

## **Private Contractor Issue**

### **Private Contractors and Public School Pupil Transportation**

One third of the communities across the country do not operate their own school bus fleets. These cities and towns have determined that their needs can be better served by contracting with a school transportation company. School bus contractors offer a wide range of outsourcing options, but most school districts that contract choose to turn over the entire pupil transportation system—including all responsibility for drivers, vehicles, routing, dispatching and management—to the professional provider. The length of individual contracts and competitive bidding requirements are largely determined by state regulations, and vary across the country.

Contractor provided buses are essentially the same as those operated by local school districts. They present the same emissions challenges and opportunities for improvement using the latest engine and emission technologies. Furthermore, while school districts that contract transportation are located throughout the country, they are disproportionately concentrated in large urban regions and in non-attainment areas. That makes it even more important to ensure that contractors and the school districts they serve are able to access Clean School Bus funds as easily as other districts.

### **Treatment of Contractors in Pending Authorizing Legislation**

The comprehensive energy bill which has passed the House on two occasions contains authorizing legislation to implement a Clean School Bus program. The legislation is the product of negotiations involving the broad coalition of interests that support funding for replacement and retrofit of school buses with new technology equipment. This includes the manufacturers of competing technologies, school bus operators, school bus administrators and public interest organizations. The language, which has been approved by all of the committees of jurisdiction and by the whole House, authorizes grants to: (a) “local or State government entities responsible for providing school bus service”, (b) contracting entities who would own, operate and maintain the buses if the application is submitted jointly with the school district, and (c) to a nonprofit school transportation authority representing private contracting entities if the association has notified and received approval of one or more school system to be served.

Despite an expression of intent on the part of Congress to allow funding to those communities which use private contractors (either in the form of grants directly to contractors in connection with a joint application or indirectly through nonprofit associations), the Administration’s proposed legislative language to accompany the Clean School Bus USA program, which was included in the FY05 Budget Appendix, limits grant funding under the program to “State, tribal or local governmental entities responsible for providing school bus services...” The House chose to delete the language advanced in the budget documents and instead included as bill language, language from the prior two years’ reports specifying that the funds go “to school districts”.

There is a concern that, if grant eligibility is restricted in law to “State, tribal or governmental entities” or “to school districts”, those communities which contract out bus services may be unable or unwilling to participate in the program to the same extent as communities that operate their own buses. The two major reasons for this have to do with inconsistent timing between the grant cycle and the school bus contracting cycle and the reluctance on the part of contracting school districts, which have elected to contract out in part to limit their liability, to become involved in the trail of dollars used to purchase or retrofit buses. Since a large percentage of non-attainment areas are communities that contract out, any impediment to assisting such communities could hamper EPA’s ability to direct funding to those communities where Clean School Bus USA funding could have the biggest impact on air quality.

### **Proposed Solutions**

We recommend one of two possible solutions for how this should be handled in the appropriations process. First, provide broader flexibility on who may receive grants. This can be accomplished by either deleting or, alternatively, modifying the first proviso of the authorizing language proposed as part of the Budget Appendix (pages 940 – 941) as follows:

#### STATE AND TRIBAL ASSISTANCE GRANTS

“...\$65,000 shall be for competitive grants for school bus retrofit and replacement projects that reduce diesel emissions: Provided, That beginning in fiscal year 2005 and thereafter, and notwithstanding any other provision of law, the Administrator is authorized to make such grants, subject to such terms and conditions as the Administrator shall establish, to [~~State, tribal or local governmental~~] entities, [~~responsible for providing~~] *that provide* school bus services to one or more public school systems: Provided further, That with regard to such school bus grants, the non-Federal share of the cost of a project shall be at least 15 percent and preference will be given to grant applicants from entities that impact national Ambient Air Quality Standards non-attainment areas...”

Another approach would be to amend the language to reflect the compromise approach in the Energy bill conference report with respect to grant eligibility. Such an approach would allow contractors to apply jointly with the districts they serve or through a variety of state or national nonprofit trade associations representing school bus contractors.

Attached below is the language from Section 742(c) of the Conference Report accompanying the Energy Policy Act of 2003 (H. Rept. 108-375)

*“(c) ELIGIBLE RECIPIENTS- A grant shall be awarded under this section only--*

*(1) to 1 or more local or State governmental entities responsible for providing school bus service to 1 or more public school systems or responsible for the purchase of school buses;*

*(2) to 1 or more contracting entities that provide school bus service to 1 or more public school systems, if the grant application is submitted jointly with the 1 or more school systems to be served by the buses, except that the application may provide that buses purchased using funds awarded shall be owned, operated, and maintained exclusively by the 1 or more contracting entities; or*

*(3) to a nonprofit school transportation association representing private contracting entities, if the association has notified and received approval from the 1 or more school systems to be served by the buses.”*