

**AMENDMENT NO 2  
TO  
PURCHASED SERVICES CONVENIENCE CONTRACT NO. C0900219  
BETWEEN  
STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY  
AND  
CUMMINS NORTHWEST**

**Purpose:** This amendment revises Section 8 of the Special Terms and Conditions.

This Amendment No. 2 is between the State of Washington Department of Ecology (AGENCY) and Cummins Northwest (CONTRACTOR).

WHEREAS, the parties entered into a Purchased Services Convenience Contract for the Installation or Retrofit Emission Control Technology (Diesel Oxidation Catalysts [DOCS]) on Privately Owned Diesel Fleets effective October 15, 2008;

WHEREAS, the parties have agreed to modify certain terms and conditions of the contract;

NOW, THEREFORE, the parties hereby agree as follows:

1. **The Effective Date for Amendment 2 shall be April 17, 2009.**
2. **Section 8 of the Special Terms and Conditions shall be changed to:**
8. ***AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) CONTRACT REQUIREMENTS***
  - A. Recovery Act Reporting Requirements; Section 1512(c) of the Recovery Act

Contractor acknowledges and agrees that the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act" places great emphasis on accountability and transparency in the use of taxpayer dollars. Among other things, it creates a new Recovery Accountability and Transparency Board and a new website -- Recovery.gov -- to provide information to the public, including access to detailed information on grants and contracts made with Recovery Act funds.

The Department of Ecology, as a recipient of Recovery Act funds, must comply with the Recovery Act's extensive reporting requirements, including quarterly financial and programmatic reporting due within 10 calendar days after the end of each calendar quarter. The Department of Ecology will require periodic reports from its sub-recipients in order to fulfill its reporting obligations. Contractor receiving Recovery Act funds may expect that a standard form(s) and/or reporting mechanism will be made available at a future date.

Contractor agrees to provide to the Department of Ecology all reports, documentation, or other information, as may be required by the Department of Ecology to meet reporting obligations under the Recovery Act. Contractor's receipt of funds is contingent on Contractor meeting the reporting requirements of Section 1512.

Additional instructions and guidance regarding the required reporting will be provided as they become available. For planning purposes, however, Contractors receiving Recovery Act funds should be aware that Recovery Act section 1512(c) provides:

Recipient Reports- Not later than 10 days after the end of each calendar quarter, each recipient that received recovery funds from a Federal agency shall submit a report to that agency that contains—

- (1) The total amount of recovery funds received from that agency;
- (2) The amount of recovery funds received that were expended or obligated to projects or activities; and
- (3) A detailed list of all projects or activities for which recovery funds were expended or obligated, including:
  - (a) The name of the project or activity;
  - (b) A description of the project or activity;
  - (c) An evaluation of the completion status of the project or activity;
  - (d) An estimate of the number of jobs created and the number of jobs retained by the project or activity; and
  - (e) For infrastructure investments made by State and local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with funds made available under the Recovery Act, and name of the person to contact at the agency if there are concerns with the infrastructure investment.
- (4) Detailed information on any subcontracts or subgrants awarded by the recipient to include the data elements required to comply with the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), allowing aggregate reporting on awards below \$25,000 or to individuals, as prescribed by the Director of the Office of Management and Budget.

B. Section 1512 of the Recovery Act: Registration with Central Contractor Registration (CCR)

Recipients of funds under the Recovery Act shall register with the Central Contractor Registration (CCR) database at [www.ccr.gov](http://www.ccr.gov). This ensures consistent reporting of data about each entity and thereby makes data more useful to the public. In order to register in CCR, a valid Data Universal Numbering System (DUNS) Number is required and should be included on the cover page or other designated place in this agreement.

C. Section 1602 of the Recovery Act: Preference for Quick-Start Activities (if applicable)

Section 1602 of the Recovery Act provides:

In using funds made available in the Recovery Act for infrastructure investment, recipients shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the enactment of the Recovery Act. Recipients shall also use funds in a manner that maximizes job creation and economic benefit.

D. Section 1604 of the Recovery Act: Limit on Funds

Section 1604 of the Recovery Act provides:

None of the funds appropriated or otherwise made available in the Recovery Act may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

E. Required Use of American Iron, Steel, and Manufactured Goods—Section 1605 of the American Recovery and Reinvestment Act of 2009

*Note: For projects funded by the Department of Ecology Air Quality Program, the Buy American Terms and Conditions apply 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 governmental entity is conducting the project.*

Contractor shall comply with Section 1605 of the Recovery Act unless (1) compliance has been waived by the Federal Agency providing the funds; or (2) compliance with the Recovery Act conflicts with an international trade agreement.

1 Section 1605 of the Recovery Act provides:

Use of American Iron, Steel, and Manufactured Goods.

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that:

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the Federal Register a detailed written justification as to why the provision is being waived.

(d) This section shall be applied in a manner consistent with United States obligations under international agreements.

2 International Trade Agreements.

[Contracts/Grants] for the procurement of goods and services in the amount of \$528,000 or more and for constructions services in the amount of \$7,443,000 or more are covered by an international trade agreement and are therefore not subject to Section 1605.

3 Waivers.

Contractor shall provide The Department of Ecology with information and applicable supporting data as may be required by The Department of Ecology, to support any request for waiver of compliance with Section 1605 (b) of the Recovery Act. The following applies to requests for waivers submitted to The Department of Ecology.

(a) Definitions.

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been:

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

- (1) This award term and condition implements Section 1605 of the Recovery Act of 2009 by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.
- (2) This requirement does not apply to the material excepted by the Federal Government.
- (3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b) (2) of this term and condition if the Federal Government determines that:
  - (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
  - (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
  - (iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b) (3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Contractor could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the Department of Ecology will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the Department of Ecology shall adjust the award amount or redistribute budgeted funds in accordance with requirements adopted pursuant to the Recovery Act.

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) Data. To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the following information and any applicable supporting data based on the survey of suppliers should be provided to The Department of Ecology:

FOREIGN AND DOMESTIC ITEMS COST COMPARISON			
Description	Unit of Measure	Quantity	Cost (Dollars)*
Item 1:			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron or manufactured good			

[List name, address, telephone number, email address, and contact for suppliers surveyed.]  
[Attach copy of response; if oral, attach summary.]  
[Include other applicable supporting information.]  
[\*Include all delivery costs to the construction site.]

F. Wage Rate Requirements under Section 1606 of the American Recovery and Reinvestment Act of 2009 – Davis-Bacon Act

All laborers and mechanics employed by Contractor and [subcontractor/subgrantees] on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act, shall 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 (Davis-Bacon Act). With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan numbered 14 of 1950 (64 Stat. 1267, 5 U.S.C. App.) and section 3145 of title 40 United States Code. See U.S. Department of Labor, Wage and Hour Division website at <http://www.dol.gov/esa/whd/contracts/dbra.htm>. Wage determinations can be found at <http://www.wdol.gov>.

The Contractor shall include this provision and require this provision to be contained in all [subcontracts/subgrants] for work performed under this Contract.

The work performed by this Contract may also be subject to the State's prevailing wage laws, Chapter 39.12 RCW. The Contractor is advised to consult with the Washington State Department of Labor and Industries to determine the prevailing wages that must be paid.

G. Non-supplanting of State and Local Funds (if applicable -- consult the program solicitation and the special conditions in the award document)

Contractors must use federal funds to supplement existing State and local funds for program activities and must not replace (supplant) State or local funds that they have appropriated or allocated for the same purpose. Potential supplanting will be the subject of monitoring and audit. Violations may result in a range of penalties, including suspension of current and future funds under this program, suspension or debarment from federal grants, recoupment of monies provided under a grant, and civil and/or criminal penalties. For additional guidance regarding supplanting, refer to the information provided at <http://www.ojp.usdoj.gov/recovery/supplantingguidance.htm>.

H. Protection of Whistleblowers

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the Recovery Act 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 Accountability and Transparency Board, 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 other person working for the employer who has the authority to investigate, discover or terminate misconduct,) a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- Gross mismanagement of an agency contract or grant relating to covered funds;
- Gross waste of covered funds;
- Substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- Abuse of authority related to the implementation or use of covered funds; or

- 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.

I. ARRA – Listing Recovery Act Jobs With The Employment Security Department

This Contract is funded with federal stimulus funds (under the American Recovery & Reinvestment Act), which has strict reporting requirements for funds spent and jobs created or retained (See Exhibit A, attached and incorporated into this Contract as additional instructions). All job openings created by the Contractor for this project must be listed with the WorkSource system (an affiliate of the Employment Security Department) before hiring; all hiring decisions also must be reported to WorkSource. In addition, all [Sub-Contractors/Sub-Grantees] hired by the Contractor also must be required to list jobs and report hiring results to WorkSource. Existing Contractor or [Sub-Contractor/Sub-Grantee] 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 Contractor's consideration. The Contractor 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](mailto:ARRA@esd.wa.gov).

J. Disadvantaged Business Enterprise:

As with all federally funded projects, Recovery Funded Contractors 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 Contractor'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](http://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 contractor awards subcontracts, requiring the subcontractors to take the six good faith efforts in paragraphs A through E above.

Pursuant to 40 CFR, Section 33.501(b) and (c), the Contractor 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 a DBE or non-DBE.

The Contractor 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.

K. 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.

