



The State of New Hampshire
Department of Environmental Services

Thomas S. Burack, Commissioner



June 19, 2014

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Environmental Services (DES) to enter into a grant agreement with Berlin Public Schools SAU #3, Berlin, New Hampshire (Vendor Code #177267-B002) for an amount not to exceed \$2,500 to support the purchase of a fuel operated heater, effective upon Governor and Council approval through September 30, 2014. Funding is 100% Federal.

Funding is available in account as follows:	<u>FY2014</u>
03-44-44-443010-2278-072-500573	\$2,500
Dept. Environmental Services, Federal DERA Funds, Grants- Federal	

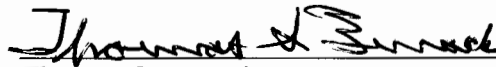
EXPLANATION

Under the Diesel Emission Reduction Act (DERA) the U.S. Environmental Protection Agency (EPA) provides funding for State Clean Diesel Programs to support projects that reduce harmful emissions produced by diesel vehicles. New Hampshire's State Clean Diesel Grant Program includes projects that reduce emissions by minimizing idling time, converting to lower emission fuels, and replacing highway vehicles with those meeting more stringent emission standards.

One aspect of the State's DERA program builds on the Department's voluntary school bus idling reduction education program by supplying technology that further reduces idling through the use of engine fuel operated heaters. These heaters use only a small amount of fuel to maintain engine and passenger comfort heat while the bus is not running.

This agreement has been approved as to form, substance, and execution by the Office of the Attorney General. In the event that the Federal funds become no longer available General funds will not be requested to support this program.

We respectfully request your approval.


Thomas S. Burack
Commissioner

Subject: Berlin Public Schools FORM NUMBER P-37 (version 1/09)

AGREEMENT
The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

Form with fields for State Agency Name, Contractor Name, Address, Phone, Completion Date, Price Limitation, Signatures, and Acknowledgements.

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.
Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

EXHIBIT A
PROJECT SCOPE OF SERVICES

This Scope of Services describes activities that have been agreed to between the Department of Environmental Services (DES) and Berlin Public Schools (hereinafter referred to as Berlin) to reduce school bus idling, thereby reducing the exposure to children of harmful diesel emissions. Funds are being provided by the federal Diesel Emissions Reduction Act (DERA) and granted via the NH State Clean Diesel Grant Program.

Berlin will purchase and install a fuel operated heater prior to September 30, 2014.

- 1) For the purposes of this agreement, DES and Berlin agree as follows:
 - a) Berlin shall submit an initial **Project Status Report** to DES prior to the project completion date. Report shall contain the following:
 - i) Specifications and conditions of the school bus equipped with a heater including:
 - Bus make and model,
 - Year of manufacture,
 - Vehicle Identification Number,
 - Date of heater installation.
 - b) Berlin agrees to use said bus for a period of no less than five years, and will maintain the heater in accordance with the manufacturer's recommendations, as applicable.
 - c) Prior to heater purchase, Berlin shall provide documents supporting equipment and vendor selection, including:
 - i) A minimum of three written vendor quotations for a vehicle that is the performance equivalent of the vehicle or equipment that is to be replaced; **or:**
 - ii) A copy of the Request for Proposals (RFP) solicitation utilized to select the vendor, including:
 - documentation the RFP was properly advertised using avenues likely to reach all potential bidders,
 - a short narrative description of the competitive bid process including dates and where the RFP was posted and length of response period, and
 - a description of the results of the competitive bid process including the number and copies of the responses received; **or:**
 - iii) Documentation indicating that the selected equipment will be purchased in accordance with specifications, price, and from a vendor specified in a State of NH purchase agreement (municipalities and qualified transit providers only); **or:**
 - iv) The grant recipient applies for and receives from DES a waiver of the competitive bid requirements listed above. DES reserves the right to waive competitive bid requirements to accommodate special circumstances.
 - d) Berlin shall submit a final **Project Status Report** to DES after one school year of operation, containing the following information:
 - i) Specification and condition of the each of the school buses that were equipped with a heater including:
 - Bus make and model,
 - Year of manufacture,
 - Vehicle Identification Number,
 - Vehicle mileage since installation of heater,

- Fuel usage since installation of heater,
 - Hours of heater operation.
- 2) Berlin shall not use grant funds for any costs not specified in this Exhibit A, Scope of Services. Berlin shall complete all activities, reports, and work products specified herein.

EXHIBIT B
PAYMENT SCHEDULE

1. Payments under this agreement are not to exceed \$2,500
2. DES will reimburse Berlin for eligible expenses in the amount approved by the Governor and Executive Council, provided Berlin is in compliance with all recordkeeping and reporting requirements in Exhibit A.
 - a. Invoices may be submitted for reimbursement upon payment and shall include the following:
 - i. A copy of all vendor invoices.
 - ii. A copy of cancelled checks or other documentation verifying payment;
 - iii. Contact information for any questions related to the reimbursement request.
 - b. DES will process completed invoices within 30 days of receipt.

EXHIBIT C
SPECIAL PROVISIONS

For the purposes of this agreement, the following section of the Grant Agreement shall be waived:

- ♦ 17. Insurance and Bond.

Certificate of Authority

SAU#3

I, Corinne E. Cascadden, Superintendent of Berlin Public Schools do
Printed Name of Certifying Officer Title Name of Company

hereby certify that Thomas Sutton is authorized to execute any documents
Printed Name of Person Authorized to sign
that may be necessary to enter into a contract with the State of New Hampshire.

In witness whereof, I have hereunto set my hand as the Superintendent,
SAU#3 *Office/Position of Certifying Officer*
of Berlin Public Schools, this 12th day of June, 2014
Name of Company

Corinne Cascadden
Signature of Certifying Officer

Notarization

State of New Hampshire
County of Coos .

On June 12, 2014, before me, Debora Payeur,
Date Name of Notary or Justice of the Peace

the undersigned officer, personally appeared Corinne E. Cascadden, who
Printed Name of Certifying Officer
acknowledged him/herself to be the Superintendent, of Berlin Public Schools
Office/Position Name of Company
and that she/he, being authorized to do so, executed the foregoing instrument for the
purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.

Debora A Payeur
Notary Public or Justice of the Peace

(affix seal)

Commission Expires: DEBORA A. PAYEUR
NOTARY PUBLIC
State of New Hampshire
My Commission Expires
February 20, 2018