

**North Central Texas
Council of Governments**

**North Central Texas Clean Construction Equipment
2011 Call for Projects Guidelines**

October 2011
North Central Texas Council of Governments
Air Quality Policy and Program Development
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www.nctcog.org/construction

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INTRODUCTION

The North Central Texas Clean Construction Equipment program was established to provide financial assistance for the implementation of projects that reduce emissions from diesel construction machinery in the Dallas-Fort Worth (DFW) nine-county ozone nonattainment area; thereby, supporting efforts to reduce ozone concentrations and improve air quality in this region. Funds for this Call for Projects (CFP) are made available through grants from the Environmental Protection Agency (EPA). The CFP is being administered by the North Central Texas Council of Governments (NCTCOG) and is consistent with requirements set forth in the National Clean Diesel Funding Assistance Program.

PURPOSE

Nine counties in the DFW area have been reclassified as serious nonattainment under the National Ambient Air Quality Standard for ozone. This means that ground-level ozone concentrations in these counties exceed the federal health-based limit as set forth by the EPA. Ozone is formed when nitrogen oxides (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight and heat. Numerous efforts are being implemented to reduce emissions that contribute to ozone formation. The region is considered NO_x-limited, indicating that NO_x emissions are the primary determinant of ground-level ozone formation; therefore, most strategies implemented at the regional level focus on reducing emissions of NO_x.

CONTACT INFORMATION

CFP information is available at www.nctcog.org/construction. Potential applicants may also contact NCTCOG staff with any questions or comments:

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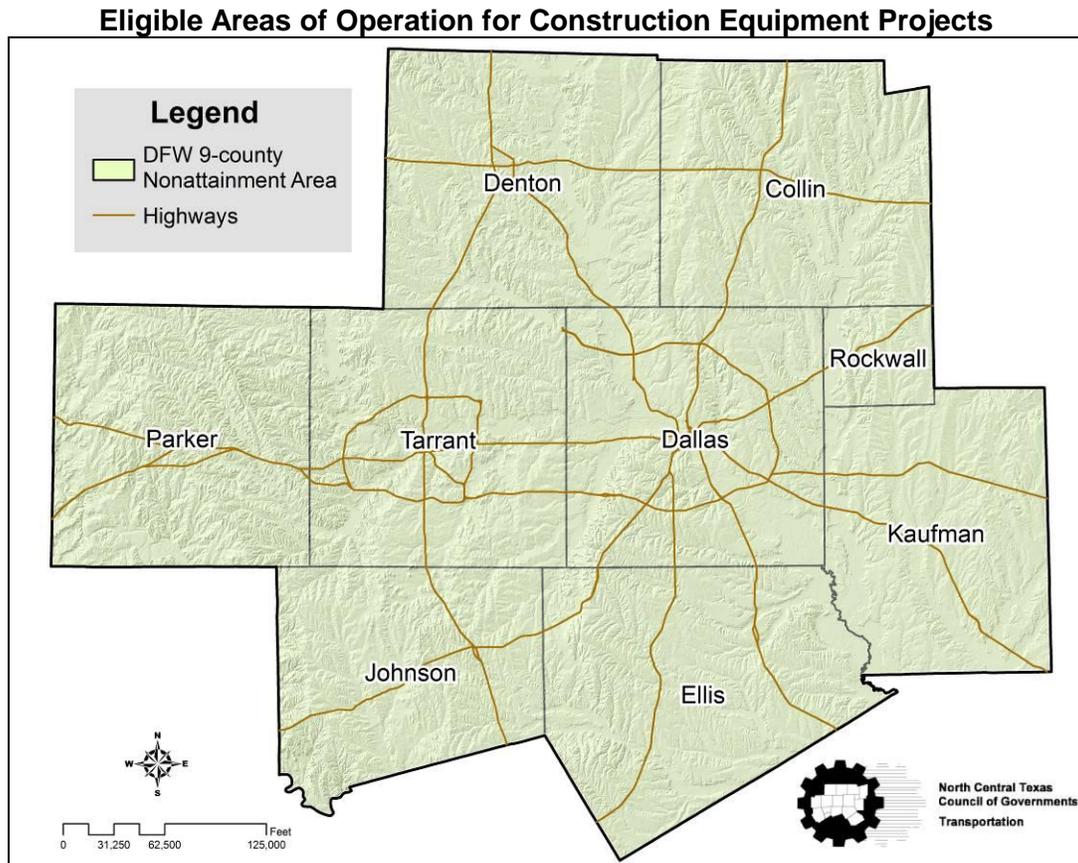
ELIGIBLE APPLICANTS

Funding is available to public and private entities that operate, or plan to operate, construction equipment that contribute to emissions of NO_x, in the eligible areas (see the section "Eligible Areas" below).

Public or private entities in which a NCTCOG or EPA employee, spouse, or family member of a NCTCOG or EPA employee has a direct or indirect interest, financial or otherwise, may be prohibited from receiving a grant, depending upon the nature of the interest. Any questions regarding the eligibility of an entity to apply for a grant should be referred to NCTCOG staff early in the application process.

ELIGIBLE AREAS

Construction equipment must spend a majority of operating time within the nine counties of the DFW ozone nonattainment area in order to be eligible. The DFW ozone nonattainment area currently includes Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties, and is shown in the map below.



ELIGIBLE ACTIVITIES

Construction equipment upgrade projects that achieve a reduction in NO_x emissions will be selected. Eligible activities will include replacement, repower, and retrofit/engine upgrade of diesel-powered construction equipment used primarily in the DFW ozone nonattainment area, subject to EPA funding caps of 25, 75, and 100 percent of the incremental project cost, respectively. Emphasis will be placed upon:

- Repower and retrofit/engine upgrade activities
- Activities that achieve Tier 3 or better emission standards and achieve reductions in NO_x reductions
- Activities that address emissions from Tier 0/1 equipment

Funding will only be awarded to activities that include engine configurations, repowers, and/or retrofits/engine upgrades that have been certified by either the EPA and/or the California Air Resources Board (CARB). In addition, all grant-funded equipment must remain operational for a six-year Activity Life.

Equipment used primarily for competition or recreation is not eligible for funding under any of the project categories. The incremental cost of the proposed activity must be reduced by the value of any existing financial incentive that directly reduces the cost of the proposed activity, including tax credits or deductions, other grants, or any other public financial assistance.

Repower or replacements that would have occurred through normal attrition are considered to be the result of normal fleet turnover and are not eligible for funding under this program. The old equipment/engine must have continued to be operational in the fleet for a minimum of five years if grant funding were not available. Prior to award, NCTCOG may require a third-party mechanic to verify vehicle/engine remaining useful life. In the case of equipment replacements and repowers, old equipment and/or engines must be scrapped or returned to the manufacturer as detailed under “Disposition” in the *Requirements* section. A fleet turnover schedule must be submitted with the application to demonstrate that requested activities are in excess of normal fleet attrition.

The Appendix outlines NO_x emissions standards and Tier rating by engine model year. Detailed information can be found on the EPA website at: www.epa.gov/nonroad-diesel/frm1998/nr-fr.pdf and/or the Dieselnet website at: www.dieselnet.com/standards/us/nonroad.php.

Replacement

This category is for the replacement of construction equipment with a new or newer piece of construction equipment. Replacement projects are eligible for up to 25 percent funding. For this category, the applicant must be replacing a piece of equipment that would have remained in the applicant’s fleet for at least five years.

The replacement equipment must be of the same type and similar horsepower as the equipment being replaced and must perform the same function as the equipment being replaced (i.e. an excavator that digs pipelines must be replaced by an excavator that digs pipelines). In addition, if the NCTCOG awards the project as a replacement, the equipment being replaced must be rendered permanently inoperable and disposed of in an environmentally responsible manner and in accordance with local disposal laws.

Repower

This category is for the replacement of an existing engine on a piece of construction equipment with a newer, cleaner engine certified to a more stringent set of emissions standards. Repower projects are eligible for up to 75 percent funding. The engine being replaced must be of the same type and similar horsepower as the engine being replaced. In addition, if the NCTCOG awards the project as a repower, the engines being repowered must be rendered permanently inoperable and disposed of in an environmentally responsible manner and in accordance with local disposal laws.

Retrofit/Engine Upgrades

This category is for the retrofit of an existing piece of construction equipment, or installing a verified engine upgrade. To be eligible for funding, the retrofit or engine upgrade must be verified by the EPA or CARB to reduce NO_x emissions as compared with the engine prior to the retrofit or upgrade. Retrofit/upgrade projects are eligible for up to 100 percent funding. Detailed information on verified retrofit technologies is

available on the EPA verified Diesel Retrofit Technologies website at www.epa.gov/oms/retrofit/verif-list.htm and the CARB Verified Diesel Retrofit Technologies website at www.arb.ca.gov/diesel/verdev/vt/cvt.htm.

Table 1 includes a list of all products listed as verified on the EPA and CARB websites that achieve NO_x reductions for non-road equipment as of October 20, 2011, for reference. Applicants are encouraged to review these websites to get the most up to date information possible.

Table 1: EPA and CARB Verified Diesel Retrofit Technologies
(Note: Includes NO_x- reducing technologies for non-road diesel vehicles only)

Manufacturer	Technology	Applicability	Reductions	
			PM	NO _x
Caterpillar, Inc.	Emissions Upgrade Group	Nonroad: Caterpillar model 3306 diesel engines for nonroad applications with model years from 1988 to 1995 with mechanical direct fuel injection.	22%	37%
Cleaire	Lonestar (Lean NO _x Catalyst and DPF)	150-350 HP, 1996-2009 Models	85%	40%
Engine Control System	AZ Purimuffler/Purifier (DOC + Alt Fuel)	1996-2002 off-road; PuriNOx	50%	20%
Extengine	ADEC (DOC + SCR)	1991-1995 Cummins 5.9 liter off-road; CARB diesel	25%	80%
Lubrizol	PuriNOx, Water emulsion fuel	Nonroad, heavy-duty, 2 & 4-cycle	16-58%	9-20%
Nett Technologies Inc.	BlueMAX 100	Nonroad, 4-cycle, non-EGR diesel engines between 75–370 kW power ranges, originally manufactured from 1996 through 2008 and originally certified without a catalyst to EPA Tier 1, 2, or 3 standards	0%	65%
Vycon	REGEN System (Energy Storage System)	Pre-1996 model year or Tier 1, 2, or 3 certified off-road diesel engines on rubber-tired gantry cranes; biodiesel. *	25%	30%

INELIGIBLE COSTS

Internal Costs: Administrative costs and other internal costs of the grant recipient—including but not limited to personnel expenses, internal salaries, indirect costs, and travel—are not eligible. This restriction also applies to situations where the grant recipient acts as a transporter for delivery of the grant-funded equipment before or after its acceptance.

Consultant/Third-Party Fees: Consultant fees for the preparation of a grant application, either directly or as an addition of the cost basis of the grant-funded vehicle, equipment, or engine, are not eligible for reimbursement by NCTCOG. Similarly, fees to manage and administer the grant-funded activities, including coordination of the work and submission of reports and paperwork to NCTCOG for the grant recipient, are not eligible. This restriction is not intended to limit the ability of the equipment supplier or installer to include reasonable and necessary costs for managing the work to be performed in the price of the vehicle, equipment, or installation services. The costs for professional services, including engineering and technical work, required for completion of the activity may be included, subject to the restrictions pertaining to that type of project. Per the Uniform Grant Management Standards (UGMS), the cost plus a percentage of cost method of contracting for professional services shall not be used.

APPLICATION REQUIREMENTS

Projects must comply with the following elements to be considered for funding.

Bids/Quotes Included: Applicant must include at least one bid/quote for each type of Activity included in the proposed project. The bid/quote should include purchase price, taxes, and any applicable installation costs. If multiple equipment or Activity types are submitted, at least one bid/quote should be provided for each type of equipment and each type of Activity.

Clean Fleet Vehicle Policy Adoption: Public sector applicants must have adopted the Clean Fleet Vehicle Policy prior to submitting a grant application. Entities that have adopted the policy must be in compliance with all policy requirements, including annual reporting, in order to be eligible for funding. The policy must be adopted prior to the application deadline. More information on this policy is available online at www.nctcog.org/fleetpolicy.

Combined Technologies: Where two technologies (e.g., repower plus retrofit) are combined on the same equipment and/or engine, the NCTCOG may consider combined reductions from the two technologies in evaluating emissions reductions. This decision will be solely at the discretion of the NCTCOG, and will be based on its determination that the combination of the two technologies will permanently reduce emissions.

Emissions Credit: Applicant must surrender all emissions reductions to NCTCOG to meet air quality requirements and goals. The recipient may not utilize emissions reductions to satisfy other air quality commitments.

Expedited Fleet Turnover: It is not NCTCOG's intention to fund replacement or repower projects that would have occurred through the normal attrition of equipment or to provide funds for expanding a fleet. Normal attrition is defined as a replacement or repower that is scheduled to take place between now and the end of the Activity Life, which is five years for all grant-funded projects. Normal attrition is determined by the equipment or fleet owner's budget plan, operating plan, standard procedures, or retirement schedule. For example, if a fleet typically retires equipment after 20 years, a machine that is currently in its 18th or 19th year of service is not eligible for replacement. A machine that is currently in its 15th year of service and has five years of useful life remaining (as defined by the fleet's retirement schedule) is eligible for replacement. A fleet turnover schedule must be provided as part of the application. An example fleet turnover schedules is included in the application. The schedule should reflect 15 years, (e.g. 2000-2015), to demonstrate average fleet turnover.

Financial Disclosure: Applicant must notify NCTCOG of the value of any existing financial incentive that directly reduces the cost of the proposed activity, including tax credits or deductions, other grants, or any other public financial assistance, to allow for accurate calculation of incremental cost.

Project Deadlines: Projects approved for funding must be implemented by February 29, 2012.

Project Type: Project(s) must meet criteria stated in Eligible Activities section of this document while reducing NO_x emissions.

Voluntary Reductions: An activity must be voluntary in nature and not required by any State or federal law, rule, regulation, memorandum of agreement, or other legally binding document.

REQUIREMENTS FOR PROJECT IMPLEMENTATION

The following requirements apply to all grant recipients under this program. **NCTCOG reserves the right to withhold grant payment or request return of funds if these requirements are not met and/or are not sufficiently documented.** Applicants should consider these conditions carefully when evaluating whether to submit a grant application.

Activity Life: Grant recipients must commit to using the piece of equipment in the eligible counties and to monitor and report to NCTCOG for six years. In addition, for replacement/repower projects, the equipment/engine must have continued to operate in the applicant's fleet for at least five years if grant funds were not available.

Competitive Procurement: Grant recipients are required to comply with federal procurement requirements regarding fair and open competition when making purchases. To comply with these requirements, recipients must have written procurement procedures in place, as well as processes to maintain relevant records. These requirements also impact the process through which a purchase can be made. Applicants should review NCTCOG's *Third Party Procurement Procedures* document, which is attached as Appendix B, to ensure understanding of these requirements. For this program, the following procurement methods are particularly relevant and are further explained in Appendix B.

- Purchases under \$100,000: must obtain at least two competitive written quotes
- Purchases over \$100,000: must follow requirements for one of the following:
 - Publicly Advertised Sealed Bid Process
 - Publicly Advertised Competitive Proposal Process

For purchases over \$100,000 total cost, NCTCOG must approve the recipient's planned procurement process prior to the recipient moving forward with purchases. A purchase made after the date the CFP opened, but prior to official grant award, may be eligible for reimbursement provided the recipient can document compliance with applicable requirements. Appendix B.1 is a checklist NCTCOG will use to ensure recipient compliance with these standards. Appendix B.2 includes EPA procurement requirements under 40 CFR 31.36.

Disposition: If NCTCOG awards the project as a replacement or repower, the equipment/engine being replaced must be rendered permanently inoperable and disposed of in an environmentally responsible manner and in accordance with local disposal laws. Destruction generally will require drilling a three-inch hole in the engine block, cutting the frame of the

chassis or supporting structure in a 75 percent wedge, and recycling salvageable materials. Alternatively, an engine may be retired by sending it to a remanufacturing facility.

Program Income: Any funds received for scrapped equipment/engines will be treated as program income, which will be recorded as part of the applicant's required cost share. Applicants will be required to report scrap value when requesting reimbursement for implemented activities, or to retain scrapped equipment for internal use.

Property Management: Grant recipients must maintain grant-funded equipment/technology in accordance with federal property management requirements. At the end of the Activity Life, or upon transfer of ownership, a written certification of Disposition must be submitted documenting the continued use and condition of the vehicles/equipment, fair market value, remaining useful life, and any actual or anticipated improvements that may increase the value of the vehicles/equipment.

Notification: Grant recipients must agree to notify NCTCOG of any changes in the following during the Activity Life: termination of use, change in use, sale, transfer, or accidental or intentional destruction of grant-funded equipment.

Security Interest: Grant recipients shall grant NCTCOG a security interest in any grant-funded equipment/technology and will be required to document fulfillment of this requirement prior to reimbursement being issued. Documentation may be shown through items such as a title, lien, etc. NCTCOG shall relinquish such security interest upon the end of the Activity Life or upon agreed-upon disposition, whichever occurs first.

Semi-Annual Usage Reporting: Grant recipients must commit to submitting reports regarding project status twice a year (January 15 and July 15) for the duration of the Activity Life. Failure to submit these reports may be grounds for termination of Agreement and/or return of funds. Required reporting will include the following information for each Activity:

- Hours of Use for the Six-Month Reporting Period
- Cumulative Hours of Use
- Gallons Fuel Consumed for the Six-Month Reporting Period
- Cumulative Gallons Fuel Consumed
- Percent of Time Operating in DFW Ozone Nonattainment Area for the Six-Month Reporting Period
- Operational Issues or Changes (if any, such as significant maintenance concerns, repair needs, etc.)

Usage reporting will be completed online through the NCTCOG website (www.nctcog.org/aqfunding). A username and password will be provided prior to the end of the first reporting period.

Usage Commitment: Grant recipients' submitted usage reporting will be evaluated against the hours of use committed in the grant application. Failure to achieve the projected usage may result in additional monitoring and/or requirement to return a portion of grant funds.

SCHEDULE

Task	Estimated Timeframe
Call for Projects Opens	October 20, 2011
Application Deadline	5 pm Central Time on the first Friday of each month from November 4, 2011 until January 6, 2012, or when all funds are exhausted, whichever comes first
Evaluate & Select Proposals	Monthly until funds are exhausted
Announce Awarded Projects	Monthly until funds are exhausted
Begin Contracting with Awardees	Ongoing upon award announcement
Projects Complete/ Final Invoice Due	February 29, 2012

SELECTION CRITERIA

Properly completed, eligible applications will be evaluated and recommended for funding by NCTCOG staff based on the following criteria. Please note that greater emphasis will be placed upon the Quantitative Assessment, with Qualitative Assessment serving to provide additional evaluation for projects with similar cost per ton estimates.

Quantitative Assessment

NCTCOG will take into consideration that not all criteria may be appropriate for all activities. Each measure will be evaluated both in regard to the project as a whole, and also in regard to the DFW ozone nonattainment area.

- Cost per Ton NO_x Reduced
- Cost per Ton Particulate Matter (PM) Reduced
- Cost per Gallon Gasoline/ Diesel Reduced
- Cost per Ton Carbon Dioxide (CO₂) Reduced

Qualitative Assessment

- Partnership:
 - Participation in Other Air Quality Initiatives such as the EPA Blue Skyways Collaborative
 - Adoption of Clean Fleet Vehicle Policy for private-sector applicants
- Feasibility/Risk:
 - Previous participation in other NCTCOG funding programs
 - Timely implementation schedule
 - Source of cost share/ financial stability
- Strategic Program Goals:
 - Applicants who meet the following considerations will be favorably evaluated:
 - Small Business Enterprises as defined by the Small Business Administration
 - Disadvantaged Business Enterprise (DBE), including minority-owned and woman-owned businesses
 - Primarily Performs Roadway Work
 - Projects which include the following components will be favorably considered:
 - Repowers/Retrofits

- Upgrades of Tier 0/1 Equipment
- Upgrades to Tier 3 or Better Emissions Standards

NCTCOG is not obligated to fund a proposal from an applicant that has demonstrated marginal or unsatisfactory performance on previous grants or contracts with the NCTCOG and/or other State agencies. NCTCOG is not obligated to fund a proposal from an applicant based on a determination of the risks associated with the applicant, including the financial condition of the applicant and other risk factors as may be determined by the NCTCOG.

Regardless of the scores and ranking assigned, the NCTCOG may base funding decisions on other factors associated with best achieving the goals of the program, and the NCTCOG is not obligated to select a project for funding. Additionally, the NCTCOG may select parts of a proposal for funding and may offer to fund less than the dollar amount requested in a proposal.

APPLICATION PROCESS

Submit Via E-mail:

Applicants may submit proposals by e-mailing the completed application form and supporting documentation in Microsoft Excel format. The application form **MUST** be in Excel format; pdf or scanned copies are not acceptable. Supporting documentation, such as bids/quotes, must accompany the application and may be in any electronic format. Applicants are advised that e-mail submissions are limited to five (5) megabytes in size, per e-mail. Applications for projects can be e-mailed to rnayar@nctcog.org. In order for an e-mail submission to be accepted, the application file must be attached to a transmittal e-mail which includes the certification statement in Item #42 on Page 4 of the application. The applicant must copy and paste the paragraph as it appears in Item #42 into the body of the transmittal e-mail to constitute an electronic signature. If the application package exceeds five (5) megabytes and requires multiple e-mails, this certification statement must be included in each transmittal e-mail.

Submit Hard Copy:

Applicants who do not wish to submit via e-mail may request to submit a hard copy application. Hard copy submissions will require original signatures, must be in a sealed envelope with a return address on the outside, and must be “in hand” by the deadline. Please contact the NCTCOG staff identified under the *Contact Information* section of this document.

Applications must be received “in-hand” by 5 p.m. Central Time on the first Friday of each month in order to be considered with that month’s applications. Applications that have been postmarked, or, in the case of e-mail, are “sent”, but are not received by the Friday deadline, and/or for which NCTCOG staff must request supplemental information, will be considered late and will not be accepted.

Faxed copies of the application packet will not be accepted.

In accordance with Regional Transportation Council (RTC) bylaws, late applications will not be accepted. Supplemental information may not be submitted after the application deadline. All applicants are encouraged to submit in advance of the application deadline to allow NCTCOG staff to review for completeness. Non-material omissions will not constitute an incomplete application.

GRANT ADMINISTRATION AND REIMBURSEMENT OF EXPENSES

Successful applicants will be notified their selection and the amount of grants funding that may be awarded. Entities selected to receive grant funding will be required to execute a contract with NCTCOG. All services or work carried out under a contract awarded as a result of this CFP must be completed within the scope, time frames, and funding limitations specified by the contract. Upon signature and execution of the contract by NCTCOG, a copy of the executed contract will be returned to the applicant, at which time the grant will be considered awarded.

Grant funds will be paid out on a reimbursement basis for eligible expenses incurred and paid by the grant recipient. A cost may not be considered incurred until the grant-funded technology has been received and accepted by the grant recipient. Requests for reimbursement shall include documentation to show that the equipment has been received and installed, and that the expenses have been incurred and paid by the grant recipient. Recipients will also have the option to assign their grant payments directly to a dealer or service provider. NCTCOG will supply reimbursement request and reporting forms for use by the recipient. ***Expenses incurred on or after the Call for Projects opening date (October 20, 2011) may be eligible for reimbursement. However, applicants are advised that any expenses incurred prior to the receipt of the Notice to Proceed are at the applicant's own risk, as funding is contingent upon approval of submitted activities and reimbursement is dependent upon compliance with Requirements for Project Implementation as well as Agreement terms and conditions.***

Upon completion of all grant-funded purchases, the grant recipient will need to submit a final request for reimbursement of all remaining unreimbursed expenses. The final request must include a completed and signed release of claims.

The grant recipient must also agree to place a label or sticker on the grant-funded vehicles and equipment, upon request by NCTCOG.

Applicants that are successfully awarded funding through this CFP are obligated to fulfill the requirements of the contract, including surrendering all eligible emissions credits to NCTCOG for the full Activity Life of the project. The recipient is responsible for achieving the annual and total NO_x emissions reductions within the eligible areas as defined in the contract. Recipients will be required to return all or a pro rata share of the grant funds to NCTCOG if the emissions reductions are not achieved.

Grant recipients are responsible for complying with all US Internal Revenue Service (IRS) laws and rules regarding the taxable status of grants. Grant payments are Form 1099 reportable.

APPENDIX A: Non-Road Diesel NO_x Emission Standards By Model Year

Non-Road Diesel (Compression Ignition) Engines NO_x Emission Standards by Model Year		
Engine Power (HP)	Tier Rating	Engine Model Year
25<hp<50 (19<kW<37)	Tier 0 (uncontrolled)	pre-1999
	Tier 1	1999-2003
	Tier 2	2004-2012
	Tier 4	2013+
50<hp<100 (37<kW<75)	Tier 0 (uncontrolled)	pre-1998
	Tier 1	1998-2003
	Tier 2	2004-2007
	Tier 3	2008-2012
	Tier 4 (50-75 hp)	2013+
	Tier 4 (75-100 hp)	2013+
100<hp<175 (75<kW<130)	Tier 0 (uncontrolled)	pre - 1997
	Tier 1	1997-2002
	Tier 2	2003-2006
	Tier 3	2007-2012
	Tier 4	2013+
175<hp<300 (130<kW<225)	Tier 0 (uncontrolled)	pre-1996
	Tier 1	1996-2002
	Tier 2	2003-2005
	Tier 3	2006-2013
	Tier 4	2014+
300<hp<600(225<kW<450)	Tier 0 (uncontrolled)	pre-1996
	Tier 1	1996-2000
	Tier 2	2001-2005
	Tier 3	2006-2013
	Tier 4	2014+
600<hp<750 (450<kW<560)	Tier 0 (uncontrolled)	pre-1996
	Tier 1	1996-2001
	Tier 2	2002-2005
	Tier 3	2006-2013
	Tier 4	2014+
hp>750 (kW>560)	Tier 0 (uncontrolled)	pre-2000
	Tier 1	2000-2005
	Tier 2	2006-2010
	Tier 3	N/A
	Tier 4 Gen Sets <1200 hp	2011
		2015
	Tier 4 Gen Sets >1200 hp	2011+
	Tier 4 Other engines	2011+

APPENDIX B: NCTCOG Third Party Procurement Procedures

ADDENDUM #1

**THIRD PARTY
PROCUREMENT PROCEDURES**

NORTH CENTRAL TEXAS COUNCIL OF GOVERNMENTS
TRANSPORTATION DEPARTMENT
JUNE 2011

OVERVIEW

These procedures establish standards and guidelines for the North Central Texas Council of Governments' (NCTCOG) subgrantees for procurement of goods and services through Third Party Contracts, in accordance with 49 CFR Part 18.36 and 40 CFR Part 31.36.¹ These procedures have been developed to ensure fair, open, and competitive opportunities for all parties involved in the procurement. In order to assist NCTCOG's subgrantees in complying with federal procurement requirements, NCTCOG will publish these procedures as part of calls for projects to make potential applicants aware of these requirements in advance of submitting applications to NCTCOG for funding consideration. In addition, NCTCOG will periodically hold workshops on procurement and other compliance requirements to assist subgrantees in meeting these objectives.

Compliance with Federal Regulations

Subgrantees shall comply with applicable federal, State, and local laws and regulations, and conform to the standards set forth in 49 CFR Part 18.36 or applicable governing standards published by the awarding agency. These guidelines apply to purchases for contractual services, commodities, and equipment funded with federal and State funds.

Use of Lower-Tier Subgrantees

If the provisions of a NCTCOG agreement allow a lower-tier subgrantee to manage and administer NCTCOG supported projects, the lower-tier subgrantee must also comply with applicable federal, State, and local laws, and all guidelines established by the applicable funding agency.

Conflict of Interest

There can be no conflict of interest, real or apparent, in the award or administration of a contract supported by federal funds. The subgrantee shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees, or agents engaged in the award and administration of contracts supported by federal funds.

Contract Administration System

Subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts and purchase orders.

Open and Fair Competition

All procurement transactions shall be conducted in a manner that provides maximum open and fair competition consistent with 49 CFR Part 18.36 or applicable federal law. Procurement procedures shall not restrict or eliminate competition. Examples of what is considered to be restrictive of competition include, but are not limited to, the following:

- Placing unreasonable requirements on firms/service providers/vendors/consultants in order for them to qualify to do business;
- Placing geographical preferences in the evaluation of bids or proposals;
- Noncompetitive practices between firms/service providers;
- Organization conflicts of interest;
- Requiring unnecessary experience and excessive bonding requirements; and,
- Any arbitrary action in the procurement process.

¹ UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS; Subpart C, Post-Award Requirements; Changes, Property, and Subawards under the United States Department of Transportation regulations. These procedures are written to comply with grant management standards for all federal agencies (e.g. Environmental Protection Agency, Department of Energy, etc...) as well as subgrantees funded with State funds.

Written Procurement Policies

The subgrantee shall have written procurement procedures and may adopt by reference procedural requirements of 49 CFR Part 18.36 or applicable federal law.

Procurement Guidelines

NCTCOG, in reviewing subgrantee procurement procedures and policies, will determine consistency with 49 CFR Part 18.36 or the applicable federal law regulating procurement. Stated therein are the governing regulations and implementing guidelines for all procurement activity undertaken with grant funds. Some of those items, with particular applicability to NCTCOG grants, are:

Procurement Standards

1. Subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
2. Procedures will allow for analysis of the most economical approach in purchasing, including lease versus purchase alternatives. Each proposed procurement must be reviewed to avoid the purchase of unnecessary or duplicative items.
3. Subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
4. Subgrantees will maintain records sufficient to detail the significant history of procurement.
5. These standards do not relieve the subgrantee of any contractual responsibilities under its NCTCOG contracts. The subgrantee is responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual administrative issues arising out of any procurement entered in support of a NCTCOG grant. These include, but are not limited to, source evaluation, protests, disputes, and claims.

Method of Procurement²

All procurement transactions shall be made by one of the following methods:

1. PROCUREMENT BY SMALL PURCHASE PROCEDURES

For procurement of services, supplies, or other property with an aggregate cost of least \$100,000³, written price or rate quotations shall be obtained from at least two qualified sources. The aggregate sum of all items being purchased is considered one purchase.

Purchases under \$3,000

Purchases which do not involve the expenditure of at least \$3,000, exclusive of freight or shipping charges, may be made without advertising or otherwise requesting competitive quotes; provided, however, that nothing contained in this paragraph shall be construed to prohibit any agency or governing authority from establishing procedures which require competitive quotes on purchases under \$3,000.

Purchases under \$100,000

Purchases which involve the expenditure of at least \$3,000 but not more than \$100,000, exclusive of freight and shipping charges, may be made from the lowest and best vendor without publishing or posting advertisements for bids, provided at least two competitive written quotes have been obtained. The term "competitive written quotes" means a quote submitted on a quote form furnished by the subgrantee and signed by authorized personnel representing the vendor, or a quote submitted on a vendor's letterhead or quote form signed by authorized personnel representing the vendor. NCTCOG

²Explicit federal and State regulations apply to each procurement method. Subgrantees may proceed with procurement activities only after careful study of the regulations reveals all requirements have been met.

³ This purchase threshold is to be utilized for subgrantee procurements with federal funds. Separate thresholds may be permitted or required under state law for state funded grants.

may request copies of quotes to ensure compliance with this provision as a condition of reimbursement.

2. **PROCUREMENT BY SEALED BIDS**

Purchases over \$100,000

Public advertisement once each week for two consecutive weeks for competitive sealed bids is required for all purchases that exceed \$100,000. Bids may not be due less than seven working days following the date the last advertisement appears in the public forum.

Purchases that involve expenditure of more than \$100,000, exclusive of freight and shipping charges shall be made from the lowest and best bidder after publicly advertising for competitive sealed bids once each week for two consecutive weeks. The date, as published, for the bid opening, shall not be less than seven working days after the published notice has been completed. The notice shall state the time and place at which bids shall be received; types of supplies, and/or equipment to be purchased, and the contact person. If plans or specifications are not published, notice should state where copies may be obtained. Specifications shall be written so as not to exclude any supplier.

Procurements over \$100,000 by sealed bid must be submitted to NCTCOG for review and approval 30 days prior to initiating the procurement. NCTCOG reserves the right to deny reimbursement upon failure to comply with the approved procurement process or failure to adequately address NCTCOG's comments concerning the proposed procurement process.

3. **PROCUREMENT BY COMPETITIVE PROPOSALS**

Purchases over \$100,000

Formally publicizing a request for proposals which normally results in conducting competitive negotiation with more than one source submitting an offer. This method is generally used when conditions are not appropriate for the use of sealed bids. All evaluation factors and their relative importance will be identified. There will be procedures for technical evaluations of the proposal and selection of an awardee. Awards are made to the proposal most advantageous to the program, with price and other factors considered.

Procurements over \$100,000 competitive proposal must be submitted to NCTCOG for review and approval 30 days prior to initiating the procurement. NCTCOG reserves the right to deny reimbursement upon failure to comply with the approved procurement process or failure to adequately address NCTCOG's comments concerning the proposed procurement process.

4. **SOLE SOURCE PROCUREMENT**

Noncompetitive items are items available from one source only. In connection with the purchase of noncompetitive items only available from one source, a certification of the conditions and circumstances requiring the purchase shall be filed by the subgrantee with the appropriate NCTCOG project manager. Upon receipt by the NCTCOG project manager, the certification will be forwarded to the appropriate NCTCOG personnel for approval of the request.

Only after receiving authorization from NCTCOG will the purchase be deemed a sole source procurement. All authorizations must be received prior to any procurement transactions. The appropriate NCTCOG personnel may authorize a sole source procurement under the conditions defined in State law, provided that the sole source procurement shall be made according to the established purchasing rules and regulations and shall not be made so as to circumvent the competitive purchasing requirements.

5. **PURCHASES UNDER GOVERNMENTAL COOPERATIVE PURCHASING PROGRAMS**

Public entities that can purchase under State contracts or other governmental cooperative purchasing programs can do so without prior approval or obtaining written quotes. All other purchases must follow the guidelines outlined in the Contracting Procurement Procedures.

6. EMERGENCY PROCUREMENT

NCTCOG may approve an emergency procurement under the conditions defined in federal and State law, provided such emergency procurement shall be made with such competition as is practicable under the circumstance.

Subgrantee Files

Each subgrantee must maintain adequate files to support any purchases made. A copy of the quotes that were obtained (purchases between \$3,000.00 and \$100,000.00) or a copy of the legal notice must also be on file to support the choice of lowest and/or best bid. The subgrantee must provide adequate justification if the purchase is not awarded to lowest and/or best bidder.

APPENDIX B.1: Subgrantee Procurement Review Checklist

Grant Name and Number: _____
 Subgrantee: _____
 Subgrantee Federal Award: _____
 Total Project Cost: _____

Procurement Requirements	Yes	No
1. Does the subgrantee have a written code of conduct for procurement officials?		
2. Does the subgrantee have a contract administration system in place to ensure compliance with procurement procedures?		
3. Are the following documents included in the subgrantee's contract administration system?		
a. Written Procurement History (including rationale used for procurement method, selection process, methodology used to select vendor)		
b. Solicitation Documentation		
c. Purchase Order / Contract		
d. Invoice		
e. Proof of Payment		
f. NCTCOG Pre-approval (if applicable)		

Item(s) Procured	Purchase Price	Procurement Method Used*

List of Procurement Methods:

1. Purchases < \$3,000
2. Purchases > \$3,000 but < \$100,000
3. Purchases > \$100,000 – Sealed Bid (Publicly advertised, requires NCTCOG pre-approval)
4. Purchases > \$100,000 – Competitive Proposal (Publicly advertised, requires NCTCOG pre-approval)
5. Sole Source (Requires NCTCOG pre-approval)
6. Emergency Procurement (Requires NCTCOG pre-approval)
7. State Contract
8. Other – Please Explain

Notes:

APPENDIX B.2: Procurement Requirements of 40 CFR 31.36

40 CFR 31.36 Procurement.

(see <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&rgn=div5&view=text&node=40:1.0.1.2.29&idno=40#40:1.0.1.2.29.3.15.14>)

(a) *States.* When procuring property and services under a grant, a State will follow the same policies and procedures it uses for procurements from its non-federal funds. The State will ensure that every purchase order or other contract includes any clauses required by federal statutes and executive orders and their implementing regulations. Other grantees and subgrantees will follow paragraphs (b) through (i) in this section.

(b) *Procurement standards.* (1) Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable federal law, the standards identified in this section, and if applicable, §31.38.

(2) Grantees and subgrantees will maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

(3) Grantees and subgrantees will maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:

(i) The employee, officer or agent,

(ii) Any member of his immediate family,

(iii) His or her partner, or

(iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award. The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantee and subgrantees may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards or conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the grantee's and subgrantee's officers, employees, or agents, or by contractors or their agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest.

(4) Grantee and subgrantee procedures will provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.

(5) To foster greater economy and efficiency, grantees and subgrantees are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(6) Grantees and subgrantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.

(7) Grantees and subgrantees are encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.

(8) Grantees and subgrantees will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(9) Grantees and subgrantees will maintain records sufficient to detail the significant history of a procurement. These records will include, but are not necessarily limited to the following: rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and subgrantees will use time and material type contracts only—

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and subgrantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or subgrantee of any contractual responsibilities under its contracts. Federal agencies will not substitute their judgment for that of the grantee or subgrantee unless the matter is primarily a Federal concern. Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and subgrantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protestor must exhaust all administrative remedies with the grantee and subgrantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or subgrantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or subgrantee.

(c) *Competition.* (1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §31.36. Some of the situations considered to be restrictive of competition include but are not limited to:

- (i) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (ii) Requiring unnecessary experience and excessive bonding,
- (iii) Noncompetitive pricing practices between firms or between affiliated companies,
- (iv) Noncompetitive awards to consultants that are on retainer contracts,
- (v) Organizational conflicts of interest,
- (vi) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance of other relevant requirements of the procurement, and
- (vii) Any arbitrary action in the procurement process.

(2) Grantees and subgrantees will conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient requirements of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and subgrantees will ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, grantees and subgrantees will not preclude potential bidders from qualifying during the solicitation period.

(5) Construction grants awarded under Title II of the Clean Water Act are subject to the following “Buy American” requirements in paragraphs (c)(5) (i)–(iii) of this section. Section 215 of the Clean Water Act requires that contractors give preference to the use of domestic material in the construction of EPA-funded treatment works.

(i) Contractors must use domestic construction materials in preference to nondomestic material if it is priced no more than 6 percent higher than the bid or offered price of the nondomestic material, including all costs of delivery to the construction site and any applicable duty, whether or not assessed. The grantee will normally base the computations on prices and costs in effect on the date of opening bids or proposals.

(ii) The award official may waive the Buy American provision based on factors the award official considers relevant, including:

(A) Such use is not in the public interest;

(B) The cost is unreasonable;

(C) The Agency's available resources are not sufficient to implement the provision, subject to the Deputy Administrator's concurrence;

(D) The articles, materials or supplies of the class or kind to be used or the articles, materials or supplies from which they are manufactured are not mined, produced or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project; or

(E) Application of this provision is contrary to multilateral government procurement agreements, subject to the Deputy Administrator's concurrence.

(iii) All bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following “Buy American” provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

(d) *Methods of procurement to be followed—* (1) *Procurement by small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.

(2) *Procurement by sealed bids (formal advertising).* Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bid method is the preferred method for procuring construction, if the conditions in 31.36(d)(2)(i) apply.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

(A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening the bids;

(B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;

(C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;

(D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and

(E) Any or all bids may be rejected if there is a sound documented reason.

(3) Procurement by *competitive proposals*. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids. If this method is used, the following requirements apply:

(i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;

(ii) Proposals will be solicited from an adequate number of qualified sources;

(iii) Grantees and subgrantees will have a method for conducting technical evaluations of the proposals received and for selecting awardees;

(iv) Awards will be made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered; and

(v) Grantees and subgrantees may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be

used to purchase other types of services though A/E firms are a potential source to perform the proposed effort.

(4) Procurement by *noncompetitive proposals* is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

(A) The item is available only from a single source;

(B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;

(C) The awarding agency authorizes noncompetitive proposals; or

(D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) Grantees and subgrantees may be required to submit the proposed procurement to the awarding agency for pre-award review in accordance with paragraph (g) of this section.

(e) [Reserved]

(f) *Contract cost and price.* (1) Grantees and subgrantees must perform a cost or price analysis in connection with every procurement action including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals. A cost analysis must be performed when the offeror is required to submit the elements of his estimated cost, e.g., under professional, consulting, and architectural engineering services contracts. A cost analysis will be necessary when adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or based on prices set by law or regulation. A price analysis will be used in all other instances to determine the reasonableness of the proposed contract price.

(2) Grantees and subgrantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

(3) Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles (see §31.22). Grantees may reference their own cost principles that comply with the applicable Federal cost principles.

(4) The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

(g) *Awarding agency review.* (1) Grantees and subgrantees must make available, upon request of the awarding agency, technical specifications on proposed procurements where the awarding agency believes such review is needed to ensure that the item and/or service specified is the one being proposed for purchase. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the grantee or subgrantee desires to have the review accomplished after a solicitation has been developed, the awarding agency may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.

(2) Grantees and subgrantees must on request make available for awarding agency pre-award review procurement documents, such as requests for proposals or invitations for bids, independent cost estimates, etc. when:

(i) A grantee's or subgrantee's procurement procedures or operation fails to comply with the procurement standards in this section; or

(ii) The procurement is expected to exceed the simplified acquisition threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation; or

(iii) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "brand name" product; or

(iv) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or

(v) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold.

(3) A grantee or subgrantee will be exempt from the pre-award review in paragraph (g)(2) of this section if the awarding agency determines that its procurement systems comply with the standards of this section.

(i) A grantee or subgrantee may request that its procurement system be reviewed by the awarding agency to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews shall occur where there is a continuous high-dollar funding, and third-party contracts are awarded on a regular basis.

(ii) A grantee or subgrantee may self-certify its procurement system. Such self-certification shall not limit the awarding agency's right to survey the system. Under a self-certification procedure, awarding agencies may wish to rely on written assurances from the grantee or subgrantee that it is complying with these standards. A grantee or subgrantee will cite specific procedures,

regulations, standards, etc., as being in compliance with these requirements and have its system available for review.

(h) *Bonding requirements.* For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the awarding agency may accept the bonding policy and requirements of the grantee or subgrantee provided the awarding agency has made a determination that the awarding agency's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

(1) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(i) *Contract provisions.* A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section. Federal agencies are permitted to require changes, remedies, changed conditions, access and records retention, suspension of work, and other clauses approved by the Office of Federal Procurement Policy.

(1) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. (Contracts more than the simplified acquisition threshold)

(2) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000)

(3) Compliance with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees)

(4) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (All contracts and subgrants for construction or repair)

(5) Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and subgrantees when required by Federal grant program legislation)

(6) Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and subgrantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

(7) Notice of awarding agency requirements and regulations pertaining to reporting.

(8) Notice of awarding agency requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(9) Awarding agency requirements and regulations pertaining to copyrights and rights in data.

(10) Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

(11) Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed.

(12) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000)

(13) Mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871).

(j) *Payment to consultants.* (1) EPA will limit its participation in the salary rate (excluding overhead) paid to individual consultants retained by grantees or by a grantee's contractors or subcontractors to the maximum daily rate for a GS–18. (Grantees may, however, pay consultants more than this amount). This limitation applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed; grantees will pay these in accordance with their normal travel reimbursement practices. (Pub. L. 99–591).

(2) Subagreements with firms for services which are awarded using the procurement requirements in this part are not affected by this limitation.

(k) *Use of the same architect or engineer during construction.* (1) If the grantee is satisfied with the qualifications and performance of the architect or engineer who provided any or all of the facilities planning or design services for a waste-water treatment works project and wishes to retain that firm or individual during construction of the project, it may do so without further public notice and evaluation of qualifications, provided:

(i) The grantee received a facilities planning (Step 1) or design grant (Step 2), and selected the architect or engineer in accordance with EPA's procurement regulations in effect when EPA awarded the grant; or

(ii) The award official approves noncompetitive procurement under §31.36(d)(4) for reasons other than simply using the same individual or firm that provided facilities planning or design services for the project; or

(iii) The grantee attests that:

(A) The initial request for proposals clearly stated the possibility that the firm or individual selected could be awarded a subagreement for services during construction; and

(B) The firm or individual was selected for facilities planning or design services in accordance with procedures specified in this section.

(C) No employee, officer or agent of the grantee, any member of their immediate families, or their partners have financial or other interest in the firm selected for award; and

(D) None of the grantee's officers, employees or agents solicited or accepted gratuities, favors or anything of monetary value from contractors or other parties to subagreements.

(2) However, if the grantee uses the procedures in paragraph (k)(1) of this section to retain an architect or engineer, any Step 3 subagreements between the architect or engineer and the grantee must meet all of the other procurement provisions in §31.36.

[53 FR 8068 and 8087, Mar. 11, 1988, and amended at 53 FR 8075, Mar. 11, 1988; 60 FR 19639, 19644, Apr. 19, 1995; 66 FR 3794, Jan. 16, 2001; 73 FR 15913, Mar. 26, 2008]