



# Sustainable Aviation Technologies and Energies (SATE) Cluster

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| <b>RFQQ:</b>                   | SUSTAINABLE AVIATION FUELS APPLIED R&D CENTER BUSINESS PLAN |
| <b>ISSUE DATE:</b>             | May 8 <sup>th</sup> , 2023                                  |
| <b>PROPOSAL DUE:</b>           | June 6 <sup>th</sup> , 2023                                 |
| <b>SUBMITTAL REQUIREMENTS:</b> | EMAIL IN PDF FORMAT TO EMILYW@AFA-WA.COM                    |
| <b>QUESTIONS:</b>              | CONTACT EMILY WITTMAN AT EMILYW@AFA-WA.COM                  |

## **ORGANIZATION BACKGROUND**

AFA is the State's trade association for aerospace companies and communities in Washington. Founded as a 501(c)6 non-profit in 2006, AFA's mission is to advocate for Washington state's aerospace industry and help member companies connect and grow. Our vision is for Washington state to be the recognized center of aerospace excellence around the world and for our aerospace industry to get stronger every year.

In 2022, AFA was awarded federal EDA funds through a Washington State Department of Commerce Innovation Cluster Accelerator Program (ICAP) to form the Sustainable Aviation Technologies and Energies (SATE) Cluster. In operation since March 2022, the SATE Cluster leads the research, development, and deployment of sustainable aviation fuels, electrified aviation, hydrogen-powered aviation, and hybrid technologies in the state of Washington.

In March 2023, AFA joined Snohomish County, Washington State University, and other partners with the goal to launch a world-leading Research & Development Center focused on Sustainable Aviation Fuels (SAF) at Paine Field Airport. The facility will include a repository where SAF samples will be received, stored, tested at small scale, indexed, and distributed domestically and internationally; Finishing of SAF samples including distillation, blending or hydrotreating; and Large scale testing of samples to meet high-blend ratio qualifications, hardware development or emissions standards. The center will consist of a tank farm capable of holding large volumes of experimental fuels and a combustion test facility to research and qualify new fuels to decarbonize locally produced aircraft worldwide. For more information on the center, visit: <https://www.snohomishcountywa.gov/6286/SAF-RD-Center>

## **SCOPE OF WORK**

SATE is seeking a consultant to support the initial development phases of the described applied research and development center for sustainable aviation fuels. While it is envisioned that the development and establishment of the center will unfold over several phases, the development of a business plan and a site concept are critical to understanding the potential viability of the R&D center and to support decision making by policymakers.

The consultant will develop a business plan to serve as a strategy to determine the resources, partnerships, and funding to establish and maintain an R&D center. The consultant should develop the business plan based on an existing R&D Center with a focus on sustainable aviation energies. SAF is the primary focus and should guide the development of the business plan, but the plan should be flexible enough to allow additional focuses as the R&D Center matures over time. Responding to this phase of development does not preclude participation in future phases of work related to center development.

Scope of Work deliverables will include:

- Comparative Analysis (at least two similar centers, one domestic and one global)
- Proposed Partners (academic, industry, public, philanthropic, and capital investors, including roles in R&D center)
- Workforce Development & Training (plan for integrating training and curriculum development into the center)
- Financial Plan/Revenue Model (funding phases for launch to 7 years, including capital sources and campaigns)
- Incorporation Status
- Governance Structure (oversight and management, ex: Board of Directors to include analysis of limitations/benefits of public entity involvement)
- Organization Structure and Staff Complement (organizational chart and staff complement from launch to 7 years)
- Operational Support/Employer of Record (operational and back office support for the center)



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- Five to Seven Year Growth Model (including initial focus on SAF and future technologies)

## **FINAL REPORT DUE DATE**

September 30, 2023

## **ESTIMATED BUDGET**

The SATE Cluster has allocated \$30,000 for this project through September 30, 2023. AFA will not accept responses over the \$30,000 budget or proposals that offer additional phases to complete the Scope of Work deliverables.

## **PROPOSAL REQUIREMENTS**

- Cover letter that includes your business's legal information, including UEI
- An outline of how the proposer will deliver the scope of work, including a schedule for performing the work
- Resume or statement of qualifications for individual(s) performing the work
- For transparency purposes, a fee schedule which should include hourly rates, miscellaneous fees, and other anticipated expenses
- Two to three professional references (Name, email, and project(s) completed)
- Copy of current required business license(s)
- Disclosure of legal action taken against the firm/ consultants within the last five (5) years
- Disclosure of business transactions or relationships within the last five (5) years that may create or be perceived to create a conflict of interest, including any business dealings or recommendations of a product or firm that may conflict with this project
- Examples of previous reports similar to Scope of Work deliverables

Proposals shall not exceed ten (10) pages, including all required components; proposer(s) will not be scored upon the length of their proposal or effort to reach the 10-page maximum. Proposer(s) are encouraged to focus on the quality and brevity of their proposal.

## **TIMELINE**

|                     |                                   |
|---------------------|-----------------------------------|
| RFQQ Issued         | May 8 <sup>th</sup> , 2023        |
| Proposals Due       | June 6 <sup>th</sup> , 2023       |
| Finalist Interviews | June 9 <sup>th</sup> , 2023       |
| Work Begins         | June 19 <sup>th</sup> , 2023      |
| Draft Review 1      | July 8 <sup>th</sup> , 2023       |
| Draft Review 2      | August 31 <sup>st</sup> , 2023    |
| Final Draft Due     | September 30 <sup>th</sup> , 2023 |

## **EVALUATION CRITERIA**

- 0 – Not included
- 1 – Included but fails to meet project needs
- 2 – Included and a good fit for project needs

| Criteria  | Value |
|---|-------|
| Proposed delivery of Scope of Work  | 30%   |
| Examples of previous work demonstrating the ability to perform the work                 | 30%   |
| Statement of qualifications for individual(s) who will be performing the work           | 25%   |
| Cover letter including your business's legal information                                | 5%    |
| Fee schedule including hourly rates, miscellaneous fees, and other anticipated expenses | 5%    |



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|--|----|
| Copy of current business license(s) and disclosures, if applicable | 5% |
|--|----|

## **SELECTION CRITERIA**

A review committee will evaluate proposals to determine the person or firm best suited to complete the project's scope of work based on qualifications, experience, references, and fixed fee quotation.

AFA may choose to interview one or more responders but reserves the right to select or to contract with the person or firm that best meets the qualifications without conducting any interviews. AFA also reserves the right to reject all proposals.

Submitting a proposal or being chosen as the most qualified proposal does not guarantee a contract will be executed.

## **SUBMISSION INSTRUCTIONS**

Proposals are due no later than 5:00 PM PDT, June 6<sup>th</sup>, 2023. Late submissions will not be accepted or considered. AFA assumes no responsibility for formatting or transmission errors.

Responses must be submitted in PDF format by email to Emily Wittman, AFA President & CEO at [emilyw@afa-wa.com](mailto:emilyw@afa-wa.com). Mailed responses will **NOT** be accepted.

## **QUESTIONS**

Questions are to be addressed to Emily Wittman, AFA President & CEO at [emilyw@afa-wa.com](mailto:emilyw@afa-wa.com).

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## APPENDIX

### GENERAL INFORMATION

#### Compliance with Commerce General Terms and Conditions

Commerce included in its RFP a list of General Terms and Conditions to be included in any agreement between Commerce and grant awardees. These General Terms and Conditions are attached as Appendix A. As noted in Section 36 of the General Terms and Conditions, any AFA subcontractor must follow applicable terms of the contract between AFA and Commerce. Additionally, the subcontractor cannot be presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

#### Discrimination Laws

Contractor shall comply with all federal, State, and local nondiscrimination laws, regulations, and policies. Contractor noncompliance with certain anti-discrimination laws may result in canceling the contract.

#### Required Disclosures

Contractor shall disclose any potential or actual conflicts of interest, including but not limited to, any recent business dealings that could be perceived as a conflict, any current or recent state employee working on behalf of Contractor. Contractor shall also certify that it has not been debarred from contracting with the Federal government, and shall further disclose if there are any legal actions against it.

#### Fraud Training

Contractor shall complete the certification and fraud training to comply with EDA conditions.

Insurance The subcontractor shall secure 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 \$500,000 per occurrence. Additionally, the subcontractor is responsible for ensuring that any of its 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 subcontractor or its subcontractor, automobile liability insurance shall be required. The minimum limit for automobile liability is \$500,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.

**Fidelity Insurance.** Every officer, director, employee, or agent who is authorized to act on behalf of the subcontractor 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. Subcontractors that receive \$10,000 or more per year in funding through this Contract shall secure fidelity insurance. The amount of fidelity coverage secured pursuant to this subcontract 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 AFA as beneficiary.
- B. The subcontractor shall provide, upon 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 AFA will be provided thirty (30) days advance written notice of cancellation



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## Industrial Insurance Coverage.

Contractor must comply with applicable industrial insurance coverage required by law.

### 1. DEFINITIONS

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

- A. "Authorized Representative" shall mean the Director and/or the designee authorized in writing to act on the Director's behalf.
- B. "COMMERCE" shall mean the Department of Commerce.
- C. "Contract" or "Agreement" means the entire written agreement between COMMERCE and the Contractor, including any Exhibits, documents, or materials incorporated by reference. Email or Facsimile transmission of a signed copy of this contract shall be the same as delivery of an original.
- D. "Contractor" shall mean the entity identified on the face sheet performing service(s) under this Contract, and shall include all employees and agents of the Contractor.
- E. "Modified Total Direct Costs (MTDC)" shall mean all direct salaries and wages, applicable fringe benefits, materials and supplies, services, travel, and up to the first \$25,000 of each subaward (regardless of the period of performance of the subawards under the award). MTDC excludes equipment, capital expenditures, charges for patient care, rental costs, tuition remission, scholarships and fellowships, participant support costs and the portion of each subaward in excess of \$25,000.
- F. "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.
- G. "State" shall mean the State of Washington.
- H. "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.



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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

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

9. AUDIT

If the Contractor is a subrecipient and expends \$750,000 or more in federal awards from any and/or all sources in any fiscal year, the Contractor shall procure and pay for a single audit or a program-specific audit for that fiscal year. Upon completion of each audit, the Contractor shall: 1. Submit to COMMERCE the reporting package specified in OMB Super Circular 2 CFR 200.501, reports required by the program-specific audit guide (if applicable), and a copy of any management letters issued by the auditor. 2. Submit to COMMERCE follow-up and developed corrective action plans for all audit findings. If the Contractor is a subrecipient and expends less than \$750,000 in federal awards from any and/or all sources in any fiscal year, the Contractor shall notify COMMERCE they did not meet the single audit requirement. The Contractor shall send all single audit documentation to [auditreview@commerce.wa.gov](mailto:auditreview@commerce.wa.gov).

10. CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY AND VOLUNTARY EXCLUSION—PRIMARY AND LOWER TIER COVERED TRANSACTIONS

- a. Contractor, defined as the primary participant and its principals, certifies by signing these General Terms and Conditions that to the best of its knowledge and belief they:
  - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.
  - ii. Have not within a three-year period preceding this Contract, been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction, violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice;
  - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of federal Executive Order 12549; and
  - iv. Have not within a three-year period preceding the signing of this Contract had one or more public transactions (Federal, State, or local) terminated for cause of default.
- b. Where the Contractor is unable to certify to any of the statements in this Contract, the Contractor shall attach an explanation to this Contract.
- c. The Contractor agrees by signing this Contract that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by COMMERCE.
- d. The Contractor further agrees by signing this Contract that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion



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Lower Tier Covered Transaction," as follows, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions:

## LOWER TIER COVERED TRANSACTIONS

- i) The lower tier contractor certifies, by signing this Contract that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
  - ii) Where the lower tier contractor is unable to certify to any of the statements in this Contract, such contractor shall attach an explanation to this Contract.
- e. **The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, person, primary covered transaction, principal, and voluntarily excluded, as used in this section, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549.**

## 11. CONFIDENTIALITY/SAFEGUARDING OF INFORMATION

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

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

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

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

## 12. 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.



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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.

## 13. 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.

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

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

## 14. DISPUTES

GENERAL TERMS AND CONDITIONS  
SERVICES CONTRACT  
FEDERAL FUNDS

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;





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- 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.

## 15. 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.

## 16. 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.

## 17. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the State of Washington, COMMERCE, agencies of the State and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the contract. "Claim" as used in this contract, means any financial loss, claim, suit, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or the destruction of tangible property including loss of use resulting therefrom.

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

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the contract. The 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.

## 18. 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



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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.

## 19. INDIRECT COSTS

The Grantee shall provide their indirect cost rate that has been negotiated between their entity and the Federal Government. If no such rate exists a de minimis indirect cost rate of 10% of modified total direct costs (MTDC) will be used.

## 20. 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.

## 21. LAWS

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

## 22. LICENSING, ACCREDITATION AND REGISTRATION

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

## 23. LIMITATION OF AUTHORITY

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

## 24. NONCOMPLIANCE WITH DISCRIMINATION 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 noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with COMMERCE. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

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

## 25. PAY EQUITY

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



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A. Employees are "similarly employed" if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed;

B. Contractor may allow differentials in compensation for its workers if the differentials are based in good faith and on any of the following:

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

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

## 26. POLITICAL ACTIVITY

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.

## 27. PROCUREMENT STANDARDS FOR FEDERALLY FUNDED PROGRAMS

All Contractors must establish procurement policies and procedures in accordance with 2 CFR Part 200, for all purchases funded by this Contract.

The Contractor's procurement system should include at least the following:

- A. A code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in the awarding of contracts using federal funds.
- B. Procedures that ensure all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.
- C. Minimum procedural requirements, as follows:
  - i. Follow a procedure to assure the avoidance of purchasing unnecessary or duplicative items.
  - ii. Solicitations shall be based upon a clear and accurate description of the technical requirements of the procured items.
  - iii. Positive efforts shall be made to use small and minority-owned businesses.
  - iv. The type of procuring instrument (fixed price, cost reimbursement) shall be determined by the Contractor, but must be appropriate for the particular procurement and for promoting the best interest of the program involved.
  - v. Contracts shall be made only with reasonable subcontractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement.
  - vi. Some form of price or cost analysis should be performed in connection with every procurement action.
  - vii. Procurement records and files for purchases shall include all of the following:
    1. Contractor selection or rejection.
    2. The basis for the cost or price.
    3. Justification for lack of competitive bids if offers are not obtained.
  - viii. A system for contract administration to ensure Contractor conformance with terms, conditions and specifications of this Contract, and to ensure adequate and timely follow-up of all purchases.
- D. Contractor and Subcontractor must receive prior approval from COMMERCE for using funds from this Contract to enter into a sole source contract or a contract where only one bid or proposal is received when value of this Contract is expected to exceed \$5,000.



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Prior approval requests shall include a copy of proposed 8. contracts and any related procurement documents and justification for non-competitive procurement, if applicable.

## 28. 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.

## 29. 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.

## 30. 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.

## 31. REGISTRATION WITH DEPARTMENT OF REVENUE

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

## 32. RIGHT OF INSPECTION

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

## 33. 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

## 34. 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.



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## 35. SITE SECURITY

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

## 36. 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.

## 37. 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.

## 38. 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.

## 39. TERMINATION FOR CAUSE

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

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

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

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



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## 40. 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.

## 41. TERMINATION PROCEDURES

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

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

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

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

- A. Stop work under the contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the contract that is not terminated;
- C. Assign to COMMERCE, in the manner, at the times, and to the extent directed by the Authorized Representative, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case COMMERCE has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Authorized Representative to the extent the Authorized Representative may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to COMMERCE and deliver in the manner, at the times, and to the extent directed by the Authorized Representative any property which, if the contract had been completed, would have been required to be furnished to COMMERCE;
- F. Complete performance of such part of the work as shall not have been terminated by the Authorized Representative; and
- G. Take such action as may be necessary, or as the Authorized Representative may direct, for the protection and preservation of the property related to this contract, which is in the possession of the Contractor and in which COMMERCE has or may acquire an interest.

## 42. 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



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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.

#### 43. 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.

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