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Document Name:

Westchester County DPW Bid Solicitation

Organization/Agency Responsible:

New York Westchester County

Contact:

Robert Funicello
Environmental Director
County of Westchester, NY
914-813-5457
rff3@westchestergov.com

Description: Westchester County Initiatives

In 1995, the Department of Environmental Facilities (DEF) of Westchester County, NY enacted an environmental policy to prevent pollution and exceed legal regulatory requirements where practical. The county's Department of Public Works' bid solicitation requires contractors to use ultra-low diesel fuel and vehicles that are retrofitted with diesel oxidation catalysts (DOCs) or crankcase vent filters (CVFs), or have engines certified to the 2007 US EPA standard for particulate matter (PM).

SPECIAL NOTICE

County of Westchester
New York

ULTRA LOW SULFUR DIESEL FUEL

- A. In accordance with Chapter 873 Article XIII Section 873.1329 (Air Quality: Onroad and nonroad vehicles: Emission standards) for contracts over \$150,000 Contractors and Subcontractors operating onroad and nonroad vehicles to perform County work must power those vehicles with ultra low sulfur diesel fuel. Ultra low sulfur diesel fuel is any diesel fuel that has a sulfur content of no more than fifteen parts per million.
- B. In addition, all onroad and nonroad diesel vehicles used to perform County work and equipped with a model year 2003 or older engine shall utilize the best available technology in accordance with the following schedule:
- a) effective September 1, 2007 - 35% of all such motor vehicles used on this project;
 - b) effective September 1, 2008 - 65% of all such motor vehicles used on this project;
 - c) effective September 1, 2009 - 100% of all such motor vehicles used on this project.
- C. All onroad and nonroad diesel vehicles to perform County work having a gross vehicle weight rating of more than 14,000 pounds shall utilize the best available technology or be equipped with an engine certified to the applicable 2007 United States Environmental Protection Agency ("EPA") standard for particulate matter as set forth in Section 86.007-11 of Title 40 of the Code of Federal Regulations or to any subsequent EPA standard for such pollutant that is at least as stringent, in accordance with the following schedule:
- a) by September 1, 2007 - 35% of all such motor vehicles;
 - b) by September 1, 2008 - 65% of all such motor vehicles;
 - c) by September 1, 2009 - 100% of all such motor vehicles
- D. 1. Each and every Contractor and all subcontractors must keep individual logs setting forth the date of purchase, the name and address of the vendor and the quantity of low sulfur diesel fuel (15 ppm Sulfur Maximum) purchased.
2. Each and every Contractor and all subcontractors must complete the affidavit form and log on Forms Pages 9-10. These forms must be submitted at least monthly and with each payment request.

FOR FURTHER DETAILS SEE ARTICLE-56.ULTRA LOW SULFUR DIESEL FUEL OF THE GENERAL CLAUSES ON PAGE 3.40.

SPECIAL NOTICE

County of Westchester
New York

QUALIFIED TRANSPORTATION FRINGE PROGRAM

Executive Order No. 7-2005 requires that contractors, concessionaires and vendors doing business with the County enroll in a Qualified Transportation Fringe Program as defined in §132(f)(1) of the IRS Tax Code for all contracts for goods or services of \$100,000 or more in any twelve month period during the contract term if such contractor, concessionaire or vendor employs more than 25 individuals who utilize public transportation and/or pay for commuter parking at least 1 day per week regardless of whether those employees are engaged in work pursuant to the contract.

Bidders shall submit the signed statement on Proposal Page 34. Notwithstanding the above, a Bidder may submit a Waiver Application on Proposal Page 35 to the Commissioner.

SPECIAL NOTICE

County of Westchester
New York

PROTECTION OF WATER RESOURCES & THE ENVIRONMENT

- A. The Contractor shall comply with the County's policies to protect water resources and the environment, and applicable stormwater management, water quality, erosion and sediment control laws, rules, regulations, permits, procedures and specifications. (see Section 3. General Clauses, Article 14).
- B. In addition the Contractor shall complete and submit Proposal Page 20, STORMWATER POLLUTION PREVENTION CERTIFICATION. As a condition for approval, Subcontractors shall also be required to complete and submit the STORMWATER POLLUTION PREVENTION CERTIFICATION.

STORMWATER POLLUTION PREVENTION CERTIFICATION

I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan ("SPPP") for the construction site identified in such SPPP as a condition of authorization to discharge stormwater. I also understand the operator must comply with the terms and conditions of the New York State Pollutant Discharge Elimination System ("SPDES") general permit for stormwater discharges from construction activities and it is unlawful for any person to contribute to a violation of water quality standards.

Signature

Sworn to before me

This _____ day of _____, 200_.

Notary Public – State of New York, County of _____

My Commission Expires on _____.

This Certification will also have to be signed by your subcontractors. Additional copies of this form can be acquired from the Department of Public Works.

COMPLETE THIS FORM USING BLACK INK ONLY

QUALIFIED TRANSPORTATION FRINGE PROGRAM

**STATEMENT OF ENROLLMENT IN A
QUALIFIED TRANSPORTATION FRINGE PROGRAM**

1. I am the _____ of _____.
(title) (Bidder's full legal name)

2. This statement is not applicable because (*check all that apply, skip number 3 and sign below*):

- The total value of the contract is less than \$100,000 in any twelve month period during the contract term.
- Bidder employs less than 25 individuals who utilize public transportation and/or pay for commuter parking at least 1 day per week.

(If question 2 does not apply proceed with question 3 and sign below).

3. This Statement is applicable and is submitted in order to comply with the requirements of Executive Order No. 7-2005 of the County of Westchester which requires prospective contractors, concessionaires and vendors to submit a signed statement at the time of procurement of the contract that they are enrolled in or have initiated the process to enroll in a Qualified Transportation Fringe Program as defined in §132(f)(1) of the IRS Tax Code.

As of the date hereof the above indicated Bidder:

is enrolled in a Qualified Transportation Fringe Program as set forth in §132(f) of the Internal Revenue Service Tax Code, or

has initiated the process of enrolling in a Qualified Transportation Fringe Program as set forth in §132(f) of the Internal Revenue Service Tax Code and will notify the appropriate County personnel in writing upon the commencement of their participation in such a program.

signature

date

COMPLETE THIS FORM USING BLACK INK ONLY

INFORMATION FOR BIDDERS

control, this policy may be applied to the conduct of non-County employees with respect to sexual harassment of County employees in the workplace.

- 2) This sexual harassment policy includes, but is not limited to, inappropriate forms of behavior described by the Equal Employment Opportunity Commission.
- B. Sexual advances that are not welcome, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment when:
- 1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; -OR-
 - 2) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions, such as promotion, transfer, or termination, affecting such individuals; -OR-
 - 3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
- C. Sexual harassment refers to behavior that is not welcome, that is personally offensive, that fails to respect the rights of others, that lowers morale and that, therefore, interferes with an employee's work performance and effectiveness or creates an intimidating, hostile or offensive working environment.

38. SMOKE-FREE WORKPLACE POLICY

- A. By way of Executive Order No. 5 of 1998 and Local Law 3 of 2003, it is now the policy of the County of Westchester to institute a smoke-free "workplace".
- B. Every indoor County "workplace", shall become a smoke-free area. The smoking or carrying of lighted cigarettes, cigars, pipes, or any other tobacco-based products, or products that result in smoke, is hereby banned.
- C. Every indoor County "workplace" shall be covered under this Executive Order, including the County Jail in Valhalla and the Westchester County Center in White Plains. This Executive Order shall not, however, apply to County-owned facilities that are not County "workplaces", such as employees housing or privately run restaurants on County property (e.g. at the County golf courses).
- D. The Richard J. Daronco County Courthouse shall not, for purposes of this Executive Order, be considered a County "workplace", and therefore shall not be required to be smoke-free.
- E. This Executive Order is intended to be consistent with, and not modify, any provisions of the New York State Public Health Law.
- F. This Executive Order shall take effect immediately and remain in full force and effect until otherwise superseded or revoked.

INFORMATION FOR BIDDERS

39. COUNTY ENERGY EFFICIENT PURCHASING POLICY

- A. By way of Executive Order No. 9 of 2002, it is now the policy of the County of Westchester to institute an Energy Efficient Purchasing Policy.
- B. This policy shall apply to all purchases made by and for the County in accordance with applicable laws, rules and regulations.
- C. Wherever the price is reasonably competitive and the quality adequate for the purpose intended, purchase and utilization of products that meet Energy Star requirements for energy efficiency as determined by the United States Environmental Protection Agency and the United States Department of Energy is hereby recommended.
- D. If the Energy Star label is not available with respect to a particular product, than it is recommended that products in the upper twenty-five percent of energy efficiency as designated by the United States Federal Energy Management Program shall be purchased and utilized if the prices of those products are reasonably competitive and the quality adequate for the purpose intended.

40. RESTRICTION ON USE OF TROPICAL HARDWOODS

- A. The bidder/proposer shall not use or propose to use any tropical hardwoods or tropical hardwood products in any form, except in accordance with State Finance Law § 165 (Use of Tropical Hardwoods), as may be amended from time to time. Pursuant to the State Finance Law § 165, any bid/proposal which proposes or calls for the use of any tropical hardwood or wood product in the performance of the contract shall be deemed non-responsive.

41. DISCLOSURE OF RELATIONSHIPS TO COUNTY

- A. The successful bidder is required to complete the form entitled "Required Disclosure of Relationships to County" on Proposal Pages 32-33 before award of the contract.
- B. In the event that any information provided on the completed Proposal Pages entitled "Required Disclosure of Relationships to County" changes during the term of this agreement, the Contractor shall notify the Commissioner in writing within ten (10) days of such event by submitting a revised "Required Disclosure of Relationships to County" form.

42. CONTRACTOR DISCLOSURE STATEMENT

- A. If the Contractor was required to complete the form entitled "Contractor Disclosure Statement" on Proposal Pages 23-31 and information provided on that document changes during the term of this agreement the Contractor shall notify the Commissioner in writing within ten (10) days of such event by submitting a revised "Contractor Disclosure Statement".

GENERAL CLAUSES

payments otherwise due to the Contractor and that all such sums withheld shall be deemed not to be earned by the Contractor.

13. PROTECTION OF UTILITIES AND STRUCTURES

The Contractor shall be responsible for the preservation of all public and private underground and surface utilities/structures at or adjacent to the construction work; insofar as they may be endangered by the work. This shall hold true whether or not they are shown on the contract drawings. If they are shown on the drawings, the County does not guarantee their locations even though the information will be from the best available sources.

The Contractor shall give ample and reasonable notice to all private, corporate or municipal owners before work is done near their utility or structure; shall properly protect all utilities/structures encountered; shall at their expense repair/replace any items that are damaged; and shall proceed with caution to prevent undue interruptions to utility services.

Investigation and/or on-site mark-out, by the County, must be done prior to excavation work at the Valhalla Campus. This investigation/mark-out is to serve as a guide for the Contractor and does not absolve the Contractor from the responsibility to repair/replace identified or non-identified utilities/structures, at no cost to the County.

All excavation work performed at the Valhalla Campus requires the submission of a completed "Ground Penetration" form/sketch(es) will be distributed to the appropriate utility owners. Therefore, the Contractor should assume that no excavation work can be performed until approximately twenty (20) working days after submission of the form/sketch(es), but not prior to approval by the DPW-BO Superintendent of Buildings.

14. PROTECTION OF WATER RESOURCES & THE ENVIRONMENT

The Contractor is responsible to review the specifications and drawings as they relate to this Agreement to ascertain what procedures must be followed in order to comply with all applicable stormwater management, water quality control, erosion, and sediment control laws, rules, regulations and permits. If the Contractor is of the opinion that any work required, necessitated, or contained in the specifications or otherwise ordered conflicts with the applicable stormwater management, water quality control, erosion, and sediment control laws, rules, regulations, procedures, and permits, including, without limitation, all applicable provisions of the New York State Stormwater Management Design Manual, and the New York Standards and Specifications for Erosion and Sediment Control as they may be amended from time to time, it must promptly notify the First Deputy Commissioner of the Department of Public Works in writing.

In addition to all other requirements contained in this Agreement, the Contractor recognizes and understands that it is an essential element of this Agreement that the Contractor complies with the County's policies to protect water resources and the environment. The Contractor must comply with all applicable stormwater management, water quality control, erosion, and sediment control laws, rules, regulations, permits, procedures and specifications, including, without limitation, all applicable provisions of the New York State

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Stormwater Management Design Manual,¹, the New York Standards and Specifications for Erosion and Sediment Control as they may be amended from time to time. All of these documents should be obtained from the New York State Department of Environmental Conservation to ensure that the Contractor has the latest version. It should be noted that the standards set forth in the New York State Stormwater Management Design Manual, and the New York Standards and Specifications for Erosion and Sediment Control apply to ALL work done for the County, regardless of the size of the project. In case of a conflict among the governmental regulations and standards, the most stringent regulation, standard or recommendation shall apply to the work done under this Agreement.

The Contractor and its subcontractors shall execute the required Stormwater Pollution Prevention Certification, which is located at Proposal Page 20. In addition, the Contractor acknowledges that if the work required under this Agreement requires that a State Pollutant Discharge Elimination System ("SPDES") permit be obtained from the New York State Department of Environmental Conservation, then the Contractor must comply with the terms and conditions of the SPDES permit for stormwater discharges from construction activities and the Contractor will not take any action or fail to take any necessary action that will result in the County being held to be in violation of said permit or any other permit. The Contractor shall cooperate with the County in obtaining the permit and comply with the SPDES permit and all other applicable laws, rules, regulations and permits.

The Contractor shall provide, as the Commissioner or his designee may request, proof of compliance with the County's policies to protect water resources and the environment, and all applicable stormwater management, water quality control, erosion and sediment control laws, rules, regulations, permits, procedures and specifications.

The Contractor is responsible to ascertain which of the laws, rules, regulations, permits and standards referenced above affect its construction activities, and the Contractor shall be solely responsible for all costs and expenses, including any penalties or fines, incurred by the County, due to the Contractor's failure to comply with such applicable laws, rules, permits, regulations, standards and County policies. The Contractor shall be responsible to defend and indemnify the County from any and all claims resulting from the Contractor's failure to comply with the applicable laws, rules, regulations, permits, standards and County policies.

Failure of the Contractor to comply with the County's policies to protect water resources and the environment, and all applicable stormwater management, water quality control, erosion and sediment control laws, rules, regulations, permits, procedures and specifications may result in the withholding of progress payments to the Contractor by the County. Such withholding of progress payments shall not relieve the Contractor of any requirements of the Agreement including the completion of the work within the specified time, and any construction sequence requirement of the Agreement.

The Contractor acknowledges that its failure to comply with the County's policies to protect water resources and the environment, and all applicable stormwater management, water

¹ available at <http://www.dec.state.ny.us/website/dow/swmanual/swmanual.html> - The location of this reference is provided to assist the Contractor; it does not relieve the Contractor from the obligation of obtaining and complying with the latest version of the document.

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quality control, erosion and sediment control laws, rules, regulations, permits, procedures and specifications shall constitute a material breach under this contract. For the breach or violation of this provision, without limiting any other rights or remedies to which the County may be entitled, the County shall have the right, in its sole discretion to suspend, discontinue or terminate this Agreement immediately upon notice to the Contractor. In such event, the Contractor shall be liable to the County for any additional costs incurred by the County in the completion of the project.

The failure of the Contractor to comply with these requirements could lead to a determination that the Contractor is not a responsible bidder when the Contractor is bidding on other projects.

15. SANITARY REGULATIONS

The Contractor shall obey and enforce such sanitary regulations and orders and shall take such precautions against infectious diseases as may be deemed necessary. The building of shanties or other structures for housing the men, tools, machinery or supplies will be permitted only at approved places, and the sanitary condition of the grounds in and at such shanties or other structures must be at all times maintained in a satisfactory manner.

16. CLEANING UP

Upon completion of the work, the Contractor shall remove all equipment, rubbish, debris and surplus materials from the buildings, and grounds, and provide a suitable dumping place for such materials. The premises shall be left in a neat, clean and acceptable condition.

No litter, debris of any kind shall be allowed to accumulate for more than one day in any portion of the buildings or grounds, and must be removed from the area at the end of each workday.

17. PREVENTION OF DUST HAZARD

In accordance with the New York State Labor Law, Section 22a, in the event a silica or other harmful dust hazard is created due to construction operations under the contract, the Contractor shall install, maintain and keep in effective operation the appliances and methods for the elimination of such silica dust or other harmful dust as have been recommended and approved by State and local authorities.

18. REPRESENTATIVE ALWAYS PRESENT

The Contractor in case of its absence from the work shall have a competent representative or foreman present, who shall obey without delay, all instructions of the Construction Administrator in the prosecution and completion of the work in conformity with this contract, and shall have full authority to supply labor and material immediately.

19. WORK IN BAD WEATHER

During freezing, stormy or inclement weather, no work shall be done except such as can be done satisfactorily and in a manner to secure first-class construction throughout.

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the Contractor in such overtime, extended day, extra crews, Saturday, Sunday or holiday work (but not for the straight time costs of such labor) together with any social security and state or federal unemployment insurance taxes in connection with such premium time. However, no overhead, supervision costs, commissions, profit or other costs and expenses of any nature whatsoever, including impact costs or costs associated with lost efficiency or productivity, shall be payable in connection therewith. Anything to the foregoing notwithstanding, in the event that the Contractor has fallen behind schedule or in the Owner's judgment appears likely to fall behind schedule, Owner shall have the absolute right to direct the Contractor to accelerate the performance of its work, including that of its subcontractors, and the full costs for such acceleration shall be borne solely by the Contractor.

56. ULTRA LOW SULFUR DIESEL FUEL

- A. In accordance with Chapter 873 Article XIII Section 873.1329 (Air Quality: Onroad² and nonroad³ vehicles: Emission standards) for contracts over \$150,000 Contractors and Subcontractors operating onroad and nonroad vehicles to perform County work must power those vehicles with ultra low sulfur diesel fuel. Ultra low sulfur diesel fuel is any diesel fuel that has a sulfur content of no more than fifteen parts per million.
- B. In addition, all onroad and nonroad diesel vehicles used to perform County work and equipped with a model year 2003 or older engine shall utilize the best available technology⁴ in accordance with the following schedule:
- a) effective September 1, 2007 - 35% of all such motor vehicles used on this project;
 - b) effective September 1, 2008 - 65% of all such motor vehicles used on this project;
 - c) effective September 1, 2009 - 100% of all such motor vehicles used on this project.
- C. All onroad and nonroad diesel vehicles to perform County work having a gross vehicle weight rating of more than 14,000 pounds shall utilize the best available technology or be equipped with an engine certified to the applicable 2007 United States Environmental Protection Agency ("EPA") standard for particulate matter as set forth in Section 86.007-11 of Title 40 of the Code of Federal Regulations or to any subsequent EPA standard for

² Onroad diesel vehicle means any self-propelled vehicle designed for transporting persons or property on a street or highway that operates on diesel fuel.

³ Nonroad diesel vehicle means a vehicle that is powered by a diesel engine fifty horsepower or greater, including but not limited to excavators, backhoes, cranes, compressors, bulldozers and similar equipment, but not including a vehicle used solely for competition.

⁴ Best Available Technology means a system for reducing the emission of pollutants which is based on technology verified by the U.S. Environmental protection Agency or the California Air Resources Board or which has been identified pursuant to NYC's Department of Environmental Protection that (1) reduces diesel particulate matter emissions by at least 85 percent, as compared to a similar engine operating on traditional diesel fuel without emission control technology, or reduces engine emissions to 0.01 grams diesel particulate matter per brake horsepower per hour or less; and 2) achieves the greatest reduction in emissions of nitrogen oxides at a reasonable cost and in no case produces a net increase in nitrogen oxides in excess of 10%.

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such pollutant that is at least as stringent, in accordance with the following schedule:

- a) by September 1, 2007 - 35% of all such motor vehicles;
- b) by September 1, 2008 - 65% of all such motor vehicles;
- c) by September 1, 2009 - 100% of all such motor vehicles

- D. Any contractor who violates any provision of Section 873.1329 shall be liable for a civil penalty not to exceed ten thousand dollars plus twice the amount of money saved by such contractor for failure to comply with this section.
- E. Any contractor who makes a false claim may be liable for a civil penalty not to exceed twenty thousand dollars, in addition to twice the amount of money saved by such contractor as a result of having made such false claim.
- F. Nothing in this section shall be construed to limit the County'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 public entity business.
- G. If sufficient quantities of ultra low sulfur diesel fuel are not available to meet the needs of a contractor to fulfill the requirements of this contract, the Contractor may submit a written request to the Commissioner to use diesel fuel with a sulfur content of no more than thirty parts per million as long as the contractor shall use whatever quantity of ultra low sulfur diesel fuel that is available. Such determination shall be made in writing on a case by case basis upon written application to the Commissioner. If the Commissioner grants such authority it shall expire sixty days thereafter and may be renewed upon written request for additional periods of sixty days.
- H. The Contractor, in order to comply with Subsections B & C above, must retrofit its vehicles to include both of the following in order to comply with the Best Available Technology Requirements:
- Diesel Oxidation Catalysts (DOC)
 - Crankcase Vent Filters (CVF)

If the Contractor wants to propose an alternative technology it must submit a written request to the Commissioner with sufficient detail to enable the Commissioner to make a determination as to whether to accept the alternative technology. Any approval of alternative technology must be in writing.

57. LOW SULFUR DIESEL FUEL

To the extent that Article 56 above does not apply, the Contractor must comply with the following requirements;

- A. In accordance with Executive Order 1-2005, each Contractor and Subcontractor

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58. QUALIFIED TRANSPORTATION FRINGE PROGRAM

EXECUTIVE ORDER NO. 7-2005

Requires that contractors, concessionaires and vendors doing business with the County enroll in a Qualified Transportation Fringe Program as defined in §132(f)(1) of the IRS Tax Code for all contracts for goods or services of \$100,000 or more in any twelve month period during the contract term if such contractor, concessionaire or vendor employs more than 25 individuals who utilize public transportation and/or pay for commuter parking at least 1 day per week regardless of whether those employees are engaged in work pursuant to the contract.

Bidders shall submit the signed statement on Proposal Page 34. Notwithstanding the above, a Bidder may submit a Waiver Application on Proposal Page 35 to the Commissioner.

SAMPLE FORMS

**CONTRACTOR'S ULTRA LOW SULFUR DIESEL FUEL AFFIDAVIT
FOR CONTRACT OVER \$150,000**

County of Westchester, Department of Public Works

Contract No. _____ Period Included in this Report: _____, 20__ to _____, 20__

Title of Contract and Location _____

Contractor _____
Address _____

Subcontractor _____
Address _____

STATE OF _____) ss.:
COUNTY OF _____)

I, _____ being duly sworn, depose and say:
(print name) (print title)

1. I certify under penalty of perjury that I agree to comply with the requirements of Chapter 878, Article XIII, Section 873.13.29 of the Laws of Westchester County.
2. During the period _____ through _____, all diesel-powered vehicles, used in the performance of Contract No. _____, were powered by ultra low sulfur diesel fuel (15 ppm Sulfur Maximum).
3. No fuel other than Ultra Low Sulfur Diesel Fuel (15 ppm Sulfur Maximum) was utilized on this project for the above described vehicles.
4. The annexed Ultra Low Sulfur Diesel Fuel Log is a true and accurate summary of the low sulfur diesel fuel (15 ppm Sulfur Maximum) purchased and utilized in the performance of this project.
5. I have read the foregoing statement, have full knowledge of the contents thereof, and it is my intent that the County of Westchester will rely on the statements contained herein.

(Signature)

STATE OF _____) ss.:
COUNTY OF _____)

On this _____ day of _____, 20__, before me personally came _____ to me known, and known to me to be the person who executed the above instrument, and who being duly sworn did say that he/she executed the same.

Sworn to before me this

_____ day of _____, 20__.

Notary Public

The Ultra Low Sulfur Diesel Fuel-Log must be attached.

This Certification also has to be submitted by your subcontractor(s). *Additional copies of this form can be acquired from the Department of Public Work.*

