*7

CONTRACT

Project: Diesel Retrofit
Bid No: 1145
Amount of Contract: $ 43,723.68

THIS CONTRACT, made this 19th day of January, 2009, by and between the City of Milpitas, and Cummings West Inc., hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

Part A – Invitation For Bids
Part B – Instructions To Bidder
Part C – Terms and Conditions
Part D – Special Provisions for Equipment & Material Furnished By Contractor
Part E – Bidder's Statement Regarding Insurance Coverage
Part F – Worker's Compensation Insurance Certificate
Part G – Experience Statement
Part H – Non-Collusion Affidavit

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Proposal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Proposal, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

_____	Mike Murphy
City Manager	Contractor's Signature
_____	Territory Manager
Title	Title

Business Tax Compliance: Certificate No. 94-3147123

Approved As
To Content: _____
City Project Manager

Prepared By: Chris Schroeder
City Purchasing Agent

Approved As
To Form: _____
City Attorney

Approved As
To Insurance: _____
City Risk Manager

ATTEST:

By _____
City Clerk

City of Milpitas
NOTICE
INVITATION FOR BIDS
Bid No. 1145
for
Diesel Retrofit

Notice is hereby given that sealed bids will be received at the Information Counter located on the first floor of City Hall at 455 E. Calaveras Blvd., Milpitas, CA 95035-5411, until 2:00 P.M. December 12, 2008 local time, at which time they will be publicly opened and read for furnishing all labor, materials and equipment, and performing all work necessary and incidental to:

Retrofitting three (3) trucks in the City's fleet with Cleaire Horizon M Electrical Regenerated Diesel Particulate Filters (DPF)

in accordance with the City of Milpitas plans, specifications and contract documents.

Bids shall be delivered and addressed to the City of Milpitas Purchasing Agent, 455 E. Calaveras Blvd., Milpitas, CA, 95035-5411, and shall be labeled Diesel Retrofit, Bid No. 1145. Any Bidder who wishes his bid to be considered is responsible for making certain that his bid is received at the Information Counter by the proper time. No oral, telegraphic, electronic, facsimile, or telephonic bids or modifications will be considered unless specified. Bids received after the scheduled Bid Submittal Deadline will be returned unopened.

It is the responsibility of the Bidder to see that any bid submitted shall have sufficient time to be received by the City before the Bid Submittal Deadline. Late bids will be returned to the Bidder unopened.

The receiving time at the Information Counter will be the governing time for acceptability of bids. Bids will not be accepted by telephone or facsimile machine. Bids must bear original signatures and figures.

Pre-Bid Conference. A pre-bid conference is not planned at this time.

Chris Schroeder
Signature
Purchasing Agent

Published: Milpitas Post
November 27, 2008

INSTRUCTIONS TO BIDDER

ADDENDA. Addenda issued pursuant to this IFB, if any, will be posted on the City website. However, it is the sole responsibility of the bidder to check the website and/or contact the project manager directly to determine that they have included all addenda in their proposal before submitting it to the City. Any proposal submitted that does not acknowledge each and every addenda issued will be considered non-responsive. Addenda, if any, must be acknowledged on the bid form in the space provided.

BID FORMS. Bid must be submitted on preprinted Bid Forms supplied by the Purchasing Office.

BID OPENING AND BID RESULTS. Bids are opened publicly in the Purchasing Office. Interested parties are invited to attend the bid opening. A tabulation of bids received will be available within a reasonable time after the bid opening. Bid results will be faxed or mailed to interested parties upon request.

BID SUBMITTAL DEADLINE. **The Bid Submittal Deadline is 2:00 P.M. December 12, 2008.** Bid must be submitted in sealed envelopes and should be properly identified with the bid number and Bid Submittal Deadline. **Bids must arrive at the Information Counter located on the first floor of City Hall at 455 E. Calaveras Blvd., Milpitas, CA, 95035-5411, by 2:00 P.M. December 12, 2008 local time.** Telephone, telegraphic, facsimile, electronic, and late bids will not be accepted or considered. It is the Bidders' responsibility to see that their bids have sufficient time to be received by the Purchasing Office before the Bid Submittal Deadline.

BID WITHDRAWAL. Bidders' authorized representatives may withdraw bids only by written request received by the Purchasing Agent before the Bid Submittal Deadline. After that time, Bidders may not withdraw their bids for a period of ninety- (90) days from the Bid Submittal Deadline. At no time may the successful Bidder(s) withdraw his bid.

INFORMED BIDDERS. Before submitting bids, Bidders must fully inform themselves of the conditions, requirements and specifications of the work or materials to be furnished. Failure to do so will be at Bidders' own risk and they cannot secure relief on the plea of error.

LATE BIDS. Bids not received by the Bid Submittal Deadline are late. Late bids will be returned to Bidders unopened.

PRICES, NOTATIONS, AND MISTAKES. All prices and notations must be in ink or typewritten. Mistakes may be crossed out and corrections typed or printed adjacent to the mistake and initialed in ink by the person who signs bid. Prices shall be stated in units and quotations made separately on each item. In case of conflict, unit prices will govern. Where there is a conflict between words and figures, words will govern.

OFFERS OF MORE THAN ONE PRICE. Bidders are allowed to submit more than one bid but not more than four bids. Bidders may submit one Base Bid and up to three Alternate Bids. Where Bidder submits more than one bid, one bid shall be marked "Base Bid" and the others shall be marked "Alternate Bid". Each Base Bid and each Alternate Bid shall be submitted in accordance with the terms and conditions of this bid solicitation. Bidders may reproduce this bid package to submit alternate bids. Additional bid packages will not be furnished by the City of Milpitas.

PAYMENT TERMS. Discounts for payments made twenty (20) days or more from receipt of invoice will be considered in award of bid. Payment discounts must be clearly shown on the Bid Form.

QUESTIONS AND COMMENTS. Questions and comments regarding this solicitation must be submitted in writing and or by email to bdamele@ci.milpitas.ca.gov or by facsimile at 408-586-3170. General questions may be directed to the Purchasing Office by calling 408-586-3162.

TERMS OF THE OFFER. City of Milpitas' acceptance of Bidder's offer shall be limited to the terms herein unless expressly agreed in writing by the City of Milpitas. Bids offering terms other than those shown herein will be declared non-responsive and will not be considered.

TERMS AND CONDITIONS

ATTORNEY FEES. In the event a suit or action is instituted in connection with any controversy arising out of this contract, the prevailing party shall be entitled to receive, in addition to its costs, such sum as the court may adjudge reasonable as to attorney's fees and costs.

BIDDER AGREEMENT TO TERMS AND CONDITIONS. Submission of a signed bid will be interpreted to mean Bidder has agreed to all the terms and conditions set forth in the pages of this solicitation.

CANCELLATION OF CONTRACT. The City of Milpitas may cancel this contract WITHOUT CAUSE at any time by giving thirty (30) days written notice to the supplier/contractor. The City of Milpitas may cancel this contract WITH CAUSE at any time by giving ten (10) days written notice to the supplier/contractor. Cancellation for cause shall be at the discretion of the City of Milpitas and shall be, but is not limited to, failure to supply the materials, equipment or service specified within the time allowed or within the terms, conditions or provisions of this contract. The successful Bidder may not cancel this contract without prior written consent of the Purchasing Agent.

COMPLIANCE WITH OR DEVIATION FROM SPECIFICATIONS. Bidder hereby agrees that the material, equipment or services offered will meet all the requirements of the specifications in this solicitation unless deviations from them are clearly indicated in the Bidder's response. Bidder may submit an attachment entitled "Exceptions to Specifications", which must be signed by Bidder's authorized representative. An explanation must be made for each item to which an exception is taken, giving in detail the extent of the exception and the reason for which it is taken. Bids failing to comply with this requirement will be considered non-responsive. Submittal of brochure or other manufacturer literature is desirable but shall not be an acceptable substitution for this requirement.

COMPLIANCE WITH LAWS. All bids shall comply with current federal, state, local and other laws relative thereto.

FORCE MAJEURE. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the Contractor, the Contractor shall notify the City of Milpitas, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to acts of God, war, acts of a public enemy, acts of any governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

FORMATION OF CONTRACT. Bidder's signed bid and City of Milpitas' written acceptance shall constitute a binding contract.

LAWS GOVERNING CONTRACT. This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the county of Santa Clara, in state of California. The parties further stipulate that the county of Santa Clara, California is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

NOMENCLATURES. The terms Successful Bidder, supplier, vendor, and contractor may be used interchangeably in this solicitation and shall refer exclusively to the person, company, or corporation with whom the City of Milpitas enters into a contract as a result of this solicitation.

RECYCLED PRODUCT PROCUREMENT. The City of Milpitas is committed to the conservation and protection of state and local resources; therefore bidders able to supply recycled products and products containing recycled and environmentally preferable materials that meet performance requirements are encouraged to offer them in bids and proposals. The Purchasing Agent shall purchase recycled products whenever they are available at the same total cost and the fitness and quality are equal to that of non-recycled products

a.) Contractors and consultants are required to use environmentally preferable products, and use products manufactured with the maximum practicable amount of post-consumer material, whenever cost effective and to the extent practicable.

b.) All businesses doing business with the City are required to certify in writing the minimum, if not exact, percentage of post consumer materials in the products or supplies offered or sold to the City.

c.) With respect to printer or duplication cartridges, a certification from the vendor is required to specify that the cartridges are remanufactured and are in compliance with the requirements of Section 12156 (e) of the Public Contract Code.

d.) For all paper materials of any kind delivered to the City, by a contractor, supplier, or consultant, whether in the form of a product such as a cup or a deliverable such as a report, shall use recycled paper that bears an imprint identifying the recycled content of the paper as not less than the 30% post consumer fiber as specified in Section 12209 of the Public Contract Code. A product such as a cup may have the identifying logo and/or language on the packaging, while a deliverable such as a report shall have the identifying logo on the first page. This shall apply for all paper materials delivered to the city whenever practicable.

e.) Contractors and consultants shall use both sides of paper sheets whenever practicable.

f.) The purchasing agent shall provide to the suppliers of recycled products a preference of 10% (percent) of the lowest bid or price quoted by suppliers of non-recycled products.

REJECTION OF BIDS. The City of Milpitas reserves the right to reject any bids, all bids, or any part of any bid presented and readvertise for bids. The City reserves the right to cancel the solicitation and make no award. The City of Milpitas reserves the right to reject the bid of any Bidder who previously failed to perform adequately for the City of Milpitas or any other governmental agency. The City of Milpitas expressly reserves the right to reject the bid of any Bidder who is in default on the payment of taxes, licenses, or other monies due the City of Milpitas. The City accepts no liability for any cost incurred by any bidder in the preparation of a bid. All costs associated with the preparation of a bid shall be born solely by the bidder

SAFETY. All articles delivered under this contract must conform to the Safety Orders of the State of California, Division of Industrial Safety.

SELL OR ASSIGN. The successful Bidder shall not have the right to sell, assign, or transfer, any rights or duties under this contract without the specific written consent of the City of Milpitas.

SEVERABILITY. If any provisions, or portions of any provisions, of this contract are held invalid, illegal, or unenforceable, they shall be severed from the contract and the remaining provisions shall be valid and enforceable.

TAXES, FEDERAL EXCISE. The City of Milpitas is exempt from Federal Excise Tax.

TAXES, SALES. California Sales Tax should be shown separately on the Bid Form, when and where indicated.

WAIVER OF INFORMALITIES. The City of Milpitas reserves the right to waive informalities or technicalities in bids.

SPECIAL PROVISIONS
FOR MATERIALS & EQUIPMENT

AUTHORIZED DISTRIBUTOR. Successful Bidder must be an authorized distributor for the product he offers, or with his bid he must submit documentation from an authorized distributor that he has purchased the specified product/equipment from that distributor and that the distributor will honor all of the manufacturer's warranties.

BRAND NAMES. Manufacturers names, trade names, brand names, model and catalog numbers used in these specifications are for the purpose of describing and establishing general quality levels. Such references are not intended to be restrictive. Bids will be considered for alternative brands that meet or exceed the quality of the specifications listed for any item.

BRAND SUBSTITUTIONS. Bids will be considered on equipment or material complying substantially with specifications, provided each deviation is stated and each substitution is described in detail. Standard catalog sheets or technical data will not be accepted in lieu of this requirement. The City of Milpitas will be the sole determiner of whether such substitutions are equivalent to the materials or equipment specified.

COMPLIANCE WITH OSHA. Bidder agrees that all item(s) offered comply with all applicable Federal and the State Occupational Safety and Health Act, laws, standards and regulations, and that Bidder will indemnify and hold the City of Milpitas harmless for any failure to so conform.

DEMONSTRATION OF PRODUCT. A demonstration of the item(s) offered may be required. If the demonstration cannot not to be performed at a City of Milpitas facility, the demonstration must be performed within a 60-mile radius of the Purchasing Office. Bidders shall indicate on their bid the location of the demonstration site. Bids for item(s) that do not perform to the City of Milpitas' satisfaction during the demonstration will be declared non-responsive and will not be considered for award of bid.

F.O.B. POINT & SHIPPING CHARGES. All prices shall be quoted F.O.B. destination, City of Milpitas, California. All shipping, handling and freight charges must be shown separately on the Bid Form.

MANUFACTURER & MODEL NUMBER. On his Bid Form, Bidder must state the manufacturer name and model number of each item proposed.

NEW AND UNUSED. Unless specifically provided to the contrary, all materials and equipment shall be new and unused and of the current production year. Bids that are received for other than the current production year or for items and materials that have been previously used will be rejected.

SAMPLES. For evaluation purposes, samples may be requested from any Bidder. Samples shall be provided at no charge unless Bidder indicates on his bid the exact charge for samples. The City of Milpitas reserves the right to consume samples for testing purposes. The City of Milpitas may retain samples until delivery and acceptance of contracted items. Bidder shall remove samples at his expense within (30) days of request by the City of Milpitas.

WARRANTY, SUCCESSFUL BIDDER. Successful Bidder shall fully warrant all materials and equipment furnished under the terms of this contract, against poor and inferior quality, for a period of not less than ***one (1) year*** from date of the final acceptance by the City of Milpitas. Time is of the essence of this contract. While under warranty, successful Bidder shall repair or replace inoperable materials or equipment in a timely manner to minimize the disruption of City of Milpitas operations.

SPECIAL PROVISIONS
FOR SERVICES

ACCESSIBILITY. The contractor shall fully inform himself regarding any peculiarities and limitations of the spaces available for the performance of work under this contract. He shall exercise due and particular caution to determine that all parts of his work are made quickly and easily accessible.

AUTHORITY OF THE CITY OF MILPITAS. Subject to the power and authority of the City of Milpitas as provided by law in this contract, the City of Milpitas shall in all cases determine the quantity, quality, and acceptability of the work, materials and supplies for which payment is to be made under this contract. The City of Milpitas shall decide questions that may arise relative to the fulfillment of the contract or the obligations of the contractor hereunder.

BUSINESS LICENSE. If the scope of work under this bid includes performing services or installation on City of Milpitas property, the SUCCESSFUL BIDDER must have a current City of Milpitas Business License. Inquires regarding Business License may be directed to (408) 586-3100. Business Licenses are not required for materials or equipment shipped by U.S. mail or common carrier.

CHANGES IN WORK. The City of Milpitas may, at any time work is in progress, by written order and without notice to the sureties, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the City of Milpitas may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the City of Milpitas. Changes in work and the amount of compensation to be paid to the contractor for any extra work as so ordered shall be determined in accordance with the unit prices quoted.

CLEAN-UP. During performance and upon completion of work on this project contractor will remove all unused equipment and instruments of service, all excess or unsuitable material, trash, rubbish and debris, and legally dispose of same, unless otherwise directed by these specifications. Contractor shall leave entire area in a neat, clean and acceptable condition as approved by the City of Milpitas.

COMPLIANCE WITH FAIR EMPLOYMENT PRACTICE ACT. Contractor agrees in accordance with Section 1735 and 1777.6 of California Labor Code, and the California Fair Employment Practice Act (Sections 1410-1433) that in the hiring of common or skilled labor for the performance of any work under this contract or any subcontract hereunder, no contractor, material supplier or vendor shall, by reason of race, color, national origin or ancestry, or religion, discriminate against any person who is qualified and available to perform the work to which such employment relates.

CONTRACT INCORPORATION. This contract embodies the entire contract between the City of Milpitas and the Contractor. The parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein. No changes, amendments, or modifications of any of the terms or conditions of the contract shall be valid unless reduced to writing and signed by both parties. The complete contract shall include the entire contents of the bid solicitation, all addenda, all of Bidder's successful submittal, supplemental

agreements, change orders, performance bond(s), and any and all written agreements which alter, amend or extend the contract.

DAMAGE. The contractor shall be held responsible for any breakage, loss of the City of Milpitas' equipment or supplies through negligence of the contractor or his employee while working on the City of Milpitas' premises. The contractor shall be responsible for restoring or replacing any equipment, facilities, etc. so damaged. The contractor shall immediately report to the City of Milpitas any damages to the premises resulting from services performed under this contract. Failure or refusal to restore or replace such damaged property will be a breach of this contract.

INDEPENDENT CONTRACTOR. In accepting this contract, Contractor covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services hereunder. Contractor further covenants that, in the performance of this contract, no subcontractor or person having such an interest shall be employed. Contractor certifies that to the best of his knowledge, no one who has or will have any financial interest under this contract is an officer or employee of City of Milpitas. It is expressly agreed by Contractor that in the performance of the services required under this contract, Contractor, and any of its subcontractors or employees, shall at times be considered independent contractors and not agents of City of Milpitas.

INSURANCE REQUIREMENTS. Within ten (10) consecutive calendar ***days*** of award of contract, Successful Bidder must furnish the City of Milpitas with the Certificates of Insurance proving coverage as specified in ***Exhibit A*** and naming the City of Milpitas, its officers and agents, Additional Insured by endorsement. Failure to furnish the required certificates within the time allowed will result in forfeiture of Bidder's Bid Security.

LAWS - ADHERENCE TO ALL LOCAL, STATE, AND FEDERAL LAWS AND REQUIREMENTS. The contractor shall adhere to all applicable health and safety laws and regulations including, but not limited to, those promulgated by CAL-OSHA, FED-OSHA, EPA, the California State Department of Health Services, and County Environmental Health Department.

MEASUREMENTS. It is the responsibility of the Bidder to make all measurements to determine his bid price. The City of Milpitas will not be responsible for determining the quantities of materials necessary to complete the work specified.

PERMITS. Unless otherwise specified herein, Contractor shall at his expense, obtain all permits and licenses and pay all charges and fees necessary for the performance of the contract, and shall give all public notices necessary for the lawful performance of the contract. Contractor shall pay all taxes, levies, duties and assessments of every nature due in connection with any work under the contract, shall make any and all payroll deductions required by law, and shall indemnify and hold harmless the City of Milpitas from any liability on account of any and all such taxes, levies, duties, assessments and deductions.

PREVAILING WAGE. In accordance with Section 1773 et seq. of the Labor Code of the State of California, the Director of the Department of Industrial Relations of the State of California has established the prevailing or current rate of per diem wages to be paid to laborers, workers and mechanics for all work done under or by virtue of this contract. Copies of said prevailing wage rates

are on file in the office of the City Engineer and will be made available to the Contractor. A copy of said wage rate shall be posted on the job site by the Contractor.

The rate for work performed on Sundays and such legal holidays as are designated by the Council by ordinance, and for work performed in excess of eight (8) hours in one working day, in such cases in which such overtime is permitted by law, is not less than one and one-half (1-1/2) times the above described prevailing rate of per diem wages.

The Contractor and his subcontractors shall not pay less than said rates and the Contractor shall forfeit as a penalty to the City, the sum of Twenty-five dollars ($25.00) for each worker(s) and for each working day such worker(s) is paid less than the above stipulated rates for any work done under or by virtue of this contract by him or her or by any subcontractor under him or her.

> REPORTS. The Contractor shall keep or cause to be kept an accurate record showing the names and occupation of all laborers, workers, or mechanics employed by him or her or by any subcontractor under him or her in connection with the work and also showing the actual hours worked and actual wages paid to each of such workers, which record shall be open at all reasonable hours to the inspection of the Engineer and to the Chief of the Division of Labor Law Enforcement of the Department of Industrial Relations, his or her deputies and agents as required of Section 1776 of the Labor Code of the State of California and shall be submitted upon request.

PROTECTION OF PUBLIC. Adequate warning devices, barricades, guards, flagmen or other necessary precautions shall be taken by the contractor to give advised and reasonable protection, safety and warning to persons and vehicular traffic concerned in the area.

REJECTION OF WORK. Contractor agrees that the City of Milpitas has the right to make all final determinations as to whether the work has been satisfactorily completed.

UNKNOWN OBSTRUCTIONS. Should any unknown obstruction be encountered during the course of this contract the Contractor immediately bring it to the attention of the City of Milpitas. The contractor shall be responsible for the protection of all existing equipment, furniture, or utilities encountered within the work area.

West

mike.c.Murphy@Cummins.com
415-860-6332 Cell

Cover Letter

Cummins West, Inc. Company Resume

Cummins West, Inc., is the exclusive distributor of Cummins and Onan products with eight locations in central and northern California and Hawaii. Cummins West is headquartered in San Leandro, California and has more than 500 employees.

All of our branch locations assure prompt quality services on your Cummins or Onan products whenever and wherever you need service or parts. We offer 7 days/24 hour availability to handle any problem you may have and mobile service is available at all locations.

Cummins West provides emissions compliance expertise including fleet analysis and solutions such as:
- Repower with the newest emission compliant Cummins engines
- Retrofit with Cleaire and Cummins Emissions Solutions aftertreatment systems
- Replacement Cummins engines designed to maximize your compliance strategy

Allison West, the newest Allison Transmission Distributor in North America, offers sales, service, and an extensive parts and ReTran transmission inventory. Allison West provides factory trained technicians and field service support capabilities for commercial-duty automatic transmissions and hybrid propulsion systems for on-highway trucks and buses and off-highway equipment.

Tax ID# 94-3147123.

BID FORM
Diesel Retrofit
IFB 1145

To: City of Milpitas
455 E. Calaveras Blvd.
Milpitas, CA, 95035-5411

From: Cummins West Inc.
Name of Bidder

14775 Wicks Blvd.
Mailing Address

San Leandro, CA 94577
City, State & Zip

The undersigned Bidder agrees he will contract with the City of Milpitas to provide all necessary labor, supervision, machinery, tools, apparatus, and other means of construction to do all the work and furnish all the materials specified in the contract in the manner and time therein prescribed, and that he will take in full payment the amount set forth hereon.

Bid No. **1145 Diesel Retrofit,** in its entirety, all Addenda, and the following documents by this reference are hereby made a part of this contract:

a. Notice of Invitation For Bids
b. Instructions To Bidder
c. Terms and Conditions
d. Special Provisions for Equipment & Material Furnished By Contractor
e. Special Provisions For Services
f. Additional Terms and Conditions
g. Addenda
h. Non-Collusion Affidavit
i. Bidder's Statement Regarding Insurance Coverage
j. Worker's Compensation Insurance Certificate
k. Bidder's Nondiscriminatory Employment Certificate
l. Proposed Equipment and Material Manufacturers
m. Experience Statement
n. Subcontractors List

Bidder acknowledges receipt of Addenda Number(s) __, ___, ___, and ___.

The cost of all labor, material, and equipment necessary for the completion of the work itemized, even though not shown or specified, shall be included in the unit price for the various items shown hereon. The City of Milpitas reserves the right to increase or decrease the quantity of any item or omit items as may be deemed necessary, and the same shall in no way affect or make void the contract. When

increases or decreases are made, appropriate additions or deductions from the contract total price will be made at the stipulated unit price.

Qty Unit Description of Work Unit		Single Unit Pricing
Material Cost to retrofit three (3) trucks with Cleaire Horizon M Electrical Regenerated DPF (including parts kit) See Exhibit A Vehicle List	$ 33,585.00	$ 11,195.00
Labor Cost to install Cleaire Horizon Electrical Regenerated DPF units on three (3) trucks See Exhibit A Vehicle List	$ 7,200.00	$ 2,400.00
Sales Tax	$ 2,938.68	$ 979.56
Total Cost Base Bid	$ 43,723.68	$ 14,574.56

(Total Base Bid Written in Words) Forty Three Thousand Seven Hundred Twenty Three + Sixty Eight cents

Award of bid will be made to the lowest responsible and responsive bidder of the Total Amount of Base Bid.

Amount Written in Words. This bid will be awarded based upon the total amount bid **as written in words.** Where there is a discrepancy between words and figures, WORDS WILL GOVERN. Where there is a discrepancy between item unit price and extended total, UNIT PRICE WILL GOVERN.

Recycled Product Procurement. (If Applicable) Be sure to add an attachment detailing the requirements of the Recycled Product Procurement section of the Terms and Conditions.

Please check your calculations before submitting your bid; the City of Milpitas will not be responsible for Bidder miscalculations.

Maximum Completion or Delivery Time: 3 Days from receipt of order or notice to proceed. – for each unit.

Subcontractor Information. Does this proposal include the use of subcontractors?

Yes _____ No ✓ Initials M.M.

Cummins West Inc.
Company Name of Bidder

Cummins West Inc.

Mailing Address (PO Box or street)

14775 Wicks Blvd.

City, State, and Zip Code

San Leandro, CA 94577

Name of Authorized Representative

Mike Murphy — Signature

Territory Manager — Title

Corporation

Type of Business (Corp, Partnership, Sole Proprietorship)

510-347-6668 — Telephone Number

510-347-6170 — Facsimile Number

Non-Collusion Affidavit
To Be Completed and Submitted With Bid

State of California
County of Santa Clara ss.

Mike Murphy (Bidder's Name), being first duly sworn, deposes and says that he or she is Owner of Cummins West Inc. (Contractor/Business Name) the party making the foregoing bid that the bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation; that the bid is genuine and not collusive or sham; that the Bidder has not directly or indirectly induced or solicited any other Bidder to put in a false or sham bid, and has not directly or indirectly colluded, conspired, connived, or agreed with any Bidder or anyone else to put in a sham bid, or that anyone shall refrain from bidding; that the Bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the Bidder or any other Bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other Bidder, or to secure any advantage against the public body awarding the contract of anyone interested in the proposed contract; that all statements contained in the bid are true; and further, that the Bidder has not , directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, or paid, and will not pay, any fee to any corporation, partnership, company association, organization, bid depository, or to any member or agent thereof to effectuate a collusive or sham bid."

12-11-08 San Leandro
(Date) (Signed at (Place)

Cummins West Inc. Mike Murphy
Bidder Name Authorized Representative
(Person, Firm, Corp.)

14775 Wicks Blvd. Mike Murphy
Address Representative's Name

San Leandro, CA 94577 Territory Manager
City, State, Zip Representative's Title

SAMPLE CONTRACT

Project: Diesel Retrofit
Bid No: 1145
Amount of Contract: $ 43,723.68

THIS CONTRACT, made this (day of month) day of (month), (year), by and between the City of Milpitas, and (Name of Contractor), hereinafter referred to as "Contractor",

WITNESSETH:

A. WHEREAS, the City of Milpitas has caused specifications, drawings and other contract documents, hereinafter referred to as "Specifications", to be prepared for certain work on the referenced project; and

B. WHEREAS, said Specifications include:

Part A – Invitation For Bids
Part B – Instructions To Bidder
Part C – Terms and Conditions
Part D - Special Provisions for Equipment & Material Furnished By Contractor
Part E – Special Provisions For Services
Part F – Non-Collusion Affidavit
Part G – Bidder's Guaranty
Part H – Bidder's Statement Regarding Insurance Coverage
Part I – Worker's Compensation Insurance Certificate
Part J – Bidder's Nondiscriminatory Employment Certificate
Part K – Experience Statement
Part L – Subcontractors List

C. WHEREAS, Contractor has offered to perform the proposed work in accordance with the terms of said Specifications as set forth by submission of the Contractor's Proposal;

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained in said Specifications and Contractor's Proposal, which are made a part hereof as though fully set forth, Contractor hereby agrees to complete the work at the prices and on the terms and conditions therein contained, and City of Milpitas hereby employs the Contractor and agrees to pay the Contractor the contract prices therein provided for the fulfillment of the work and the performance of the covenants therein set forth.

IN WITNESS WHEREOF, this contract has been executed on the day and year first above written.

City of Milpitas,
A Municipal Corporation

_____	Mike Murphy
City Manager	Contractor's Signature
_____	Territory Manager
Title	Title

Business Tax Compliance: Certificate No. 94-3147123

Approved As
To Content: _____
City Project Manager

Prepared By: _____
City Purchasing Agent

Approved As
To Form: _____
City Attorney

Approved As
To Insurance: _____
City Risk Manager

ATTEST:

By _____
City Clerk

BIDDER'S STATEMENT
REGARDING INSURANCE COVERAGE
To Be Submitted With Bid

BIDDER HEREBY CERTIFIES that the Bidder has reviewed and understands the insurance coverage requirements specified in the Invitation For Bids No. (bid number), to (bid title). Should the Bidder be awarded the contract for the work, Bidder further certifies that the Bidder can meet the specified requirements for insurance, including insurance coverage of the subcontractors, and agrees to name the City of Milpitas as Additional Insured for the work specified.

Cummins West Inc.
Name of Bidder (Person, Firm, or Corporation)

Mike Murphy
Signature of Bidder's Authorized Representative

Territory Manager
Name & Title of Authorized Representative

12-11-08
Date of Signing

WORKER'S COMPENSATION INSURANCE CERTIFICATE

The Contractor shall execute the following form as required by the California Labor Code, Sections 1860 and 1861:

I am aware of the provisions of Section 3700 of the Labor Code, which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

Cummins West Inc.
Name of Bidder (Person, Firm, or Corporation)

Mike Murphy
Signature of Bidder's Authorized Representative

Territory Manager
Name & Title of Authorized Representative

12-11-08
Date of Signing

EXPERIENCE STATEMENT
To Be Submitted With Bid

List at least three references for work of a similar nature performed within the last three years.

I hereby certify that I have performed the work listed below.

Mike Murphy
Signature of Bidder

Description	Yr.	Amt.	Customer	Telephone
		$		( )
See Attachment		$		( )
		$		( )
		$		( )
		$		( )
		$		( )

SUBCONTRACTORS LIST

The following is a list of the subcontractors that will be used in the work if the Bidder is awarded the contract, and no subcontractor not listed below will be used without the written approval of the City of Milpitas. Additional numbered pages outlining this portion of the bid may be attached to this page. **NOTE: Subcontractors' address, telephone number, license numbers, class and expiration date information may be omitted from this form but must then be submitted within two (2) working days following the opening of bids. Subcontractor name, address, and item of work must be stated at the time of the bid.**

Cummins West Inc — No subcontractors

Bidder Name

SUBCONTRACTORS LIST, Page 1 ***All Subcontractors in excess of 1/2 of 1% of total bid must be listed.***		
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. **CLASS:**	**EXPIRATION DATE:** / /	PHONE: ( )
SUBCONTRACTOR:		ITEM OF WORK:
LOCATION/ADDRESS:		
LICENSE NO. **CLASS:**	**EXPIRATION DATE:** / /	PHONE: ( )

CURRENT REFERENCES

Company Name:	Bay Area Rapid Transit District (BART)
Address:	601 E. 8th Street
City, State, Zip Code:	Oakland, CA 94604-2688
Contact Person:	John Ford
Telephone Number:	Office 510.464.6654
Service Provided:	Installation of Cleaire Horizon Units, Cummins Engine & Allison Transmission maintenance
Dates/Type of Service:	Installation of 18+ units from Q4 2008 to Q1 2009

Company Name:	City of San Ramon
Address:	5000 Crow Canyon Road
City, State, Zip Code:	San Ramon, CA 94583
Contact Person:	Ron McClean
Telephone Number:	925.973.2830
Service Provided:	Installation of Cleaire Horizon units
Dates/Type of Service:	Installation of Cleaire Horizon units in Q2, Q3, Q4 2008. Pending installations in 2009

Company Name:	City of Alameda
Address:	2040 Grand Street
City, State, Zip Code:	Alameda, CA 94501-1228
Contact Person:	Thomas Woods
Telephone Number:	510.748.3101
Service Provided:	Installation of Cleaire Horizon Units
Dates/Type of Service:	Ongoing installations in beginning in 2007, 2008. Continuing through 2009.

Company Name: Cummins West, Inc.

FORMER REFERENCES

Company Name:	University of California Berkeley
Address:	2000 Carlton Street
City, State, Zip Code:	Berkley, CA 94720
Contact Person:	Linda Brun
Telephone Number:	510.643.7300
Service Provided:	Installation of Cleaire Horizon units
Dates/Type of Service:	Oct, Nov 2008

Company Name:	Contra Costa County
Address:	2467 Waterbird Way
City, State, Zip Code:	Martinez, CA 94553-4711
Contact Person:	Richard Battersby
Telephone Number:	925.313.7072
Service Provided:	Installation of Cleaire Aftertreatment units
Dates/Type of Service:	Ongoing through 2006, 2007.

Company Name:	A C Transit
Address:	10626 International Blvd.
City, State, Zip Code:	Oakland, CA 94603
Contact Person:	Stuart Hoffman
Telephone Number:	510.577.8853
Service Provided:	Installation of Cleaire Aftertreatment units
Dates/Type of Service:	300+ Installations between 2003-2008

Company Name:	Cummins West, Inc.

Company Name: Cummins West Inc.

INSURANCE REQUIREMENTS GRID

All of the "standard" insurance requirements for the City of Milpitas are contained in the documents entitled "Exhibit A Insurance Requirements – General", and "Exhibit A Insurance Requirements – Consultants" all of which must be met unless specifically exempted in writing by the Risk Manager. In addition, here are the basic requirements regarding the four (4) endorsements required by the City. Insurance coverage required by the City varies depending on the contract; you have to read the insurance requirements of the contract to be sure you are getting all of the necessary endorsements.

		X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied	X if required	Check if supplied
	Endorsement Required	**General Liability**		**Auto Liability**		**Workers Comp.**		**Pro. Liability**		**Other**	
		X	✓	X	✓	X	✓	X			
1.)	Additional Insured*	X		X	✓						
2.)	Contractors Insurance shall be:										
	Primary	X		X							
	Non-Contrib.	X		X							
3.)	Waiver of Subrogation	X		X		X					
4.)	30 Day Notice of Cancellation	X		X				X			

Exceptions: We did get #1 for AL CSR 1/16/09
The work is going to take place at the Cummins West facility Second Form ATTACHED

Note:
Most insurance companies will provide actual certificates of endorsement for the requirements listed above, but frequently not until specifically asked or pushed. However, depending on the insurance company, it may be their practice to incorporate all of the endorsements into a standardized "blanket" endorsement form/document(s). Alternatively, they may submit excerpts from the policy document, this is also acceptable to the City. However, be sure to ask the company to clearly mark the specific clause(s) that reflect each endorsement and to send you those pages **only**, or you will likely wind up with a legalistic form 40 pages long and no easy way to determine which clauses apply to the certificate.

Prepared BY: [signature] 1/12/09

Approved By: _____ Date: ___/___/___
Risk Manager

X = Most commonly required.
* AI language must be stated as follows: "The City, its officers, officials, employees, and volunteers"

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/16/09

PRODUCER 1-812-373-4435
Artex Risk Solutions, Inc.
529 Washington Street
Columbus, IN 47201-6229

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Cummins West, Inc.
14775 Wicks Blvd.
San Leandro, CA 94577-6779

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Ins Co	16535
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	X	GENERAL LIABILITY X COMMERCIAL GENERAL LIABILITY CLAIMS MADE X OCCUR X Broad Form Liab. GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY PRO-JECT LOC	GLO373102804	06/01/08	06/01/09	EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$1,000,000 $ Included $5,000 $1,000,000 $2,000,000 $2,000,000
A	X	AUTOMOBILE LIABILITY X ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS X HIRED AUTOS X NON-OWNED AUTOS X Auto Phys. Damage X Garagekeepers	BAP373102704	06/01/08	06/01/09	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
		GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A	X	EXCESS/UMBRELLA LIABILITY X OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $	UMB373880805	06/01/08	06/01/09	EACH OCCURRENCE AGGREGATE	$5,000,000 $5,000,000 $ $ $
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	WC373102605	06/01/08	06/01/09	X WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$1,000,000 $1,000,000 $1,000,000
A		OTHER Property Insurance	CPO373880705	06/01/08	06/01/09	Bldg & Prsnl Prp Blanket	Blanket

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Diesel engine sales and service.
The City of Milpitas, its officers, officials, employees, and volunteers are added as additional insured for work performed by the Named Insured. Coverage is primary and non-contributory. Waiver of Subrogation applies to the City, its elected or appointed officers, officials, agents and employees for losses paid under the terms of any policy which arise from work performed by the Named Insured for the City. This applies to Workers Compensation too.

CERTIFICATE HOLDER

City of Milpitas
455 E Calaveras Blvd.
Milpitas, CA 95035-5411
USA

CANCELLATION *10 day notice for non-payment of premium

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30* DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

© ACORD CORPORATION 1988

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Additional Insured – Automatic - Owners, Lessees Or Contractors-Broad Form

Policy No.	Eff. Date of Pol.	Exp. Date of Pol.	Eff. Date of End.	Producer	Add'l. Prem	Return Prem.
GLO373102804	06/01/08	06/01/09	12/10/08	Artex Risk		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Commercial General Liability Coverage Part

A. **WHO IS AN INSURED (Section II)** is amended to include as an insured any person or organization whom you are required to add as an additional insured on this policy under a written contract or written agreement.

B. The insurance provided to additional insureds applies only to "bodily injury", "property damage" or "personal and advertising injury" covered under Section I, Coverage **A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY and Coverage B, PERSONAL AND ADVERTISING INJURY LIABILITY,** but only if:

1. The "bodily injury" or "property damage" results from your negligence; and
2. The "bodily injury", "property damage" or "personal and advertising injury" results directly from:
   - a Your ongoing operations; or
   - b "Your work" completed as included in the "products-completed operations hazard", performed for the additional insured, which is the subject of the written contract or written agreement.

C. However, regardless of the provisions of paragraphs **A.** and **B.** above:

1. We will not extend any insurance coverage to any additional insured person or organization:
   - a That is not provided to you in this policy; or
   - b That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or written agreement; and
2. We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:
   - a The Limits of Insurance provided to you in this policy; or
   - b The Limits of Insurance you are required to provide in the written contract or written agreement.

D. The insurance provided to the additional insured person or organization does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" that results solely from negligence of the additional insured; or

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2. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering or failure to render any professional architectural, engineering or surveying services including:
   a The preparing, approving, or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
   b Supervisory, inspection, architectural or engineering activities.

E. The additional insured must see to it that:
1. We are notified as soon as practicable of an "occurrence" or offense that may result in a claim:
2. We receive written notice of a claim or "suit" as soon as practicable; and
3. A request for defense and indemnity of the claim or "suit" will promptly be brought against any policy issued by another insurer under which the additional insured also has rights as an insured or additional insured.

F. The insurance provided by this endorsement is primary insurance and we will not seek contribution from any other insurance available to any additional insured person or organization unless the other insurance is provided by a contractor other than you for the same operations and job location. Then we will share with that other insurance by the method described in paragraph **4.c.** of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS.**

Any provisions in this Coverage Part not changed by the terms and conditions of this endorsement continue to apply as written.

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Commercial Auto Insurance
Endorsement

ZURICH

Insurance for this coverage is provided by:
Zurich North America

Policy Number: BAP 373102704
Renewal of Number: BAP 373102703

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – PERSON / COMPANY

Name of Person or Organization: City of Milpitas

WHO IS AN INSURED is changed to include as an "insured" the person or organization named above for "bodily injury" or "property damage" arising out of the use of a covered "auto" while the covered "auto" is being used pursuant to a contract described in the schedule.

However, the person or organization named above is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions of:

1. You;
2. Any of your employees or agents; or
3. Any person, except the employee or agent of the person or organization named above, operating a covered "auto" with the permission of any of the above.

Product Warranty

YOUR WARRANTY RIGHTS AND OBLIGATIONS

Cleaire Advanced Emission Controls, LLC warrants the diesel emission control system in the application for which it is sold or leased to be free from defects in design, materials, workmanship, or operation of the diesel emission control system which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, for the periods of time listed in Table 1, provided there has been no abuse, neglect, or improper maintenance of your diesel emission control system, vehicle or equipment, as specified in the owner's manuals. Where a warrantable condition exists, this warranty also covers the engine from damage caused by the diesel emission control system, subject to the same exclusions for abuse, neglect or improper maintenance of your vehicle or equipment. Please review your owner's manual for other warranty information. Your diesel emission control system may include a core part (e.g., particulate filter, diesel oxidation catalyst, selective catalytic reduction converter) as well as hoses, connectors, a backpressure monitor (if applicable), and other emission-related assemblies. Where a warrantable condition exists, Cleaire will repair or replace your diesel emission control system at no cost to you including diagnosis, parts, and labor.

Table 1. Warranty Period

Engine Type	Engine Size	Warranty Period
On-Road	Light heavy-duty, 70 to 170 hp, Gross Vehicle Weight Rating (GVWR) less than 19,500 lbs.	5 years or 150,000 miles
	Medium heavy-duty, 170 to 250 hp, GVWR from 19,500 lbs. to 33,000 lbs.	
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs.	
	Heavy heavy-duty, exceeds 250 hp, GVWR exceeds 33,000 lbs., and the truck is: 1. Typically driven over 100,000 miles per year, and 2. Has less than 300,000 miles on the odometer at the time of installation.	2 years, unlimited miles
Off-Road (includes portable engines) and Stationary	Under 25 hp, and for constant speed engines rated under 50 hp with rated speeds greater than or equal to 3,000 rpm	5 years or 4,200 hours
	At or above 25 hp and under 50 hp	
	At or above 50 hp	

WARRANTY COVERAGE

For an engine used in an application listed in Table 1, the warranty period will be the years or hours or miles of operation shown in Table 1, whichever occurs first. If any emission-related part of your diesel emission control system is defective in design, materials, workmanship, or operation of the diesel emission control system thus causing the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706, and 2710, within the warranty period, as defined above, Cleaire will repair or replace the diesel emission control system, including parts and labor.

In addition, Cleaire will replace or repair the engine components to the condition they were in prior to the failure, including parts and labor, for damage to the engine proximately caused by the verified diesel emission control strategy. This also includes those relevant diagnostic expenses in the case in which a warranty claim is valid. Cleaire may, at its option, instead pay the fair market value of the engine prior to the time the failure occurs.

OWNER'S WARRANTY RESPONSIBILITY

As the vehicle, engine, or equipment owner, you are responsible for performing the required maintenance described in your owner's manual. Cleaire recommends that you retain all maintenance records and receipts for maintenance expenses for your vehicle, engine, or equipment, and diesel emission control system. If you do not keep your receipts or fail to perform all scheduled maintenance, Cleaire may have grounds to deny warranty coverage. You are responsible for presenting your vehicle, equipment, or engine, and diesel emission control system to a Cleaire-authorized dealer as soon as a problem is detected. The warranty repair or replacement should be completed in a reasonable amount of time, not to exceed 30 days. If a replacement is needed, this may be extended to 90 days should a replacement not be available, but must be performed as soon as a replacement becomes available.

If you have questions regarding your warranty rights and responsibilities, you should contact Cleaire at 1-800-308-2111 or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

Installation Warranty

YOUR WARRANTY RIGHTS AND OBLIGATIONS

The Cleaire-authorized installer warrants that the installation of the diesel emission control system is free from defects in workmanship or materials which cause the diesel emission control system to fail to conform to the emission control performance level it was verified to, or to the requirements in the California Code of Regulations, Title 13, Sections 2700 to 2706. The warranty period and the extent of the warranty coverage provided by the Cleaire-authorized installer is the same as the product warranty provided by Cleaire, and the same exclusions apply.

OWNER'S WARRANTY RESPONSIBILITY

As the vehicle, engine, or equipment owner, you are responsible for presenting your vehicle, engine, or equipment, and diesel emission control system to the Cleaire-authorized installer as soon as a problem with the installation is detected.

If you have questions regarding your warranty rights and responsibilities, you should contact a Cleaire-authorized dealer, or Cleaire at 1-800-308-2111, or the California Air Resources Board at 9528 Telstar Avenue, El Monte, CA 91731, or (800) 363-7664, or electronic mail: helpline@arb.ca.gov.

Cleaire Warranty Clarifications

(Which do not limit or modify the provisions of the Product Warranty or Installation Warranty in any way)

This warranty document is the sole warranty made by Cleaire Advanced Emission Controls, LLC. There are no other warranties, expressed or implied, or of merchantability or fitness for a particular purpose.

For the purpose of this warranty, abuse or neglect includes vehicle accidents, ignoring the Longview or Lonestar system indicator lights, blending lubricating oil with fuel, or any engine failure or condition that allows excess lubricating oil, coolant, contaminants or debris to enter the exhaust system. The owner shall not use any fuel additive or lube oil additive that is not approved for use in diesel engines equipped with catalytic mufflers.

Cleaire is not responsible for incidental or consequential damages, which include, but are not limited to fines, theft, vandalism, or collisions. The owner is responsible for incidental costs such as communication expenses, meals, and lodging incurred by owner or employees of owner as a result of a warrantable condition.

The verified diesel emission control system must be installed and serviced by Cleaire-authorized personnel. Installation or service by unauthorized personnel may result in a denial of warranty coverage.

EMISSION-RELATED PARTS

The warranty period for emission-related parts is given in Table 1. Emission-related parts are listed in Table 2 below.

Table 2. Emission-Related Parts.

NOx-reduction catalysts (NRC)
Catalyzed diesel particulate filter
MLC
Injector assembly
Static mixer
Diesel fuel pump
Thermocouples
Exhaust backpressure sensor
Manifold pressure sensor
Engine RPM sensor
Fuel pressure switch
Fuel pressure regulator
Fuel shut-off valve

BASE SYSTEM COVERAGE

The base system coverage is 1 year / 50,000 miles for on-road applications and 1 year / 1,400 hours for off-road applications. Coverage includes standard non-emission-related parts supplied with the system as listed in Table 3 below. This warranty coverage is over and beyond the emission-related parts warranty as required by CARB.

Table 3. Base-System Parts.

Inlet cone
Outlet cone
V-ring clamps and seals
Backbone
Saddles
Electrical harness and extensions

NEW REPLACEMENT PARTS

Cleaire's new replacement parts have a 6 month parts only replacement warranty.

New Replacement Parts Warranty covers failures of new Cleaire parts that are the result of defects in Cleaire's material or factory workmanship, under normal use and service.

New parts warranty is not applicable to failures caused by abuse, neglect or installation workmanship during installation of the new part. These items are listed in Table 4 below.

Table 4. New replacement parts.

NOx-reduction catalysts (NRC)
Catalyzed diesel particulate filter
MLC
Injector assembly
Static mixer
Diesel fuel pump
Thermocouples
Exhaust backpressure sensor
Manifold pressure sensor
Engine RPM sensor
Fuel pressure switch
Fuel pressure regulator
Fuel shut-off valve
Inlet cone
Outlet cone
V-ring clamps and seals
Backbone
Saddles
Electrical harness and extensions

MISCELLANEOUS PART COVERAGE

The miscellaneous part coverage is 30 days / unlimited miles for on-road applications and warrants parts are free from defects in material and factory workmanship. Coverage includes replacement only for any other parts not specifically listed above.

GENERAL CLARIFICATIONS

Cleaire shall in no event be liable for failures resulting from owner or operator abuse or neglect of the engine upstream of the Cleaire product, including but not limited to: operation without adequate coolant, fuel or lubricants; overfueling; overspeeding; lack of maintenance of lubricants, fuels, cooling or air intake systems; improper storage, starting, warm-up, running or shutdown practices.

Cleaire shall in no event be liable for failures or maintenance resulting from engine condition or engine component failures upstream of the Cleaire product, including but not limited to: turbo failure, engine oil consumption, residual ash within diesel particulate filter, or leaking or failed engine fuel injector.

Cleaire shall in no event be liable for towing charges, maintenance items such as oil filters, belts, hoses, etc.; communication expenses, meals, lodging and incidental expenses incurred by owner or employees of owner, "down-time" expenses, overtime expenses, cargo damages and all business costs and losses of revenue resulting from a warrantable failure.

Cleaire shall in no event be liable for failures resulting from improper repair by others or the use of parts not approved by Cleaire.