

§ 24-163.3 Use of ultra low sulfur diesel fuel and best available technology in nonroad vehicles.

- (a). For purposes of this section only, the following terms shall have the following meanings:
- "Contractor" means any person or entity that enters into a public works contract with a city agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such public works contract.
- "Motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.
- "Nonroad engine" means an internal combustion engine (including the fuel system) that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.
- "Nonroad vehicle" means a vehicle that is powered by a nonroad engine, fifty horsepower and greater, and that is not a motor vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a nonroad engine of sixty-five horsepower or less and that are not used in any construction program or project.
- "Public works contract" means a contract with a city agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a city agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a city agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.
- (b).
- (1). Any diesel-powered nonroad vehicle that is owned by, operated by or on behalf of, or leased by a city agency shall be powered by ultra low sulfur diesel fuel.
  - (2). Any diesel-powered nonroad vehicle that is owned by, operated by or on behalf of, or leased by a city agency shall utilize the best available technology for reducing the emission of pollutants, or shall be equipped with an engine certified to the applicable tier four emissions standards established by the United States environmental protection agency as set forth in section 1039.101 of title forty of the code of federal regulations or to any subsequent United States environmental protection agency emissions standard for such engine that is at least as stringent.
- (c).
- (1). Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall use ultra low sulfur diesel fuel in diesel-powered nonroad

vehicles and all contractors in the performance of such contract shall comply with such specification.

- (2). Any solicitation for a public works contract and any contract entered into as a result of such solicitation shall include a specification that all contractors in the performance of such contract shall utilize the best available technology for reducing the emission of pollutants for diesel-powered nonroad vehicles, or shall utilize diesel-powered nonroad vehicles that are equipped with engines certified to the applicable tier four emissions standards established by the United States environmental protection agency as set forth in section 1039.101 of title forty of the code of federal regulations or to any subsequent United States environmental protection agency emissions standard for such engines that is at least as stringent. All contractors in the performance of such contract shall comply with such specification.
- (d).
- (1).
  - (i) The commissioner shall make determinations, and shall publish a list containing such determinations, as to the best available technology for reducing the emission of pollutants to be used for each type of diesel-powered nonroad vehicle to which this section applies for the purposes of paragraph two of subdivision b and paragraph two of subdivision c of this section. Each such determination, which shall be updated on a regular basis, but in no event less than once every six months, shall be primarily based upon the reduction in emissions of particulate matter and secondarily based upon the reduction in emissions of nitrogen oxides associated with the use of such technology and shall in no event result in an increase in the emissions of either such pollutant.
  - (ii) In determining the best available technology for reducing the emission of pollutants, the commissioner shall select technology from that which has been verified by the United States environmental protection agency or the California air resources board, as set forth in the executive orders of such board, for use in nonroad vehicles for each engine family. If no such technology exists for a specific engine family, then the commissioner shall select appropriate technology from that which has been verified by the United States environmental protection agency or the California air resources board as set forth in the executive orders of such board, for a different nonroad vehicle engine family. If no such appropriate technology exists for a different nonroad vehicle engine family, then the commissioner may select such technology that he or she deems appropriate.
- (2). No city agency or contractor shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered nonroad vehicle in accordance with the provisions of this section within three years of having first utilized such technology for such vehicle or on or before July 1, 2017, whichever is later.
- (e). A city agency shall not enter into a public works contract subject to the provisions of this section unless such contract permits independent monitoring of the contractor's compliance with the requirements of this section and requires that the contractor comply with section 24-163 of this code. If it is determined that the contractor has failed to comply with any provision of this section, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the contractor.
- (f).

- (1). The provisions of paragraph one of subdivision b of this section shall apply to all diesel-powered nonroad vehicles that are owned by, operated by or on behalf of, or leased by a city agency and the provisions of paragraph one of subdivision c of this section shall apply to all public works contracts six months after the effective date of this section.
  - (2). The provisions of paragraph two of subdivision b of this section shall apply to all diesel-powered nonroad vehicles that are owned by, operated by or on behalf of, or leased by a city agency and the provisions of paragraph two of subdivision c of this section shall apply to any public works contract that is valued at two million dollars or more one year after the effective date of this section.
  - (3). The provisions of paragraph two of subdivision c of this section shall apply to all public works contracts eighteen months after the effective date of this section.
- (g). On or before January 1, 2005, and every succeeding January 1, the commissioner shall report to the comptroller and the speaker of the council on the use of ultra low sulfur diesel fuel in diesel-powered nonroad vehicles and the use of the best available technology for reducing the emission of pollutants and such other authorized technology in accordance with this section for such vehicles by city agencies during the immediately preceding fiscal year. This report shall include, but not be limited to
- (i) the total number of diesel-powered nonroad vehicles owned by, operated by or on behalf of, or leased by each city agency or used to fulfill the requirements of a public works contract for each city agency;
  - (ii) the number of such nonroad vehicles that were powered by ultra low sulfur diesel fuel;
  - (iii) the number of such nonroad vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology used for each vehicle;
  - (iv) the number of such nonroad vehicles that utilized such other authorized technology in accordance with this section, including a breakdown by vehicle model and the type of technology used for each vehicle;
  - (v) the locations where such nonroad vehicles that were powered by ultra low sulfur diesel fuel and/or utilized the best available technology for reducing the emission of pollutants or such other authorized technology in accordance with this section were used;
  - (vi) all findings and waivers, and renewals of such findings and waivers, issued pursuant to paragraph one or paragraph three of subdivision j or subdivision l of this section, which shall include, but not be limited to, all specific information submitted by a city agency or contractor upon which such findings, waivers and renewals are based and the type of such other authorized technology, if any, utilized in accordance with this section in relation to each finding, waiver and renewal, instead of the best available technology for reducing the emission of pollutants.
- (h). This section shall not apply:

- (1). where federal or state funding precludes the City from imposing the requirements of this section; or
  - (2). to purchases that are emergency procurements pursuant to section three hundred fifteen of the charter.
- (i). Paragraph one of subdivision b and paragraph one of subdivision c, as that paragraph applies to all contractors' duty to comply with the specification, of this section shall not apply to any diesel-powered nonroad vehicle covered under a federal waiver for the use of ultra-low sulfur diesel fuel issued by the United States environmental protection agency pursuant to 42 U.S.C. § 7545(c)(4)(C)(ii) or any regulation promulgated thereunder, provided that the City agency or contractor shall fully comply with the terms of such federal waiver, and that the requirements of paragraph one of subdivision b and paragraph one of subdivision c of this section shall be in full force and effect upon the expiration of such federal waiver.
  - (j). Paragraph two of subdivision b and paragraph two of subdivision c, as that paragraph applies to all contractors' duty to comply with the specification, of this section shall not apply:
    - (1). to a diesel-powered nonroad vehicle where a city agency makes a written finding, which is approved, in writing, by the commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, in which case such agency or contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle; or
    - (2). to a diesel-powered nonroad vehicle that is used to satisfy the requirements of a specific public works contract for fewer than twenty calendar days; or
    - (3). to a diesel-powered nonroad vehicle where the commissioner has issued a written waiver based upon a city agency or contractor having demonstrated to the commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, in which case such city agency or contractor shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.
  - (k). In determining which technology to use for the purposes of paragraph one or paragraph three of subdivision j of this section, a city agency or contractor shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.
  - (l). Any finding or waiver made or issued pursuant to paragraph one or paragraph three of subdivision j of this section shall expire after one hundred eighty days, at which time the requirements of paragraph two of subdivision b and paragraph two of subdivision c of this section shall be in full force and effect unless the City agency renews the finding, in writing, and the commissioner approves such finding, in writing, or the commissioner renews the waiver, in writing.
  - (m). Any contractor who violates any provision of this section shall be liable for a civil penalty in accordance with section 24-178 of the code.

- (n). Any contractor that makes a false claim with respect to the provisions of this section to a city agency shall be subject to enforcement pursuant to the provisions of chapter eight of title seven of the code.
- (o). This section shall not apply to any public works contract entered into or renewed prior to June 19, 2004.
- (p). Nothing in this section shall be construed to limit the City's authority to cancel or terminate a contract, deny or withdraw approval to perform a subcontract or provide supplies, issue a non-responsibility finding, issue a non-responsiveness finding, deny a person or entity pre-qualification as a vendor, or otherwise deny a person or entity city business.