



To: Montana Schools and School Districts
 From: Vicki Woodrow, DEQ Procurement Officer
 Date: September 1, 2022
 Subject: Request for Applications: Matching Funding to Purchase New Battery-Electric, Low NOx, Gasoline, Propane or Cleaner Diesel School Buses

The U.S. Environmental Protection Agency (EPA) allocates funds to reduce diesel emissions under the Diesel Emissions Reduction Act (DERA). DERA authorizes the EPA to support states’ clean diesel grant programs to replace higher-polluting diesel engines. The Montana Department of Environmental Quality (DEQ) was awarded a state clean diesel grant and proposes to partner with schools to replace school buses statewide.

DEQ is soliciting applications from **school districts or K-12 schools** in Montana for matching funding to replace **model years 1996-2019** diesel-powered C and D type school buses with new, battery-electric school buses or school buses with low NOx engines and to replace **model years 1996-2009** diesel-powered C and D type school buses with gasoline, propane, or cleaner diesel buses.

Table 1: Eligible Replacement School Bus/Engine Technology and Cost Share

	Battery-electric school bus	School bus with certified low NOx engine	Propane, gasoline, or new diesel bus with Emissions Model Year 2019 or newer
Eligible existing bus engine model years to be replaced	1996-2019	1996-2019	1996-2009
DEQ Clean School Bus funding limits	45% of total cost, not to exceed \$177,667 (includes costs of charging infrastructure)	35% of total cost, not to exceed \$43,274	25% of total cost, not to exceed \$25,000
Minimum school district/ applicant cost share	55%	65%	75%
Fueling infrastructure eligible for funding?	Yes – dedicated electric bus charging infrastructure	No	No

Schools may apply to replace more than one bus but **must complete a separate application for each bus.**

Interested schools or school districts must submit their applications and the required supporting documentation in accordance with the attached Request for Applications. **All application materials must be postmarked or e-mailed by 5:00 p.m. local time on November 15, 2022.** Applications received with a postmark or time stamp after the stated date/time will not be accepted. DEQ will notify the successful applicants on or before December 9, 2022. All activities and billing under this program must be completed by August 31, 2023. Additional copies of these application materials can be obtained via the DEQ website at: <https://deq.mt.gov/energy/Programs/fuels>.

DEQ Contact

Vicki Woodrow
 Montana DEQ – Financial Services Bureau
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REQUEST FOR APPLICATIONS
Montana Department of Environmental Quality
Montana Clean School Bus Replacement Project
September 1, 2022

1. Program Overview

The Diesel Emissions Reduction Act (DERA) authorizes the U.S. Environmental Protection Agency (EPA) to support grant and loan programs administered by states and the District of Columbia designed to achieve significant reductions in diesel emissions. The Montana Department of Environmental Quality (DEQ) administers the Montana Clean Diesel Program through EPA State Grants. DEQ was awarded a state clean diesel grant to be matched with non-federal funds to replace existing school buses before the end of their useful life with cleaner buses through the Montana School Bus Replacement Project (Montana Project).

The goal of the Montana Project is to reduce diesel vehicle emissions, reduce student exposure to emissions, and reduce diesel fuel use in a cost-effective manner. Any awards to schools or school districts in response to this solicitation are subject to the applicable regulatory provisions in 40 CFR Chapter 1, Subchapter B, all terms and conditions of each DEQ contract, and any attachments from EPA with respect to DERA. This Request for Applications is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

2. Purpose

The purpose of this Request for Applications (RFA) is to solicit applications from school districts or K-12 schools in Montana for matching funding to replace older diesel-powered school buses with battery-electric, low NOx, propane, gasoline, or cleaner diesel buses. Battery-electric buses and school buses with California Air Resources Board (CARB) certified low NOx engines can replace diesel powered buses model years 1996-2019. New school buses powered by diesel, gasoline, or propane can replace diesel buses model years 1996-2009. The replacement buses must be powered by engines certified to meet Emissions Model Year (EMY) 2019 EPA emission standards. DEQ and the Montana Office of Public Instruction (OPI) will review and rank the applications to select those most appropriate for funding under DERA guidelines. A new battery-electric school bus is estimated to cost between \$350,000 and \$438,000. New school buses powered by low NOx engines, propane, gasoline, and newer diesel engines that meet EPA 2019 EMY or newer standards are estimated to cost from \$80,000 to \$126,000.

3. Point of Contact

Starting on the issue date (September 1, 2022) of this RFA, applicants can communicate with Vicki Woodrow at DEQ via e-mail DEQProcurement@mt.gov or 406-444-3101.

4. Eligibility Requirements and Evaluation Priorities

The Montana Clean School Bus Program will prioritize the replacement of existing school buses with new buses in accordance with the ranking system described in Appendix A – Evaluation Criteria Form. Any bus considered for funding must also meet the eligibility requirements defined in Appendix B—School Bus Specifications and Eligibility Requirements. The goal of the Montana Project is to permanently reduce diesel emissions, reduce diesel fuel use and reduce NOx emissions. This will occur by permanently removing the higher polluting diesel school buses from service and replacing them with cleaner buses purchased under this program.

5. Recycling/Scrappage of Replaced School Bus

The school or district shall ensure the existing bus is scrapped or recycled and shall bear the cost of recycling/scraping the old bus. Successful applicants must agree to meet all the EPA and DEQ recycling/scraping and documentation requirements as defined in **Appendix B – School Bus Specifications and Eligibility Requirements** and, **Appendix E – Sample Contract**.

6. Mandatory Match

For a battery-electric bus, applicants are required to provide a match for a delivered replacement bus and electric bus charging infrastructure of 55 percent. DEQ will provide 45 percent of the total lowest bid of the battery-electric bus and charging infrastructure, not to exceed a maximum award of \$177,667 for the bus and charging infrastructure.

For battery-electric or propane school bus projects eligible in this RFA, the mandatory match may not be provided by an award from EPA's Clean School Bus Program. Matching funds must come from a non-federal source. Likewise, an award from this funding opportunity cannot be used as match for the EPA program. While DEQ is managing these funds, they originate from the EPA.

For a new school bus with a CARB certified low NOx engine, EPA requires a minimum mandatory match for a replacement school bus of 65 percent of the cost of the delivered school bus. DEQ will provide 35 percent of the lowest bid, not to exceed a maximum award of \$43,274. Engines certified to CARB's Optional low NOx Standards may be found by searching CARB's Executive Orders for Heavy-duty Engines and vehicles found at: <https://ww3.arb.ca.gov/msprog/onroad/cert/cert.php>.

For a new diesel, gasoline, or propane school bus with a 2019 model year or newer engine certified to EPA emission standards, EPA requires a minimum mandatory match for a delivered replacement bus of 75 percent. DEQ will provide 25 percent of the lowest bid, not to exceed a maximum award of \$25,000. The remainder of the cost of the bus is the mandatory match, and the responsibility of the school.

DEQ will set grant award amounts based on the lowest of the three bids, with options, for each bus. The applicant may choose to purchase its bus(es) from the vendor with a higher bid provided the school or district covers any cost above that of the lowest bid, including options.

7. Contracted School Bus Services

Schools or school districts with contracted school bus services are eligible to apply for funding, however, the application(s) must be submitted by the school or school district, not the contracted bus provider. Applications submitted by a private bus contractor on behalf of a school will not be accepted. Schools in this situation will need to work with their contractors, possibly modifying their contracts, to comply with the funding requirements. The replacement bus(es) will need to remain in the school or district fleet for the useful life of the bus, which is typically seven years. Activities to revise the bus service contracts are not reimbursable under this funding.

8. Applicant's Signature

The application and letter of commitment must be signed by an individual authorized to legally bind that party. A school official must sign the application; however, a bus service contractor or a private donor can supply the match and sign the letter of commitment. The applicant's signature on an application in response to this RFA guarantees that the offer has been established without collusion and without effort to preclude the State of Montana from obtaining the best possible supply or service. Proof of authority of the person signing the request for application response must be furnished upon request.

9. Offer in Effect for 120 Days

An application may not be modified or canceled by the applicant for a 120-day period following the deadline for application submission as defined in the Schedule of Events, or receipt of best and final offer, if required, and applicant so agrees in submitting the application.

10. Other Requirements

In accordance with §18-4-313(4), MCA, the State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

11. Project Schedule and Award Term

Complete applications must be **postmarked or e-mailed to the point of contact at DEQ by 5:00 p.m. Mountain Time on November 15, 2022. DEQ will not accept any applications received with a postmark or e-mail time stamp later than 5:00 p.m. Mountain Time on November 15, 2022.**

DEQ will first review each application for completeness and compliance with this RFA. Complete and compliant applications will then be forwarded to the review team. The review team will evaluate the applications and recommend school buses for replacement in an order of ranking. DEQ will begin negotiating with the highest-ranking applicants and continue until funds are exhausted. Successful applicants will be notified on or before December 9, 2022.

The term for funding of each successful applicant will begin when the final contract is signed by all parties and **will end on or before August 31, 2023. Expenditures before the signature date of the contract are not reimbursable.** The diesel school bus being replaced shall be recycled or scrapped within 90 days of receipt of the replacement school bus, in accordance with **Appendix E – Sample Contract.**

12. Important Dates:

- Release of RFA – September 1, 2022
- Deadline for Applications – November 15, 2022
- Notification of Awards – December 9, 2022
- Sign Contracts and Begin Project – December 19, 2022
- Deliverables due and projects Completed – August 31, 2023

13. Application Materials

Schools may apply to replace more than one bus but must complete a separate application for each bus. A complete application shall include:

- a. Completed and signed Application Form: Applicants must use the attached one-page Application Form.
- b. Bids for the School Bus: One bid from each of the three **different** vendors for **each** school bus to be replaced clearly showing base cost, options, and total cost. For example, an applicant seeking to replace two buses would require submittal of two applications. Each application would be separate, and the three vendor bids would need to clearly identify that the bid is in support of the bus being replaced. **If a vendor will not provide a bid, please enclose a signed letter or e-mail stating the reason for not providing a bid.**
- c. Bids for Electric Bus Charging Infrastructure: For battery-electric bus replacements, dedicated charging infrastructure (charging stations) costs are eligible for funding under this program. If an applicant will use grants to fund charging infrastructure, one bid from each of three different charging infrastructure

vendors will be required. **If a vendor will not provide a bid, please enclose a signed letter or e-mail stating the reason for not providing a bid.**

- d. **Required Eligibility Form:** Applicants are required to use the provided Eligibility Statement format attached to this RFA (Appendix C). This is a new requirement based on EPA's state program guidelines to ensure that the bus being replaced is eligible for funding.
- e. **Required Letter of Commitment for Match and Early Retirement:** Applicants are **required** to use the provided Letter of Commitment format attached to this RFA (Appendix D) to state the amount of match the school will provide, and to commit to retiring and scrapping any bus replaced under this program.
- f. **Copy of Existing Bus Title:** A copy of the title of the school bus is required to ensure that the model year and VIN are correct. In some cases, the engine's build date is different.
- g. **Photo of Existing Bus VIN Plate:** Photo must show official GVWR of bus to be retired.

14. Complete Application Checklist:

- Completed and signed 1-page Application Form
- Bids from three vendors for each bus clearly showing base cost, options, and their costs. If a vendor will not provide a bid, please enclose a signed letter or e-mail stating the reason for not providing a bid.
- Bids from three vendors for electric school bus charging infrastructure (if funds from this program will be used to purchase charging infrastructure)
- Signed Eligibility Statement (Appendix C)
- Signed Letter of Commitment for Match and Early Retirement (Appendix D)
- Copy of existing bus title
- Photo of existing bus VIN plate for official GVWR
- Postmarked or e-mailed on or before November 15, 2022**

15. List of Attachments and Appendices:

- Application Form
- Detailed Instructions for Application Form
- Appendix A. Evaluation Criteria Form
- Appendix B. School Bus Specifications and Eligibility Requirements
- Appendix C. Required Eligibility Statement
- Appendix D. Required Letter of Commitment for Match and Early Retirement
- Appendix E. Sample Contract

MONTANA CLEAN SCHOOL BUS REPLACEMENT 2022 APPLICATION FORM

Contact Person: _____ E-mail: _____
Phone: _____
Organization: _____
D-U-N-S® Number: _____
Mailing Address: _____
Physical Address: _____
City, State, Zip: _____
County: _____

Low bus cost bid with all options \$ _____
Total cost of bus chosen \$ _____
Total charging infrastructure cost (battery-electric bus) \$ _____
Grant request \$ _____
Mandatory Match \$ _____

Would this bus replacement occur before September 30, 2025 and without this EPA financial assistance?
___ No ___ Yes

Existing Bus Data (from the old diesel bus being replaced and scrapped)

Bus Vehicle Identification Number: _____ (Include copy of existing title)
Bus Chassis Manufacturer & Year: _____
GVWR (Include photo of VIN plate): _____
Horsepower rating: _____ hp
Engine Manufacturer, Model, Year Built: _____
Engine Serial Number: _____ Gallons of Diesel/Year: _____
Total Chassis Miles: _____ Total Current Diesel Engine Miles: _____

New Clean School Bus information (for replacement bus, EPA 2019 model year or newer engine with certified emissions)

Bus Miles per Year: _____ (include miles in addition to route, like summer school)
Total Daily Bus Route Miles: _____ Pupils Transported Daily: _____
Type of bus (C or D) _____ GVWR: _____
Bus Capacity ___ students
Fuel for new bus (diesel, propane, gasoline, battery-electric): _____
Authorized Official's Signature _____
Authorized Official's Title _____ Date _____

This project is advertised as a part of the EPA State Clean Diesel Grant Program as authorized under Title VII, Subtitle G, Section 793 of the Diesel Emissions Reduction Program (DERA) in the Energy Policy Act of 2005 (codified at 42 U.S.C. 16133). An award of funds under this project is automatically canceled if federal funds under the Act are not appropriated or otherwise made available to support the contract's commencement or continuation of performance. **Applications and signed letters of financial commitment for local cash match must be postmarked by November 15, 2022.**

Send all application materials to:

Vicki Woodrow
Montana DEQ – Financial Services Bureau
P.O. Box 200901
Helena, MT 59620-0901
Phone: 406-444-3101, E-mail: DEQProcurement@mt.gov

Please refer to the RFA and Detailed Instructions for Application Form for additional guidance on completing the application.

MONTANA CLEAN SCHOOL BUS REPLACEMENT DETAILED INSTRUCTIONS FOR APPLICATION FORM

Note: A separate application must be submitted for each bus replaced.

Contact Person, E-mail, & Phone Number: The person(s) responsible for the financial and technical application and authorized to sign the contract for the replacement bus in the school or district. This is not the school bus contractor.

Name of Organization: Please provide the name of the school or district that would receive the funding. Applicants with contracted bus services will need to coordinate with their contractors for this project, and modify their contracts as needed.

D-U-N-S® Number: EPA requires all applicants receiving or applying for DERA funding to provide their Dun and Bradstreet Universal Numbering System (DUNS) number. Please contact Vicki Woodrow with DEQ at DEQProcurement@mt.gov should you have problems identifying the district's DUNS number. DUNS number requests usually take 30 days to process. Applications cannot be accepted without a DUNS number.

Mailing Address, Physical Address, City, State, Zip, and County: Provide the mailing and physical address of the school or district where an agreement may be sent and the county where the school is located.

The information requested below is **specific to each bus and route**.

Low bid with All Options and Costs: This is the cost of the bus with all options. Bus bids must clearly identify bus cost, options and all applicable costs.

Total Cost of Bus Chosen: Applicant is not required to purchase the lowest bid bus. Insert the total cost of the bus chosen.

Total Charging Infrastructure Cost and Bids from 3 Vendors: If the project is a battery-electric school bus replacement and funds from this program will be used for dedicated electric bus charging infrastructure, applicant will include bids from charging infrastructure vendors identifying all applicable costs.

Grant Request: This is the amount of funds requested for the replacement diesel, propane, gasoline, or battery-electric school bus based on the lowest bid with options. For battery-electric buses, this would be the **lower** of either \$177,667 or 45 percent of the low bus bid and cost of charging infrastructure. For buses with CARB certified Low NOx engines, this would be the **lower** of either \$43,274 or 35 percent of the low bus bid. For diesel, gasoline, or propane buses, this would be the **lower** of either \$25,000 or 25 percent of the low bus bid.

Mandatory Match: The mandatory match is the difference between the cost of the bus chosen, and the grant amount. Mandatory match funds must come from a non-Federal source. Please note that matching funds are no longer evaluated in the ranking criteria.

Would this bus replacement occur before September 30, 2025 and without this EPA financial assistance: EPA requires funds for replacement vehicles to be used to replace vehicles before their regular replacement period (early retirement). Checking "yes" will disqualify the application from further consideration. Replacement periods vary between schools. EPA requires that all buses being replaced would have a service life beyond September 30, 2025. In other words, the school district had no plans to retire the bus before September 30, 2025. Answering "no" to this question ensures that successful applicants will provide DEQ the necessary fleet rotation documentation for DEQ to provide EPA.

Existing Bus Data

The following information is from the bus to be replaced and recycled.

- **Bus Vehicle Identification Number:** The VIN from the diesel bus to be replaced is listed here on the application. It must match the VIN on the copy of the existing bus title (provided with the application). This VIN should coordinate with the OPI database where applicable.

- **Bus Model Year, Bus Manufacturer, and Bus Capacity:** This information lists the model year of the existing bus chassis, manufacturer, and rider capacity.
- **GVWR/Vehicle Weight Class:** EPA requires the replacement vehicle will be of the same type and similar gross vehicle weight rating (GVWR) as the vehicle being replaced. **The engine's primary intended service class must be within 10 percent of the existing bus GVWR.** For example, a light heavy-duty diesel engine is used in a vehicle with a GVWR of 16,001-19,500 lbs. A medium heavy-duty diesel engine is used in a vehicle with a GVWR of 19,501-33,000 lbs. and a heavy heavy-duty diesel engine is used in a vehicle with a GVWR greater than 33,000 lbs. Please provide a copy of a photo of the existing bus VIN plate to verify the GVWR. Please contact us if you need clarification.
- **Engine Manufacturer, Year Built and Engine Serial Number:** Please provide the engine manufacturer, the model, the engine year built (not always the same as the bus model year), and the engine serial number for the working engine in the school bus being replaced. The engine year built may be different from the school bus model year because of engine replacements. Emissions are based on the engine year built.
- **Gallons of Diesel per Year:** Please provide the estimated diesel gallons per year used by the vehicle to be replaced. If necessary, use the school bus fuel economy (miles per gallon) and the route/use for the replacement bus to estimate gallons.
- **Total Chassis Miles:** The current odometer reading for the bus to be replaced.

New Replacement Bus Data

The following information is for the replacement bus.

- **EPA 2019 Model Year or Newer Engine with Certified Emissions:** Buses purchased with these funds must be powered by a 2019 or newer model year certified highway heavy duty engine or battery-electric bus. The manufacturer will certify the emissions standard on the bill of lading.
- **Bus Miles Driven per Year:** Please provide the estimated number of miles that the new bus will drive in a year. Most fleets put the newest bus on the longest or most time sensitive routes, and this may include route miles, training miles, and/or other student transport miles (for example, summer school miles).
- **Total Daily Bus Route Miles:** Please provide the estimated daily miles that the replacement bus will travel.
- **Pupils/Daily Route:** Please provide the estimated number of pupils that will be transported on the new bus on a daily basis. For buses transporting the same pupils more than once per day (i.e. to and from school), the number should reflect the cumulative pupils transported. **For example, if bus transports 70 pupils to and from school the total number of pupils per day would be 140.**
- **Type of Bus (C or D):** School bus types as defined as Type C buses are a conventional bus; and Type D are a front/mid/rear-engine transit-style school bus. DEQ will focus on these larger buses to potentially benefit a greater number of student riders. EPA requires the replacement vehicle will be of the same type and similar gross vehicle weight rating (GVWR) as the vehicle being replaced. **The engine's primary intended service class must be within 10 percent of the existing bus GVWR.**
- **Title of Bus Being Replaced:** A copy of title of bus to be retired must to be included with the application.
- **New Bus Bid #1, New Bus Bid #2, New Bus Bid #3 (Total Price & Vendor):** Please provide copies of three competitive bids by different vendors for each bus replacement. The lowest bid will be used to determine the grant amount. The school may purchase a bus that is not the lowest bid. If a vendor will not provide a bid, please enclose a signed letter or e-mail stating the reason for not providing a bid.

APPENDIX A – EVALUATION CRITERIA FORM

The DEQ prioritizes the replacement of existing diesel-powered school buses with new buses using a ranking system as part of an application process. The goal of this project is to reduce diesel emissions, reduce diesel fuel use, and reduce school children’s exposure to harmful emissions. This RFA will prioritize bus replacements as follows:

Poor Air Quality Areas (Bus Routes in): This factor uses the school location for the replacement bus to determine where the candidate replacement bus operates. The highest priority areas are those designated as non-attainment, maintenance or high risk for fine particulate matter non-attainment under the National Ambient Air Quality Standards (NAAQS).

<u>Location</u>	<u>Application Points</u>
PM2.5/10 NAA/Maintenance	8
Poor AQ/High Population and Class 1 Areas	4

Student Rider Service Levels (Riders-VMT/Bus/School Year): This factor ranks applications by the amount of potential student exposure to diesel emissions, based on the number of riders (students) and vehicle miles traveled (VMT) (projected for the new bus) for the school year.

<u>Pupil-VMT per Bus</u>	<u>Application Points</u>
> 700,000 pupil-VMT	6
> 400,000 – 700,000	4
> 100,000 – 400,000	2
<100,000	0

Propane and Battery-Electric Rates (Engine Year Built): This factor helps prioritize the schools that are replacing diesel fueled buses with battery-electric and propane fueled buses that meet EPA certifications. Battery-electric bus and propane buses help reduce the public’s and children’s exposure to harmful emissions.

<u>Fuel type</u>	<u>Application Points</u>
Battery-Electric Bus	6
Low NOx engine	5
Propane Bus	4
2019 or newer Diesel or Gasoline	3

Remaining Useable Life (Per Bus): This factor is designed to replace buses producing the most pollutants that have the longest remaining service. The chassis model year or engine manufacture year, VIN, vehicle odometer reading (accumulated miles at time of this application) and other supporting information for fleet turnover rates will be used to determine the rank. *Please see the EPA requirements listed in more detail in the Request for Applications and Appendix E, Sample Contract.*

<u>Accumulated Mileage</u>	<u>Application Points</u>
< 100,000 miles	6
100,000 - < 150,000	4
150,000 - < 200,000	2
200,000 - < 225,000	1

APPENDIX B – SCHOOL BUS SPECIFICATIONS AND ELIGIBILITY REQUIREMENTS

Minimum Specifications for Battery-Electric, Low NOx Engine, Propane, Gasoline, or Diesel-Powered School Buses: All replacement buses must comply with the Federal and Montana standards for school buses. The basic specifications are listed below. For detailed standards, please refer to the 2022 Montana School Bus Standards document on the OPI website at: <https://opi.mt.gov/LinkClick.aspx?fileticket=Ab5BKcdY9kc%3d&portalid=182>

Eligibility Requirements for School Bus Replacements

The applicants and buses selected for funding must meet the following requirements:

- Only bus model years 1996-2009 will be replaced with diesel, gasoline, or propane buses. Bus model years 1996-2019 may be replaced with a battery-electric bus or a bus with a CARB certified low NOx engine.
- Like-for-Like: **The new bus will be of the same type and the gross vehicle weight must be within 10 percent of the school bus being replaced.** The replacement school bus will perform the same function as the bus being replaced. The cost of optional components or “add-ons” that significantly increase the cost of the vehicle may not be eligible for funding under the grant; the replacement vehicle should resemble the replaced vehicle in form and function.
- Battery-electric school buses may weigh more than similar-sized diesel, gasoline, or propane buses. Applicants should refer to the Montana School Bus Standards, specifically to the “Passenger Load” section, to ensure the battery-electric bus does not exceed weight requirements.
- Early Replacement: These funds are only to replace buses in advance of their normal retirement schedule. Any replacements that would have occurred through normal attrition before September 30, 2025 are considered to be the result of normal fleet turnover and are not eligible. Successful applicants must provide evidence that the replacement activity would not have occurred without the financial assistance provided by EPA-DETA. Supporting evidence must document the useful remaining life of the bus being replaced left and characterize the vehicle ages and average turnover rates of the local bus fleet. This documentation will be provided by successful applicants.
- For the purposes of this RFA, buses include diesel, gasoline, propane, or battery-electric powered school buses of Type C and D. To be eligible as a school bus, a vehicle should meet the definition of a school bus as defined by the National Highway Transportation Safety Administration. This definition includes but is not limited to: 1) A bus that is used for purposes that included carrying students to and from school or related events on a regular basis; 2) Be identified with the words “School Bus”; and 3) Be painted National School Bus Glossy Yellow.
- Each replacement bus must operate solely in Montana for a period estimated at seven years. Funds may not be granted as reimbursement for a bus purchased before the grant award date, or a bus meeting its normal retirement criteria, or a bus intended for a new or expanded service route.
- The old bus must be recycled or scrapped with the engine disabled and documented as described below, and in accordance with the EPA requirements detailed in the contract agreement.
- The applicant must submit a minimum of three competitive bids for each bus being replaced or include a signed letter or email from vendor stating they do not wish to bid. All vehicle bid engines would meet EPA 2019 model year or newer engine certified emissions and have a fuel-operated heater, or be propane or battery electric technology. Awards will be based on the lowest bid with options. Applicants may purchase another bidders’ bus provided the school or district covers in the case of battery-electric any cost above 45 percent of the lowest bid, including options and charging infrastructure. In the case of low NOx engine any cost above 35 percent of the lowest bid including options and in the case of diesel, gasoline, or propane buses, any cost above 25 percent of the lowest bid, including options.

- The applicant must post at least two “No Idling, Clean Air Zone” Montana signs in a visible location at the student drop off area(s) of the school. DEQ provides these signs at no cost to schools that request them.
- Grant funds may only be used to purchase new (with near-zero odometer reading) school buses equipped with safety equipment meeting current safety standards. All new buses must be powered by 2019 or newer model year certified highway heavy duty engines.
- A fuel operated heater (using EPA-verified technology,) must be included unless the bus is battery-electric, low NOx, gasoline, or propane. All options required by the applicant are eligible to be included in the minimum bid.
- Non-federal matching funds are required. DEQ’s program will fund the lesser amount of \$177,667 or 45 percent of a battery-electric bus and charging infrastructure, \$43,274 or 35 percent for a bus with CARB certified low NOx engine, or \$25,000 or 25 percent of a replacement diesel, gasoline, or propane bus.
- **All transactions, billing, proof of new bus and installed emissions, proof of recycling of old bus, and all other required information must be completed and submitted to DEQ before August 31, 2023.**
- **Recycling and Scrappage Requirements for Replaced Buses:** The bus being replaced must be scrapped, recycled, photographed, and documented. Successful applicants will agree to complete DEQ- and EPA-required recycling and documentation requirements as described in this section. To be considered a replacement, the purchase of a new school bus must be accompanied by the recycling of the old diesel school bus listed by VIN and engine serial number in the DEQ contract. The school bus being replaced must be recycled within ninety (90) days of the acceptance of the replacement bus and before final payment is made. The successful applicant will use an approved Montana recycling facility to recycle the old school bus. The recycling is done at the cost of the applicant. Any funds from recycling and scrapping will be directed back to the school to off-set the costs of recycling.
 For this RFA, recycling is defined by EPA as a permanently disabled engine and dismantling the vehicle frame so that the school bus is no longer suitable for use. **Cutting a three inch by three-inch hole in the engine block and cutting the chassis frame are the EPA preferred scrapping methods for permanently disabling the engine and chassis.** Most recyclers remove non-metal items and shred the remaining bus. DEQ recommends disabling the vehicle after it is driven to the approved recycling facility. Written and photographic evidence of appropriate disposal, including the engine serial number, odometer reading, make, model, and year, and scrapped Vehicle Identification Number (VIN), is required as part of the deliverables submitted to DEQ, and necessary for final payment. The recycling entity must place this information on the EPA Scrapping Statement, and color photo evidence of the VIN and engine label is also required. School districts are responsible for documenting the recycling of the existing bus.

APPENDIX C – REQUIRED ELIGIBILITY STATEMENT

2022-2023 DERA Clean School Bus Program

Eligibility Statement

Vehicle make:	Engine make:
Vehicle model:	Engine model:
Vehicle model year:	Engine model year:
VIN:	Engine horsepower:
Odometer/usage meter reading:	Engine ID or serial number:
Vehicle registration state and number:	Equipment licensing state and number:

I certify that the following statements are true regarding the vehicle/engine/equipment identified above:

1. The existing vehicle, engine, or equipment is fully operational.
2. I have owned and operated the vehicle during the two years prior to upgrade.
3. The existing vehicle, engine, or equipment has at least three years of remaining life at the time of upgrade.
4. The existing highway vehicle has accumulated at least 7,000 miles/year during the two years prior to upgrade. School Buses may use mileage from calendar year (Jan-Dec) 2019.

Vehicle owner's name:

Vehicle Owner (Signature)

Date

Vehicle owner's address:

APPENDIX D – REQUIRED LETTER OF COMMITMENT FOR MATCH AND EARLY RETIREMENT

Letter of Commitment Instructions:

The Required Letter of Commitment Format (see next page) is the **only acceptable format** applicants may use to submit this information to DEQ.

A signed Letter of Commitment is required with each application for a replacement bus under this Request for Applications.

The Letter of Commitment must be written by the entity agreeing to provide the mandatory match. The Letter of Commitment must be signed by an official authorized to commit funds to this project.

Please include a Letter of Commitment from each funding source if match is being provided by more than one entity. For example, one from the school and one from contractor, if each are contributing.

The required Letter of Commitment format is on the following page.

Required Letter of Commitment Format

To: Vicki Woodrow
Montana Department of Environmental Quality
PO Box 200901
Helena, MT 59620-0901

From: _____ (responsible official and entity providing the matching funds)

Date: _____, 2022

Subject: Cash Match Commitment for Replacement School Bus Purchase Application for _____
(Private School/Public School District Name, if different from applicant)

Dear Ms. Woodrow:

Thank you for supporting our effort to reduce emissions and partnering with _____ (School or district name) in the replacement school bus project. Our school operates/contracts a fleet of ____ (number of) school buses in _____, (Location Name) Montana. If selected, _____ (School or District) accepts the Department of Environmental Quality (DEQ) School Bus Replacement award. This award will replace one ____ model year bus with a new bus powered by a 2019 model year or newer certified highway heavy duty engine and a fuel-operated heater with timer or propane, gasoline, or battery-electric technology.

The District understands the new bus must remain in service in the school district's local fleet for its lifespan which is typically seven years. We do not contract our school bus services. **OR**
We contract our bus services with _____ (Contractor). We understand we may need to modify our contract as the DEQ reimburses the school and not the school's bus contractor.

The District will provide \$ _____ match to fund this replacement school bus purchase. Based on the lowest bid with option of \$ _____ (low bid amount) from _____ (name of bus vendor), we understand the maximum award from DEQ will be \$ _____ (the lesser of \$177,667 or 45 percent for battery-electric bus and charging infrastructure, the lesser of \$43,274 or 35 percent if CARB certified Low NOx engine, or the lesser of \$25,000 or 25 percent of the low bid for diesel, gasoline, or propane). In addition, we understand if the District elects to purchase a bus from a vendor other than low bidder, the district will pay for the difference in cost, while keeping the approved fuel-operated-heater in any bus purchased with this program's funds.

The District certifies we are replacing this ____-model year bus in advance of our normal replacement cycle for school buses and that the bus would not have been retired or replaced in regular rotation before September 30, 2025. All school buses replaced under this program will be recycled and documented according to EPA and DEQ requirements. The District has reviewed the draft Clean School Bus sample agreement provided. We have determined no impediments to signing the agreement and to complying with the requirements.

The District commits to protect children's health and reduce children's exposure to diesel emissions by promoting idling reduction strategies by posting at least two "No Idling, Clean Air Zone" Montana signs near school drop-off locations.

The District understands that the award is not official or final until the agreement with DEQ has been completed and signed by both DEQ and the District.

Sincerely,
<Actual signature>
Responsible Official's Name and Title
Private School/Public School District Name

APPENDIX E – SAMPLE CONTRACT

State Clean School Bus Grant CONTRACT NO. XXXXXX

This Contract No XXXXXX is hereby made between _____ School District (Contractor) and the **Montana Department of Environmental Quality** (DEQ) for replacing an old, high-polluting diesel school bus. This Contract is issued in accordance with Title 18, Montana Code Annotated (MCA), and the Administrative Rules of Montana (ARM), Title 2, Chapter 5. The parties, in consideration of mutual covenants and stipulations described below, agree as follows:

SECTION I. TERM OF CONTRACT

Performance of the Contract shall begin upon signature by both parties with the effective date being the latter of the two signatures. **The services provided pursuant to Section II Paragraph A must be completed by August 31, 2023** except for the assurance provided in Section II paragraph A.2, which is a continuing obligation, unless this Contract is terminated or modified as provided herein.

SECTION II. SERVICES

A. Contractor shall do the following:

1. Replace the following school bus through the purchase of a new, clean, energy efficient bus that meets or exceeds U.S. Environmental Protection Agency (EPA) 2019 model year or newer engine certified emissions. The contractor shall purchase the school bus through blanket purchase agreements or some other mechanism that ensures a low price for the item from one of the Montana approved vendors as submitted with the application. The school bus being replaced will be:

Make/Model/Year: (Make, e.g. International, Blue Bird, Thomas) XXXXXXXXXXXXXXXXXX

VIN: XXXXX XXXXX XXXXX

- a. Provide DEQ with a revised Letter of Commitment giving the dollar amount of non-federal match.
 - b. Provide DEQ with an updated number of daily riders (each way to and from school and estimated daily miles).
2. Ensure that for its seven-year lifespan, the school bus purchased with funding under this Contract is used only for the school district for which it was purchased for the intended purposes of transportation of the school district's children to and from school and/or to and from other school related activities.
 3. Provide DEQ with a replacement bus point of contact, a copy of the title of the old bus showing the **vehicle identification number (VIN)**, a photo of the old bus VIN plate with the gross vehicle weight rating (GVWR), and a letter of commitment identifying the amount of cash and excess match.
 4. Provide a copy of the Purchase Order (PO), including the line item sheet, sent by the bus manufacturer noting estimated delivery of the purchased bus on or before Contract end date. The PO will indicate EPA emission standards for the bus ordered. If this is a battery-electric school bus replacement, please provide a copy of the purchase order for the electric bus charging infrastructure.
 5. Upon manufacturer's delivery to Contractor of the new bus, provide DEQ with a copy of the bill of lading reflecting total amount of the purchase, including line item sheet indicating item-by-item pricing, and actual date of delivery, and mileage on the date of acceptance by Contractor. The line item sheet must include the model year and VIN; and must certify the engine meets or exceeds the 2019 EPA emissions standards. The line item sheet must also clearly identify the engine make, model, and horsepower; vehicle components and specific engine emissions configuration installed including model year and emissions equipment installed (such as diesel particulate filter (DPF), select catalytic reduction (SCR), idle reduction equipment etc.). In addition, a fuel operated heater must also be installed in the school bus (if diesel),

clearly identified on line item sheet including all components, and in accordance with Appendix B of the School Bus Specifications and Eligibility Requirements for Type C and D buses.

6. Provide a copy of the invoice from the vendor showing total bus purchase price (for each contract/bus) including EPA emissions year. If electric bus charging infrastructure is included, provide a copy of the invoice from the vendor showing total charging infrastructure cost.

7. Provide DEQ with a copy of the EPA Certificate of Conformity provided for the new bus engine and photographic (color electronic images are sufficient) documentation that the engine family emissions listed in the certificate matches that on the engine name plate. The engine name plate is usually located on the engine or within the engine compartment. A photo of the name plate is sufficient if the reproduction is clear enough to allow DEQ to easily read all information and numbers contained on the name plate. If this is not possible, then Contractor shall include the required information on the Emissions Verification Form provided by DEQ.

8. Provide DEQ with photographic (color electronic images are sufficient) evidence of the new bus and, if applicable, dedicated electric bus charging infrastructure, clearly showing the school name, engine plate with engine serial number and engine production date, the DEQ-supplied Montana Clean School Bus decal(s), the fuel operated heater if diesel replacement, and side and front views showing the bus number and license (if available at the time of photographing).

9. Provide DEQ with documentation that shows Contractor complied with the RECYCLING/ SCRAPPAGE requirements of EPA's DERA program and DEQ's work plan. This includes the method used to recycle the replaced school bus. Contractor must submit written and photographic verification of the bus disposal process that includes the engine serial number and chassis VIN of the bus to be recycled described in Section II Paragraph A.1, and the EPA Scrappage Statement with this information. DEQ will also provide an Emissions Verification Form for the Contractor to complete and sign to confirm information that is not always legible in the images of the old engine plate, odometers and other items. Said written and photographic verification must be submitted to DEQ before final payment is processed.

10. Notify DEQ immediately should Contractor receive notice of a significant delay in the delivery of the bus that will impact completion of tasks required by this section, and work with bus manufacturer and DEQ to resolve any issues to the satisfaction of Contractor and DEQ.

11. Contribute a non-federal match in the amount of at least X5% of the total cost for the new school bus.

12. Comply with all applicable federal and state laws, executive orders, regulations, and applicable written policies in performance of services under this Contract.

13. As part of the reporting requirements under the Federal Grant Award, Contractors and any subcontractors must have a unique entity Identification number (UEI) and maintain active and current contractor profiles in the System for Award Management (SAM – <https://sam.gov/content/home>) for the duration of this Contract.

B. DEQ shall upon request provide consultation to Contractor concerning the subject matter of this Contract.

C. Both parties agree that the typical lifespan of a school bus is seven years. Both parties agree that Contractor shall have control over the disposition of the school bus at the conclusion of the typical lifespan and that the requirements outlined in Section IIA no longer applies.

SECTION III. CONSIDERATION

A. In consideration of services rendered pursuant to this Contract, the value of which constitutes good and sufficient consideration, DEQ agrees to reimburse Contractor X5% of the total cost for the purchase of one (1) school bus up to a maximum award of \$XX,XXX. Contractor agrees to provide at least X5% of the total school bus cost for the new school bus as match towards the purchase.

1. Subject to DEQ approval of the documentation required under Section II Paragraph A, DEQ shall reimburse Contractor within 30 days after receipt and approval of said documentation.

2. This Contract is funded in whole or in part by a federal grant from the EPA in the amount of \$338,399 (Federal Grant #: DS95819302; Federal Catalog #: 66.040).

SECTION IV. ACCOUNTING, AUDITING, AND RETENTION OF RECORDS

A. Contractor shall maintain books, records, documents, other evidence directly pertinent to performance of work under this Contract and current accounting for all funds received and expended pursuant to this Contract in accordance with generally accepted accounting principles. Contractor's accounting system must be capable of allocating costs associated with this Contract in a manner that keeps these costs separate from the costs of other contracts, and Contractor shall so allocate all such costs accordingly.

B. DEQ, the Legislative Auditor, the Legislative Fiscal Analyst, the Environmental Protection Agency, and the Comptroller General of the United States, or their authorized agents, have the right of access to accounting records of Contractor for purposes of making an inspection, audit, excerpts, or transcripts of funds received and expended by Contractor pursuant to this Contract. Contractor shall maintain the records at the address of its liaison in Section XII and allow the entities in the preceding sentence to have access to them for review and copying during normal business hours for as long as the Contractor retains the records under paragraph IV.E. This Contract may be terminated by DEQ upon any refusal of Contractor to allow access to such records (§18-1-118, MCA).

C. Contractor shall disclose all information and reports resulting from access to the records maintained in paragraph IV.A to any of the agencies referred to in paragraph IV.B.

D. Audits conducted under this section must be in accordance with generally accepted auditing standards as established by the American Institute of Certified Public Accountants and with established procedures and guidelines of the reviewing or auditing agency.

E. All books, records, reports, accounting, and other documents maintained by Contractor under this Contract must be retained for a period of eight years after either the completion date of this Contract, or the conclusion of any litigation, claim, audit or exception relating to this Contract taken by DEQ or a third party. Contractor may not destroy any records without first offering the records to DEQ.

F. In the event that an audit shows that Contractor has not complied with federal or state laws and rules concerning the handling and expenditure of the funds received under this Contract, including any grant-related income, Contractor shall correct the areas of non-compliance within six months after DEQ receives the audit report.

SECTION V. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

In accordance with §18-4-141, MCA, Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. Any subcontracting of services under this Contract must be done in a competitive manner and ensure that subcontractor rates are justified and documented in accordance of Level IV of the Executive Schedule, available at <http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages>. Contractor is responsible to DEQ for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and DEQ under this contract.

SECTION VI. HOLD HARMLESS/INDEMNIFICATION AND INSURANCE REQUIREMENTS

A. Each party shall be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent required by law, and shall indemnify and hold the other party harmless from any such liability.

B. Each party shall maintain reasonable coverage for such liabilities, either through commercial insurance or a reasonable self-insurance mechanism under the provisions of Title 2, Chapter 9, MCA, at the minimums prescribed by law.

C. Each party shall provide the other party with a certificate of insurance upon request.

SECTION VII. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal of the Contract term. Upon expiration, a renewal document must be sent to the Montana Department of Environmental Quality, PO Box 200901, Helena, MT 59620-0901.

SECTION VIII. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor shall subject subcontractors to the same provisions, and Contractor shall ensure the same via any subcontract. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

SECTION IX. RETIRED STATE EMPLOYEE REQUIRED EMPLOYER REPORTING

In accordance with ARM 2.43.2114, state agencies are required to file employee reports with the Montana Public Employee Retirement Administration (MPERA). The employee reports required under ARM 2.43.2114 include a working retiree report covering Montana's Public Employees' Retirement System (PERS) retirees performing work in a PERS-covered position as an employee, an independent contractor, or through an employee leasing arrangement, or a temporary service contractor. ARM 2.43.2114(6) (a) requires DEQ to include the social security number of employees and workers in the employer report. Contractor's staff assigned to perform work under this contract will be asked to provide a social security number.

The purpose of collecting the social security number of an individual hired as an independent contractor or through a professional employer arrangement, an employee leasing agreement, or a temporary service contractor is to determine whether the individual is a retiree. Determining an individual's status as a retiree will determine whether DEQ must make employer contributions into the public employee retirement system for retirees who return to work in a PERS-covered position as required by Section 19-3-1113, MCA.

SECTION X. FEDERAL REQUIREMENTS

Contractor agrees to comply with the following terms and conditions as defined by the United States Code (<http://uscode.house.gov/search/criteria.shtml>) (USC), the Code of Federal Regulations (<http://www.ecfr.gov/>) (CFR) applicable to the Environmental Protection Agency, and Presidential Executive Orders (<http://www.whitehouse.gov/briefing-room/presidential-actions/executive-orders>) (EOs) as they apply to the federal grant from the Environmental Protection Agency for the state clean diesel grants under the Diesel Emissions Reductions Act. Citations to the relevant portions of the USC, CFR, and EOs may be obtained at (<https://beta.sam.gov/>) using the CFDA number(s) referenced in Section 5. The following provisions are incorporated into this Contract and shall be included by the Contractor in each subcontract or sub-tiered agreement under any subcontract it enters into in connection with this Contract.

A. Supersession (CFR). This Section applies to the work eligible for EPA assistance to be performed under this Contract, and the provisions within it supersede any conflicting provisions of this Contract.

B. Drug Free Workplace (CFR). Contractor agrees to maintain a drug-free workplace. Contractor certifies, by signing this Contract that its employees and subcontractors shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in the performance of this Contract.

C. Lobbying (CFR). Contractor certifies that no federal appropriated funds have been paid or must be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence Congress or any federal agency in connection with the awarding of any federal/state Contract, the making of any federal/state grant, the making of any federal/state loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal/state contract, grant, loan or cooperative agreement. If any funds other than federal or state appropriated funds have been paid or must be paid to any person for influencing or attempting to influence Congress or any federal agency in connection with this Contract, grant, loan or cooperative agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

D. Debarment, Suspension, Ineligibility and Voluntary Exclusion (CFR). Contractor certifies that it and its principals: (1) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from the award of Contracts by any federal department or agency; (2) have not within a 3-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) contract or subcontract; been in violation of federal or state antitrust statutes, or been convicted of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property; or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in (2) above; and, (3) have not within a 3-year period preceding this Contract, had one or more Contracts terminated for cause or default by any federal or state agency.

E. Procurement of Recycled Good (USC). In accordance with Section 6002 of the Resource Conservation and Recovery Act, when the purchase of an item exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more, Contractor and subcontractors shall give preference to the purchase of specific products containing recycled materials.

F. Use of Recycled Paper (EO). Contractor certifies that recycled paper must be used for all reports, documents, or other submittals prepared by Contractor under the terms of this Contract. This requirement does not apply to reports that are prepared on forms supplied by the federal awarding agency.

G. Equipment, Supplies and Materials

1. Any purchase of equipment, other than the school bus or buses defined by Section IIA, required under this Contract must be approved in advance and in writing by DEQ prior to purchase by Contractor.

2. The title of equipment, other than the school bus or buses defined by Section IIA, defined as having a purchase price of over \$5,000 and a useful life of more than one year, acquired under this Contract, shall vest with DEQ. Title to the school bus or buses defined by Section IIA shall vest with Contractor. Contractor agrees to maintain the equipment in good working condition and provide accountability of the equipment per state law and rule concerning Asset Management.

3. At the conclusion of this Contract, other than the school bus or buses defined by Section IIA, equipment shall be returned in good working condition to DEQ unless otherwise authorized in writing by DEQ and the Surplus Property Program of the Property and Supply Bureau of the General Services Division of the Montana Department of Administration. Supplies and materials with a value of less than \$5,000, purchased for and used in completing the terms of this Contract shall be the property of Contractor.

H. Subcontracting Under Disadvantaged Business Enterprise (DBE) Program (CFR)

1. Contractor shall assure compliance with the DBE Program when subcontracting, which includes, along with disadvantaged business enterprises, minority and women's business enterprise (MBE/WBE).

Contractor shall ensure that DBEs have the opportunity to compete for procurements subcontracted under this Contract by following the Six Good Faith Efforts noted below:

- a. Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and local government recipients, this must include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
 - b. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
 - c. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local government recipients, this must include dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
 - d. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
 - e. Use the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.
 - f. If the Contractor awards subcontracts, require the subcontract to take the steps in paragraph X.H.1.a. through X.H.1.e of this Section.
2. Subcontracting done by Contractor under this Contract must, to the fullest extent possible, make available a "fair share" of at least 3% of funds for supplies, construction, equipment or services to "women business enterprises" (WBE), and 2% of funds to "minority business enterprises" (MBE). DEQ reserves the right to adjust the "fair share" percentages by providing written notice to Contractor. These are goals, not quotas. The requirement is that Contractor shows and documents good faith efforts to solicit DBE participation.
 3. Contractor shall employ the Six Good Faith Efforts regardless of whether Contractor has achieved its "fair share" objectives as described in Section X.H.2.
 4. Contractor shall ensure payment to a DBE subcontractor for satisfactory performance is no more than 30 days from the date Contractor receives payment from DEQ.
 5. Contractor shall notify the State in writing prior to termination of a DBE subcontractor for convenience.
 6. If a DBE subcontractor fails to complete work under the subcontract for any reason, Contractor shall employ the Six Good Faith Efforts when soliciting for a replacement subcontractor.

SECTION XI. CONTRACT TERMINATION

A. Termination for Cause with Notice to Cure Requirement. Either party may terminate this Contract in whole or in part for failure of the other party to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving the other party written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

B. Reduction of Funding. In accordance with §18-4-313(4), MCA, DEQ must terminate this Contract if funds are not appropriated or otherwise made available to support DEQ's continuation of performance of this Contract in a subsequent fiscal period. If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial Contract payment level or any Contract increases to that initial level) in subsequent fiscal periods, DEQ

shall terminate this Contract as required by law. DEQ shall provide Contractor the date DEQ's termination shall take effect. DEQ shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, DEQ shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date DEQ's termination takes effect. This is Contractor's sole remedy. DEQ shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

C. Any termination of this Contract is subject to the exception that Section IV (ACCOUNTING, AUDIT AND RETENTION OF RECORDS), relating to retention of and access to records, must remain in effect.

SECTION XII. LIAISONS

Contractor's liaison to DEQ for purposes of this Contract is **XXX** or successor at Contractor's address **XXXXXX** [Phone (406) **xxx-xxxx**, e-mail **xxxxxxxxx**]. DEQ's liaison to Contractor for purposes of this Contract is Neal Ullman or successor at DEQ's Energy Bureau, 1520 East Sixth Avenue, Helena, Montana 59620, phone (406) 444-6582, e-mail neal.ullman@mt.gov.

SECTION XIII. CHOICE OF LAW AND VENUE

In accordance with §18-1-401, MCA, Montana law governs this contract. If there is a dispute under this Contract the Parties will meet in person and attempt to resolve the dispute. If the dispute cannot be settled through negotiation, the parties agree that prior to resorting to litigation they will attempt to settle the dispute by nonbinding mediation administered by a neutral mediator agreed to by the parties.

Both parties waive objection to personal jurisdiction in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Any litigation concerning this bid, proposal, or contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

SECTION XIV. SCOPE, AMENDMENT AND INTERPRETATION

A. This Contract consists of 8 numbered pages, and contains the entire Contract of the parties. A copy of the original has the same force and effect for all purposes as the original. Any enlargement, alteration, or modification requires a written amendment signed by both parties.

B. A declaration by any court, or any other binding legal source, that any provision of this Contract is illegal or void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.

SECTION XV. EXECUTION

To express the parties' intent to be bound by the terms of this Contract, they have executed this document on the dates set out below.

(CONTRACTOR)

DATE
Address
City, state, zip

XXXX, Title

MONTANA DEPARTMENT OF ENVIRONMENTAL QUALITY

DATE

VICKI J. WOODROW, Contracts Officer

Centralized Services Division
Financial Services Bureau
Metcalf Building, Room 003
1520 E. Sixth Avenue
Helena, MT 59620-0901

Approved as to Legal Content:

DATE

DEQ Attorney