



***Appendix G***

***Process for***  
***Protection of Proposal Information***

***For***

***2011 Western Region***  
***Request For Proposals***  
***For***  
***Long-Term***  
***Supply-Side Resources***

Entergy Services, Inc.  
December 9, 2011

## **APPENDIX G PROCESS FOR PROTECTION OF PROPOSAL INFORMATION**

### **SUMMARY**

This Appendix G describes the process that ESI will follow to ensure that information provided by Bidders in response to this RFP is kept confidential and is not improperly disclosed to or used by any employee, consultant, or other representative of ESI or any other Affiliate of ESI.

Additionally, this Appendix G outlines ESI's process for evaluating proposals submitted in response to this RFP to achieve the following:

- the objective and impartial treatment of all Bidders, including Entergy Competitive Affiliates<sup>1</sup> and self-build and/or self-supply projects; and
- compliance with all applicable legal and regulatory requirements, including the applicable Affiliate Rules.

### **OVERVIEW**

This Appendix G details the various mechanisms put in place by ESI to protect the confidentiality of information provided by Bidders in the RFP process and to achieve the additional objectives outlined above. These mechanisms include the following:

1. Use of Independent Monitor (IM);
2. Reliance upon an RFP Administrator and RFP Administration Team;
3. Adherence to protocols for Receipt of Bidder Registration Information;
4. Adherence to procedures for Receipt of Proposal Information and Protection of Confidentiality;
5. Adherence to protocols for the Protection of Market Sensitive Proposal Information; and
6. Compliance with applicable Affiliate Rules.

#### **1. Use of Independent Monitor**

In order to ensure that this RFP is conducted in a fair and impartial manner, ESI has retained the IM in order to (1) oversee the design and implementation of this RFP's solicitation, evaluation, selection, and contract negotiation process to ensure that it will be impartial and

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<sup>1</sup> This Appendix G includes safeguards to ensure that confidential RFP information is not shared with Entergy Competitive Affiliates. As mentioned in Section 1.7 of the Main Body, Entergy Competitive Affiliates are not eligible to participate in this RFP.

The statements contained in this Appendix are made subject to the Reservation of Rights set forth in Appendix D of the RFP and subject to the terms and acknowledgements set forth in the Proposal Submission Agreement..

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objective and (2) provide an objective, third-party perspective concerning ESI's efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder, including no undue preference to designated personnel responsible for developing the detailed construction cost estimates and fully defined project scope and performance data for the self-build option (the "Self-Build Commercial Team"). The role of the IM is described in the Scope of Work Activities.<sup>2</sup> The IM performs specific roles during each of the following phases in the RFP process:

**1.1 Overall RFP Design.** The RFP process has been developed with the advice and oversight of the IM, in an attempt to ensure that the RFP process is designed and implemented in a fair and impartial manner and is consistent with principles associated with a market-based procurement process.

**1.2 Proposal Review.** All submitted proposals will be reviewed and screened by the IM, who will redact certain information from the proposal documents to ensure that information needed for review of the proposals is retained without also providing information from the proposals that would identify the Bidders to persons who do not need to receive that information. The IM also will oversee the segregation of information from the proposals into confidential reports (*e.g.*, a report containing credit-related information only, a report containing only information necessary for the economic evaluation, a report containing fuel information, and redacted special considerations to a proposal and/or responses to due diligence appendices), which will then be made available to the applicable RFP Evaluation Teams, with different teams seeing only those reports that include information they need to see in order to carry out their part of the proposal evaluation. The IM may consult with one or more persons within Entergy's System Planning & Operations organization who is not a member of an Evaluation Team regarding whether proposal information in the "Special Considerations" section may be needed by a particular Evaluation Team. This information segregation process is designed to protect Bidder confidentiality and ensure impartial evaluation of all proposals by the Evaluation Teams. While no process can ensure that the identity of the Bidder remains completely anonymous, subject to the activities of the Viability Assessment Team and the Delivery Analysis Team, the intention of this process is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process. These confidential reports will provide only the information required for the evaluator to perform the specified function, with the name of the Bidder withheld and substituted with a randomly-generated identification number (other than for the credit evaluation process). This process will be completed before any proposal information is provided to the Evaluation Teams.

**1.3 Proposal Submission Process.** The IM will review information submitted by Bidders to determine whether the proposals meet the Preliminary Shortlist Requirements specified in Section 2.3 of the Main Body and to determine whether additional information is needed or appropriate. The IM will oversee receipt of all proposals during the Proposal Submission Period.

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<sup>2</sup> The Scope of Work Activities is posted on the Western RFP Website.

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**1.4 Proposal Evaluation and Selection Process.** The IM will monitor the proposal evaluation and selection process to ensure that the RFP process is objective and impartial and to provide an objective, third-party perspective concerning ESI's efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder, including the Self-Build Commercial Team. In addition, the IM will review the precautions taken to restrict access to information from proposals only to those members of the Evaluation Teams who need to have such information for evaluation purposes, so as to preserve the confidentiality of such information and to ensure an unbiased proposal evaluation process.

**1.5 Oversight of Bidder Contact.** During the period prior to the selection of the Primary Selection List and/or Secondary Selection List, the IM will obtain and review copies of all written communications from the RFP Administrator to Bidders. Such IM review will take place in advance of ESI's issuance of such communications. With respect to contacts with Bidders conducted pursuant to Section 2.5 of this Appendix G, the RFP Administrator will consult with the IM to minimize the dissemination of information that explicitly identifies Bidders to members of the Evaluation Teams that do not need to know such information.

**1.6 Contract Negotiation Process and Due Diligence Process.** After notification of the selection of the Primary Selection List and Secondary Selection List, the IM will monitor all negotiations relating to such awarded or shortlisted proposals. With respect to the Self-Build proposal, if such proposal is selected for award on the Primary Selection List, the IM will monitor and, as it deems appropriate, participate in any discussions between members of the RFP Evaluation Team(s) and the Self-Build Commercial Team. If the Self-Build proposal is selected to the Secondary Selection List, unless and until the Self-Build proposal is selected to the Primary Selection List, the IM shall participate in all discussions between the RFP Evaluation Team(s) and the Self-Build Commercial Team. The IM also may participate in negotiations with Bidders as deemed necessary by the IM.

## **2. Role of the RFP Administration Team**

ESI has designated an RFP Administration Team, which includes an individual who shall serve as the RFP Administrator. The members of the RFP Administration Team shall consist of the RFP Administrator, the Vice President, System Planning, and up to two others who are not members of any Evaluation Team or the Self-Build Commercial Team. Under the supervision of the IM, the RFP Administrator, and where indicated, the RFP Administration Team, will serve in a multi-purpose role that includes, but is not limited to, the following responsibilities:

**2.1 Responsibility as Liaison.** The RFP Administrator will serve as a liaison between all market participants and ESI with regard to RFP-related matters.

**2.2 Responses to Bidder Questions.** The RFP Administration Team will ensure that Bidder questions are addressed, with questions and answers posted on the Western RFP Website, subject to provisions relating to confidentiality as discussed in Section 7.1 of the Main Body.

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**2.3 Distribution of Proposal Information.** The RFP Administration Team will ensure that proposal information is distributed to appropriate members of the RFP Evaluation Teams after review and approval by the IM.

**2.4 Provision of Assistance to IM.** The RFP Administration Team will work directly with the IM with respect to all questions associated with a specific proposal and to assist the IM in an administrative capacity in support of the IM's efforts to ensure appropriate processes and procedures are being followed.

**2.5 Processing of Questions.** Except with respect to activities of the VAT and the DAT with respect to Phase II, in the event that ESI needs to contact a Bidder for purposes of clarifying proposal terms or requesting additional information, ESI will rely on the RFP Administrator to communicate directly with Bidders. The IM will obtain and review copies of all written communications to be issued by ESI to Bidders in advance of ESI's issuance of such communications. Bidders will submit their written responses to the RFP Administrator, who will engage the IM in accordance with Section 1.5 above prior to transmitting the information to the appropriate Evaluation Team.

**2.6 Responsibility for RFP Files.** The RFP Administrator will ensure that all RFP-related files and information are properly organized, stored, and secured so as to protect adequately the confidentiality of information in accordance with the processes and procedures described herein.

### **3. Protocols for Receipt of Bidder Registration Information**

All information submitted to ESI through the Bidder Registration Process will be included in a confidential database accessible only to the IM, the RFP Administration Team, and IT Support. Only the IM and RFP Administration Team review the information received from Bidders and oversee the preparation of reports that transmit some of the information contained in proposals to different members of the RFP Evaluation Teams, as described below.<sup>3</sup>

### **4. Procedures for Receipt of Proposal Information and Protection of Confidentiality**

A key process objective of the RFP process is to ensure that information provided by Bidders in response to this RFP is kept confidential. ESI has designed procedures that its employees, agents, and consultants will be required to follow in conducting the proposal review process and the proposal evaluation process phases of the RFP. These procedures are designed to preserve, to the extent practicable, the confidentiality of any confidential information contained in Bidders' proposals, including, but not limited to, the identities of Bidders (except with respect to the activities of the VAT, CET and DAT) and the proposal prices and other terms and conditions of their proposals. These procedures include the electronic submission of

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<sup>3</sup> Technical personnel responsible for computer systems and information necessarily will have access to the confidential database; however, this access will be solely for the purpose of providing computer-related technical support.

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proposals and the creation and use of data reports for the evaluation of each proposal. These reports are based on information provided to ESI in the proposals submitted by Bidders, with identifying information about Bidder redacted so that different members of the Evaluation Teams receive only the specific limited information that they need to carry out their evaluations.

These procedures are intended to provide reasonable assurance to Bidders that, except as noted below with respect to legal or regulatory requirements, information contained in their proposals will be disclosed only to the relevant members of the Evaluation Teams, and select agents and consultants. Also, these procedures are designed so that this information will be disclosed to members of the Evaluation Teams only to the extent necessary for the sole purpose of resource evaluation and will be disclosed to other agents and consultants only to the extent necessary for them to perform their respective functions in connection with this RFP.

**4.1. Basic Preliminary Protective Measures; Executive Reports.** Immediately after the end of the Proposal Submission Period, each proposal package will be reviewed by the IM, who will redact certain information from the proposal documents prior to giving any information from the proposals to any member of the Evaluation Teams. This information redaction process will be accompanied by an automated process that generates separate data reports, with each report being provided only to those members of the Evaluation Teams who are responsible for evaluating a particular aspect of the proposal response. For example, the member of the VAT responsible for fuel evaluation will receive only information on fuel-related issues, but no non-fuel pricing information. Prior to providing these data reports to the Evaluation Teams, the IM will review the reports to ensure that they do not contain the name, address, telephone number, email, or other pertinent Bidder contact information or other information that otherwise identifies the identity of Bidder. This process will be completed before any proposal information is provided to members of the Evaluation Teams.

#### Phase I Executive Report

Upon completion of the Proposal Submission Process, the IM will prepare an Executive Report, which will communicate the following: (1) the total number of Bidders submitting proposals; (2) the total number of resources for which proposals have been submitted; (3) the number of proposals submitted for each Product category; (4) the total number of resources, proposals, and capacity by area; (5) a high level summary of proposal pricing (first year option prices for PPAs); and (6) any additional information that the recipients of the Executive Report may request and that the IM concurs is appropriate to provide. The Executive Report will be communicated only to the Entergy Operating Committee and to the Group President of Utility Operations and, upon request and with the concurrence of the IM, to other senior executives.

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#### Phase II Executive Report

After Phase I of the RFP is completed and the Entergy Operating Committee has approved the preliminary shortlist of proposals that will move forward for continued evaluation in Phase II of the RFP, the IM will prepare a Phase II Executive Report that will communicate the following for the proposals included on the approved preliminary shortlist: (1) Proposal ID; (2) Resource ID; (3) Bidder names; (4) resource names; (5) Product type; (6) Capacity amount; (7) resource location (by state only); and (8) any additional information that the recipients of the Phase II Executive Report may request and that the IM concurs is appropriate to provide. The Phase II Executive Report will be communicated only to the Entergy Operating Committee and to the Group President of Utility Operations and, upon request and with the concurrence of the IM, to other senior executives.

**4.2 Proposal Data Reports.** ESI has developed reporting software to generate automated proposal data reports that will contain limited proposal data. There are six distinct proposal data reports:

- (i) a report containing information regarding the operational and economic characteristics of the proposal, which report will be provided to members of the EET;
- (ii) report(s) containing the proposal information regarding fuel supply and transportation issues (gas and solid fuel) for each proposal, which report(s) will be provided to designated members of the VAT responsible for the fuel evaluation;
- (iii) a report containing the proposal information for each proposal regarding the location of, and deliverability of power from, Bidder's facility, which report will be provided to members of the DAT;
- (iv) a report containing the proposal information for each proposal regarding applicable information to validate credit credentials, which report will be provided to members of the CET; and
- (v) a report containing technical, environmental, operational and commercial characteristics of the proposal, which report will be provided to members of the VAT responsible for the viability assessment evaluation.

These proposal data reports will provide only the information required by the RFP Evaluation Teams to perform the specified evaluation function for which each team is responsible. The reports described above will exclude data specifically identifying the Bidder (*e.g.*, Bidder company name, Bidder company address and Bidder company contact information, etc.). In addition to these reports, the IM will also redact as necessary Bidder's responses to due diligence appendices (Appendices H, I-1, and I-2) and/or any Special Considerations to a proposal that are deemed important to the evaluation, prior to providing the information to an

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Evaluation Team(s). While no process can ensure that the identity of Bidder remains completely anonymous, subject to the activities of the VAT, CET and DAT, the intention is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process. As described in Section 4.1 above, the IM will review the output of this automated system prior to the distribution of any information to members of the Evaluation Teams. During proposal evaluation, each proposal will be identified by its unique Proposal ID and/or Resource ID.

**4.3 Evaluation Team Reports.** The Evaluation Teams will prepare reports that summarize information from the data reports described above and from the results of analysis of the various proposals. These summary reports will be reviewed by senior advisors and other decision-makers of ESI and the Entergy Operating Companies. In addition, once a proposal has been selected for either the Primary Selection List or the Secondary Selection List, all information relating to such proposal will be provided to the appropriate negotiation team and to appropriate executives and other decision-makers of ESI and the Entergy Operating Companies. With the concurrence of the IM, this additional information also may be made available to the Economic Evaluation Team. ESI reserves the right, in the event of unforeseen circumstances that materially affect the RFP evaluation, with the concurrence of the IM, to disclose proposal information to additional ESI personnel as necessary to address those circumstances. All Entergy personnel and other agents and consultants having access to confidential information as described above will be contractually and/or professionally bound to protect the confidentiality of confidential Bidder information and to use it for no other purpose besides activities related to the RFP process and resource evaluation processes, more generally. Notwithstanding the foregoing, and without limiting Appendix D, ESI and the Entergy Operating Companies disclaim any liability to a Bidder for damages of any kind resulting from disclosure of any Bidder or proposal information.

**4.4 Post-RFP Treatment of Proposals and Related Information.** Proposals or other information or correspondence submitted in response to this RFP will not be returned to Bidders. At the conclusion of the RFP process (including regulatory review of any transaction entered into as a result of this RFP), all proposals will be either destroyed or archived by ESI, subject to the procedures described in this section providing for the treatment of such proposals as confidential and subject to any applicable Affiliate Rules.

**4.5 Certain Permitted Disclosures of Proposal Information.** All information contained in a proposal or otherwise provided by Bidder to ESI in connection with this RFP may be (i) required to be disclosed by ESI or any Entergy Operating Company pursuant to any applicable law, rule, or regulation or in any proceeding or investigation involving ESI or any Entergy Operating Company and (ii) subject to review by one or more of the regulatory bodies, including their staffs, having jurisdiction over ESI or any Entergy Operating Company in connection with any proceeding or investigation involving ESI or any Entergy Operating Company, or by any other Governmental Authority with jurisdiction over ESI or any Entergy Operating Company over any matter related, directly or indirectly, to this RFP, and may be subject to legal discovery or disclosure. By submitting a proposal in response to this RFP,

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Bidder agrees to (a) allow ESI and any Entergy Operating Company to use any of the information contained in any of its proposals or otherwise submitted to ESI in connection with this RFP in filings, pleadings, responses to information requests, testimony, or evidence in any proceeding before or investigation involving any such regulatory body or other Governmental Authority and, without limiting the generality of the foregoing, (b) disclose any of such information when required to do so as described above. In the event such information is to be so disclosed, ESI will use good faith efforts to attempt to obtain from such Governmental Authority (or other Person to whom such disclosure is being made), prior to the disclosure of such information, a confidentiality agreement or protective order or other mechanism to protect the confidentiality of such information and limit its dissemination. ESI can provide and makes no assurance of the outcome of any such attempt. ESI advises Bidders that intervenors have sought access to confidential Bidder information about potential resource acquisitions in prior regulatory proceedings relating to previous ESI requests for proposals or in which one or more of the Entergy Operating Companies have been involved, and similar requests for access could be made in proceedings relating to this RFP.

#### **5. Protocols for the Protection of Market Sensitive Proposal Information**

Because numerous departments and personnel in the ESI organization are involved in the resource planning, asset management/supply procurement, and operations functions, ESI has implemented specific protocols for the protection of proposal information to limit access to specific market sensitive proposal information provided by Bidders in this RFP, including the protocols listed below:

- (i) No proposal information shall ever be disclosed to any Entergy Competitive Affiliate or to members of the Self-Build Commercial Team, except to the extent that such information is made public.
- (ii) Subject to Section 4.2 above, prior to the selection of proposals to the Primary Selection List and Secondary Selection List, no proposal information shall be provided to any person within ESI who is not a member of an RFP Evaluation Team, other than the information that may be provided to senior advisors and decision-makers of ESI and the Entergy Operating Companies in the executive reports provided for in Section 4.1 above.
- (iii) No proposal information shall be provided to any member of the RFP Evaluation Teams prior to the Required Proposal Submission Time or before review and approval by the IM.
- (iv) All files created in connection with the RFP process shall be available only to the approved personnel. Approved personnel will include only the IM, the RFP Administration Team, and those members of the RFP Evaluation Teams with designated access to specific information.

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- (v) ESI management is responsible for communicating to the members of the RFP Evaluation Teams the importance of compliance with these protocols, both at the outset of the RFP process and on a continuing basis.
- (vi) ESI personnel involved with the RFP process shall sign a confidentiality acknowledgement that governs access to and uses of information contained in proposals and proposal documents.

#### **6. Affiliate Rules**

All employees of ESI, any Entergy Operating Company, or any Entergy Competitive Affiliate, currently must adhere to the following Affiliate Rules, as applicable:

- (i) FERC Transmission Standards of Conduct, codified at 18 CFR § 358;
- (ii) FERC Market-Based Rate Affiliate Restrictions, codified at 18 CFR § 35.39;
- (iii) FERC Cross-Subsidization Restrictions on Affiliate Transactions, codified at 18 CFR §§ 35.43-44;
- (iv) Arkansas Affiliate Transaction Rules, as applicable;
- (v) Texas Affiliate Transaction Rules, as applicable;
- (vi) Council for the City of New Orleans Code of Conduct for Entergy New Orleans, Inc.
- (vii) October, 1992 Settlement Agreement between Entergy and the Arkansas Public Service Commission;
- (viii) Appendix 3 to the Louisiana Public Service Commission's May 3, 1993 Order No. U-19904;
- (ix) March 26, 1998 Settlement Agreement between Entergy and the Council for the City of New Orleans;
- (x) April 10, 1998 Settlement Agreement between Entergy and the Mississippi Public Service Commission;
- (xi) October 19, 2000 Gas Settlement Agreement between the Council for the City of New Orleans and Entergy New Orleans, Inc.; and
- (xii) Entergy Corporation Standards of Conduct regarding the relationship between Entergy Corporation's regulated and unregulated subsidiaries.

A link to these Affiliate Rules is posted on the Western RFP Website.

#### **7. Code of Conduct for Self-Build Commercial Team**

The Self-Build Commercial Team will adhere to the provisions of an Acknowledgement of Confidentiality, which will require, among other things, that the members of the Self-Build Commercial Team refrain from participation in the RFP evaluation process.

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