

**Texas Commission on Environmental Quality (TCEQ)  
Texas Emissions Reduction Plan (TERP)**

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**TEXAS CLEAN SCHOOL BUS PROGRAM  
Request for Grant Applications (RFGA)  
Fiscal Year (FY) 2017**

**Grants for School Bus Retrofits to  
Reduce Emissions from Diesel School Buses in Texas  
Solicitation No. 582-17-70328**

**Eligible Entities**

Any school district or charter school that operates one or more diesel-fueled school buses or a transportation system provided by a countywide school district may apply for and receive a grant under this program. Private schools are not eligible for funding. An eligible entity that leases buses may be eligible for grants if the eligible entity is the applicant and consents to being a third-party to an agreement with the leasing company and TCEQ.

**Eligible Buses**

A diesel school bus proposed for retrofit must be used on a regular, daily route to and from a school and have at least five years of useful life remaining. A bus may be taken out of service if the applicant agrees to remove the retrofit device at the end of the bus life and reinstall the retrofit device on another bus that will be used to complete the remaining time of the required five year activity life of the retrofit device.

**Application Deadline**

During this grant cycle, applications will be considered on a first-come, first-served basis.

Applications will be accepted for consideration during this grant period only if received at the front desk, Rm. 1301, 1st floor of Building F on the premises of TCEQ by no later than 5:00 p.m. Central Time, November 1, 2016. Applications received in the TCEQ mail room on this date are not guaranteed to be delivered to Rm. 1301 by the required deadline, so applicants are encouraged to plan their submissions accordingly.

**Contracting with TCEQ**

Applicants must agree to be contractually bound by:

- the Texas Clean School Bus Program requirements, as established in this RFGA,
- the Terms and Conditions included in this RFGA, including the Project Completion deadline, and
- the project work plan and other commitments on the application forms.

The award of a grant is dependent upon funding availability and the TCEQ may suspend acceptance of applications at any time.

Information on the Texas Procurement and Support Services (TPASS) statewide contract for clean school bus retrofits can be found at <http://www.txsmartbuy.com/contracts/view/216>.

The guidelines and grant application forms may be viewed and downloaded from the TERP website at <http://www.terpgrants.org>. The materials may also be obtained by calling TERP staff at 1-800-919-TERP (8377).

Application forms are also available on the Texas Electronic State Business Daily at <http://esbd.cpa.state.tx.us/>.

**Submit Applications to:**

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***Express Mail:***

Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section (TCSB), MC-204  
12100 Park 35 Circle  
Austin, TX 78753

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***Regular Mail:***

Texas Commission on Environmental Quality  
Air Quality Division  
Implementation Grants Section (TCSB), MC-204  
P.O. Box 13087  
Austin, TX 78711-3087

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**Texas Commission on Environmental Quality  
Texas Emissions Reduction Plan**

**TEXAS CLEAN SCHOOL BUS PROGRAM  
Request for Grant Applications  
Fiscal Year (FY) 2017**

**1. PROGRAM OVERVIEW**

- 1.1. This grant program implements the portion of the Texas Emissions Reduction Plan (TERP) related to the Texas Clean School Bus Program, as authorized under Chapter 390, Texas Health and Safety Code. The Texas Commission on Environmental Quality (TCEQ) adopted rules to implement this program under 30 Texas Administrative Code (TAC), Chapter 114, Subchapter K, Division 4.
- 1.2. The goal of this program is to reduce children's exposure to diesel exhaust in and around diesel school buses. Under the program, TCEQ will provide grants to offset the incremental cost of eligible projects that reduce diesel exhaust emissions.
- 1.3. Exposure to diesel exhaust can cause health problems and aggravate existing respiratory diseases such as asthma. Recognizing these health impacts, the U.S. Environmental Protection Agency (EPA) requires:
  - 1.3.1. ultra-low sulfur diesel fuel to be the standard U.S produced on-road diesel fuel; and
  - 1.3.2. new heavy-duty diesel buses to include advanced pollution control systems that significantly reduce emissions up to 95 percent starting in 2007.
- 1.4. However, existing buses are not required to be upgraded to these new emission standards. Installing retrofit systems on existing buses reduces harmful emissions.

**2. DEFINITIONS**

- 2.1. *Activity* – the installation of a single retrofit system for an individual vehicle, in accordance with the terms of the Contract Documents.
- 2.2. *Activity Life* – is five (5) years from the installation of the Grant Equipment, or if the Grant Equipment is moved from one bus to another, the sum of time the grant equipment is installed and in use on the eligible school buses, so long as the sum is equal to five (5) years, during which time equipment usage must be recorded.
- 2.3. *Agreement* – the Clean School Bus Program Requirements, in addition to the Terms and Conditions and project work plan and budget, constitute the Agreement.
- 2.4. *Application* – the application for a grant submitted by the Performing Party, including Forms 1, 2, 3, 4, 5, 6, and 7; and any amendments or supplemental conditions added to the application in order for it to be approved.
- 2.5. *Grant Equipment* – the equipment and the related goods and services in the grant Activity for which the cost of purchase is reimbursed by TCEQ under the Agreement.
- 2.6. *Include* – When used in this contract, these words mean "includes [including, included] but not limited to." The word "include" and all forms such as "including" shall be construed to introduce a non-exhaustive list. The parties agree "include" is a term of enlargement and does not limit the scope of the preceding noun.

- 2.7. *Minor Change* – Minor Change - a written document which provides for minor changes in the work in accordance with the General Conditions, but which does not involve a change in the Contract Amount or the Contract Period.
- 2.8. *Performing Party* – the Grantee, or legal Eligible Applicant named in the Contract Documents.
- 2.9. *Project Completion Date* – The required deadline for purchase and installation of Grant Equipment. The Project Completion Date is a material term to the contract.
- 2.10. *Written Amendment* – a document signed by the Performing Party and TCEQ that changes at least one term in the Agreement, including authorizing an addition, deletion or revision in the work, or an adjustment in the Contract Amount or the Contract Period, issued on or after the Effective Date of the Agreement.

### **3. ELIGIBLE APPLICANTS**

- 3.1. Any Texas school district, charter school or transportation system provided by a countywide school district may apply for and receive a grant under this program. Private schools are not considered school districts for the purposes of this grant. A “School District” is authorized and created pursuant to Chapter 11 of the Texas Education Code. A “Charter School” is a school authorized and created by Chapter 12 of the Texas Education Code. A “Private School” is any school run for profit or not-for profit by any entity other than a School District or the State of Texas.
- 3.2. TCEQ is not obligated to fund any application including one from an applicant that has demonstrated marginal or unsatisfactory performance on previous grants or contracts with TCEQ or other state agencies. A rating of marginal or unsatisfactory performance on past contracts may be used as a basis to lower or otherwise change the priority and ranking of an application.
- 3.3. TCEQ is not obligated to fund any application including when TCEQ determines the proposal poses a risk due to the financial condition of the applicant or other risk factors as determined by TCEQ.
- 3.4. TCEQ is not obligated to fund any application including one from an applicant that is under federal, state, or local enforcement action for violation of environmental laws or permits.
- 3.5. TCEQ is not obligated to fund any application including from an applicant with an overall compliance history classification of “unsatisfactory” or from an applicant who is delinquent in paying TCEQ penalties or fees.
- 3.6. School buses that are otherwise eligible for a Texas Clean School Bus Program grant, but are owned by a private leasing company may be eligible for a Texas Clean School Bus Program grant if the school district in which the leased buses operate is the applicant and the private leasing company certifies its willingness to be a party to the resulting grant agreement (See Form 6). Special Terms and Conditions relevant to such an arrangement will be negotiated prior to the signature of the contract.
- 3.7. TCEQ is not obligated to fund any application, even if it was received by the deadline.
- 3.8. Any expenses incurred by the grantee prior to the opening of the grant round will be at the grantee’s own risk.

## 4. FUNDING AMOUNTS

During this application period, the TCEQ will not limit the maximum amount of funding requested by the applicant. TCEQ is not obligated to fund projects at the amount requested by the applicant and may increase or decrease funding amounts. TCEQ may select individual requests from an application for funding. TCEQ may make funding contingent upon additional conditions or changes to the project pertaining to equipment, logistical considerations, expenses, and other program elements.

## 5. ELIGIBLE BUSES

- 5.1. Any bus proposed for retrofit must be used on a regular daily route to and from a school and have at least five (5) years of useful life remaining. All sizes of diesel-fueled school buses are eligible.
- 5.2. For Clean School Bus Grants that fund retrofits of buses owned by private entities, the parties shall agree to additional special terms and conditions that govern the use of funds.

## 6. ELIGIBLE ACTIVITIES

- 6.1. Eligible activities include the purchase and installation of eligible retrofit systems on eligible buses. Because many of the available retrofit systems have been verified only for certain engines, the applicant is responsible for researching and confirming that it is installing an appropriate technology for the proposed bus. Eligible systems include:
  - 6.1.1. **Closed Crankcase Filtration Systems.** Closed crankcase filtration systems (CCFS) that are shown to reduce crankcase Particulate Matter (PM) emissions may be funded independently or in conjunction with another verified system. Because of the effectiveness of CCFS to reduce the PM emissions most likely to enter the bus interior, applicants are encouraged to submit proposals for CCFS use.
  - 6.1.2. **Diesel Particulate Filters.** Diesel particulate filters (DPF) that are verified by the EPA or the California Air Resources Board (CARB) are for buses manufactured in or after 1994. Most filter systems require the use of ultra-low sulfur diesel (15 parts per million or less sulfur). Applicants are responsible for ensuring the continued availability of ultra-low sulfur diesel in their area.
  - 6.1.3. **Diesel Oxidation Catalysts.** Diesel oxidation catalysts (DOC) that are verified by the EPA or CARB to reduce PM emissions may be considered for:
    - I. buses manufactured before 1994,
    - II. buses manufactured in or after 1994 for which a DPF is not available, or
    - III. areas where ultra-low sulfur diesel fuel is not available.
- \*Applicants are encouraged to consider combinations of these retrofit systems to create cost effective overall emission reductions.
- 6.2. Other retrofit systems that are verified by the EPA or CARB to reduce PM emissions by at least 25 percent may be funded at a later date. The systems must be reviewed by TCEQ and added to the list of eligible technologies.
- 6.3. Applicants are encouraged to obtain additional funds from other sources to retrofit the maximum number of buses.

- 6.4. An activity is not eligible if it is required by any state or federal law, rule, memorandum of agreement, or other legally binding document. Exceptions include:
- I. a change that is not required by state or federal law, rule, memorandum of agreement or other legally binding document on the date of the grant award; and
  - II. an activity that is required only by local law or regulation or by controlling board policy.
- 6.5. An activity involving a new emission reduction measure that would otherwise generate marketable credits under state or federal averaging, banking, or trading programs is not eligible for funding unless the reductions are permanently retired.

## **7. ELIGIBLE COSTS**

- 7.1. TCEQ will reimburse the cost of equipment purchase and installation, subject to limitations expressed in Article 7.5. Eligible costs include reasonable and necessary personnel expenses if in-house labor is used to install equipment. However, the Performing Party may not use the grant for administrative expenses or indirect charges.
- 7.2. TCEQ neither encourages nor discourages use of a consultant to assist with applications. TCEQ has no agreement with any consultant that applications prepared by the consultant will receive favorable treatment. Consultant fees are the responsibility of the Performing Party or vendor and may not be charged to the grant, either directly or as an addition to the equipment cost.
- 7.3. All purchase decisions must be based on sound business practices and arm's length bargaining. In most cases, this requires a competitive procurement process, which can be performed by the Performing Party. This requirement is satisfied if the Performing Party uses the statewide contract pursuant to Article 7.4.
- 7.4. Eligible applicants have the option of purchasing Grant Equipment and installation services from vendors under the Texas Procurement and Support Services (TPASS) Division of the Comptroller's Office statewide contract 928-M1 on the [TexSmartBuy website](#) or following their organization's procurement process for goods and services.
- 7.5. If an eligible applicant chooses to follow its procurement process, reimbursement is subject to the reasonable basis of the cost. TCEQ reserves the right to ask for a justification for reimbursement of devices that appear to significantly deviate from the anticipated market rate.

## **8. DETERMINATION OF ELIGIBILITY OF COST**

- 8.1. TCEQ will reimburse the Performing Party for those costs that are eligible for reimbursement in accordance with all requirements. Costs are considered eligible for reimbursement when TCEQ, in its sole discretion, determines that the costs are allowable for implementing the Grant Activities approved by TCEQ in this Agreement. Costs must be included in this Agreement to be eligible for reimbursement.
- 8.2. In order to be allowable, costs must be included in the Agreement and must satisfy the requirements of this Agreement, the Uniform Grant Management Standards (UGMS), state agency rules, all applicable state and federal laws, and the RFGA under which the application was submitted.

- 8.3. The Performing Party agrees to follow all the requirements of the [Uniform Grant Management Standards \(UGMS\)](#) just as if the Performing Party were a covered local government grantee (except that the applicable cost principles are those listed as corresponding to the Performing Party's classification in UGMS, Part III State Uniform Administrative Requirements for Grants and Cooperative Agreements, Subpart C, \_\_\_\_\_.22 Allowable Costs, e.g., for-profit organization, private non-profit, etc.).
- 8.4. Unless expressly authorized by TCEQ, eligible costs do not include:
- 8.4.1. amounts deducted from the true price of the purchase of Grant Equipment whether as discounts, rebates, refunds or otherwise;
  - 8.4.2. amounts which the Performing Party owes or agrees to pay the vendor or contractor for any purpose other than the implementation of grant Activities;
  - 8.4.3. amounts in the charges which the vendor contractor intends to return to Performing Party in the form of cash, goods, services, gifts, intangibles, discounts or any other items of value; and,
  - 8.4.4. amounts which are reimbursed by other public sources or for which tax credits or other public financial incentives are received by the Performing Party.
- 8.5. Cost amounts stated in this Agreement are maximum amounts of reimbursement. The amount of costs for which reimbursement may be requested is the lesser of 1) the costs stated in the Application of this Agreement or 2) the actual eligible costs. In no event will reimbursement exceed the Contract Amount.

## 9. REIMBURSEMENT

- 9.1. **Eligibility for Reimbursement.** Except as provided for under Article 9.2., to be eligible for reimbursement under this Agreement, a cost must have been incurred and paid by the Performing Party prior to claiming reimbursement from TCEQ. All grant Activity costs must have been incurred by the Performing Party prior to claiming reimbursement. Therefore, Grant Equipment must be purchased and installed prior to a request for reimbursement. Ineligible invoices will be rejected.
- 9.2. **Assignment of Payment.** Subject to approval by TCEQ, the Performing Party may assign the payments due from TCEQ directly to the supplier, subcontractor, or other appropriate entity from which the goods or services were procured or financed by the Performing Party. A properly completed Assignment Information Form should be completed and sent to TCEQ with the Request for Reimbursement Forms. Under this option, the Grant Equipment included under a cost must have been received and accepted by the Performing Party, and the Performing Party must have an obligation to pay the expense. Sufficient supporting documentation must be submitted, as outlined in the form instructions, to document that the goods or services were received and that the payment amount is owed to the entity designated to receive the payment from the state. Payments will not be made to a consultant or entity that acts as a middle-man between the Performing Party and a vendor.
- 9.3. **Final Request for Reimbursement.** A final Request for Reimbursement form, indicating in the appropriate box that it is the final request, shall be submitted to TCEQ by no later than forty-five (45) days after May 31, 2019.
- 9.4. **Release of Claims.** The final Request for Reimbursement must include a signed Release of Claims, releasing all claims for payment of any funds due and payable by TCEQ, upon TCEQ's payment of the reimbursement request.

- 9.5. The Performing Party shall submit any supporting documentation required or requested by TCEQ. In order to be reimbursed for each payment, the Performing Party is specifically required to submit the following supporting documents:
  - 9.5.1. canceled checks or wire transfers;
  - 9.5.2. written purchase agreements;
  - 9.5.3. bills of sale or receipts for delivery; and
  - 9.5.4. other documentation requested by TCEQ in order to support the assertions in the Request for Reimbursement.
- 9.6. TCEQ may waive the requirement for submission of any supporting documents that are not applicable to the Performing Party.
- 9.7. TCEQ may at any time, in its sole discretion, establish additional criteria and requirements for reimbursement of costs.
- 9.8. TCEQ is not obligated to make payment until the Request for Reimbursement is approved by TCEQ. Further, TCEQ reserves the right to suspend or withhold all or part of a payment or all payments as authorized by the Agreement.
- 9.9. No Entitlement. In accordance with this Agreement, the Performing Party does not have an expectation or entitlement of continued receipt of financial assistance. Therefore, Performing Party waives any claim for damages arising from or resulting from TCEQ's termination of this Agreement for any reason.
- 9.10. The Performing Party shall notify TCEQ, in its Request for Reimbursement forms, of any financial incentive that offsets the cost of the proposed project. TCEQ, in reimbursing the Performing Party, may reduce the amount of authorized costs eligible for reimbursement by the value of any additional financial incentive received by the Performing Party, without an Amendment to this Agreement.

## **10. CONTRACT REQUIREMENTS**

- 10.1. When signed by both the Performing Party and TCEQ, the application becomes part of the Agreement. By submitting a signed application, the Performing Party is agreeing to abide by the Agreement, which consists of:
  - I. the RFGA, including the requirements and the Terms and Conditions; and
  - II. the application, including the project work plan and budget.
- 10.2. After TCEQ has reviewed, approved, and signed the application, a copy of the contract will be provided to the Performing Party. Costs can be eligible for reimbursement of retrofits at the date of the RFGA posting; however, reimbursement is not guaranteed until there is a signed contract by both parties. Performing Party bears the risk that TCEQ will not fully reimburse costs if retrofits are installed prior to contract signature.
- 10.3. The Performing Party must maintain the grant-funded retrofit system in good operating condition. Performing Parties that conduct their own procurement for Grant Equipment should include at minimum a five-year manufacturer and installer warranty in their purchase agreements. Retrofit systems will require maintenance and replacement parts before the end of the Activity Life. The Performing Party is responsible for all maintenance and replacement part costs.

10.4. Performing Party agrees/commits to use its best efforts to have all retrofits installed and operational on or before the Project Completion Date in this agreement. Performing Party shall notify TCEQ if Project Completion Date changes.

## 11. MONITORING AND REPORTING

11.1. The Performing Party must monitor bus use for the five-year Activity Life and may be requested by TCEQ to provide confirmation of use. The five-year Activity Life commences when the retrofitted bus goes back in service.

11.2. TCEQ may provide an identifying mark for grant-funded buses to aid TCEQ and the Performing Party in identifying and tracking those buses. The Performing Party must place the label on the grant-funded bus if requested to do so by TCEQ.

## 12. APPLICATION AND AGREEMENT

The Performing Party must determine the specific buses to be retrofitted. Performing Parties that conduct their own procurement process must obtain final bids for equipment and installation before submitting an application. Two original copies of the completed and signed Application and Agreement form must be submitted. Applications will be processed on a first-come, first-served basis. Incomplete forms will not be considered.

## 13. PUBLIC INFORMATION

Upon submission, all applications are subject to the Texas Public Information Act, Texas Government Code, Chapter 552.

## 14. STANDARDS FOR PERFORMING PARTY'S PERFORMANCE

14.1. In accordance with Texas Government Code Chapter 2261, the TCEQ is required to monitor the Performing Party's performance under this Agreement. The Performing Party agrees that the standards set forth below are appropriate standards for the Performing Party's performance during the Agreement.

14.1.1. **Quality and Accuracy.** Standard: The Performing Party's Grant Activities conform to the requirements of this Agreement.

14.1.2. **Timeliness.** Standard: The Performing Party's Grant Activities are completed on schedule.

14.1.3. **Reports and Administrative and Financial Operations.** Standard: The Performing Party's administrative and financial operations comply with all obligations in law and in this Agreement, including record-keeping, reimbursement requests, audits, allowable costs, payments to subcontractors, and restricted expenditures.

14.1.4. **Communication.** Standard: The Performing Party's accessibility, responsiveness, and cooperativeness with respect to any contract-related concerns communicated by the TCEQ; and including the Performing Party's demonstrated relationship with subcontractors.

14.1.5. **Other.** Standard: Other factors unique to the type of project, as determined by the TCEQ.

- 14.2. The TCEQ will monitor the Performing Party's performance and evaluate the level of compliance with the standards utilizing the performance measures set forth below.
- 14.2.1. **Exceeds Expectations.** The Performing Party fully complied with all the standards on a consistent basis.
- 14.2.2. **Satisfactory Performance.** The Performing Party's performance complied with all of the standards, with only typical errors, delays, or other problems that needed to be corrected.
- 14.2.3. **Marginal Performance.** The Performing Party's performance was acceptable, although a significant number of deficiencies had to be corrected before the contract requirements could be considered met.
- 14.2.4. **Unsatisfactory Performance.** The Performing Party's performance was not acceptable, even after attempts to correct deficiencies.
- 14.3. State agencies shall report a vendor's performance on any purchase of \$25,000 or more from contracts administered by the commission or any other purchase made through an agency's delegated authority or a purchase made pursuant to the authority in Government Code, Title 10, Subtitle D or a purchase exemption from CPA/TPASS procurement rules and procedures.

## 15. CONTRACTOR EVALUATION

The TCEQ will prepare a written evaluation of the performance of the Performing Party upon completion of all reimbursements under this Agreement and upon the completion of the Project Life, or more frequently, as deemed necessary by the TCEQ. A copy of the evaluation will be provided to the Performing Party and a copy retained in the TCEQ's contract files. The content of the evaluation shall be wholly within the sole discretion of the TCEQ. The Performing Party may provide a written statement which explains or disagrees with the evaluation, which will be incorporated into the evaluation. The Performing Party waives any claim for damages against TCEQ for the evaluation.

The performance rating on the contractor evaluations may be considered by the TCEQ in evaluating an application from the PERFORMING PARTY for additional funding under this program. The Performing Party understands that a rating of marginal or unsatisfactory performance may have a negative impact on decisions regarding funding for additional projects applied for by the Performing Party.

## **General Terms and Conditions**

### **16. STATEMENT OF AGREEMENT**

This Agreement is entered into by the parties listed on the application Signature Page for the purpose of providing a grant to financially assist the Performing Party in implementing the grant Activities. The Parties agree: Performing Party shall conduct the grant Activities required by this Agreement; TCEQ will reimburse authorized allowable costs subject to the Texas Uniform Grant Management Standards (UGMS) and the Agreement; Performing Party is not a vendor of goods and services under Texas Government Code Chapter 2251; if, during the Contract Period, the Performing Party chooses to not complete the grant Activities and withdraw from the obligations under this Agreement, the Performing Party may terminate this Agreement by providing thirty (30) days written notice to TCEQ.

### **17. CONTRACT PERIOD**

The Effective Date of this Agreement is the date on which the Signature Page of the Agreement is signed by the last of the parties to sign. This Agreement commences on the Effective Date and, for purposes of availability of funding and completion of TCEQ's obligations to reimburse the Performing Party for allowable costs, shall expire on August 31, 2019, or upon completion of all requirements, whichever is earlier, unless otherwise terminated in accordance with the Agreement. However, reporting and other requirements as identified in the Agreement shall survive the termination of this Agreement. The Performing Party agrees to and shall perform in accordance with the Agreement beyond any event of termination and through the end of the Activity Life of each activity included in the approved Application. This Agreement shall immediately terminate at the end of any state fiscal year for which the Texas Legislature fails to appropriate and/or to provide sufficient funds in the subsequent fiscal year necessary to perform this Agreement.

### **18. REPRESENTATIONS**

The Performing Party ratifies and attests to all representations in this Agreement and agrees to give prompt written notice to TCEQ if there is any material change in these certifications or deliverables.

### **19. CONTINUING OBLIGATIONS**

All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with the Agreement, as well as all continuing obligations indicated in the Agreement, will survive final payment, completion and acceptance of the grant Activities and termination or completion of the Agreement until August 31, 2024, or until the end of the Activity Life, whichever is later.

### **20. REMEDIES AVAILABLE TO THE TCEQ**

The following schedule of remedies applies to this Agreement in the event of the substandard performance of grant Activities or other material failure to conform to the requirements of the contract or applicable law:

- 20.1. reject substandard performance and request corrections without charge to TCEQ;
- 20.2. issue notice of substandard performance or other non-conforming act or omission;
- 20.3. request and receive return of any over payments or inappropriate payments;

- 20.4. reject reimbursement request and suspend payment pending accepted revision of substandard performance or non-conformity;
- 20.5. suspend all or part of the work and/or payments pending accepted revision of substandard performance;
- 20.6. reject reimbursement request and withhold and retain all or partial payments for recovery of administrative costs or to be returned to the TERP fund as authorized by state law; and/or
- 20.7. terminate the Agreement, demand and receive: return of all equipment purchased with grant funds, return of all unexpended funds, and repayment of improperly expended funds.

## **21. CUMULATIVE REMEDIES**

TCEQ may avail itself of any remedy or sanction provided in this Agreement or in law to recover any losses arising from or caused by the Performing Party's substandard performance or any material non-conformity with the Agreement or the law. The remedies and sanctions available to either party in this contract shall not limit the remedies available to the parties under law.

## **22. BANKRUPTCY**

If the Performing Party files for bankruptcy, the Performing Party shall immediately notify TCEQ Clean School Bus Grant Coordinator in writing AND send notification by certified mail directly to:

TCEQ Bankruptcy Program  
MC-132  
P. O. Box 13087  
Austin, TX 78711-3087

The notice shall include the appropriate Contract number(s).

## **23. INSURANCE**

Unless otherwise expressly agreed by TCEQ, the Performing Party shall obtain and maintain a policy of insurance for the Activity Life that is sufficient to provide for replacement of Grant Equipment which is lost, stolen, or irreparably damaged. Any insurance proceeds received by or on behalf of the Performing Party under an insurance policy due to the damage or destruction of Grant Equipment must be utilized to acquire equivalent or better Grant Equipment or be paid to TCEQ. If otherwise permissible under applicable law, governmental entities may use an established self-insurance program to satisfy this requirement. If requested by TCEQ, the Performing Party shall provide proof of insurance coverage. TCEQ may approve alternative forms of insurance to comply with this requirement, including evidence of self-insurance. Upon request by the Performing Party, TCEQ may also waive this requirement, at its sole discretion, for certain types of entities.

## **24. MAINTENANCE**

The Performing Party agrees to maintain the Grant Equipment as necessary to keep the Grant Equipment in good condition and functioning at optimum performance during the Activity Life. Upon the occurrence of a repairable malfunction or damage to Grant Equipment, the Performing Party shall cause the Grant Equipment to be repaired and restored to the level of optimum performance. TCEQ will not reimburse any costs for Grant Equipment maintenance.

## **25. USE**

The Performing Party agrees to keep and use the Grant Equipment purchased under this Agreement for the Activity Life. Grant Equipment used outside of the scope of this Agreement may require the Performing Party to return a pro rata share of the grant to TCEQ.

## **26. FUNDS**

This Agreement and all claims, suits or obligations arising under or related to this Agreement are subject to and limited to those funds which are both: 1) appropriated for the purposes of this Agreement, and 2) actually received and deposited into an account of the treasury dedicated to TCEQ for the purposes of this Agreement.

## **27. RFGA CRITERIA**

This Agreement is subject to the criteria established in the RFGA issued by TCEQ and under which the grant application was submitted, and any amendments.

## **28. DEBTS**

TCEQ may offset against reimbursement payments, any amounts owed by the Performing Party to TCEQ or the State of Texas, whether owed under this program or otherwise.

## **29. STATE AUDITOR'S OFFICE**

Pursuant to Government Code § 2262.154(a), Performing Party understands that acceptance of funds under contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Performing Party further agrees to cooperate fully with the State Auditor's Office or its successor in the conduct of the audit or investigation, including providing all records requested. Performing Party understands that an entity that is the subject of an audit or investigation by the State Auditor must provide the State Auditor with access to any information the State Auditor considers relevant to the investigation or audit. Performing Party will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Performing Party and the requirement to cooperate is included in any subcontract it awards.

## **30. RECORDS**

The Performing Party shall maintain books, records, documents, and other evidence reasonably pertinent to performance of the grant Activities and requirements of the Agreement, including the Agreement or amendments thereto. Records under this Article shall be maintained by the Performing Party during performance of the Grant Activity under this Agreement, for the Activity Life as set forth in this Agreement, and for three years after the ending date of the Activity Life. If any litigation, claim, negotiation, audit, cost recovery, or other action (including actions concerning costs of items to which an audit exception has been taken) involving such records has been started before the expiration of the three year period, such records must be retained until completion of the action or resolution of all issues which arise from it, or until the end of the regular three year period, whichever is later.

### **31. ACCESS TO RECORDS, GRANT EQUIPMENT, AND VEHICLES, EQUIPMENT, AND ENGINES BEING REPLACED**

The Performing Party shall allow access to all the material including bank statements and records by TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, inspection, audit, excerpts, transcriptions, and/or copying. The Performing Party shall provide appropriate facilities and equipment for such access and inspection. The Performing Party shall allow access to all Grant Equipment, including equipment, vehicles, engines, retrofit systems, infrastructure, and other items to be reimbursed under this Agreement, by TCEQ, the State of Texas, the State Auditor's Office, and any of their authorized representatives for the purpose of review, on-site inspection, and/or audit. In addition, the Performing Party shall allow access to all vehicles, equipment, and engines being replaced under this Agreement.

### **32. COMPLIANCE WITH LAWS**

The Performing Party shall give all notices and comply in all material respects with all Laws and Regulations applicable to furnishing and performance of the grant Activities. Except where otherwise expressly required by applicable Laws and Regulations, TCEQ shall not be responsible for monitoring Performing Party's compliance with any Laws or Regulations.

### **33. SAFETY**

Where applicable, the Performing Party shall be responsible for requiring employees, contractors, and subcontractors to maintain and supervise all necessary safety precautions and programs in connection with the grant Activities. The Performing Party shall take all necessary safety precautions.

### **34. BENEFIT**

In performing the grant Activities, the Performing Party undertakes performance for its own benefit and not as agent for TCEQ.

### **35. WAIVER**

Unless authorized in writing by TCEQ in accordance with this Agreement, no waiver of any obligation of the Performing Party shall bind TCEQ. Any such authorized waiver shall not constitute a continuing waiver of the obligation.

### **36. TITLE**

Subject to this Agreement, ownership of Grant Equipment acquired under this Agreement by the Performing Party shall vest upon acquisition in the Performing Party.

### **37. ASSIGNMENT**

This Agreement will inure to the benefit of and be binding upon the successors and assigns of the respective parties. This Agreement is not transferable or otherwise assignable by the Performing Party without the written consent of TCEQ and any attempted transfer without such consent is void.

### **38. AMENDING THE AGREEMENT**

The Agreement may be amended to provide for additions, deletions, and revisions in the Grant Activities or to modify the Terms and Conditions in one or more of the following ways as appropriate: a Written Amendment or a Minor Change.

### **39. SOVEREIGN IMMUNITY**

This Agreement does not waive the State's sovereign immunity relating to suit, liability, and the payment of damages. All claims, suits, or obligations arising under or related to this Agreement are subject to and limited to the availability of funds appropriated by the Texas Legislature for that respective claim, suit, or obligation.

### **40. GOVERNING LAW AND VENUE**

This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, excluding any choice of law or rules that may direct the application of laws of another jurisdiction. Any action at law or in equity to enforce the Terms and Conditions of this agreement shall be brought in Travis County, Texas. This provision does not waive TCEQ's sovereign immunity.

### **41. SEVERABILITY**

Any provision of the Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon TCEQ and the Performing Party, who agree that this Agreement is reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

### **42. TERMINATION FOR CAUSE**

This Agreement may be terminated in whole or in part by TCEQ for cause, including a material failure by the Performing Party to comply with the requirements of the Agreement, upon thirty (30) days written notice. If the basis for a termination for cause is found to not be material, the termination is converted into a termination for convenience.

### **43. TERMINATION FOR CONVENIENCE**

TCEQ or Performing Party may, upon thirty (30) days written notice, terminate this Contract for convenience. Termination shall not prejudice any other right or remedy of TCEQ or the Performing Party.

- 43.1. ***Reimbursement Upon Early Termination.*** If terminated for convenience by TCEQ, Performing Party may request reimbursement for: conforming grant Activities and timely, reasonable costs directly attributable to termination. Performing Party shall not be paid for: work not performed, loss of anticipated profits or revenue, consequential damages or other economic loss arising out of or resulting from the termination.

#### **44. INDEMNIFICATION**

To the extent permitted by law, the Performing Party agrees to indemnify and hold harmless the State of Texas and TCEQ, including its employees and officers, against and from any and all liability, loss, or damage arising out of actions of the Performing Party in the performance of this Agreement.

#### **45. IDENTIFYING MARK**

Upon request by TCEQ, Performing Party may install, or permit TCEQ or its contractor to install, a prominently placed identifying mark on the equipment, identifying it as TCEQ-funded equipment and containing such other information as TCEQ shall specify.

- 45.1. If Performing Party does not display the identifying mark within a reasonable time of TCEQ request or refuses to permit access to its equipment for the display of the mark, Performing Party may be required to return all grant funds used to purchase the equipment.

#### **46. PUBLIC DISCLOSURE**

Information, documentation and other material in connection with this contract may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Performing Party is prohibited from using contract award information in promotions, including press releases, or other publicity about the contract without prior agency consent. Any publicity that could be construed as an endorsement by the agency of the Performing Party or the products or services provided pursuant to the contract is prohibited.

#### **47. FORCE MAJEURE**

Neither Performing Party nor Texas Commission on Environmental Quality shall be liable to the other for any delay in, or failure of performance of any requirement included in any grant resulting from this RFGA caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either party and that by exercise of due foresight such party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such party is unable to overcome. Each party must inform the other in writing, with proof of receipt, within three (3) business days of the existence of such force majeure, or otherwise waive this right as a defense.

#### **48. DISPUTE RESOLUTION**

The dispute resolution process provided for in Chapter 2260 of the Texas Government Code and the related rules of TCEQ will be used by TCEQ and the Grantee to attempt to resolve any claim for breach made by the Grantee.