

## NYSERDA

### Express Terms

#### 21 NYCRR Part 507 CO<sub>2</sub> Allowance Auction Program

A new Part 507 is added to read as follows:

##### 507.1: Purpose

The purpose of this part is to provide for the administration and implementation by the New York State Energy Research and Development Authority (“Authority”) or its designee of CO<sub>2</sub> allowance auctions and programs to promote the purposes of the clean energy technology account (“the Account”) as provided by the CO<sub>2</sub> Budget Trading Program at 6 New York Codes, Rules and Regulations (“NYCRR”) Part 242. This part complements the provisions of the CO<sub>2</sub> Budget Trading Program, which was established by the New York State Department of Environmental Conservation to stabilize and then reduce anthropogenic emissions of CO<sub>2</sub>, a greenhouse gas, from CO<sub>2</sub> budget sources in an economically efficient manner.

##### 507.2: Definitions

Part 507 incorporates by reference the definitions established by the Department at 6 NYCRR Part 242. In addition, the following definitions apply:

- (a) Auction Advisory Committee: A committee comprised of the Commissioner of the Department of Environmental Conservation, the President and Chief Executive Officer of the Authority, and the Chairperson of the New York State Public Service Commission, or their respective designees (“the Committee”). The Committee shall advise the Authority on procedures relevant to conducting the CO<sub>2</sub> Allowance Auctions provided for in this Part.

- (b) Authority: the New York State Energy Research and Development Authority.
  
- (c) Authority Contact Person: An employee of the Authority designated to communicate with the public regarding CO<sub>2</sub> Allowance Auctions, as identified in each Notice of CO<sub>2</sub> Allowance Auction.
  
- (d) CO<sub>2</sub> Allowance Auction Website: A website to be established that will contain information regarding the CO<sub>2</sub> Budget Trading Program and auctions to be conducted pursuant to this part.
  
- (e) Control Period: The time periods established by the Department under 6 NYCRR Part 242.
  
- (f) Department: the New York State Department of Environmental Conservation.
  
- (g) Energy Efficiency and Clean Energy Technology Account: A general account to be established by the Authority, into which the Department shall allocate CO<sub>2</sub> Allowances.
  
- (h) Environmental Notice Bulletin: An official Department publication pursuant to Environmental Conservation Law Section 3-0306(4).
  
- (i) Participating State. A state that has established a corresponding regulation as part of the CO<sub>2</sub> Budget Trading Program.

(j) Reserve Price: The minimum acceptable price for each CO<sub>2</sub> allowance in a given auction, to be determined by the Authority in consultation with the Auction Advisory Committee. The Authority will not be obligated to sell any CO<sub>2</sub> allowance unless the corresponding bid meets or exceeds the reserve price.

(k) RGGI: The Regional Greenhouse Gas Initiative which is a cooperative effort to reduce carbon dioxide emissions by Northeastern and Mid-Atlantic states, as well as other states and jurisdictions should such parties elect to participate. RGGI is supported by the Regional Greenhouse Gas Initiative, Inc. (RGGI, Inc.), a corporation formed to provide technical and scientific advisory services to participating states in the development and implementation of the CO<sub>2</sub> Budget Trading Program (or its successor).

#### Part 507.3: Multi-State Auctions

The Authority, in consultation with the Auction Advisory Committee (“the Committee”), shall determine whether to participate in a multi-state CO<sub>2</sub> allowance auction or auctions in coordination with other RGGI Participating States, or to conduct a New York State auction or auctions. In making such determination, the Authority and the Committee shall consider whether: (a) a multi-state auction capability and process is in place for the Participating States, (b) the multi-state auction can provide benefits that meet or exceed the objectives of the auction and purposes of the Account, as described in this Part, and (c) the multi-state auction process would be consistent with the process described in this Part. The Authority will retain control over the proceeds associated with the sale of all of New York’s CO<sub>2</sub> allowances, whether sold in a multi-state or a New York State CO<sub>2</sub> allowance auction.

#### Part 507.4: The Energy Efficiency and Clean Energy Technology Account

(a) the Authority will establish and administer the Account.

(b) the purpose of the Account is to best achieve the emissions reduction goals of the CO<sub>2</sub> Budget Trading Program, as such goals are described at 6 NYCRR Part 242.

(c) the Authority will administer the Account in such a manner that allowances allocated to the Account by the Department from the CO<sub>2</sub> Budget Trading Program base budget will be made available for sale in CO<sub>2</sub> allowance auctions as described in this Part.

(d) the proceeds of the auctions will be placed into a segregated Authority funding account, and shall not be commingled with other Authority funds.

(e) the proceeds of the auctions will be used to promote and implement programs for energy efficiency, renewable or non-carbon emitting technologies, and innovative carbon emissions abatement technologies with significant carbon reduction potential, and for reasonable administrative costs incurred by the Authority in undertaking the activities described in Part 507 and for administrative costs, auction design and support costs, and program design and support costs associated with the CO<sub>2</sub> Budget Trading Program, whenever incurred.

(f) the Authority shall annually convene an advisory group of stakeholders representing a broad array of energy and environmental interests to advise it on how to best utilize said funds to achieve the goals of the Account.

#### Part 507.5: Implementation of CO<sub>2</sub> Allowance Auctions

(a) The Authority will design, implement and administer CO<sub>2</sub> Allowance Auctions in accordance with the objectives identified in 6 NYCRR Part 242.

(b) Implementation and administrative support functions for any auction conducted pursuant to this Part may be delegated by the Authority to a designee deemed qualified by the Authority to perform such functions, provided that such designee shall perform all such functions under the direction and oversight of the Authority.

#### 507.6 Commencement, Frequency, Quantity of CO<sub>2</sub> Allowance Auctions

- (a) Upon notification from the Department that it has allocated CO<sub>2</sub> allowances into the Account, the Authority shall conduct auctions to sell such allowances pursuant to this part.
- (b) The initial auction shall be conducted at such time and manner as determined by the Authority in consultation with the Committee.
- (c) Frequency. Auctions will be held at least annually; auctions may be held as often as necessary to effectuate the objectives of the CO<sub>2</sub> Budget Trading Program, at the Authority's discretion, in consultation with the Committee.
- (d) Quantity. Prior to the end of each Control Period, CO<sub>2</sub> allowances in a quantity equal to the number of CO<sub>2</sub> allowances allocated to the Account for such Control Period will be made available for sale. The Authority may make available for sale CO<sub>2</sub> allowances for future Control Periods.
- (e) Reserve price. Prior to any auction, upon consultation with the Committee, the Authority may set a binding reserve or minimum price to be accepted for CO<sub>2</sub> allowances in such auction. Such reserve price may or may not be disclosed to the public or to prospective bidders.
- (f) Any CO<sub>2</sub> allowances left unsold in any auction shall be made available for sale in a subsequent auction or auctions, in quantities and in a manner which shall be determined by the Authority in consultation with the Committee.

#### 507.7 Auction Formats

In conducting auctions, the Authority may employ any of the following auction formats, or an auction format consisting of any or all of the components thereof:

(a) Sealed Bid, Discriminatory Price. A single or multiple round sealed-bid auction in which the bidders may submit multiple bids at different prices. Allowances are allocated to the highest bidders at their own bid prices.

(b) Sealed Bid, Uniform Price. A single or multiple round sealed-bid auction in which bidders may submit multiple bids at different prices; the price paid by all awarded bidders will be uniform.

(c) Ascending price, multiple round. A multiple round auction starting with an opening price with increases each round by predetermined increments. In each round, bidders offer the quantity they are willing to purchase at the posted price. Rounds continue so long as demand exceeds the quantity offered for sale. At the completion of the final round, the Authority may allocate allowances: (i) at the final price to remaining bidders and withhold unsold allowances for a future auction, (ii) at the penultimate price, first to final round bidders and then to bidders in the penultimate round in chronological order of bid during the penultimate round for all remaining allowances, or (iii) according to an alternative mechanism designed to effectuate the objectives of this Part.

(d) Descending price, multiple round. A multi-round auction starting with a high provisional price, which falls in each round by predetermined increments. In each round, the bidder can lock in some purchases at the current provisional price and/or the bidder can wait for the price to fall. The auction rounds cease when the number of allowances locked in is greater than or equal to the quantity of allowances being offered.

#### 507.8: Participant Eligibility

(a) The Authority, in consultation with the Committee, shall determine which categories of eligible bidders as defined at section 507.8(b) will be authorized to submit bids in each auction. Notification of such categories will be included in each Notice of CO<sub>2</sub> Budget Trading Program Auction.

(b) Eligible categories of bidders for an auction may include:

- (1) owners of CO<sub>2</sub> budget units located in New York;
  - (2) owners of CO<sub>2</sub> budget units located outside of New York but within those states that have final CO<sub>2</sub> Budget Training rules in place at the time of the auction and are RGGI Participating States;
  - (3) other market participants including but not limited to owners of fossil fuel-fired generation units located outside of the RGGI Participating States, brokers, environmental groups and financial and investment institutions.
- (c) In order to participate in auctions, otherwise eligible bidders will be required to provide financial security in the form of a bond, cash, certified funds, or an irrevocable stand-by letter of credit, in a form acceptable to the Authority. Bidders' eligibility to bid in any auction may be limited to the level of financial security provided. Financial security may be forfeited to and retained by the Authority in the event the bidder's offer is accepted in a CO<sub>2</sub> Allowance Auction and the bidder fails to tender payment of the full amount when due.
- (d) Bidders may request return of their financial security at any time prior to or following any CO<sub>2</sub> Allowance auction, and the Authority shall return said financial security provided that the Authority has no current or pending claim to such security as a result of a failure of the bidder to comply with these regulations or to pay the full amount of its accepted bid when due.

#### 507.9: Notice of Auctions

- (a) A Notice of CO<sub>2</sub> Allowance Auction ("Notice") shall be published on the CO<sub>2</sub> Allowance Auction Website and the Environmental Notice Bulletin ("ENB") no later than 45 days prior to the date upon which each auction may be conducted. Such Notices may be transmitted electronically to parties requesting such notification provided they have submitted an electronic-mail address to the Authority Contact Person.

(b) Each Notice will provide a specific description of the auction format for each auction, including all auction participation requirements, and shall include but not be limited to information including the date, time and location of the auction, the auction format, the categories of bidders who will be eligible to bid, the number of CO<sub>2</sub> Allowances to be auctioned, the required bid format, instructions as to the pre-qualification application, a standard allowance purchase and sale contract, other pertinent rules of the auction, and identification of an Authority Contact Person for further information.

#### 507.10: Participation Requirements

##### (a) Pre-qualification

(1) Any party wishing to participate in a CO<sub>2</sub> Allowance Auction will be required to open and maintain a compliance or general account pursuant to the provisions in 6 NYCRR 242-6.2.

(2) Auctions will be implemented through a two-step process, consisting of (i) an pre-qualification application step, and (ii) a competitive bidding step. Only those bidders found prequalified through the step one application process will be permitted to submit bid(s) or otherwise participate in bidding in any auction.

(3) As a part of their pre-qualification application, bidders will be required to provide information and documentation relating to bidder's ability and authority to execute bids and honor contractual obligations.

Such documentation may include but may not be limited to:

(i) Information and documentation regarding the corporate identity, ownership, and capital structure of the bidder;

(ii) Audited annual reports and credit reports;

(iii) The identification of any indictment or felony conviction of the bidder, or any member, director, principle, partner or officer of the bidder or any affiliate or related entity;

- (iv) A statement by bidder as to prior findings of non-responsibility with regard to any New York State procurement including findings under Section 139-j of the New York State Finance Law;
- (v) A statement by bidder as to certification under New York State Tax Law Section 5-a.
- (vi) This information must be up-dated and re-filed with the Authority annually commencing on the date such information was initially filed with the Authority.

(4) Any party wishing to participate in a CO<sub>2</sub> Allowance Auction shall submit an original and three copies of a pre-qualification application to the Authority on or before the pre-qualification application deadline date specified in the Notice of CO<sub>2</sub> Allowance Auction, which date shall be no sooner than 15 days following the date of publication of the Notice. Pre-qualification application information and forms shall be made available electronically on the CO<sub>2</sub> Allowance Auction Website.

(5) The Authority will review each pre-qualification application and make determinations as to qualification to submit bids in CO<sub>2</sub> Allowance Auctions. Failure to provide any information required by the Notice may result in the pre-qualification application being declared incomplete or otherwise deficient. All prospective bidders will be notified in writing of such determinations no later than 15 days prior to the date upon which the auction may be conducted. If a pre-qualification application is determined to be incomplete or otherwise deficient, the Authority shall notify the prospective bidder and state the reason therefore. Prospective bidders whose pre-qualification applications have been determined to be incomplete or deficient will be given a reasonable opportunity, and in no event less than 10 business days, to provide additional information and to cure such deficiencies.

(6) Parties found pre-qualified for participation under subsection (4) will be qualified for all subsequent CO<sub>2</sub> Allowance Auctions, and will be eligible to bid in such auctions provided that such party has complied with the financial security requirements of section 507.8, that there has been no material change to the

information provided in the pre-qualification application, and that the applicant is within one of the categories of eligible bidders described in the Notice for such auction. The bidder shall notify the Authority of any material change in the information provided in the pre-qualification application no later than 5 days following the end of the month during which such material change occurred. The notice shall state the date the change occurred and describe the change in sufficient detail to enable the Authority to determine if a change in the qualification of the bidder to participate in future auctions is warranted.

(7) The Authority may suspend or revoke its approval of a pre-qualification application if the bidder fails to comply with this Part 507 and or the provisions of 6 NYCRR Part 242.

(b) Bid Submittal Instructions. All bids shall be in a form prescribed by the Authority, which shall be made available electronically on the CO<sub>2</sub> Allowance Auction Website, as appropriate. All bids submitted will be considered binding offers for the purchase of allowances under the rules of the auction.

(c) If the Authority determines that a bidder has provided false or misleading information, or has withheld pertinent information in its pre-qualification application, or has otherwise failed to comply with any material provision of Part 507, the bidder may be prohibited from participating in any future CO<sub>2</sub> Allowance Auctions.

507.11: Audit and Certification

The Authority will employ a certified public accounting firm to observe the conduct and outcome of each auction and to issue a report to the Auction Advisory Committee in accordance with professional auditing standards.

#### 507.12: Transfer of CO<sub>2</sub> Allowances

Upon receipt and approval by the Auction Advisory Committee of the report provided for under Subpart 507.11 and upon payment in full by the successful bidder to the Authority, the Authority shall transfer or have transferred the corresponding CO<sub>2</sub> allowances from the energy efficiency clean energy technology account to the successful bidder's compliance or general account.

#### 507.13 Publication of Results

The Authority reserves the right to publish the winning bids along with the correlating dollar amounts of such bids on the CO<sub>2</sub> Allowance Auction Website.