

REGULATIONS OF THE DEPARTMENT OF PROCUREMENT SERVICES
FOR
CLEAN DIESEL CONTRACTING

GENERAL PROVISIONS

Statement of Authority

These regulations are issued pursuant to the following section of the Municipal Code of Chicago:

Section 2-92-595 of the Municipal Code of Chicago (the "Ordinance") establishes progressively rigorous requirements regarding the use of heavy-duty diesel vehicles, non-road vehicles, and non-road equipment in the performance of City contracts by construction firm contractors and subcontractors (collectively, "Vehicles"). Subsection (h) authorizes the chief procurement officer to "adopt rules and regulations she may deem appropriate for the administration and enforcement" of the Ordinance.

Subsection (c) provides for the assignment of numerical point values to each Vehicle based on factors such as engine model year, the presence of any diesel emission control retrofit devices, and fuel type. A contractor's clean fleet score is determined by calculating the average of all Vehicle point values. Required minimum clean fleet scores are established by subsection (b).

Subsection (c) also provides that for any solicitation for a contract advertised or otherwise communicated on or after January 1, 2014, and any contract entered into as a result of such solicitation shall include a specification that the contractor shall submit a written compliance plan to the department with respect to compliance with the requirements of the Ordinance within 14 days following the notice to proceed. The plan shall detail the strategy to be used by the contractor to comply with the requirements of the Ordinance. The chief procurement officer is authorized to determine the contents of a compliance plan by rules and regulations promulgated pursuant to subsection (h). Contractors must also submit detailed reports of Vehicles used during each reporting period.

Subsection (f) authorizes the chief procurement officer to grant a clean fleet score annual waiver certificate upon application and payment of a \$100 fee by a contractor.

Application and Statement of Purpose

These regulations describe the contents of the compliance plan and how the ordinance will be administered and enforced, including departmental close outs on compliance and the authority of the chief procurement officer to waive the clean fleet score requirement.

DEFINITIONS

Unless otherwise specified, whenever used in these regulations, the following terms have the following meanings:

- (1) "CARB" means the California Air Resources Board.
- (2) "Clean fleet score ("CFS") waiver grantee" means any construction firm to which the chief procurement officer has granted a clean fleet score annual waiver certificate pursuant to subsection (f) of this section.
- (3) "Compression-ignition engine" means a reciprocating, internal-combustion engine that is not a spark-ignition engine.
- (4) "Contract" means any contract, the amount of which is \$2,000,000 or more, awarded by the city and whose cost is to be paid from funds belonging to or administered by the city, for construction projects including, but not limited to, the construction, demolition, restoration, repair, renovation, environmental remediation or environmental abatement of any building, structure, tunnel, excavation, roadway, bridge, transit station or parcel of land. The term "contract" does not include a fixed-price, fixed term, and indefinite quantity contract, such as contracts commonly referred to as "job order contracts," unless the estimated value of an individual order under the contract is \$2,000,000 or more.
- (5) "Contractor" means any person that enters into a contract with the city.
- (6) "Department" means any city department or city agency that manages or supervises a contract awarded to a contractor.
- (7) "Engine model year" means the year designating the annual new model production period during which the engine was produced, determined in accordance with 42 U.S.C. § 7521(b)(3), 40 C.F.R. § 86.082-2, 40 C.F.R. § 89.2, or 13 C.C.R. § 2421(a)(37) for purposes of compliance with US EPA or CARB emissions certification requirements and may differ from the model year of the vehicle or equipment powered by the engine.
- (8) "Heavy-duty diesel vehicle" means a motor vehicle with a gross vehicle weight rating of at least 8,500 pounds that is powered by a compression-ignition engine and which is not a "heavy-duty alternative-fuel vehicle."
- (9) "Heavy-duty alternative-fuel vehicle" means a motor vehicle with a gross vehicle weight rating of at least 8,500 pounds that is powered by an engine fueled at a minimum 80 percent, as measured by energy content, by natural gas, liquefied petroleum gas (commonly known as "propane"), hydrogen, or another fuel designated as an alternative fuel by the United States Department of Energy.
- (10) "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- (11) "Non-road engine" means a fifty horsepower or greater compression-ignition engine: (i) in or on a piece of equipment that is self-propelled (such as a cart or truck that is not a motor vehicle) or serves a dual purpose by both propelling itself and performing another function (such as garden tractors, off-highway mobile cranes and bulldozers); or (ii) in or on a piece of equipment that is intended to be propelled while performing its function (such as pushed or towed equipment); or (iii) that, by itself or in or on a piece of equipment, is portable or transportable, meaning designed to be and capable of being

carried or moved from one location to another. Indicia of transportability include, but are not limited to, wheels, skids, carrying handles, dolly, trailer, or platform. The term “non-road engine” does not include an engine that is used in a motor vehicle or vehicle used solely for competition, or in a stationary source, except that this term shall include compression-ignition engines used to power portable generators, portable compressors or similar equipment used in any construction program or project.

- (12) “Non-road equipment” means equipment that is powered by a non-road engine.
- (13) “Non-road vehicle” means a vehicle that is powered by a non-road engine and that is not a motor vehicle or a vehicle used solely for competition.
- (14) “Reporting day” means the fifth day on which city business is transacted following the last working day of every reporting period.
- (15) “Reporting period” means (i) every 60 working day period from the beginning of work on the contract; or (ii) the period between the first working day and the last working day, if the contract is completed in less than a 60 working day period; or (iii) any period following the last day of the last 60 working day period up to and including the last working day, if such period consists of not more than 75 working days and, if such period consists of more than 60 working days, the contractor provides a written notice to the department before the 60th working day that such period will consist of more than 60 working days.
- (16) “Solicitation” means the process used to communicate procurement requirements and to request responses from interested vendors.
- (17) “Spark-ignition engine” means a gasoline-fueled engine or other engine with a spark plug (or other sparking device) and with operating characteristics significantly similar to the theoretical Otto combustion cycle and uses a throttle to regulate intake air flow to control power during normal operation.
- (18) “Subcontractor” means any person that enters into a contract with a contractor to perform work on a contract.
- (19) “Tier 1 Non-road Diesel Standards,” “Tier 2 Non-road Diesel Standards,” “Tier 3 Non-road Diesel Standards,” or “Tier 4 Non-road Diesel Standards” means US EPA’s Tier 1, Tier 2, Tier 3, or Tier 4 Non-road engine emission standards, respectively, as specified in 40 C.F.R. § 89.112(a), 40 C.F.R. § 1039.101, and 40 C.F.R. § 1039.102.
- (20) “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur content of no more than fifteen parts per million.
- (21) “US EPA” means the United States Environmental Protection Agency.
- (22) “Verified diesel emission control retrofit device” means an emission control device or strategy that has been verified to achieve a specified diesel PM reduction by US EPA or CARB. “Verified diesel emission control retrofit device” does not mean the use of ultra low sulfur diesel fuel alone or a device installed by the engine manufacturer for purposes of compliance with US EPA or CARB emissions certification requirements.
- (23) “Working day” means a day on which work is performed on a construction project site pursuant to a contract.

PROCEDURES

Minimum Clean Fleet Scores

Unless otherwise prohibited by federal, state, or local law, for any solicitation for a contract advertised or otherwise communicated on or after January 1, 2014, January 1, 2017, and January 1, 2020, and any contract entered into as a result of such solicitations shall include specifications that all Vehicles shall have a minimum of 2.1, 3.0, and 4.0 clean fleet scores, respectively, per a reporting period, exclusive of Vehicles covered by a clean fleet score annual waiver certificate.

Purpose and Effect

The purpose of the Ordinance is to reduce harmful emissions resulting from the operation of heavy-duty diesel vehicles, non-road vehicles, and non-road equipment used in the performance of City contracts, thereby protecting the environment and benefitting the City's residents with cleaner air.

Departmental Roles

Departments shall draft specifications to include the Ordinance requirements in any solicitation for a contract, and in any contract entered into as a result of such solicitation, covered by the Ordinance. Departments shall receive the written compliance plan from the contractor and the compliance report on each reporting day, and it may conduct audits and inspect vehicles or equipment to verify and ensure compliance with the Ordinance.

The Department of Procurement Services (DPS) shall review the department specifications to ensure they meet the requirements of the Ordinance. By adoption of these rules and regulations, DPS has determined the contents of a compliance plan and the processes for administration and enforcement. DPS may conduct audits to verify compliance herewith. DPS provides the forms for CFS annual waiver certificate applications.

The Department of Fleet and Facility Management (2FM) shall perform all technical evaluations of CFS annual waiver certificate applications and shall make recommendations to DPS on whether to approve or deny each application. 2FM shall also provide the form for and administer clean fleet compliance reports.

Compliance Plan

A compliance plan must include the following:

- A. A statement affirming that the contractor and all subcontractors shall use ultra low sulfur diesel fuel for any heavy-duty diesel vehicle, non-road vehicle or non-road equipment used in the performance of the contract; shall minimize idling of motor vehicles and non-road vehicles used in the performance of the contract during periods of inactivity and shall comply with the anti-idling requirements imposed by any applicable federal, state or local law; and shall not use any of the following vehicles and equipment in the performance of the contract:

1. Any heavy-duty diesel vehicle not meeting or exceeding the US EPA's emission standards for heavy-duty diesel vehicles for the 1998 engine model year, unless such vehicle is fitted with a verified diesel emission control retrofit device; or
 2. Any non-road vehicle or non-road equipment not meeting or exceeding the US EPA's Tier 1 Non-road Diesel Standards, unless such vehicle or equipment is fitted with a verified diesel emission control retrofit device.
- B. A statement affirming that the contractor expects to meet the required minimum clean fleet score based on the Vehicles(s) expected to be used in performance of the contract by the contractor and all subcontractors.
- C. A list of the approved waivers, submitted waiver applications and anticipated waiver applications by the contractor and any subcontractor(s) expected to affect the contractor's compliance in performance of the contract.
- D. A statement affirming that the contractor and all subcontractors have or will have, prior to utilizing any Vehicle in performance of the contract, clearly marked the exterior of each Vehicle with an indication of the identity of the contractor or subcontractor operating it and an identification number unique within the fleet of that operating entity and that this identification information will correspond to the identification data included in the reports required herein.

Compliance Reports

Contractors must submit to the department periodic compliance reports on the form provided by the city on each reporting day covering each reporting period for the term of the contract.

Waiver

Contractors or subcontractors that would suffer an undue financial hardship by complying with the required minimum clean fleet scores may apply for a waiver. A waiver shall be deemed appropriate if the sum total horsepower of the Vehicles listed on the application is less than or equal to 2,500 horsepower and repowering, replacing or retrofitting all or some of the listed Vehicles in order to comply with the contract requirements will cause the applicant to suffer an undue financial hardship. The contractor must submit to the chief procurement officer a completed Clean Fleet Score Annual Waiver Certificate Application detailing and affirming the foregoing facts. 2FM shall perform all technical evaluations of CFS waiver applications and shall make recommendations to the chief procurement officer – who is authorized to grant CFS annual waiver certificates – regarding whether to approve or deny an application. A CFS waiver certificate shall be valid for one year from the time it is granted. The department commissioner may renew the clean fleet score annual waiver certificate for additional one year periods upon submission by the CFS waiver grantee of a statement verified by affidavit that any of the information and statements that the CFS waiver grantee submitted to qualify for the waiver are not changed.

Waiver applications, along with the required \$100 fee in the form of a certified check or money order payable to the City of Chicago, shall be submitted to:

Chief Procurement Officer
City of Chicago
Department of Procurement Services
121 N. LaSalle St.
Room 806
Chicago, IL 60602

Penalties

Following the submittal of each compliance report, departments shall determine whether the contractor failed to meet the requirements of the Ordinance or failed to report in the manner indicated above. Departments shall provide DPS with their results, and DPS will send a preliminary determination of any shortfall to the contractor.

The city will be damaged from delay in completion of the project and inspection and other enforcement costs, as well as the resultant damages to the public health of its citizens, by the failure of a contractor to reduce emissions pursuant to the Ordinance. Therefore, in the case of noncompliance with subsections (b)(1), (b)(2), and (b)(3), \$5,000 in liquidated damages shall be assessed against, and withheld and deducted from monies otherwise payable to, the contractor for each violation, with each day of noncompliance as a separate violation, not to exceed a total of \$50,000 for any one vehicle or piece of equipment. In the case of noncompliance with subsections (b)(4), (b)(5), and (b)(6) of the Ordinance, liquidated damages shall be assessed against, and withheld and deducted from monies otherwise payable to, the contractor in the dollar amount that shall be calculated as follows:

$(RCFS - ACFS) \times \$500.00 \times \text{the number of working days in the reporting period}$; where RCFS stands for the minimum required clean fleet score during the reporting period and ACFS stands for the actual clean fleet score obtained by the contractor in the reporting period.

Any person who knowingly makes a false statement of material fact with respect to compliance with any of the contract requirements specified pursuant to any of the provisions of the Ordinance or these regulations shall be fined not less than \$1,000 and not more than \$5,000 for each false statement.

Final Decision

The chief procurement officer or her designee shall make the final determination regarding compliance with the Ordinance and the waiver of clean fleet score requirements.