



Matthew Rodriguez
Secretary for
Environmental Protection

Air Resources Board

Mary D. Nichols, Chairman
1001 I Street • P.O. Box 2815
Sacramento, California 95812 • www.arb.ca.gov



Edmund G. Brown Jr.
Governor

Notice to Prospective Proposers

Request for Proposal RFP No. 10-126

“Cap-and-Trade Market Monitor”

November 8, 2011

ARB is issuing this notice to post Questions and Answers to the Cap-and-Trade Market Monitor Request for Proposal (RFP). This RFP was originally issued as RFP 10-111. The questions and responses in this notice are from the bidders' conference held on September 20, 2011 for RFP 10-111, and the 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 10-126, 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.

Air Resources Board
ASD- Contract Services Section
Contact: Sue Bayoneta
Phone: (916) 322-2208
Email: sbayonet@arb.ca.gov

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. 10-126

Cap-and-Trade Market Monitor Follow-up Questions & Answers

Q1. On page 9 of 76, in the second line from the bottom of the page, it references “February 15, 2011”. I’m assuming this should be 2012?

A1. ARB will present the auction and reserve sale process and procedures to the Contractor for review no later than February 15, 2012.

Q2. On page 22 of 26, item F5, the URL www.dgs.ca.gov/contracts -- the link does not work. Is there an update to that contracts page? Should we use the following:

<http://www.dgs.ca.gov/pd/Programs/OSDS/GetCertified.aspx>

A2. Yes, the website has changed for contractor General Terms and Conditions (GTCs) and Contractor Certification Clauses (CCCs). Please review the terms and conditions at:

<http://www.dgs.ca.gov/Default.aspx?alias=www.dgs.ca.gov/ols>.

Q3. On page 23 of 76 – same issue – the URL <http://kepler.ss.ca.gov/list.html> results in an error. Is there an update to the appropriate web page?

A3. The corrected website is below and has been amended in the RFP. **<http://kepler.sos.ca.gov/>**

Q4. On page 23, at the top of the page, the RFP says “Proposer must own a legitimate business and be registered in the State of California as such and to operate said business in the State.” My firm is located in Pennsylvania. Does the quoted requirement only mean that my firm has to register with the Secretary of State of California to be certified to do business in California? Would I find the certification materials on the Secretary of State’s website?

A4. If you own a legitimate business in the United States (U.S) and wish to do business in California, you do not have to be registered with the California Secretary of State. This is a requirement of domestic and foreign companies (incorporated outside the U.S.). However, if you are a corporation or a limited

liability corporation (LLC) in the U.S., the company must be in good standing in the state that your business is headquartered in order to do business in California. Evidence of good standing will be verified.

Q5. There is also RFP 10-110 for “Cap and Trade Market Monitor Trainer” that was issued on the same day as 10-111. We are very interested in pursuing RFP 10-111, but we may also be interested in partnering with another firm to deliver 10-110. However, the RFP disqualifies the awardee of RFP-10-111 from participating in 10-110. Would we be able to participate in both RFP competitions, and then withdraw from 10-110 if we are awarded 10-111? I wouldn’t want to be disqualified from 10-111 (Cap and Trade Market Monitor) for submitting a proposal for 10-110.

A5. The Contractor chosen to provide the services described in this RFP will not be awarded any additional contract. There is no requirement in the RFP that disqualifies the proposer from submitting bids for both the Market Monitor and Market Monitor Trainer RFPs.

Q6. On page 7, under the Scope of Work for “Prepare a Market Monitoring Plan”: will the “publically and commercially available data sources” be gathered by the ARB, or should the Market Monitor expect to include a cost item in the proposal to collect or purchase that data?

A6. ARB will not gather publically and commercially available data sources. Preparing a Market Monitoring Plan is part of the required services for the Market Monitor and requires the Contractor to gather publically and commercially available data resources. There are no specific requirements on how this data is obtained; if a proposal includes the purchase of data then the cost detail must budget for these expenses.

Q7. On page 11, under item 4. “Monitor Allowance Holdings and Transfer Activity”, bullet 3: the market monitor is supposed to be capable of incorporating data “as frequently as daily”. Does this mean that the Market Monitor is expected to have a dedicated resource focusing on this market on a daily basis, or could an automated data process fulfill this requirement? It’s not clear what this expectation is.

A7. There are no specific requirements in the RFP on how the requirement to be capable of incorporating data “as frequently as daily” is to be accomplished. There are no specific expectations regarding dedicated resources or an automated process.

Q8. On page 11, under item 5, "Prepare Reports", in the third paragraph, the requirement is "Additional information such as reporting communications issues, security breaches, or other problems with the auction platform must be included." Question: will the Market Monitor be allowed to have a resource co-located with the Auction Administrator to observe these issues in real time, or is it expected that this information would be discerned after the fact by reviewing Auction Administrator communications records, or based on being informed by the administrator of any issues?

A8. The Market Monitor must review the market activity on an ongoing basis, which would require close coordination with the Auction and Reserve Sale Operator. There are no specific requirements or expectations on how this will be accomplished. As provided in the RFP, the Contractor must develop a monitoring plan that includes a process to coordinate with an ARB designated Auction and Reserve Sale Operator and Financial Services for Auction and Reserve Sale Contractor.

Q9. On page 20, in item D-3-a, it says that the sealed package should contain the original and 5 copies. Since there is also a requirement to deliver the document in French, should not the requirement be 2 originals (1 English and 1 French) and 6 copies (5 English, 1 French), as described in item D-1?

A9. As provided in the RFP, the original proposal must contain one (1) version in English and one (1) version in French, both marked "ORIGINAL COPY." The proposer must also submit five (5) English copies of the proposal and one (1) copy of the proposal in French. (There will be six (6) English copies total, one original plus five (5) copies; and there will (2) French copies total, one original plus one (1) copy).

Q10. What is the correct delivery address? There are different delivery addresses on pages 1 and 21 of the RFP.

A10. Please submit your proposals to the physical ARB address listed below.

Air Resources Board
ASD - Contract Services Section
ATTN: Sue Bayoneta
1001 I Street, 20th floor
Sacramento, CA 95814

Q11. On Page 23, in the first sentence, the RFP states “Proposer must own a legitimate business and be registered in the State of California as such and to operate said business in the State.” Please define what “operate said business in the State” means. Does this require establishment of an office in the State? California revenues prior to award of the contract?

A11a. If you own a legitimate business in California, then a California business license is required and must be registered in the appropriate county.

A11b. Doing business with the State of California does not require establishment of an office in the State, nor California revenues prior to award of the contract.

Q12. General question about the Market Monitoring function: Does the Market Monitor have the authority or the backing of State or Federal authorities to compel participants to provide information like an RTO market monitor?

A12. The Market Monitor does not have authority to compel market participants to provide information.

Q13. Will the market be operating under federal commodity trading law and regulations? If so will the ARB be cooperating with and relying on the CFTC or SEC for monitoring and enforcement actions?

A13. Allowance transactions within the cap-and-trade market would be subject to federal commodity trading law to the extent that such federal law is applicable and duly authorized. Where appropriate, ARB expects to cooperate with federal agencies such as CFTC.

Q14. Will the market be operating under the Federal Power Act since it includes instruments that may trade in the bulk power markets? If so will the ARB be relying on FERC as an enforcing agency?

A14. California’s cap-and-trade market will not be operating under the Federal Power Act and thus will not be relying on FERC as an enforcement agency.

Q15. Does California law have provisions for enforcement in this type of market? Does the ARB have specific legal authority for enforcement under state law in this market?

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A15. The enforcement provisions are contained in subarticle 15 of the proposed cap-and-trade regulation and relevant authority is cited therein. Proposed Cal. Code Regs. tit. 17, §§ 96010-14.

Q16. Does the SCAQMD have enforcement authority under State law in the RECLAIM market?

A16. ARB's enforcement authority and provisions are contained in subarticle 15 of the cap-and-trade regulation. SCAQMD enforcement authority is separate.

Q17. Given that the envisioned market may be interstate and international with the WCI partners, what are the expected legal enforcement mechanisms for interstate and international transactions?

A17. California expects to use the enforcement provisions contained in subarticle 15 of the proposed California Cap on Greenhouse Gas Emissions and Market-Based Compliance Mechanisms regulation and relevant authority is cited therein. Proposed Cal. Code Regs. tit. 17, §§ 96010-14.

Q18. On page 65 of the RFP, in Exhibit E, a conflict of interest provision is that the contractor may not have a "financial interest in an entity subject to any of the provisions of the MRR or cap-and-trade regulation..." Does this conflict apply only to the firm or does it apply to individuals working for the firm? If the latter, given that the California cap and trade regulation affects almost every large corporation in the U.S. and almost all investment and retirement funds hold a broad range of U.S. corporate equities, what ownership amounts constitutes a potential "conflict" in this situation? If the conflict is absolute, will the winning firm/team be allowed to divest itself of the offending holdings prior to contracting?

A18. A financial interest could include ownership, financial investment or services delivered to a client.

The RFP requirements in Exhibit E, section 10.D apply to the organization. Exhibit E, section 9.E requires that contractor's employees performing work described in the RFP complete and sign Exhibit E, Attachment 1 prior to beginning work under the contract.

Any ownership amount could be considered a potential conflict. However, this provision is not intended to apply to a publicly traded or publicly available mutual fund or other collective investment fund, or a widely held pension or mutual fund,

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provided that the interest holder neither exercises control nor has the ability to exercise control over the financial interests held in the fund.

This provision is not intended to prohibit any entity from submitting a proposal. If needed, the successful bidder will be allowed to divest itself prior to contract award.

Q19. On page 23, the RFP states that “Upon proposal opening, all documents submitted in response to this RFP will become the property of the State of California, and will be regarded as public records under the California Public Records Act (Government Code Section 6250 et seq.) and subject to review by the public. The State cannot prevent the disclosure of public documents.” Is there any way of protecting the confidential pricing information contained in the proposal?

A19. All documents submitted to ARB are considered public documents and available for review including cost proposals.

Q20. We respectfully request that ARB allow Proposers to submit change requests to the State’s proposed GTC-610 contract language to allow broader participation and competition by the vendor community.

A20. 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.

Q21. Monitoring periods - We expect market monitoring to coincide with the auction and the reserve sale periods, what type of monitoring coverage do you expect for the secondary market if any?

A21. ARB expects the Contractor to monitor secondary markets and to incorporate publically or commercially available information on compliance instrument commodity and derivative markets. There are no specific requirements or expectations regarding how this requirement will be accomplished. The Contractor is required to develop a monitoring plan; the methods to fulfill this requirement would be an example of a component that may be included in the monitoring plan.

Q22. Registrant data - We assume that the market monitoring contractor will be able to provide requirements to the auction operator so that the appropriate data can be received for monitoring purposes, is this true?

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A22. As provided in the RFP, the Contractor must develop a monitoring plan that includes a process to coordinate with an ARB designated Auction and Reserve Sale Operator and Financial Services for Auction and Reserve Sale Contractor. Additionally, the market monitor is tasked with reviewing auction and reserve sale process and procedures and providing recommendations.

Q23. Reports - We assume that by developing the public reports, ARB's Executive Officer or the auction operator will be responsible for sign off and issuance of the public reports under ARB's name, is this true?

A23. ARB must approve all documents and reports developed for public release.

Q24. Investigation - We assume that while the market monitoring contractor support on investigation efforts, ARB will be performing the investigation actions, is this true?

A24. ARB will be responsible for the investigation actions. The Contractor must provide support for ARB staff conducting investigations and provide all relevant sets of transactions and related data when anomalies or suspicious activities are detected, including explanation of the detection methods, records of contact with market participants, and any other data gathered.

Q25. Operating rules - The RFP refers to market operating rules, standards, policies and procedures that must be followed to ensure fair and competitive auctions. When will these rules be finalized? How can these rules be amended?

A25. The rules for the allowance auction are based on the proposed cap-and-trade regulation. Procedures for the auction are developed by the Auction and Reserve Sale Contractor. Draft processes and procedures are due from the Auction and Reserve Sale Contractor by March 1, 2012. Additionally, the market monitor is tasked with reviewing auction and reserve sale process and procedures and providing recommendations.

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