



Text File

Introduced: 6/1/2010

Bill No: 2010-0568, Version: 4

Committee: Committee on Land Use and
Economic Development

Status: Passed Finally

Ordinance supplementing the Pittsburgh Code, Title I-Administrative, Chapter 161-Contracts, by adding language regarding the retrofitting of construction vehicles at City subsidized projects. This bill shall be known as the "Clean Air Act of 2010."

Be it resolved that the Council of the City of Pittsburgh hereby enacts as follows:

Section 1. Supplementing the Pittsburgh Code, Title I-Administrative, Chapter 161-Contracts, by adding language regarding the retrofitting of construction vehicles at City subsidized projects as follows:

161.42 Clean Construction Diesel Operations

161.42.A Purpose

To minimize human exposure and health risks from diesel particulate emissions and to reduce the health costs, missed school days, lost worker productivity and premature mortality linked to exposure to diesel particulate matter (PM) and other diesel pollutants.

161.42.B Applicability and Funding

(1) (I) All solicitations by the City, on and after ~~January~~ September 1, 2011, for a contract for a construction project, and all contracts entered into as a result of such solicitation, shall include a specification that all contractors in the performance of such contract shall meet the following requirements of subsection (3) of this Section.

(II) With respect to each application by the City for funding from the Commonwealth of Pennsylvania and/or the federal government for a contract, the cost of the construction project(s) applied for shall include the reimbursable emission reduction costs as described in subparagraph (III) of this subsection.

(III) All incremental equipment and installation costs incurred by a contractor for a specific project that are necessary to bring non-road and on-road vehicles into compliance with the requirements set forth in subsection (3) of this Section shall be fully reimbursed from project funds within 30 days from the completion of the installation of the emission control technology, provided that:

(a) Costs for the emission control technology shall not be included in the contractor's bid, and shall not be considered by the City in evaluating bids. However, the contractor shall provide a separate

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specification of its expected emission control costs for each project, and the City shall dedicate project funds for this purpose. Eventual reimbursement shall not exceed the lesser of (A) the amount in contractor's specification or (B) the actual allowable emission control costs certified by the contractor and verified by the City; and

(b) The contractor complies with such other requirements as the Department of City Planning may provide by regulations promulgated pursuant to Section F.

(2) (I) The City shall condition the receipt, on and after January 1, 2014~~2~~, of any public funding or other valuable consideration from the City for a City Subsidized Project, on the requirement that all contractors in the performance of such project shall meet the requirements of subsection (3) of this Section.

(II) The incremental equipment and installation costs incurred by a contractor for a City Subsidized Project that are necessary to bring non-road and on-road vehicles into compliance with the requirements set forth in subsection (3) of this Section shall be the sole responsibility of the contractor, subject to the provisions of paragraph (III) of this subsection.

(III) The requirements of subsection (3) of this Section shall apply to a particular City Subsidized Project only to the extent that the aggregate incremental equipment and installation costs incurred by a contractor for such project that are necessary to bring non-road and on-road vehicles into compliance with the requirements set forth in subsection (3) of this Section do not exceed a spending cap of 2% of the total project cost or 8% of the total subsidy amount, whichever amount is greater.

(a) If the cost to upgrade the equipment should exceed the spending cap outlined above in 161.42.B subsection (2)(III), the developer shall be required to make payment to the City's Green Initiative Trust Fund in the amount of the project's spending cap.

(3) In the performance of a construction project described in subsection (1) or (2), contractors shall be required to:

(I) Use ultra low sulfur diesel fuel in diesel-powered non-road and on-road vehicles on the project site; and

(II)

a) Subject to the provisions of subsection (2) (III), beginning January 1, 2014~~2~~, not operate any diesel on-road vehicle on the project site unless that vehicle has installed Best Available Retrofit Technology that is properly maintained and operational; and

~~(III)~~ b) Beginning January 1, 2013, not operate any diesel off-road vehicle on the project site unless that vehicle has installed Best Available Retrofit Technology that is properly maintained and operational.

(4) The City may set aside project funds in the amount of 2% of the retrofit control costs to reimburse the City

for its time and resources associated ensuring compliance by the projects subject to this ordinance.

161.42.C Special Definitions

- (1) Best Available Retrofit Technology means technology verified by the United States Environmental Protection Agency (US EPA) or the California Air Resources Board (CARB) that achieves reductions in particulate matter emissions at the highest classification level for verified diesel emission control strategies for particulate matter (VDECS) (i.e., Level 1, 2 or 3, as defined by CARB) that is applicable to the particular engine and application. Such technology shall not result in a net increase in nitrogen oxides.
- (2) City Controller. Shall mean the Controller of the City of Pittsburgh.
- (3) City Subsidized Project means a construction project funded in whole or in part by City Subsidy, where the City is not the legal or actual owner or developer of the project.
- (4) City Subsidy. Shall mean any grant, loan that is forgiven or discounted below the market rate over the life of the loan, bond financing, infrastructure improvements related to a project, below-market sale or lease of property, or other form of financial assistance related to a project with an aggregate value of at least ~~one hundred thousand dollars (\$100,000)~~ two hundred fifty thousand dollars (\$250,000) but shall not include an educational or training grant. For purposes of determining whether the assistance threshold is met, all affiliates, controlled organizations, controlling organizations, and/or organizations having an identity of interest with the assistance recipient shall be treated as a single entity. Market value shall be determined by a third party that shall not include the City or the City subsidy recipient.
- (5) Contract means a contract with the City for a construction project funded in whole or in part by city, state or federal monies.
- (6) Construction Project means a project having a total cost of ~~one million dollars (\$1,000,000)~~ two million five hundred thousand dollars (\$2,500,000) or more, involving the abatement, construction, demolition, rehabilitation, renovation, restoration, or repair of any building, structure, tunnel, excavation, roadway, park or bridge; or the preparation for such construction projects; or any final work involved in the completion of such projects.
- (7) Contractor means any entity or person that enters into an agreement or contract with the City or with the owner or developer of a City Subsidized Project, or any entity or person that enters into an agreement with such person or entity (including subcontractors and their subcontractors and suppliers), to perform work or provide goods or services related to such contract.
- (8) Non-road vehicle means a vehicle or equipment that is powered by a diesel engine seventy-five (75) horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, backhoes, bulldozers, compressors, cranes, excavators, generators, and similar equipment; non-road vehicles do not include locomotives or marine vessels. Non-road vehicle does not include

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a stationary source, except that this term shall apply to diesel-powered stationary generators, compressors or similar equipment used in any construction project. Only non-road vehicles operated on a development project for greater than 80 hours during the life of the project shall be subject to the provision of this legislation

(9) On-road vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel and that has a gross vehicle weight rating of 14,000 pounds or more. Only on-road vehicles operated on a development project for greater than 80 hours during the life of the project shall be subject to the provision of this legislation.

(10) Stationary generator means a non-mobile machine that uses diesel fuel to produce electrical energy.

(11) Ultra low sulfur diesel fuel means diesel fuel that has a sulfur content of no more than fifteen (15) parts per million.

161.42.D Compliance

Each solicitation by the City for a contract for a construction project subject to this ordinance, each contract entered into as a result of such solicitation, and each agreement for City funding for a City Subsidized Project, shall include provisions for compliance with this ordinance, including but not limited to the following:

- (1) Construction shall not proceed until the contractor submits, and the City approves, a certified list of all non-road and on-road vehicles to be used on site, in accordance with regulations promulgated by the Department of City Planning pursuant to Section F.
- (2) The contractor shall establish generator sites and truck-staging zones for vehicles waiting to load or unload material on-site. Such zones shall be located where diesel emissions have the least impact on abutters, the general public, and especially sensitive receptors such as hospitals, schools, daycare facilities, elderly housing, and convalescent facilities.
- (3) The City Controller shall be authorized to inspect the project site and monitor ~~contractor's or developer's~~ compliance with the relevant requirements of construction contracts and City subsidy projects resulting from this ordinance.
- (4) ~~Prime contractors and~~ developers shall be responsible for the compliance of their subcontractors, agents and employees with the requirements of construction contracts and City subsidy projects resulting from this ordinance.

161.42.E Enforcement

(1) Each solicitation by the City for a contract for a construction project subject to this ordinance, each contract entered into as a result of such solicitation, and each agreement for City funding for a City Subsidized Project,

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shall include provisions authorizing enforcement of the requirements of this ordinance.

(2) Violations of any of the requirements of this ordinance, as inserted in the contract or City subsidy agreement, shall be deemed to be a material breach of such contract or developer agreement, and the City shall have available all remedies resulting from such a breach.

I. Enforcement.

(1) Complaint procedure. Any individual or organization may file a complaint with the Controller for any violation of this section.

(2) Review and investigation. The Controller shall review and investigate the complaint and shall make a finding of compliance or noncompliance within (30) days of the complaint being filed, including a determination of whether a contractor is covered by this law. The contractor shall permit authorized agents of the Controller to inspect any and all non-road and on-road vehicles at any time. Failure of The Controller to issue a finding of compliance or noncompliance does not relieve the covered employer of their obligations under this law.

(3) Finding of noncompliance. If at any time the Controller, upon investigation of a complaint or upon independent investigation, finds that a violation of this chapter has occurred, it shall issue a finding of noncompliance and notice of corrective action to the covered employer. The finding of noncompliance shall specify the areas of noncompliance, indicate such corrective action as may be necessary to achieve compliance, and impose deadlines for achieving compliance.

(4) Dispute of finding of noncompliance. A covered employer may dispute a finding of noncompliance and notice of corrective action by requesting a hearing within thirty (30) days of the date of receipt of the notification of noncompliance. The Controller shall appoint a hearing officer, who shall affirm or reverse the finding of noncompliance based upon evidence presented by the Controller and the covered employer. A finding of noncompliance and notice of corrective action shall become final if either the covered employer fails to request a hearing within thirty (30) days as provided in this paragraph, or the hearing officer affirms such finding after a hearing.

(5) Sanctions. If a contractor that is found to be in non-compliance does not bring their non-road and on-road vehicles into compliance within the time period allowed by this legislation, the City shall withhold the dispersal of any further City Subsidies until such time as the contractor brings all applicable non-road and on-road vehicles into compliance.

161.42.F Regulations.

Within six (6) months of the effective date of this ordinance, the Department of City Planning shall promulgate regulations implementing the provisions of this ordinance.

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161.42.G Reporting

The City Controller shall provide City Council with an annual report that includes the number of vehicles retrofitted and the amount of money spent on retrofits on each individual project.

161.42.HG Severability

In the event any provision of this section shall be held invalid or unenforceable in any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision thereof.