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Edmund G. Brown Jr.
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Notice to Prospective Proposers

Request for Proposal RFP No. 10-124

“Cap-and-Trade Financial Services for Auction and Reserve Sale”

November 8, 2011

ARB is issuing this notice to post Questions and Answers to the Cap-and-Trade Financial Services for Auction and Reserve Sale Request for Proposal (RFP). This RFP was originally issued as RFP 10-109. The questions and responses in this notice are from the bidders' conference held on September 20, 2011 for RFP 10-109, and responses have been revised to reflect the context of the reissued RFP. As the Scope of Work has not been substantially revised, the questions and answers are applicable to RFP 10-124, although some dates may be different due to reissuing the RFP.

Responses to questions may refer to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (cap-and-trade regulation). The current text of the adopted regulation is available at: <http://www.arb.ca.gov/regact/2010/capandtrade10/ctfro.pdf>.

This notice is published online in the California State Contracts Register at <http://www.eprocure.dgs.ca.gov/CSCRAAds.htm>. To ensure receipt of any addenda that may be issued, interested parties are encouraged to register online at <http://www.bidsync.com/help/bidsync/freebids.html>. Any questions are to be addressed to the contact listed below:

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Thank you.

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see our website: <http://www.arb.ca.gov>.

California Environmental Protection Agency

Request for Proposal No. 10-124

**Cap-and-Trade Financial Services for Auction and Reserve Sale
Follow-up Questions & Answers**

Q1. Is it the ARB's preference to select the same provider for both the Auction and Reserve Sale Operator and the Financial Service Contractor?

A1. ARB does not have a preference to select the same service provider for both the Auction and Reserve Sale Operator and the Financial Services for Auction and Reserve Sale contractor.

Q2. Is the ARB expecting a response from bidders for section 1 ("Minimum Qualifications") of the Technical Proposal Requirements on page 26 of the RFP, or are responses expected in section 5?

A2. The Proposer should provide a detailed response, outlining information as to how the Proposer meets each of the minimum qualifications in Section 1, Minimum Qualifications, of the proposal.

Q3. Will the Finance Service Contractor be permitted to charge participants a fee for the services provided?

A3. The Financial Service Contractor will not be permitted to charge a fee to auction participants.

Q4. Referencing Page 7 and Page 10 of RFP No. 10-109: [Page 7] *There are anticipated to be more than 300 quarterly GHG allowance auction participants (bidders) and more than 300 quarterly reserve sales participants.* [Page 10]: *It is expected that the Contractor must process up to 2,000 applications per auction or up to 1,000 account holders for the reserve sale.*

- 1. What is meant by "process applications"? Will a "form" be presented to the Contractor or will the Auction Agent process the "application"?**
- 2. Please clarify the discrepancy in the above numbers.**

A4.1 To clarify, the estimate of 300 auction participants reflects a minimum estimate at the beginning of the program to approximate the number of

facilities with a compliance obligation under the proposed cap-and-trade regulation. The estimate of up to 2,000 auction applications reflects a high-end estimate of potential entities covered under the proposed cap-and-trade regulation, including opt-in covered entities and voluntarily associated entities.

- A4.2 The estimate of 300 reserve sale participants reflects a minimum estimate at the beginning of the program to approximate the number of facilities with a compliance obligation under the proposed cap-and-trade regulation. The estimate of up to 1,000 auction applications reflects a high-end estimate of potential entities covered under the proposed cap-and-trade regulation, including opt-in covered entities.

Q5. Referencing Page 8 of RFP No. 10-109: [Second paragraph on Page 8] *The work of this contract is expected to require up to 24 months in anticipation of transitioning service over to an RAO in the future.*

- 1. Is it anticipated that additional project management support be required from the Contractor, similar to that of the Auction/Reserve Sale Preparation Services section, to assist in the transitioning to an RAO? Would this be covered under a separate work order / agreement?**

- A5. Additional project management support for transitioning cap-and-trade services to an RAO is not included as part of the scope of the Financial Services for Auction and Reserve Sale RFP. No separate work order or agreement is anticipated for transitioning services to an RAO.

Q6. Referencing Page 8 of RFP No. 10-109: *The Contractor must provide to ARB for approval, 120 days prior to the start of each auction, the insurance certificate, latest audited financial statements, and latest business continuity plan with test results for all relevant data management/processing systems, document retention infrastructure, and manual processes utilized in the provision of proposed services.*

- 1. Is the frequency of the above submission quarterly beginning in summer 2012 (120 days prior to Fall 2012 auction and all following auctions)?**

- 2. Will annual audited financials meet the financial statement requirements? Will SEC 10k / 10Q filings suffice?**
- 3. How often does ARB expect the Contractor to perform testing for all relevant data management/processing systems, document retention infrastructure, and manual processes utilized in the provision of proposed services?**

A6.1 The current draft of the cap-and-trade regulation (§ 95910) provides that (1) in 2012, auctions will be held on August 15 and November 14 and (2) beginning in 2013, subsequent auctions shall be conducted on the twelfth business day of the first second month of each calendar quarter. The frequency of submission would be anticipated to be 120 days prior to these dates.

A6.2 Yes, the latest 10K filing is acceptable for financial statement information. A current 10Q filing is acceptable if it contains *audited* financial information.

A6.3 At minimum, testing should be performed annually and within three months after any major system or process change, or sooner as required by the Contractor's Business Continuity Plan and prior test results reports.

Q7. Referencing Page 9 of RFP No. 10-109: [2. Pre-Auction/Reserve Sale Services – Financial Qualification Application Processing, Paragraph 1]...*The Contractor will work in coordination with ARB and an entity designated by ARB to serve as auction and reserve sale administrator to develop and conduct the financial qualification application process of approved market participants. Financial qualification applications will be required for both the quarterly auctions of allowances made available by ARB, and the quarterly reserve sales. The Contractor will work with ARB to finalize the list of acceptable mechanisms for payment guarantees. The current draft of the regulation indicates that bid guarantees must be in one or a combination of the following forms:*

- 1. Please explain the expected role the Contractor in the bidder qualification evaluation process. It would seem that the Contractor would handle the receipt of the instruments of value for each of the anticipated bidders, but the ultimate knowledge and judgment as to**

whether a bidder has met all the requirements would reside with the ARB and its designated auction and reserve sale operator.

- 2. Please identify the regulation that is being referenced as well as provide a status update of the draft regulation.**

A7.1 The Financial Services Contractor will make the financial qualification determination and communicate the results to ARB and the auction/reserve sale administrator so that they may notify the participants of their eligibility to participate in the auction/reserve sale.

A7.2 The Regulation refers to the California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms Regulation (cap-and-trade-regulation). The current text of the adopted regulation is available at: <http://www.arb.ca.gov/regact/2010/capandtrade10/ctfro.pdf>.

Q8. Referencing Page 9 of RFP No. 10-109: [Second to the last paragraph at bottom of the page] *The Contractor must provide a plan outlining how they will meet all applicable State of California and federal law, industry standards, and best practices for insurance/liability limits and certification to replace bid guarantees or deposit transactions that are lost or stolen and assessing the validity of collateral provided as part of the financial qualification process.*

- 1. The above statement is very broad and encompassing. Please provide a listing to the applicable laws, standards and best practices that would need to be addressed so to insure the ARB expectations are met.**

A8. ARB's expectations for the Contractor include meeting all applicable laws, standards, and practices established or promoted by regulatory entities including the California Department of Financial Institutions (<http://www.dfi.ca.gov/>), California Department of Corporations (<http://www.corp.ca.gov/>), U.S. Federal Reserve (<http://www.federalreserve.gov/>), Office of the Comptroller of the Currency (<http://www.occ.treas.gov/>), Office of Thrift Supervision (<http://www.ots.treas.gov/>), and the Federal Deposit Insurance Corporation (FDIC) (<http://www.fdic.gov/>).

Applicable laws may include: 1) banking and related financial institution laws found in the California Financial Code (CFC) and California Government Code (see http://www.dfi.ca.gov/lawsregs/2011_BankingLaw.pdf ; CFC 17000 - Escrow Law, etc.); US Code of Federal Regulations (CFR) Section 12, 201-235 (Federal Reserve Regulations A-II), and those in association with FinCEN (Chapter X, US Patriot Act); [Fair Credit Reporting Act \(FCRA\)](#); [Electronic Signatures in Global and National Commerce \(E-SIGN\) Act](#); [FDIC Deposit Insurance Regulations \(Part 330\)](#); [FDIC Temporary Liquidity Guarantee Program \(Part 370\)](#); [Right to Financial Privacy Act \(RFPA\)](#); and Dodd-Frank Wall Street Reform and Consumer Protection Act. This list provides examples of applicable laws; the list does not include all laws that may apply to all potential bidders.

Q9. Referencing Page 9 of RFP No. 10-109: [Last paragraph at bottom of the page] *The Contractor must allow for the receipt of assurance payments in U.S. Dollars and the foreign currency of jurisdictions planned to be linked to the cap-and-trade program such as the Canadian dollar as this may be required to accommodate fellow WCI Partner jurisdictions or voluntary participants from other jurisdictions.*

- 1. Although linkage to WCI is contemplated, does ARB anticipate that, initially, auctions involving California would be in USD only? Allowing for multiple currencies in a single auction could be problematic, as rules would need to be developed for FX and conversion rates.**
- 2. Assuming auctions will be in USD, how will exchange rates be determined to convert non-USD Financial Assurance to USD for communication to Auction Agent?**
- 3. How will FX fluctuations be handled in respect to Financial Assurance?**
- 4. If other currencies are contemplated, would you identify which ones are being considered?**
- 5. Would you please provide the other fellow WCI Partnership jurisdictions or voluntary participants in order to assess any potential conflicts?**

A9.1-4 The bidder must provide its financial assurance instrument in the local currency of the jurisdiction for which the auction is being held and settled.

To that end, there will be no need for the financial services provider to account for FX fluctuation

As provided in the RFP, the Contractor must also describe how administration of financial services for auction and reserve sale would be designed with the capacity for growth to accommodate potential linkage with cap-and-trade programs in other WCI Partner jurisdictions.

A9.5 ARB continues to work with the WCI Partner jurisdictions, including Canadian provinces, to establish a regional cap-and-trade program. WCI Partner jurisdictions considering the option to implement GHG cap-and-trade programs and link them to form a regional market for compliance instruments include California, British Columbia, Ontario, and Quebec. Voluntary participants in the cap-and-trade program include any person or entity that elects to voluntarily opt-in to the cap-and-trade program and be willing to be subject to the requirements of the cap-and-trade regulation.

Q10. Referencing Page 10 of RFP No. 10-109: *The Contractor must achieve 100% accuracy of collateral received no later than twelve (12) business days prior to the start of the auction/reserve sale. Once the bidder has qualified, the Contractor must notify ARB and the entity designated by ARB to serve as auction and reserve sale administrator no later than twelve (12) business days prior to the start of the auction/reserve sale in order to enter the appropriate information into the auction platform, and notify qualified participants of their eligibility to participate in the auction/reserve sale.*

- 1. It appears there may be an inconsistency between RFP No. 10-109 and RFP No. 10-108 in regard to which Contractor is responsible for notifying qualified participants of their eligibility to participate in the auction/reserve sale. As stated in RFP No. 10-108 “After ARB or an entity designated by ARB to provide financial services completes the financial application process for each applicant, the Contractor will be responsible for notifying the potential bidders of their financial qualification and approval status no later than five (5) business days prior to auction day.” The Auction Operator maintains the qualified participant notification responsibility. This would be consistent with other notification procedures and responsibilities. In addition, as a point of reference, the Auction Operator in RGGI notifies potential bidders of their financial qualification and approval status. Who has**

responsibility for making the actual qualification determination and the subsequent notification?

A10. As clarification, the Financial Services Contractor will make the financial qualification determination and communicate the results to the auction/reserve sale administrator so that they may notify the participants of their eligibility to participate in the auction/reserve sale.

Q11. Referencing Page 10 & Page 11 of RFP No. 10-109: [Page 10:] *For successful participants who posted financial assurance in a cash equivalent, such as a wire transfer or a bank/certified check, the Contractor's services will allow for these funds to be applied towards the invoice for purchase of allowances. [Page 11:] After each auction is completed, the Contractor will create and distribute invoices for all successful bidders. The Contractor will receive and process invoice payments from auction participants. The Contractor will provide ARB and an entity designated by ARB to serve as auction operator with the list of successful bidders who have satisfied their payment obligations by the specified payment due date. The Contractor must achieve 100% accuracy of final auction awards and funds received within ten (10) business days after the auction date. After each reserve sale is completed, the Contractor will create and distribute invoices to the account holders awarded GHG allowances from the reserve sale. The Contractor will also receive and process these invoice payments from reserve sale participants. The Contractor will provide ARB and as the designated auction and reserve sale operator with the list of account holders who have satisfied their payment obligations by the specified payment due date.*

- 1. Please clarify the invoice process. Does the bidder need to confirm their binding payment via a return of the invoice? What constitutes confirmation (e-mail, paper form, etc)?**
- 2. If the Financial Services Contractor were responsible for creating, distributing, receiving and processing invoices for auction participants, said participants would be required to have billing accounts set up with the Contractor. In the case of accounts created within a financial institution this would require all participants to be subject to a variety of financial services regulations including but not limited to; Patriot Act, Know-Your-Customer (KYC), Anti Money Laundering (AML), Office of Foreign Asset Control (OFAC), etc. If**

required, how is this account set-up contemplated in the intent to bid process?

3. As an alternative, it would seem that the ARB designated auction operator would be in a better position to provide the account holders with these communications since the ARB designated auction operator has responsibility for notifying the potential bidders of their financial qualification and approval status,. The Contractor would, of course, receive and process all invoice payments and provide ARB and the designated auction and reserve operator with a listing of all payments and associated remittances. Would ARB consider making a similar process change to have this communications come through the ARB auction operator?

Note: As a suggestion, ARB could consider implementing similar participant billing procedures to that of RGGI, such that each bid is considered binding on the participant and no invoicing is required.

For RGGI Auction 13:

8.2 Financial Settlement

Financial settlement of Auction 13 will commence immediately after release of the auction clearing price. The Auction Platform provides each bidder with the total cost of the awarded CO2 allowances, if any. This amount represents the amount to be paid or drawn from the bidder's financial security. Each key financial settlement event and activity is discussed below.

8.2.1 Optional Cash (Wire Transfer) Settlement

Each bidder who submits an ILOC or bond will be provided an opportunity to settle its award transaction(s) with cash via a wire transfer in USD rather than a draw against their ILOC and/or bond. Wire transfers must be in USD and must be received by The Bank of New York Mellon no later than 5:00 PM ET on Wednesday, September 14, 2011. The details for submitting cash by wire transfer are emailed to all potential bidders no later than 5:00 PM ET on Tuesday, August 23, 2011. If a wire transfer for the full award amount is received by the time and date deadline, a bidder's ILOC and/or bond will not be drawn against. Any amount of an award(s) not settled via cash with a wire transfer will be settled through a draw on the submitted ILOC or bond on Thursday, September 15, 2011.

No action is required if a bidder wishes settlement to be made by drawing against their ILOC or bond.

8.2.2 Return of Financial Security

See Sections 2.9.1 (Bonds will be returned after they expire. Unless otherwise requested that a bond be returned, each bond with an expiration date extending beyond Thursday, September 22, 2011, will continue to be held by RGGI, Inc. as valid financial security for any future CO2 Allowance Auction.) through 2.9.4 (ILOCs will be returned after they expire. Unless otherwise requested that an ILOC be returned, each ILOC with an expiration date extending beyond Thursday, September 22, 2011 will continue to be held by RGGI, Inc. as valid financial

security for any future CO2 Allowance Auction.) *for information about how each type of financial security is returned after Auction 13.*

Thus, when the results are posted, auction participants are made aware of any information that would be included on an invoice. This would alleviate the need for each participant to be considered a client of the Contractor.

A11.1 ARB interprets the question as follows: Does the bidder need to confirm their binding payment by returning the invoice or a remittance form with payment? Return of the invoice with payment is not a requirement of the RFP. Confirmation should be in writing, which may include electronic confirmation.

A11.2 The Financial Services contractor must set up an account and invoice. ARB has no requirements on how this process shall be accomplished. As provided in the RFP, the Contractor will work with ARB and an entity designated by ARB to serve as auction and reserve sale operator to develop financial qualification procedures, instructions, and contact information and training materials for potential bidders and purchasers. Additionally, the Contractor must work with ARB and an entity designated by ARB to serve as auction and reserve sale operator to design and develop financial settlement procedures, instructions, reconciliation reports, forms, contact information, and training materials. The process of setting up accounts would be an example of a component that may be included in the designed financial qualification procedures.

A11.3 ARB would not consider a process change.

Q12. Referencing Page 12 of RFP No. 10-109: [1st complete paragraph at top of page] *Some forms of financial assurance are considered cash equivalents and will be acceptable for settling the invoice for the purchase of allowances. Therefore, the Contractor must include in their services the ability to apply cash equivalent financial assurance payments to such invoices. In cases where a cash equivalent assurance payment is applied to an invoice, the Contractor will, as applicable, invoice the relevant participant for any balance due or refund overpayment to the participant.*

- 1. Please clarify how there could be a balance due, given that financial assurance is posted prior to the auction/reserve sale events.**

A12. A balance due is an unlikely event but it may be required for exceptions such as administrative errors.

Q13. Referencing Page 13 of RFP No. 10-109: *After each auction/reserve sale is completed and the proceeds have been distributed, the Contractor will return financial assurance payments to their respective bidders/reserve sale participants. Some acceptable forms of financial assurance may not be considered acceptable forms of payment for ARB's final invoice to successful participants (i.e., letters of credit or surety bonds), and will be returned, by Contractor, to participants.*

- 1. Please clarify how there could be some acceptable forms of financial assurance that may not be considered acceptable forms of payment for ARB's final invoice to successful participants. If these bidders are invalidated post-auction what is communicated to the auction agent? Will the auction results need to be re-calculated?**

A13. As provided in the RFP, the Contractor will work with ARB to finalize the list of acceptable mechanisms for payment guarantees. Acceptable mechanisms are provided in the current version of the regulation, which is available at: <http://www.arb.ca.gov/regact/2010/capandtrade10/ctfro.pdf>. In the event bidders are invalidated, ARB will communicate to the auction agent the invalidated auction results for correction. If the ARB invalidates results of the auction or invalidates some of the bidders post auction, the auction provider would need to recalculate results.

Q14. Referencing Page 29 of RFP No. 10-109: *ARB's budget for the proposed contract is limited to \$500,000, with the option for two (2), one (1) year extensions at the sole discretion of ARB. Extensions of the contract do not increase the contract budget limit. The cost detail must budget for all tasks listed in the RFP and all cost for a minimum one year extension including all tasks that would be required to be conducted in additional years.*

- 1. Is the \$500,000 contract limit for the duration of the contract (up to 24 months)? If ARB decides to exercise the one year extensions, does contract limit increase? If the \$500,000 contract limit includes up to two, one year extensions, this would suggest that ARB expects the**

contract to be limited to \$500,000 for up to four years. Please confirm.

- 2. Can fees be broken into main two components: 1) one-time development charges and 2) annual per transaction charges?**

A14.1. The total budgeted amount of the contract is \$500,000 for the 24 month duration of the contract. The one year extension language has been removed from the RFP.

A14.2. The proposed costs should be broken down in the Work Plan and Work Schedule of the RFP and can be presented as one-time and recurring costs. A revised Sample Table for Cost Proposal is provided in the RFP to reflect this amendment. The RFP has been amended to clarify this requirement by adding the text provided below.

Q15. Referencing Page 41 of RFP No. 10-109: [F. Standard Conditions of Service, Paragraph 3] *The State does not accept alternate Agreement language from a prospective contractor. A proposal with such language will be considered a counter proposal and will be rejected. The State's General Terms and Conditions (GTC) are not negotiable.*

- 1. [It is very important to us that all parties have a full and open understanding of expectations in all aspects of our client relationships. Therefore, it is important that we raise this question with you now.] Although our legal counsel is continuing their review of the RFP and the proposed General Terms and Conditions, they were able to determine that we could not accept some of the terms as stated and accordingly would need to amend the language to something that would be agreeable with both parties. What is the likelihood that our revisions would be considered?**

A15. The State's General Terms and Conditions (GTC 610) are terms and conditions that are required by California's State contracting laws and established by our control agency, Department of General Services. These terms and conditions cannot be revised.