

Department of Ecology
Convenience Contract C0900190
Current Contract Information

This page contains key contract features, find detailed contract information on following pages.

Contract title:	Retrofit Emissions Control Technology [Diesel Oxidation Catalysts (DOCs)] for Privately Owned Diesel Fleets
Purpose:	Acquisition and installation of DOCs with all necessary mounting hardware on privately owned fleets in Washington State.
Term:	October 15, 2008 through: September 30, 2010
For use by:	Department of Ecology, Local Clean Air Agencies, and Private fleets participating in the Department of Ecology (Ecology) Clean Diesel Grant Program
Contract type:	This contract is designated as convenience use.

SCOPE OF CONTRACT

This contract is awarded to one contractor.

Contractor: Cummins Northwest, LLC
4711 N Basin Avenue
Portland, OR
97217

Primary Contact: Tom Gardiner
Phone: 503 289 0900
Fax: 503 286 5938
Email: tom.b.gardiner@cummins.com

WA Tax No: C602-580-547

Federal ID No: 20-4117902

Ordering Info: Contact Contractor

Products and Services Available: Acquisition and installation of Diesel Oxidation Catalysts

Contract Pricing: See Attachment 2, Price List.

Ordering info: Contact Contractor

Term Worth: \$2,000,000

Department of Ecology

Contract Manager:

Contracts Specialist: Cheryl Witt
Phone Number: (360) 407-6805
Fax Number: (360) 407-7534
Email: cwit461@ecy.wa.gov

NOTES:

- I. **Private Fleet:** Submit Order directly to Contractor for processing.
- II. **Authorized Purchasers:** Only Department of Ecology, Local Clean Air Agencies, and Private fleets participating in the Department of Ecology (Ecology) Clean Diesel Grant Program. It is the contractor's responsibility to verify Ecology-selected private fleets prior to processing orders received under this contract. Contractor shall not process contract orders from unauthorized users.
- III. **Contract Terms:** This document includes by reference all terms and conditions published in Request for Qualifications and Quotations (RFQQ) # 0904 AQ (Attachment 1) and RFQQ #0904 AQ-Amendment 1 (Attachment 1A).

AMENDMENTS

1. **Amendment 1** – Effective April 30, 2009. Amendment revises the Term and the Term Worth; and adds sections 7, 8 and 9 to the Special Terms and Conditions.
2. All other terms, conditions, pricing, and specifications remain unchanged.

SPECIAL TERMS AND CONDITIONS

1. CONTRACTOR QUALIFICATIONS

- a) Are licensed to do business in Washington State;
- b) Have at least three (3) years of experience, and be able to demonstrate technical experience and proficiencies in installing retrofit emission control technologies, including DOCs;
- c) Have the capability to provide a fully functional, mobile retrofit team and operation that can install DOCs at designated sites within Washington State in a timely manner.

2. CONTRACTOR REPRESENTATIVE

Contractor shall maintain adequate available customer service support for this contract.

- a) **Responsibility:** Contractor's representative shall function as the primary point of contact. They shall ensure supervision and coordination and take corrective action as necessary to meet contractual requirements.
- b) **Availability:** Contractor's representative, or designee, shall be readily available during normal working hours (Monday through Friday, 8AM to 5PM Pacific Standard Time).

3. FREIGHT CHARGES

Freight charge is Free on Board Destination, Freight Prepaid with cost of freight included in the cost of the DOCs. Pricing includes all delivery and handling costs to the private fleet.

4. ACQUISITION AND INSTALLATION OF DOCS WITH ALL NECESSARY MOUNTING HARDWARE ON PRIVATELY OWNED FLEETS IN WASHINGTON STATE.

Task1: The participating government agency, either Ecology or a Washington local clean air agency will provide a list of fleets selected to participate in the grant program, including a list of vehicles suggested for retrofit. The contractor will schedule a visit to the selected fleet site to inspect each type of vehicle that is to be considered for retrofit. The contractor will determine the exact DOC kit to be ordered for each vehicle. The selected DOC kits must be currently verified by either the EPA Voluntary Diesel Retrofit Program or by the California Air Resources Board verification process.

Task 2: The contractor will provide the purchaser a work order that identifies the vehicles, including vehicle engine horsepower, suitable for DOC retrofit. The work order will identify the appropriate parts, DOC kits, mounting hardware, etc., including the price for selected parts and installation, plus any additional charges that apply. If Ecology is the participating government agency, the contractor will provide Ecology a copy of the work order. The purchaser will pay ferry or toll road charges associated with site visits. The purchaser must approve all additional charges.

Task 3: Upon receiving approval from the purchaser, the contractor will order parts (DOCs, any required inlet and outlet pipes, mounting hardware, clamps, high temperature sealant, etc.). All products must meet or exceed the warranty requirements established by either the US Environmental Protection Agency or the California Air Resources Board. The contractor will schedule an appointment with the purchaser to install DOCs on the designated vehicle.

Task 4: The contractor will install DOCs on designated vehicles at the designated fleet site. The contractor is responsible for all cleanup associated with installations. Through their normal recycling process and in accordance with all Washington State and Federal Laws, the contractor will dispose of all parts removed from vehicles. The contractor ensures that DOC installations will not void any existing warranty on retrofitted vehicles. The contractor will provide a warranty statement to each purchaser.

Required Deliverables

- The contractor will provide the purchaser with quarterly progress reports, by way of either electronic communication or conference call, on work completed for that quarter;
- Upon completion of all installs, the contractor will provide purchaser with a written invoice containing the cost for equipment and installation;
- The contractor will provide the purchaser with a written labor and materials warranty for parts and services provided.

5. **INSURANCE**

General Requirements: Contractor shall, at their own expense, obtain and keeps in force insurance as required in RFQQ # 0904 AQ.

6. **IMPLIED WARRANTIES**

Contractor warrants all labor and work performed for a period of ninety (90) days from the date of service. The applicable manufacturer's warranty shall apply to all parts incorporated into the work. Contractor makes no representation or warranty as to the fitness of the equipment or materials for any particular use or purpose, as to the condition, quality or merchantability of the equipment or materials, or any other representation or warranty, express or implied, and makes no warranties of any kind, express or implied, except that the equipment or materials shall be free from defects in workmanship and material under normal use and service and except as provided in the manufacturer's warranty documents. The sole responsibility of the Contractor is to repair or replace equipment or materials, in the manner described in such warranty documents, and it shall not be liable under any express or implied warranty or noncontractual theory of liability for any special, indirect or consequential damages, including loss of time, inconvenience, loss of use of the equipment, liability for personal injury or property damage, in any way arising out of customer's purchase of the equipment or materials, or commercial losses.

7. **SOURCE OF FUNDS**



This contract is partially funded with the American Recovery and Reinvestment Act of 2009 (Recovery Fund), Catalogue of Federal Domestic Assistance #66.040 – Recovery Act Funding for State Clean Diesel Program. The funding is provided by the Environmental Protection Agency.

8. **AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) CONTRACT REQUIREMENTS**

A. Listing Jobs with the Employment Security Department:

The RECIPIENT agrees that all job openings created for this PROJECT will be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource (<http://www.wa.gov/esd/1stop/>). In addition, all RECIPIENTS and sub-contractors must be required to list jobs and report hiring results to WorkSource. Existing RECIPIENTS or sub-contractor employees who are retained using funds from this PROJECT also must be reported to WorkSource. WorkSource will pre-screen and refer qualified job candidates for the RECIPIENT's consideration. The RECIPIENT also has the discretion to use other, additional recruitment systems and retains the right to make all hiring decisions. To begin the listing and reporting process, contact the ARRA Business Unit at 877-453-5906 (toll-free), 360-438-4849 or ARRA@esd.wa.gov.

B. American Iron, Steel, and Manufactured Goods: (Buy American requirement):

This Buy American term and condition applies only to Truck Stop Electrification (TSE) projects and diesel emissions reductions projects for heavy generators (such as those used in public energy production) which are considered to be public works when a government al entity is conducting the project.

C. Disadvantaged Business Enterprise:

As with all federally funded projects, Recovery Funded RECIPIENTS agree to comply with the requirements of the Environmental Protection Agency's Program for Utilization of Small, Minority, and Women's Business Enterprises (40CFR, Part 33) in procurement under this AGREEMENT.

Non-discrimination Provision. The RECIPIENT will comply with all federal and state nondiscrimination laws, including, but not limited to Chapter 49.60 RCW, Washington's Law Against Discrimination, and 42 U.S.C. 12101 et seq, the Americans with Disabilities Act (ADA).

In the event of the RECIPIENT's noncompliance or refusal to comply with any applicable nondiscrimination law, regulation, or policy, this AGREEMENT may be rescinded, canceled, or terminated in whole or in part, and the RECIPIENT may be declared ineligible for further funding from the DEPARTMENT. The RECIPIENT will, however, be given a reasonable time in which to cure this noncompliance.

- 1) Ensuring Disadvantaged Business Enterprises are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing Disadvantaged Business Enterprises on solicitation lists and soliciting them whenever they are potential sources. *Qualified Women and Minority business enterprises may be found on the Internet at www.omwbe.wa.gov or by contacting the Washington State Office of Minority and Women's Enterprises at 360-704-1181.*
- 2) Making information on forthcoming opportunities available to Disadvantaged Business Enterprises and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by Disadvantaged Business Enterprises in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of thirty (30) calendar days before the bid or proposal closing date.
- 3) Considering in the contracting process whether firms competing for large contracts could subcontract with Disadvantaged Business Enterprises. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by Disadvantaged Business Enterprises in the competitive process.
- 4) Encourage contracting with a consortium of Disadvantaged Business Enterprises when a contract is too large for one of these firms to handle individually.
- 5) Using services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
- 6) If the prime RECIPIENT awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs 1 through 5 above.

Pursuant to 40 CFR, Section 33.501(b) and (c), the RECIPIENT also agrees to create and maintain a bidders list for both Disadvantaged Business Enterprises (DBE) and Non-Disadvantaged Business Enterprises (non-DBE). The purpose of a bidders list is to provide the recipient and entities receiving identified loans who conduct competitive bidding with as accurate a database as possible about the universe of DBE and non-DBE prime and subcontractors. The list must include all firms that bid or quote on prime contracts, or bid or

quote subcontracts on Environmental Protection Agency assisted projects, including both DBE and non-DBE. The bidders list must only be kept until the grant project period has expired and the recipient is no longer receiving Environmental Protection Agency funding under the grant. For entities receiving identified loans, the bidders list must only be kept until the project period for the identified loan has ended. The following information must be obtained from all prime and subcontractors: entity's name with point of contact; entity's mailing address, telephone number, and e-mail address; the procurement on which the entity bid or quoted, and when; and entity's status as an DBE or non-DBE.

The RECIPIENT agrees to provide Environmental Protection Agency Form 6100-2 DBE Subcontractor Participation and Environmental Protection Agency Form 6100-3 DBE Subcontractor Performance to all its Disadvantaged Business Enterprise subcontractors.

D. Prevailing Wage (Davis-Bacon):

The RECIPIENT agrees to comply with the requirements as described in the Wage Rate Requirements, Section 1606, of the American Recovery and Reinvestment Act of 2009. This section pertains to the application of the Davis-Bacon wage rules to projects receiving Recovery Funds. The RECIPIENT is legally and financially responsible for compliance with the Davis-Bacon Act wage rules which state that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part pursuant to this Act will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. The RECIPIENT is also subject to the state prevailing wage law, Chapter 39.12 RCW.

The RECIPIENT will require this provision in contracts with all contractors, subcontractors, engineers, vendors, and any other entity for work or services covered in this AGREEMENT.

E. Project Signs:

The RECIPIENT agrees to display the American Recovery and Reinvestment Act of 2009 logo in a manner that informs the public that the project is an American Recovery and Reinvestment Act of 2009 investment. This logo may be obtained from the Environmental Protection Agency (EPA) grant office at: EPA Region 10, Mail Code: OMP-145, 1200 Sixth Avenue, Suite 900, Seattle, WA, 98101 or by contacting the DEPARTMENT's Project Manager or Financial Manager.

The EPA logo is displayed along with the American Recover and Reinvestment Act of 2009 logo and logos of other participating entities. The American Recovery and Reinvestment Act of 2009 logo must not be displayed in a manner that implies that the EPA itself is conducting the project. Instead, the EPA logo must be accompanied with a statement indicating that the RECIPIENT received financial assistance from EPA for the project.

F. Protection of Whistleblowers:

The RECIPIENT agrees to comply with the requirements as described in the Protecting State and Local Government and Contractor Whistleblowers, Section 1553, of the American Recovery and Reinvestment Act of 2009. The RECIPIENT agrees to ensure that whistleblower rights and remedies are publicly posted. The RECIPIENT understands that employees may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Act Accountability and Transparency Board, the DEPARTMENT, an inspector

general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee reasonably believes is evidence of:

- 1) Gross mismanagement of an agency contract or grant relating to covered funds;
- 2) A gross waste of covered funds;
- 3) A substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- 4) An abuse of authority related to the implementation or use of covered funds; or
- 5) A violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

G. ARRA Reporting Requirements:

The RECIPIENT agrees to comply with the requirements as described in the Reports on Use of Funds of the Transparency and Oversight Requirements, Section 1512, of the American Recovery and Reinvestment Act of 2009. The RECIPIENT agrees to maintain current registration in the Central Contractor's Registration (CCR) database (<http://www.ccr.gov>) through the completion of this PROJECT. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

The RECIPIENT agrees to furnish Prevailing Wage, American Iron, Steel and Manufactured Goods, and such other reports as may be requested pertaining to the activities included as part of this AGREEMENT. This is in addition to the minimum requirements as outlined in this AGREEMENT.

Recovery Fund reporting will include but may not be limited to:

The RECIPIENT will notify the DEPARTMENT of the following immediately upon occurrence:

- Actual date construction begins
- Actual date construction is complete

The RECIPIENT will provide the DEPARTMENT with an electronic monthly report due on the last day of each month following the effective date of the AGREEMENT. If the last day falls on a weekend or holiday, the report will be due the next business day. This report will be submitted on a mandatory electronic form provided by the DEPARTMENT.

H. Office of Management and Budget (federal) guidance:

This award is subject to all applicable provisions of implementing guidance for the American Recovery and Reinvestment Act of 2009 issued by the United States Office of Management and Budget, including the Initial Implementing Guidance for the American Recovery and Reinvestment Act (M-09-10) issued on February 18, 2009 and available on www.recovery.gov, and any subsequent guidance documents issued by OMB.

I. GAO/IG Access:

The RECIPIENT agrees to comply with the requirements as described in the Access of Government Accountability Office, Section 902, of the American Recovery and Reinvestment Act of 2009. This section gives the Comptroller General and his representative's authorization:

- 1) To examine any records of the RECIPIENT or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract; and
- 2) To interview any officer or employee of the RECIPIENT or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

9. CERTIFICATION REGARDING SUSPENSION, DEBARMENT, AND OTHER RESPONSIBILITY MATTERS.

Federal Executive Order 12549 provides that Executive departments and agencies shall participate in a government-wide system for monitoring suspended, debarred and excluded parties. These departments and agencies have further passed this requirement onto their contractors and have provided pertinent regulations in the Code of Federal Regulations. The CONTRACTOR, by signing this agreement, certifies that it is not suspended, debarred or otherwise excluded from contracting with the federal government, or from receiving contracts paid for with federal funds. If the CONTRACTOR is unable to certify to the statements contained in the certification, they must provide an explanation as to why they cannot. The web site for checking suspended, debarred or excluded parties is www.epls.gov.

PRICE SHEETS

Contractor Price List is included as Attachment 2

APPROVAL

This contract shall be subject to the written approval of the Ecology authorized representative and shall not be binding until so approved. The contract may be altered, amended, or waived only by a written amendment signed by both parties.

THIS CONTRACT, consisting of seven pages and three attachments is executed by the persons signing below who warrant that they have the authority to execute the contract.

**State of Washington
Department of Ecology**

Cummins Northwest, LLC

Polly Zehm, Deputy Director

Richard A. Stillmock, CFO

Date

Date