce “Apparent Successful Contractor” and send notification via e-mail to unsuccessful Vendors	March 1, 2017
Hold debriefing conferences (if requested)	March 2, 2017
Negotiate contract	March 6 – 30, 2017
Begin contract work	June 1, 2017

COMMERCE reserves the right to revise the above schedule at any time for any reason.

## **2.3 SUBMISSION OF PROPOSALS**

### **ELECTRONIC PROPOSALS:**

The proposal must be **received by the RFQQ Coordinator** no later than 11:59:59 PM, Pacific Standard Time in Olympia, Washington, on **January 17, 2017**.

Proposals must be submitted electronically as an attachment to an e-mail to the RFQQ Coordinator, at the e-mail address listed in Section 2.1. Attachments to e-mail shall be in Microsoft Excel format for the Qualifications and Quotations, and Microsoft Word or PDF for attachments. Zipped files cannot be received by COMMERCE and cannot be used for submission of proposals. The Certifications and Assurances form must have a scanned signature of the individual within the organization authorized to bind the Vendor to the offer. COMMERCE does not assume responsibility for problems with Vendor's e-mail. If COMMERCE email is not working, appropriate allowances will be made.

Proposals may not be transmitted using facsimile transmission.

Vendors should allow sufficient time to ensure timely receipt of the proposal by the RFQQ 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. All proposals and any accompanying documentation become the property of COMMERCE and will not be returned.

## **2.4 PROPRIETARY INFORMATION/PUBLIC DISCLOSURE**

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

Any information in the proposal that the Vendor 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 Vendor 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 Vendor has marked as "Proprietary Information" COMMERCE will notify the Vendor of the request and of the date that the records will be released to the requester unless the Vendor obtains a court order enjoining that disclosure. If the Vendor fails to obtain the court order enjoining disclosure, COMMERCE will release the requested information on the date specified. If a Vendor 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 Vendor's information per the court order.

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

## **2.5 REVISIONS TO THE RFQQ**

In the event it becomes necessary to revise any part of this RFQQ, addenda will be provided via e-mail to all individuals, who have made the RFQQ Coordinator aware of their interest. Addenda will also be published on Washington's Electronic Bid System (WEBS). The website is at

<https://fortress.wa.gov/ga/webs/>. For this purpose, the published questions and answers and any other pertinent information shall be provided as an addendum to the RFQQ and will be placed on the website.

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

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

## **2.5 DIVERSE BUSINESS INCLUSION PLAN**

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

COMMERCE has the following agency goals:

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

## **2.6 ACCEPTANCE PERIOD**

Proposals must provide 120 days for acceptance by COMMERCE from the due date for receipt of proposals.

## **2.7 COMPLAINT PROCESS**

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

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

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

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

The RFQQ coordinator will respond to the complaint in writing. The response to the complaint and any changes to the solicitation will be posted on WEBS. The Director of COMMERCE will be notified of all complaints and will be provided a copy of COMMERCE'S response. The complaint may not be raised



again during the protest period. COMMERCE'S action or inaction in response to the complaint will be final. There will be no appeal process.

## **2.8 RESPONSIVENESS**

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

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

## **2.9 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 Vendor can propose. COMMERCE does reserve the right to contact a Vendor for clarification of its proposal.

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

## **2.10 CONTRACT AND GENERAL TERMS & CONDITIONS**

The apparent successful contractor will be expected to enter into a contract, which is substantially the same as the sample contract and its general terms and conditions attached as Exhibit D. In no event is a Vendor to submit its own standard contract terms and conditions in response to this solicitation. The Vendor may submit exceptions as allowed in the Certifications and Assurances section, Exhibit B to this solicitation. COMMERCE will review requested exceptions and accept or reject the same at its sole discretion.

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

## **2.11 COSTS TO PROPOSE**

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

## **2.12 NO OBLIGATION TO CONTRACT**

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

## **2.13 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 RFQQ.

## **2.14 COMMITMENT OF FUNDS**

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

## **2.15 INSURANCE COVERAGE**

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

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

### **Liability Insurance**

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

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

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

### **Employers Liability ("Stop Gap") Insurance**

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

### **Additional Provisions**

Above insurance policy shall include the following provisions:

- **Additional Insured.** COMMERCE, its elected and appointed officials, agents and employees shall be named as an additional insured on all general liability, excess, umbrella and property insurance policies. All insurance provided in compliance with this contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.
- **Cancellation.** COMMERCE shall be provided written notice before cancellation or non-renewal of any insurance referred to therein, in accord with the following specifications. Insurers subject to 48.18 RCW (Admitted and Regulation by the Insurance Commissioner): The insurer shall give the state 45 days advance notice of cancellation or non-renewal. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation. Insurers subject to 48.15 RCW (Surplus lines): The state shall be given 20 days advance notice of cancellation. If cancellation is due to non-payment of premium, the state shall be given 10 days advance notice of cancellation.
- **Identification.** Policy must reference the COMMERCE contract number and the agency name.
- **Insurance Carrier Rating.** All insurance and bonds should be issued by companies admitted to do business within the state of Washington and have a rating of A-, Class VII or better in the most recently published edition of Best's Reports. Any exception shall be reviewed and

approved by COMMERCE, the risk manager for the state of Washington, before the contract is accepted or work may begin. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

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

#### **Workers' Compensation Coverage**

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

### 3 PROPOSAL CONTENTS

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

1. Completed Qualifications & Quotations workbook (Exhibit A) in MS Excel format with appropriate addendums
2. Signed Certifications & Assurances (Exhibit B) in MS Word format
3. Diverse Business Inclusion Plan (Exhibit C) in MS Word format

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

#### **3.1 Qualifications & Quotations Workbook (Exhibit A)**

Please complete Exhibit A “Qualifications & Quotations.” There are five sections to the Qualifications & Quotations workbook: “Business Information,” “Minimum Qualifications,” “Minimum Services,” “Cost Narrative,” and “Submission Narrative.”

1. Answer each question in the space provided. The worksheet is locked so that you can only modify certain cells. The password for the worksheet is “HSNWRFQQ” but COMMERCE encourages you to keep it locked for consistency in scoring.
2. Some questions limit your options. Deviation from the list of options on these questions may cause an application to be deemed non-responsive.
3. If an answer to a question in the “Business Information” section requires it, COMMERCE will expect an addendum with a title similar to the question asked to obtain full score.
4. If you answer “No” to a question in the “Minimum Qualifications” section, you are not qualified for this contract and should not submit a response.
5. There are three parts to every question in the “Minimum Services” section:
  - Provide an appropriate answer to the existence of that service in your SAAS;
  - Provide an annual cost for that service if it is “Already part of current product” or “Will be incorporated in time for demonstration”
  - Provide performance criteria for each minimum service. As an example for performance criteria on a minimum service, answer the question: “How will COMMERCE know they can pay me for this service?” or “What does “success” look like for this service?”
  - In the “Cost Narrative” section, provide any narrative (up to 250 words) that clarifies the annual costs or performance criteria provided in the “Minimum Services” section. Vendors are required to collect and pay Washington State taxes as applicable. The evaluation process is designed to award this procurement not necessarily to the Vendor of least cost, but rather to the Vendor whose proposal best meets the requirements of this RFQQ. Vendors are encouraged, however, to submit proposals which are consistent with state government efforts to conserve state resources.
  - In the “Submission Narrative” section, provide any final narrative (up to 500 words) necessary to complete or enhance the information already provided.

### **3.2 Certifications & Assurances (Exhibit B)**

Please complete Exhibit B "Certifications & Assurances" by reading and agreeing to the certifications and assurances stated. The "Certifications & Assurances" form must be printed, be signed in colored ink by the individual within the organization authorized to bind the Vendor to the offer, and be re-scanned in color into PDF format to be included in the electronic submission email.

### **3.3 Diverse Business Inclusion Plan (Exhibit C)**

Please complete Exhibit C "Diverse Business Inclusion Plan" by answering the questions asked. The "Diverse Business Inclusion Plan" form must be included in the electronic submission email.

## 4 EVALUATION AND CONTRACT AWARD

### 4.1 EVALUATION PROCEDURE

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

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

### 4.2 CLARIFICATION OF PROPOSAL

The RFQQ Coordinator may contact the Vendor for clarification of any portion of the Vendor's proposal.

### 4.3 EVALUATION WEIGHTING AND SCORING

The following weighting and points will be assigned to the proposal for evaluation purposes using the following scoring criteria:

"N/A" – No points awarded because it is a minimum qualification required for proposal acceptance or is cost narrative or submission narrative, which isn't scored

"Insufficient" – up to 33% of points possible for an answer that provides minimal assurance as to the Vendor's capacity to perform the work proposed

"Sufficient" – up to 66% of points possible for an answer that provides sufficient assurance as to Vendor's capacity to perform the work proposed

"Highly Sufficient" – up to 100% of points possible for an answer that provides unquestionable assurance as to Vendor's capacity to perform the work proposed

Reference Checks – Two checks, up to 25 points possible each	Up to 50 pts total
Minimum Services – Thirty-five services, up to 10 points possible each	Up to 380 pts total
Cost – Sum Annual Cost scored after breakdown by service provided	Up to 10 pts
<b>Grand Total</b>	<b><u>Up to 440 Points Possible</u></b>

### 4.4 ORAL PRESENTATIONS MAY BE REQUIRED

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

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

### 4.5 NOTIFICATION TO VENDORS

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

#### **4.6 DEBRIEFING OF UNSUCCESSFUL VENDORS**

Upon request, a debriefing conference will be scheduled with an unsuccessful Vendor. The request for a debriefing conference must be received by the RFQQ Coordinator within three (3) business days after the Notification of Unsuccessful Vendor letter is faxed/e-mailed to the Vendor. The debriefing must be held within three (3) business days of the request.

Discussion will be limited to a critique of the requesting Vendor's proposal. Comparisons between proposals or evaluations of the other proposals will not be allowed. Debriefing conferences may be conducted in person or on the telephone and will be scheduled for a maximum of one hour.

#### **4.7 PROTEST PROCEDURE**

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

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

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

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

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

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

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

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

The final determination of the protest shall:

- Find the protest lacking in merit and uphold COMMERCE'S action.
- Find only technical or harmless errors in COMMERCE'S acquisition process and determine COMMERCE to be in substantial compliance and reject the protest.
- Find merit in the protest and provide COMMERCE options which may include:
  - Correct the errors and re-evaluate all proposals

- Reissue the solicitation document and begin a new process
- Make other findings and determine other courses of action as appropriate

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



## **5 RFQQ EXHIBITS**

- 5.1 *Exhibit A Qualifications & Quotations*
- 5.2 *Exhibit B Certifications and Assurances*
- 5.3 *Exhibit C Diverse Business Inclusion Plan*
- 5.4 *Exhibit D Service Contract Format including General Terms and Conditions*

**EXHIBIT A**

***Please note: This Exhibit is intended to be submitted as an Excel Workbook. Please obtain the workbook required for submission from the Commerce Website or WEBS posting for #S18-HSNW-RFQQ.***

**CERTIFICATIONS AND ASSURANCES**

1. 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(s):
2. I/we declare that all answers and statements made in the proposal are true and correct.
3. The prices and/or cost data have been determined independently, without consultation, communication, or agreement with others for the purpose of restricting competition. However, I/we may freely join with other persons or organizations for the purpose of presenting a single proposal.
4. The attached proposal is a firm offer for a period of 120 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 120-day period.
5. In preparing this proposal, I/we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to this proposal or prospective contract, and who was assisting in other than his or her official, public capacity. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
6. I/we understand that COMMERCE will not reimburse me/us for any costs incurred in the preparation of this 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.
7. Unless otherwise required by law, the prices and/or cost data that have been submitted have not been knowingly disclosed by the Vendor and will not knowingly be disclosed by him/her prior to opening, directly or indirectly to any other Vendor or to any competitor.
8. I/we agree that submission of the attached proposal constitutes acceptance of the solicitation contents and the attached sample contract and general terms and conditions. If there are any exceptions to these terms, I/we have described those exceptions in detail on a page attached to this document.
9. No attempt has been made or will be made by the Vendor to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
10. I/we grant COMMERCE the right to contact references and others, who may have pertinent information regarding the Vendor's prior experience and ability to perform the services contemplated in this procurement.
11. If any staff member(s) who will perform work on this contract has retired from the State of Washington under the provisions of the 2008 Early Retirement Factors legislation, his/her name(s) is noted on a separately attached page.

We (circle one) **are / are not** submitting proposed Contract exceptions. (See RFQQ Section 2.10, Contract and General Terms and Conditions.) If Contract exceptions are being submitted, I/we have attached them to this form.

**On behalf of the Vendor submitting this proposal, my signed name below attests to the accuracy of the above statements.**

\_\_\_\_\_  
Signature of Vendor

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

DIVERSE BUSINESS INCLUSION PLAN

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

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

---

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

- Minority                    \_\_\_%
- Women                    \_\_\_%
- Veteran                   \_\_\_%
- Small Business         \_\_\_%

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

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



# Department of Commerce

Innovation is in our nature.

## EXAMPLE SERVICE CONTRACT

Services Contract with

<Individual or contractor organization here>

through

<Name of COMMERCE program issuing/administering contract here>

For

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

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

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Attachment A, Scope of Work

Attachment B, Budget





**SPECIAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
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**1. CONTRACT MANAGEMENT**

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

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

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

**2. COMPENSATION**

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

*NOTES:*

1. *List detail of compensation to be paid, e.g., hourly rates, number of hours per task, unit prices, cost per task, cost per deliverable, etc. or reference documents that specify Contractor's compensation and payment, e.g., Contractor's compensation for services rendered shall be based on the schedule set forth in Exhibit , Fees and Expenses.*
2. *Identify federal and state dollar amounts when relevant reporting requirements apply.*

**EXPENSES**

*NOTE: Expenses are optional. Do not include Expenses paragraph below if expenses are not allowable. If allowable, include only expenses that are appropriate for the Contract.*

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

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

**3. BILLING PROCEDURES AND PAYMENT**

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

*NOTE: Payment can also be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Contract, payment at conclusion of the Contract, etc.*

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.

**SPECIAL TERMS AND CONDITIONS  
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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.

*NOTE: Optional Provision - COMMERCE shall withhold 10 percent from each payment until acceptance by COMMERCE of the final report (or completion of the project, etc.).*

**4. INSURANCE**

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

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

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

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

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

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

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

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

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

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- B.** Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance as noted above. Fidelity insurance secured by Subcontractors pursuant to this paragraph shall name the Contractor as beneficiary.
- C.** The Contractor shall provide, at COMMERCE's request, copies of insurance instruments or certifications from the insurance issuing agency. The copies or certifications shall show the insurance coverage, the designated beneficiary, who is covered, the amounts, the period of coverage, and that COMMERCE will be provided thirty (30) days advance written notice of cancellation.

**5. ORDER OF PRECEDENCE**

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

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

**GENERAL TERMS AND CONDITIONS  
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**1. DEFINITIONS**

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.

**"Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. E-mail or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.**

- C. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- D. "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.
- E. "State" shall mean the state of Washington.
- F. "Subcontractor" shall mean one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

**2. ACCESS TO DATA**

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

**3. ADVANCE PAYMENTS PROHIBITED**

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

**4. ALL WRITINGS CONTAINED HEREIN**

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

**5. AMENDMENTS**

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

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

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

**7. ASSIGNMENT**

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

**8. ATTORNEYS' FEES**

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

**9. AUDIT**

**A. General Requirements**

Contractors are to procure audit services based on the following guidelines.

The Contractor shall maintain its records and accounts so as to facilitate audits and shall ensure that Subcontractors also maintain auditable records.

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

COMMERCE reserves the right to recover from the Grantee all disallowed costs resulting from the audit.

Responses to any unresolved findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to COMMERCE requests for information or corrective action concerning audit issues within thirty (30) days of the date of request.

**B. State Funds Requirements**

In the event an audit is required, if the Contractor is a state or local government entity, the Office of the State Auditor shall conduct the audit. Audits of non-profit organizations are to be conducted by a certified public accountant selected by the Contractor.

The Contractor shall include the above audit requirements in any subcontracts.

In any case, the Contractor's records must be available for review by COMMERCE.

**C. Documentation Requirements**

The Contractor must send a copy of any audit report no later than nine (9) months after the end of the Contractor's fiscal year(s) by sending a scanned copy to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov) or a hard copy to:

Department of Commerce  
ATTN: Audit Review and Resolution Office  
1011 Plum Street SE  
PO Box 42525  
Olympia WA 98504-2525

In addition to sending a copy of the audit, when applicable, the Grantee must include:

- Corrective action plan for audit findings within three (3) months of the audit being received by COMMERCE.
- Copy of the Management Letter and Management Decision Letter, where applicable.

If the Contractor is required to obtain a Single Audit consistent with Circular A-133 requirements, a copy must be provided to Commerce; no other report is required.

**10. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION**

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

1. All material provided to the Contractor by COMMERCE that is designated as "confidential" by COMMERCE;
2. All material produced by the Contractor that is designated as "confidential" by COMMERCE; and
3. All personal information in the possession of the Contractor that may not be disclosed under state or federal law. "Personal information" includes but is not limited to information related to

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a person's name, health, finances, education, business, use of government services, addresses, telephone numbers, social security number, driver's license number and other identifying numbers, and "Protected Health Information" under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA).

- B.** The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of Confidential Information. The Contractor shall use Confidential Information solely for the purposes of this Contract and shall not use, share, transfer, sell or disclose any Confidential Information to any third party except with the prior written consent of COMMERCE or as may be required by law. The Contractor shall take all necessary steps to assure that Confidential Information is safeguarded to prevent unauthorized use, sharing, transfer, sale or disclosure of Confidential Information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide COMMERCE with its policies and procedures on confidentiality. COMMERCE may require changes to such policies and procedures as they apply to this Contract whenever COMMERCE reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by COMMERCE. Upon request, the Contractor shall immediately return to COMMERCE any Confidential Information that COMMERCE reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.
- C.** Unauthorized Use or Disclosure. The Contractor shall notify COMMERCE within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

**11. CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the COMMERCE may, in its sole discretion, by written notice to the CONTRACTOR terminate this contract if it is found after due notice and examination by COMMERCE that there is a violation of the Ethics in Public Service Act, Chapters 42.52 RCW and 42.23 RCW; or any similar statute involving the CONTRACTOR in the procurement of, or performance under this contract.

Specific restrictions apply to contracting with current or former state employees pursuant to chapter 42.52 of the Revised Code of Washington. The CONTRACTOR and their subcontractor(s) must identify any person employed in any capacity by the state of Washington that worked on the (YOUR PROGRAM NAME) including but not limited to formulating or drafting the legislation, participating in grant procurement planning and execution, awarding grants, and monitoring grants, during the 24 month period preceding the start date of this Grant. Identify the individual by name, the agency previously or currently employed by, job title or position held, and separation date. If it is determined by COMMERCE that a conflict of interest exists, the CONTRACTOR may be disqualified from further consideration for the award of a Grant.

In the event this contract is terminated as provided above, COMMERCE shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a breach of the contract by the CONTRACTOR. The rights and remedies of COMMERCE provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which COMMERCE makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

**12. COPYRIGHT PROVISIONS**

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

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

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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.

**13. DISPUTES**

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

The request for a dispute hearing must:

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

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

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

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

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

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

**14. DUPLICATE PAYMENT**

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

**15. 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.

**16. INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, COMMERCE, agencies of the state and all officials, agents and employees of the state, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit,



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action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

The Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor's obligation to indemnify, defend, and hold harmless the State shall not be eliminated or reduced by any actual or alleged concurrent negligence of State or its agents, agencies, employees and officials.

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

**17. INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this Contract. The Contractor and its employees or agents performing under this Contract are not employees or agents of the state of Washington or COMMERCE. The Contractor will not hold itself out as or claim to be an officer or employee of COMMERCE or of the state of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such officer or employee under law. Conduct and control of the work will be solely with the Contractor.

**18. INDUSTRIAL INSURANCE COVERAGE**

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

**19. LAWS**

The Contractor shall comply with all applicable laws, ordinances, codes, regulations and policies of local and state and federal governments, as now or hereafter amended including, but not limited to:

- A. Washington State Laws and Regulations
- B. Affirmative action, RCW 41.06.020 (1).
- C. Boards of directors or officers of non-profit corporations – Liability - Limitations, RCW 4.24.264.
- D. Disclosure-campaign finances-lobbying, Chapter 42.17A RCW.
- E. Discrimination-human rights commission, Chapter 49.60 RCW.
- F. Ethics in public service, Chapter 42.52 RCW.
- G. Office of minority and women's business enterprises, Chapter 39.19 RCW and Chapter 326-02 WAC.
- H. Open public meetings act, Chapter 42.30 RCW.
- I. Public records act, Chapter 42.56 RCW.
- J. State budgeting, accounting, and reporting system, Chapter 43.88 RCW.

**20. 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.

**21. LIMITATION OF AUTHORITY**

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Only the Authorized Representative or the Authorized Representative's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the Authorized Representative.

**22. NONCOMPLIANCE WITH NONDISCRIMINATION LAWS**

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

**23. POLITICAL ACTIVITIES**

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

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

**24. PUBLICITY**

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

**25. RECAPTURE**

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

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

**26. RECORDS MAINTENANCE**

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

The Contractor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review or audit by COMMERCE, personnel duly authorized by COMMERCE, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

**27. REGISTRATION WITH DEPARTMENT OF REVENUE**

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

**28. RIGHT OF INSPECTION**

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

**29. SAVINGS**

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

**30. SEVERABILITY**

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

**31. SITE SECURITY**

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

**32. SUBCONTRACTING**

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

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

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

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

**33. SURVIVAL**

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

**34. TAXES**

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

**35. TERMINATION FOR CAUSE**

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

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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.

**36. TERMINATION FOR CONVENIENCE**

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

**37. TERMINATION PROCEDURES**

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

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

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

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

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

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6. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
7. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

**38. TREATMENT OF ASSETS**

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

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

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

**39. WAIVER**

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