



# *2022 Fall Request for Proposals*

## *Renewable Resources For Entergy Mississippi, LLC*

Entergy Services, LLC

November 17, 2022

## TABLE OF CONTENTS

<b>1. RFP INFORMATION .....</b>	<b>1</b>
1.1. Introduction .....	1
1.2. RFP Documents .....	1
1.3. EML Renewables RFP Website & PowerAdvocate .....	2
1.4. Bid Event Coordinator .....	2
1.5. Independent Monitor .....	3
1.6. Eligible Participants .....	3
1.7. Eligible Technologies .....	3
1.8. Eligible Resources .....	4
1.9. Scope Summary .....	4
<b>2. PROPOSALS .....</b>	<b>6</b>
2.1. Solar BOT Proposals - High-Level Overview of Select Commercial Terms .....	6
2.2. Solar and Wind PPA Proposals - High-Level Overview of Select Commercial Terms ..	10
2.3. Proposal Development and Special Exceptions .....	12
2.4. Threshold Requirements .....	14
2.5. Interconnection, Deliverability, and Transmission Considerations .....	15
2.5.1. Required Interconnection, Deliverability, and Transmission Service .....	15
2.5.2. Interconnection Service Applications .....	16
2.5.3. Product Deliveries and Financial Settlement .....	17
2.5.4. Market Participant Services .....	17
2.6. PPA Cost Recovery .....	18
2.7. Environmental Considerations .....	18
2.8. Design and Operating Considerations .....	19
2.8.1. BOT Resources .....	19
2.8.2. PPA Resources .....	20
2.9. Supplier Diversity .....	21
<b>3. SELF-BUILD OPTION .....</b>	<b>21</b>
<b>4. RFP PROCESSES .....</b>	<b>22</b>
4.1. RFP Schedule Overview .....	22
4.2. Bidders Conference .....	22
4.3. Bidder Registration Process .....	23
4.4. Proposal Submission Fees .....	24

4.5. Proposal Submission.....	25
5. PROPOSAL EVALUATION .....	26
6. MISCELLANEOUS RFP MATTERS .....	28
6.1. Authorized Bidder Communications Channels.....	28
6.2. Posting Questions.....	28
6.3. Contact with MISO .....	28
6.4. Affiliate Rules and Codes of Conduct.....	29
6.5. Multi-Person Bids.....	29
6.6. Reservation of Rights and Other RFP Protections.....	29
6.7. No Warranties or Liabilities .....	31
6.8. Acceptance of Proposals.....	31
6.9. Bidder Costs and Expenses .....	31
6.10. Sale of Bidder or Project.....	32

## APPENDICES

Appendices	Title
Appendix A	Glossary
Appendix B	Model BOT Agreements and Scope Books Appendix B-1 Model Solar BOT Agreement Appendix B-2 Solar Scope Book
Appendix C	Model PPAs Appendix C-1 Model Solar PPA Appendix C-2 Model Wind PPA
Appendix D	Preliminary Due Diligence and Attachments Appendix D-1 Preliminary Due Diligence List (Developmental Solar Resources) Appendix D-2 Preliminary Due Diligence List (Developmental Wind Resources) Attachment A-1 – Solar Cost Components Attachment A-2 – Wind Cost Components Attachment B – Hourly Profiles Attachment C-1 – Solar MFS Bidder Questions Attachment C-2 – Wind MFS Bidder Questions Attachment D – Annual Energy Quantities Attachment E – Accounting Certification of Agreement Attachment F – Form of Credit Certification
Appendix E	Credit and Collateral Requirements
Appendix F	Supplier Diversity

## 1. RFP INFORMATION

### 1.1. Introduction

Entergy Mississippi, LLC, hereby issues this 2022 EML Fall Renewables RFP. Through this RFP, EML seeks to procure, subject to the terms set forth in this RFP, up to 500 MW<sub>AC</sub> of energy, Capacity, Capacity-Related Benefits (such as ZRCs and capacity credits), Other Electric Products, and Environmental Attributes from eligible renewable generation resources. (EML reserves the right to acquire more or less than the stated amount.) A summary of the scope of this RFP and the threshold requirements for a conforming proposal in this RFP are provided in the Scope Summary (Section 1.9) and the Threshold Requirements section (Section 2.4). Entergy Regulated Affiliates and Entergy Competitive Affiliates are not precluded from submitting proposals, including a Self-Build Option. Solar PV or Wind resources selected by EML in the 2022 Request for Proposals for Renewable Resources for EML issued on January 25, 2022, will be considered an ineligible resource and any proposal based on such resource will be non-conforming and eliminated from consideration in the RFP.

### 1.2. RFP Documents

This RFP consists of a Main Body and nine (9) appendices. Among other things, the Main Body (i) offers general information about this RFP, (ii) describes the resource and transaction structures that EML seeks from Bidders and high-level considerations for Bidders, (iii) includes a milestone schedule for this RFP, (iv) sets forth terms governing the preparation and submission of proposals and RFP-related Bidder communications with ESL and the IM, and (v) provides a high-level overview of the proposal evaluation and selection process.

Appendix A to this RFP is a glossary of certain capitalized terms used in this RFP. A capitalized term used but not defined in the Main Body will have the meaning ascribed to such term in Appendix A, except to the extent the context otherwise requires.

Appendix B-1 is the form acquisition agreement (excluding most exhibits and all schedules) for the build--own--transfer (“**BOT**”) type of asset purchase transaction sought by this RFP for Solar PV resources (“**Model Solar BOT Agreement**”). The Model Solar BOT Agreement will be the agreement used for any solar BOT asset purchase arrangement arising out of this RFP (see Section 2.1 below).

Appendix B-2 is a draft of the scope book for Solar PV resources (“**Solar BOT Scope Book**”) that will be included as an exhibit to the Solar PV BOT agreement. The Solar BOT Scope Book addresses, among other things, the scope of the Seller’s engineering, procurement, and construction (“**EPC**”) work on the proposed Solar PV project, the project execution plan, EPC standards and processes to be followed (including for collector substations and high voltage transmission), and other technical information about the project.

Appendix C-1 is the form power purchase agreement (“**PPA**”) for the Solar PV power purchase transactions sought by this RFP (“**Model Solar PPA**”). The Model Solar PPA will be the agreement used for any Solar PV power purchase arrangement arising out of this RFP.

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

Appendix C-2 is the form PPA for the Wind power purchase transactions sought by this RFP (“**Model Wind PPA**” and together with the Model Solar PPA, the “**Model PPAs**”). The Model Wind PPA will be the agreement used for any Wind power purchase arrangement arising out of this RFP.

Appendices D-1 and D-2 contain questions and requests for material and other information that each Bidder will be required to answer or provide as part of its Proposal Package.

Appendix E generally describes the credit support requirements for any transaction arising out of this RFP and other credit-related features that will be material to any Bidder proposal.

Appendix F includes information regarding local and diversity suppliers of goods and services to projects proposed in this RFP.

Bidders are responsible for familiarizing themselves with and being fully aware of the terms of this RFP, including the terms of each Appendix and any clarifications, elaborations, or adjustments to RFP terms communicated to Bidders. Bidders are advised that from time-to-time EML may clarify, elaborate upon, or adjust the terms of this RFP in response to developments that may affect or require attention in this RFP, EML perceptions or concerns that terms in this RFP may be incomplete, inaccurate, or ambiguous or may fail to adequately address risks, rights, obligations, or other matters, questions or comments from Bidders, or for other reasons.

### **1.3. EML Renewables RFP Website & PowerAdvocate**

The official website for this RFP (the “**2022 EML Fall Renewables RFP Website**”) can be found at <https://spofossil.energy.com/ENTRFP/SEND/2022EMLFallRenewablesRFP/Index.htm>. This RFP and related material and information are posted on the 2022 EML Fall Renewables RFP Website and available for review. The 2022 EML Fall Renewables RFP Website will be updated from time-to-time with additional material and information concerning this RFP. Interested Persons are responsible for monitoring the 2022 EML Fall Renewables RFP Website to ensure the timely receipt of information about this RFP.

PowerAdvocate will be utilized for the administration of RFP documents and Bidder communications for this RFP. Bidder will be invited to join and use the PowerAdvocate site to submit proposals and documents and communicate with ESL upon the completion of the Bidder Registration Process and to gain access to RFP documents.

### **1.4. Bid Event Coordinator**

EML has engaged ESL to assist with the administration of this RFP and has designated an ESL employee to serve as the “**Bid Event Coordinator**”. The Bid Event Coordinator’s responsibilities include (i) acting as a liaison between the participants in this RFP and EML on all RFP-related matters, (ii) ensuring that Bidder RFP-related questions ESL receives during the pendency of this RFP are addressed in an appropriate manner, (iii) receiving, recording, and maintaining Bidder RFP proposals, (iv) working with the Independent Monitor throughout this RFP, and (v) managing other administrative matters relating to this RFP. The Bid Event Coordinator is also a member of the “**RFP Administration Team**”.

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The Bid Event Coordinator for this RFP is Mr. Brandon Meyer, who can be contacted prior to Bidder's completion of the Bidder Registration Process via email at [EMLRenewablesRFP@entergy.com](mailto:EMLRenewablesRFP@entergy.com) and afterwards through PowerAdvocate. PowerAdvocate information will be provided to Bidders when or shortly after Bidder completes the Bidder Registration Process.

### **1.5. Independent Monitor**

EML has retained Mr. Keith Oliver of Merrimack Energy Group, Inc. to act as the independent monitor for this RFP. The role of the IM is defined in the "Scope of Work Activities" for the IM, which is available to Bidders upon request. In summary, the IM (i) oversees all aspects of this RFP to ensure that its design, implementation, evaluation, selection, and contract negotiation processes are impartial and objective and (ii) provides an objective, third-party perspective on EML's efforts to ensure that all proposals are treated consistently and without undue preference to any Bidder. Bidders wishing to communicate with Mr. Oliver may reach him by email at [MerrimackIM@merrimackenergy.com](mailto:MerrimackIM@merrimackenergy.com) or by phone at (339) 927-3738.

### **1.6. Eligible Participants**

EML invites proposals from all potential suppliers capable of meeting the conditions and requirements identified in this RFP ("**Eligible Participants**"). Eligible Participants that do not comply with the terms, conditions, and requirements of this RFP may be determined by EML, after consultation with the IM, to be ineligible to continue to participate in this RFP. Proposals from Qualifying Facilities will not be provided any preference in this RFP solely by virtue of their QF status. Entergy Competitive Affiliates and Entergy Regulated Affiliates are not precluded from submitting proposals in this RFP. A "Bidder" in this RFP may consist of more than one Person. For additional information concerning multi-Person Bidders, please see Section 6.5 below.

### **1.7. Eligible Technologies**

Generation technologies permitted for proposals responsive to this RFP ("**Eligible Technologies**") are limited to: (i) for PPA transactions, Solar PV and Wind technologies, and (ii) with respect to BOT transactions Solar PV technologies only. Bidders may offer a commercially proven lithium-ion battery energy storage technology as a separately priced option for the Solar PV or Wind facility, but may not condition selection of the Solar PV or Wind facility proposal on the selection of a battery energy storage component. The battery energy storage system ("**BESS**") can be either AC or DC coupled with a minimum four (4)-hour discharge and have twenty-four (24) hours a day, seven (7) days a week charging and discharging capability. Technologies that do not meet the requirements of this RFP, including combustion turbine, steam, gas-fired, coal-fired, nuclear, demand-side management, distributed generation, transmission line, energy efficiency, biomass, hydroelectric, and any other technology not listed above as eligible for this RFP or that fails to meet the requirements of this RFP, are not Eligible Technologies.

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## 1.8. Eligible Resources

Generation resources that (i) produce or will produce their energy output from an Eligible Technology, (ii) will have a minimum Guaranteed Capacity equal to 50 MW<sub>AC</sub>, (iii) will be located within the EML service territory, (iv) either (a) have an executed GIA with MISO and EML or (b) are and remain included in the 2021 MISO DPP Queue or earlier studies, (v) are new-build generation resources, (vi) will interconnect directly to the EML Transmission System, (vii) are single resources, (viii) without limiting the remainder of the remainder of this Section 1.8, are not and will not be part of a system sale or shared facility-type structure or arrangement but instead will be single, standalone resources, (ix) are not resources selected by EML in the 2022 Request for Proposals for Renewable Resources for EML issued on January 25, 2022, and (x) meet the other criteria for participation in this RFP are “**Eligible Resources**”. No Bidder may condition the effectiveness of any proposal it submits into this RFP on EML’s selection of one or more other proposals from Bidder or any Affiliate of the Bidder, excluding permitted proposals for a BESS, which, by the terms of this RFP, are conditioned on the selection of the Solar PV or Wind proposal to which they relate.

## 1.9. Scope Summary

The following tables provide a high-level summary of key scoping items for this RFP.

**Table 1. Scoping Summary**

Scope Item	RFP Scope Description
<b>Solicited Resource Types</b> (Sections 1.7, 2.4)	<i>BOT transactions:</i> Solar PV <i>PPA transactions:</i> Wind or Solar PV (see battery options below)
<b>Solicited Transaction Types</b> (Sections 2.1, 2.2; 2.4 Appendices B and C)	<i>BOT transaction:</i> Build-own-transfer asset acquisition of the proposed Facility and related assets, where Seller assumes development, construction, and financing risk until Closing. <i>PPA transaction:</i> Power purchase for Contract Energy, Contract Capacity, Capacity-Related Benefits, Other Electric Products, and Environmental Attributes from the Facility. <i>Self-build transaction:</i> EML may submit one or more self-build proposals for new-build Solar PV resources.
<b>Required Resource Location</b> (Sections 1.8)	The resource is required to interconnect directly to the EML Transmission System and be located within the EML service territory.

(Table Continued on Next Page)

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**Table 1. Scoping Summary (Continued)**

<b>Scope Item</b>	<b>RFP Scope Description</b>
<b>PPA Delivery Term</b>	A minimum of ten (10) consecutive years and a maximum of twenty (20) consecutive years, with an interest in fifteen (15)-year or shorter terms.
<b>Required Interconnection Status, Transmission and Deliverability</b> (Section 1.8, 2.5)	The proposed Facility must have an executed GIA with MISO and EML or be included in the 2021 MISO DPP Queue or earlier studies.
<b>Solicited Capacity</b> (Sections 1.1, 1.8, 2.1, 2.2)	<p><i>Total Capacity sought in this RFP:</i> Up to 500 MW<sub>AC</sub> with the following RFP selection targets by transaction type:</p> <ul style="list-style-type: none"> <li>• <i>BOT transactions:</i> Up to 500 MW with a Substantial Completion Date(s) no later than May 31, 2027, with any proposal be for the sale of the entire Facility.</li> <li>• <i>PPA transactions:</i> Up to 500 MW with a delivery commencement date(s) no later than May 31, 2027, with any proposal be for the sale of all products (Capacity, energy, etc.) from the entire Facility.</li> </ul> <p>Minimum Guaranteed Capacity for proposed resources: 50 MW.</p>
<b>Substantial Completion/ Guaranteed Commercial Operation Date</b> (Sections 1.1, 2.1, 2.2, 2.4)	<p><i>BOT transactions:</i> The guaranteed Substantial Completion date must be no later than May 31, 2027.</p> <p><i>PPA transactions:</i> The Guaranteed Commercial Operation Date must be no later than May 31, 2027.</p> <p>Each of the guaranteed Substantial Completion date (BOT) and the Guaranteed Commercial Operation Date (PPA) will be subject to certain exceptions for certain delays, including force majeure (subject to an extension cap and limitations)<sup>1</sup>.</p>

(Table Continued on Next Page)

<sup>1</sup> Please see “Tax Credits” and “Change Orders” in Section 2.1 of the Main Body (addressing BOT transactions) for additional information on the guaranteed substantial completion date deadline. The Model PPAs do not contemplate change orders but do include similar provisions for extensions to the guaranteed commercial operation date due to force majeure delays affecting Seller’s work or certain Seller elections.

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**Table 1. Scoping Summary (Continued)**

<b>PPA Delivery Term</b> (Sections 2.2, 2.4)	A minimum of ten (10) consecutive years and a maximum of twenty (20) consecutive years, with an interest in fifteen (15)-year or shorter terms.  Bidders may propose a PPA that includes a buyer purchase option at the expiration of the Delivery Term and/or at interim milestones specified in the proposal.
<b>Self-Build Option</b> (Section 3)	Self-build options are not precluded
<b>Entergy Competitive Affiliates</b> (Section 1.7)	Entergy Regulated Affiliates and Entergy Competitive Affiliates are not precluded from submitting proposals

**Table 2. Optional BESS**

<b>Proposal Options</b>	<b>Description</b>
<b>Battery Energy Storage System (BESS)</b>	<ul style="list-style-type: none"> <li>• A BESS may be offered as a separately priced option for both BOT and PPA transactions</li> <li>• Any BESS offered can be either AC or DC coupled with a minimum four (4)-hour discharge and have twenty-four (24) hours a day, seven (7) days a week charging and discharging capability</li> <li>• If a proposal includes a BESS option, Bidder may not condition EML's selection of the proposal for its selection of the BESS option</li> </ul>

The preceding tables omit many items that are or could be considered key scoping items, including terms related to items described in Section 2 below. The scope and terms of this RFP are established by the terms set forth in the entirety of the documents, materials, and information provided to Bidders in this RFP, including, without limitation, the model BOT agreement and PPAs, the Solar Scope Book (BOT transactions only), and Appendix E. Tables 1 and 2 together are not, and should not be construed as, a substitute for the other provisions of this RFP.

## **2. PROPOSALS**

### **2.1. Solar BOT Proposals - High-Level Overview of Select Commercial Terms**

The following highlights, in summary form, a few basic commercial terms and considerations for the BOT resources sought by this RFP. Details of the commercial terms of BOT transactions and considerations for BOT proposals and potential BOT transactions under this RFP can be found in

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Appendix B-1 (Model Solar BOT Agreement), Appendix B-2 (Model Solar Scope Book), and Appendix E (Credit/Collateral Requirements), and elsewhere in this RFP.

- ***BOT Structure.*** With the BOT structure, Seller would agree to develop, design, build, commission, test, and sell the proposed Solar PV project to Buyer for a pre-agreed purchase price. Buyer would buy the project and related assets from Seller at the consummation of the purchase (“**Closing**”)<sup>2</sup>, after each of the Closing conditions has been fulfilled or waived, including the achievement of mechanical completion of the project. Prior to the Closing, Seller, as the project owner, would own and have care, custody, and control of the project, including the project site, and would bear construction, financing, and project completion risk, as well as risk of loss for the project. Seller’s obligation to commence construction would be conditioned on the satisfaction of several Buyer FNTF conditions, including Buyer’s receipt of regulatory approvals on terms acceptable to Buyer in its sole discretion. After the Closing, Seller would be required to continue to construct, test, and commission the project and perform related work in accordance with the terms of the BOT agreement through Final Completion. Care, custody, and control of the project, which Buyer will delegate back to Seller at the Closing, would transfer to Buyer shortly after Substantial Completion, at the Substantial Completion Payment Date. The Model Solar BOT Agreement is essentially a hybrid contract incorporating EPC principles (roughly, Articles 2-15) and generation asset acquisition terms (roughly, Articles 16-24). Under certain limited circumstances, EML will consider structuring the BOT transaction as a special purpose entity acquisition transaction instead of as an asset purchase. The risk allocations contemplated by the Model Solar BOT Agreement will remain essentially unchanged should EML agree to proceed with an equity BOT purchase.
- ***Purchase Price.*** The purchase price for the Solar PV BOT project and the other project assets will be payable by Buyer to Seller at three major milestones: the Closing, the Substantial Completion Payment Date, and Final Completion. The portion of the purchase price payable at the Closing will depend on whether Seller will finance the project with internal or unaffiliated third-party funding. If financed with internal funding, the payment will be approximately 20% of the purchase price or, if Bidder elected in the applicable proposal to be paid a greater percentage of the purchase price at the Closing, the agreed percentage, up to 80%. (EML prefers a lower payment at the Closing.) If financed with external funding, the payment will be 80% of the purchase price, except as provided in Appendix F). The balance of the purchase price, less a holdback securing the completion of agreed punch list items, will be payable at the Substantial Completion Payment Date. Assuming Seller’s performance of the remaining work, the punch list holdback will be paid at Final Completion. There will be no progress, mobilization, or other comparable payments of the purchase price.

The BOT purchase price Bidders offer in this RFP must be an “all-in” purchase price. In developing the purchase price, Bidders should take into account, among other things, development, study, engineering, procurement, permitting, design, financing, construction, installation, disposal, commissioning, testing, interim operation, maintenance, repair,

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<sup>2</sup> The effect of the Inflation Reduction Act on the Closing and purchase price payment structure is under EML review. Bidders will be notified in the event Buyer intends to change the timing of the Closing and the Purchase Price payment.

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replacement, interconnection, deliverability, transmission (including, without limitation, required upgrades), real property, reporting, access, regulatory, contracting, environmental, insurance (including, without limitation, the builder's all risk policy required by the RFP), taxes (including, without limitation, transfer, sales, and use taxes and the costs of compliance with requirements of the Inflation Reduction Act for the project's entitlement to tax credits thereunder), Closing, asset transfer, transaction, contingency, warranty, credit, and all other Seller project costs and risks and Seller's required return on investment considering the terms set forth in this RFP, including, without limitation, the Model Solar BOT Agreement, the Solar Scope Book, Appendix E, and the terms of Bidder's proposal.

Without limiting other RFP rules and requirements (including with respect to battery options), Bidders must express the purchase price in BOT proposals is a single fixed price. Bidder's proposed purchase price should be included in Appendix D, Attachment A-1 (Solar Cost Components).

- *Tax Credits.* Buyer will require at the Closing the exclusive entitlement to and transfer of all rights to applicable ITC or PTC (or any other renewable energy tax credit for which the Facility is or would be eligible after issuance of this RFP), depreciation, and similar tax benefits associated with the project (including, if applicable, the BESS). Seller will be required to commit to deliver a project (including, if applicable, the BESS) that (i) either is exempt from<sup>3</sup> or, if the project was not offered as an exempt project, satisfies the labor requirements (i.e., the prevailing wage and apprenticeship requirements) provided for under Section 45, Section 45Y, Section 48, or Section 48E of the Code, and related Treasury regulations, IRS guidance published in rulings, notices, or bulletins, or other rules, regulations, or laws applicable to the proposed project (together, the "**Government Guidance**"), and, if offered, the "domestic content" or "energy community" requirements provided under similar Code sections and related Government Guidance, and (ii) provides the guaranteed ITC percentage or PTC rate (first year in \$/MWh), as applicable, for the project set forth in the proposal. Subject to strictly limited exceptions, Buyer will not bear the risk of a loss of the guaranteed ITC or PTC benefits due to Seller's failure to satisfy the continuous efforts, continuous construction, or labor requirements, as applicable, and if offered, the "domestic content" or "energy community" requirements. Seller's representations and warranties related to ITC and/or PTCs and other tax matters in the Definitive Agreement will be among several uncapped "fundamental" representations and warranties of Seller for purposes of its post-Closing indemnity obligations to Buyer.

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<sup>3</sup> This summary of basic BOT Agreement terms assumes that Bidder/Seller is not claiming an exemption from the labor requirements under the Code (e.g., through Seller's commencement and compliance with the start-of-construction tax rules in effect for Wind or Solar PV facilities prior to the Inflation Reduction Act of 2022 and Government Guidance after the issuance date of this RFP allowing such start-of-construction compliance as a means for the project to obtain a 30% ITC or full rate PTCs in lieu of satisfying the labor requirements). If for a proposed transaction Seller will be relying on an exemption from the labor requirements and Buyer has selected the proposal for contracting, any Definitive Agreement resulting from the proposal will include terms and conditions that support receipt of the ITC or PTCs through the exemption methodology on terms acceptable to Buyer and Seller. Bidders are advised that as of the issuance date of this RFP, the Model Solar BOT Agreement has not been updated to account for the modifications to the Code arising out of the Inflation Reduction Act. Unless EML supplements these form document with updated tax provisions prior to proposal submission, Bidder is required to include in its proposal any material new provisions and to identify any material deviations from the terms of the model contract that would be required and that it proposes to obtain and provide the exemption.

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- *Closing/Mechanical Completion.* The Closing will be required to occur between the time the Facility achieves Mechanical Completion and when it first energizes and delivers power to the interconnected MISO South electric grid. The Closing will be conditioned on the satisfaction or waiver of numerous Closing conditions, including, among others, the delivery of an agreed ITC or PTC tax opinion to Buyer, the transfer to Buyer of clear title to the purchased assets (excepting only permitted encumbrances), the truth and accuracy of Seller representations and warranties, and the provision of necessary credit support.
- *Substantial Completion.* The Model Solar BOT Agreement will include a guaranteed Substantial Completion date (which may be adjusted by change order, as described below). Assuming FNTF occurs, the resource will be required to achieve Substantial Completion by the guaranteed Substantial Completion date. Except as set out below in “Change Orders,” and subject to the footnoted caveats in “Tax Credits” above, the guaranteed Substantial Completion date must be on or before May 31, 2027. Seller will owe liquidated damages to Buyer if the resource has not achieved Substantial Completion by the guaranteed Substantial Completion date. Certain Seller representations and warranties will be required to be true and accurate (or “brought down”) on the Substantial Completion Payment Date. Substantial Completion will be contingent upon numerous Substantial Completion conditions, including satisfactory completion of project performance tests, e.g., capacity and availability tests.
- *Change Orders.* The project and/or project schedule, including the guaranteed Substantial Completion date, may be modified by change orders issued by Buyer in its discretion, due to force majeure preventing Seller’s performance of its work, or due to defined Buyer-caused delays. The project schedule may be extended by force majeure via change order for up to a maximum total of 150 days, with certain exceptions. (The foregoing guaranteed Substantial Completion date discussion is subject to the caveats in “Tax Credits” above.) Any change order for force majeure will be exclusively for project schedule relief; as between Seller and Buyer, Seller will have sole responsibility for any incremental costs arising out of a force majeure affecting its work. Qualifying changes in law occurring after execution of the BOT agreement and affecting Seller’s work will be considered force majeure events and will not give rise to non-force majeure change order rights for Seller. Purchase price increases due to Buyer discretionary change orders may not exceed in the aggregate 7.5% of the purchase price. No purchase price increases due to Buyer discretionary or Buyer-caused delay change orders will be payable to Seller except as part of any Buyer purchase price payment.
- *Warranties.* Seller will be required to obtain project equipment and other warranties with respect to the work, including, without limitation, a project warranty from the prime EPC contractor(s) and equipment warranties from certain equipment suppliers. Some of the required equipment warranties and warranty term lengths are shown in Section 2.8 below. All warranties obtained by Seller prior to the Closing (but not the underlying contracts themselves) will be required to be transferred to Buyer at the Closing. This RFP does not obligate Seller to provide a comprehensive “wrap” warranty of the project work.
- *Credit.* Under the terms of this RFP, Seller will be required, without exception, to post and maintain credit support as provided in the Model Solar BOT Agreement and Appendix E and

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to certify at proposal submission its understanding and acceptance of the core credit support terms. Appendix E includes other essential information concerning the production and disclosure of financial information as part of the Bidder Registration Process and the Proposal Submission Process, the evaluation of credit information and proposals provided in the RFP, parental guaranty requirements, potential liquid credit support offsets, and limitations on Bidder special considerations related to credit terms. For other summary information involving credit, please also see the Seller Parent Guaranty subsection in Section 4.3 below.

- *Interconnection, Deliverability, and Transmission.* Please see Section 2.5 below
- *Buyer Assignment Rights.* Among other assignment rights, Buyer will have the right to assign its rights and obligations under the BOT agreement to an Affiliate of Buyer. In the event of such an assignment, EML will be liable as a guarantor of the assignee's financial obligations under the BOT agreement.
- *Termination.* The BOT agreement will include termination provisions for, among other things, uncured material breach, bankruptcy, failure of FNTF, Closing, or Substantial Completion to occur before the associated expiration date, and certain title defects. The remedies for termination will differ depending on whether the termination is before or after the Closing and the cause of termination. For more complete termination payment details, please refer to the Model Solar BOT Agreement.

As indicated previously, the foregoing is not intended, and should not be construed, as an exhaustive listing of important commercial terms for any BOT transaction arising out of this RFP. As part of Proposal Submission, please provide a complete redline of the Model Solar BOT Agreement that is consistent with the requirements of the "Proposal Development and Special Exceptions" section of this Main Body.

## **2.2. Solar and Wind PPA Proposals - High-Level Overview of Select Commercial Terms**

The following highlights, in summary form, several basic commercial terms and considerations for the PPA(s) sought by this RFP. Details of the commercial terms of PPA transactions and considerations for PPA proposals and potential transactions under this RFP can be found in Appendix C-1 (Model Solar PPA), in Appendix C-2 (Model Wind PPA), in Appendix E (Credit/Collateral Requirements), and elsewhere in this RFP.

- *PPA Products.* Any purchase of energy made pursuant to a PPA arising out of this RFP will also include any and all Capacity, Capacity-Related Benefits (such as ZRCs), Other Electric Products, and Environmental Attributes associated with such Contract Energy or Contract Capacity, the proposed resource, or the transaction.
- *PPA Guaranteed Commercial Operation Date.* The PPAs being sought are required to have a Guaranteed Commercial Operation Date of, when the PPA is signed, on or before May 31, 2027, subject to the footnoted caveats in "Tax Credits" above.

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- *PPA Pricing.* The pricing for energy deliveries from the Facility will be based on an energy rate (expressed in \$/MWh), which will be either fixed for the entire Delivery Term or defined annually (as proposed by Bidder). The energy rate will be subject to temporary reductions if the aggregate energy deliveries under the PPA over the contract year exceed a specified amount for that contract year. A proposal's pricing must reflect an "all-in" energy price (including all related fees and expenses) that EML would pay to Seller for all inputs, goods, services, work (including, without limitation, development, engineering, procurement, and construction work), and costs and risks related to, and products associated with, the provision, generation, and delivery to EML of Contract Energy, Contract Capacity, Capacity-Related Benefits, Other Electric Products, and Environmental Attributes and Seller's performance and risks under the PPA. Bidder's proposed pricing should take into account any tax credits and tax benefits associated with the resource and accruing to the project owner.
- *Energy Delivery Requirements.* PPAs will include guaranteed annual energy delivery minimums entitling EML to liquidated damages if the minimums are not met and to terminate the PPA for specified failures to meet energy delivery minimums over any two (2) consecutive contract years or any three (3) contract years (whether or not consecutive).
- *Delivery Term.* The minimum and maximum Delivery Terms for PPAs are ten (10) and twenty (20) consecutive years, respectively, with an interest in fifteen (15)-year or shorter terms. The Delivery Term for any individual PPA is expected to be based upon the Delivery Term specified in the proposal giving rise to the PPA. If the Delivery Term would expire on a date that is not the end of one of the seasonal planning periods recognized by the applicable Balancing Authority (May 31, August 31, November 30, or February 28 under the current MISO Rules), EML will have an option, exercisable at no cost to EML, to extend the Delivery Term on the same commercial terms so that it terminates at the end of such planning period.
- *Delivery/Receipt Commitment.* Subject to certain exceptions set forth in the PPA, including, without limitation, EML's right to curtail energy deliveries and force majeure, Seller will be required to deliver to EML, and EML will be required to purchase from Seller, all energy from the Contract Capacity delivered to the Physical Delivery Point via financial settlement as described below. As part of its delivery commitment, Seller will waive any and all QF put rights with respect to the Capacity contracted to Buyer under the PPA.
- *Financial Settlement.* Products will be financially settled at the EML Load Node. Seller will be responsible for any basis differential between the product price at the Injection Point and the product price at the EML Load Node and related costs.
- *Liability Transfer.* EML will not accept the risk that any long-term liability will or may be recognized on its (or any of its Affiliates') books in connection with any PPA entered into pursuant to this RFP, whether the long-term liability is due to lease accounting, the accounting for a variable interest entity or derivatives, or any other applicable accounting standard or requirement.

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- *Credit.* Under the terms of this RFP, Seller will be required, without exception, to post and maintain credit support as set forth in the Model Solar PPA or the Model Wind PPA, as applicable, and Appendix E and to certify at proposal submission its understanding and acceptance of the core credit support terms. Appendix E includes other essential information concerning the production and disclosure of financial information as part of the Bidder Registration Process and the Proposal Submission Process, the evaluation of credit information and proposals provided in the RFP, parental guaranty requirements, potential liquid credit support offsets, and limitations on Bidder special considerations related to credit terms.
- *Interconnection, Deliverability, Transmission.* Please see Section 2.5 below.
- *BESS.* If BESS capability is included in any PPA entered into pursuant to this RFP, EML will have the right to determine when the battery is charged and discharged, subject to the applicable storage operating procedures. EML will pay the same energy charge as set forth above in “PPA Pricing” for energy from the Solar PV or Wind Facility used to charge the battery, with energy discharged from the BESS delivered to the Injection Point to be financially settled as set forth in “Financial Settlement” above, with no further payment obligation by EML, except as EML and Seller may otherwise agree in the PPA for any grid charging of an AC-coupled battery, if applicable. Seller will be subject to BESS availability and efficiency guaranties, with related liquidated damages obligations if those guaranties are not met.

The foregoing is not intended, and should not be construed, as an exhaustive listing of important commercial terms for any PPA arising out of this RFP. Please refer to Appendix C-1 for the Model Solar PPA and Appendix C-2 for the Model Wind PPA. As part of Proposal Submission described below, please provide a complete redline of the applicable PPA that is consistent with the requirements of Section 2.3 and to reviewed as part of the evaluation process.

### **2.3. Proposal Development and Special Exceptions**

Bidders are responsible for developing and submitting proposals in accordance with the terms set forth, and information communicated to Bidders, in this RFP, including the terms of the model agreements. It is important that Bidders base their proposals on such terms and information and not the terms in any other RFP issued by or any previous contract entered into with EML or an Affiliate of EML. Bidders are cautioned against relying solely or principally on the summaries included in the Main Body, including in Sections 1.9, 2.1, and 2.2, when developing proposals for this RFP, submitting proposals without a reasonably complete understanding of the terms set forth in the RFP and all Appendices, including the model agreements, made available to Bidders prior to proposal submission, or assuming that EML will entertain or accept material changes to the model agreements, the terms of which were developed for this RFP and apply to all Bidders.

EML expects that the terms, conditions, and technical requirements of this RFP, including, without limitation, the appropriate model agreement and Solar Scope Book (BOT transactions only), and Appendix E, will be included or reflected in any Definitive Agreement executed for a proposal. Bidder will be charged with knowledge of the terms of this RFP, including, without limitation, the relevant model agreement and (if applicable) Solar Scope Book, and Appendix E, when EML evaluates

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Bidder's proposal(s) and during any negotiation of the Definitive Agreement. In the event of any inconsistency between a provision in a model agreement and any other part of this RFP, including between the Main Body and any of the model agreements, it is generally expected that the model agreement will control. To the extent unexplained inconsistencies exist and Bidder desires clarification, please contact the Bid Event Coordinator.

Subject to the other terms of this RFP, including, without limitation, Section C of Appendix E, Bidders are permitted to make special exceptions to terms included in the model agreements and the Solar Scope Book that they are unwilling to accept. Each Bidder is required to include with its proposal (i) a legible, electronically generated redline mark-up of the applicable model agreement and, for BOT transactions only, the Solar Scope Book and (ii) an issues list or log setting forth and providing a reasonably complete and reasonably detailed summary and explanation for each of Bidder's special exceptions (if any), as described in Section 3.1.4 of Appendix D. Redline agreements or special exceptions in which Bidder (a) reserves wholesale rights to make comments on terms or conditions included in a Definitive Agreement, (b) makes widespread, wholesale, or fundamental changes to material terms or conditions set forth in the applicable model agreement and, for BOT transactions only, the Scope Book, (c) conditions its proposal on the acceptance of material terms or conditions not accepted by EML in the ordinary course of business or that would materially diminish the value of the resource to EML, the viability of the proposal, or the likelihood of a Definitive Agreement based on the proposal, (d) takes exception to commercial terms without reasonably complete and detailed explanations or when such exceptions are not permitted by the express terms of this RFP, including Appendix E, or (e) takes actions the effect of which would be similar to those resulting from the actions described in clauses (a)-(d) are not contemplated and are grounds for a proposal's elimination from consideration in this RFP, following consultation with the IM. Bidder-provided redline agreements and special exceptions (and summaries thereof) will be reviewed in the proposal evaluation phase of this RFP. The results of EML's review of Bidder's special exceptions may adversely or positively affect the proposal's ranking. For purposes of the proposal evaluation and contract negotiations, Bidder will be deemed to have accepted any provision of the applicable model agreement and, for BOT transactions, the Scope Book that is not shown as marked or expressly noted as covered by a prior edit to the agreement or the Scope Book.

Notwithstanding anything in this RFP to the contrary, EML's acceptance or selection of a proposal containing redlines of the applicable model agreement or Scope Book or other special exceptions does not mean that EML agrees with the exceptions or will agree to or accept the exceptions (or variants of the exceptions) in any negotiation of a Definitive Agreement. Without limiting the other terms of this RFP, including this Section 2.3, Section 6.6, and Section C of Appendix E, EML reserves all rights in any proposal evaluation or negotiation involving the exceptions, including, without limitation, the right not to accept or agree to any of the exceptions (or any variant thereof), the right not to pay Bidder or Seller any incremental amount or consideration if EML does not accept or agree to any particular exception or any proposed compromise, and the right to terminate negotiations if Bidder or Seller requires EML to agree to any particular exception (or any variant thereof) as a condition to continued discussions.

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## 2.4. Threshold Requirements

Subject to the other terms of this RFP, proposals are required to be submitted in accordance with, and are subject to, the terms of this RFP. In addition to those proposal submission requirements, proposals under this RFP are required to satisfy, and will be reviewed early in the RFP evaluation process for compliance with, the prerequisites specified in this Section 2.4 (collectively, the “**Threshold Requirements**”) and will be considered non-conforming and may be eliminated by EML from further consideration in this RFP, after consultation with the IM. The Threshold Requirements are as follows:

- The resource supporting Bidder’s proposal must be an Eligible Resource and Bidder must provide evidence satisfactory to ESL demonstrating that the proposed resource is an Eligible Resource.
- Bidder must be an Eligible Participant.
- The proposal must be for a BOT transaction (Solar PV only) or a PPA transaction (or an EML self-build resource offered as an alternative).
- The resource must be free of fatal design flaws and/or atypical operational or permitting restrictions that would reasonably be expected to prevent it from meeting the requirements of this RFP.
- For the PPA proposals, the proposed Delivery Term must be no less than ten (10) consecutive years and no more than twenty (20) consecutive years.
- Subject to certain exceptions permitted by this RFP and generally described in Sections 2.1 and 2.2 above, BOT and PPA proposals must have Guaranteed Substantial Completion Date or Guaranteed Commercial Operation Date no later than May 31, 2027.
- A PPA proposal must offer at least 50 MW<sub>AC</sub> of Capacity for Solar PV or wind technology at the Injection Point (to be financially settled, for PPA proposals, at the EML Load Node). A BOT proposal must offer Capacity for Solar PV technology at the Injection Point.
- Bidders must provide a complete hourly generation profile of the proposed resource and explain how it was derived. The profile should be based upon verifiable data, to the extent available, for a period of two (2) or more recent years using established, reliable, and accurate data measurement equipment at or near the site of the proposed resource and/or a third-party assessment study. Bidders should provide this information in the appropriate fields in Appendix D, Attachment B, which will be posted on the PowerAdvocate site.
- Bidder must show that Seller, or an Affiliate under Seller’s control, has control of 75% or more of the project site or an enforceable contract to obtain control of at least 75% of the project site for at least the full delivery term proposed by Bidder (PPA transactions) or the expected useful

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life of the resource (BOT transactions).<sup>4</sup> If Bidder, or Seller or an Affiliate under Seller's control, has obtained at least 75% but less than 100% site control over each of the sites upon which its individual generating facilities for the proposed resource will be located, Bidder must have in place at the time of proposal submission (and provide to ESL upon request) a reasonable written site procurement plan to gain full site control by a time that will support the project schedule (including the in-service date) for the proposed resource.

- The proposed resource must be eligible to qualify as a Long-Term Network Resource of EML under the MISO Tariff.
- The proposed resource must be capable of providing the offered amount of energy, Capacity, and Other Electric Products to EML at the Injection Point.
- Bidder must provide the interconnection, deliverability, and transmission service documentation for their proposals to the Bid Event Coordinator or as part of their Proposal Packages in accordance with the applicable requires of this RFP.
- For PPA proposals, Bidder must include in the Proposal Package the accounting (if requested) and credit certifications, and for BOT proposals, Bidder must include in the Proposal Package the credit certifications, required under, and prepared, executed, and submitted in accordance with the requirements of, Sections 4.5 below.
- Bidder must provide the most recent Published Credit Rating from S&P and Moody's of Bidder (or, if different from Bidder, Seller) and the proposed Seller Parent Guarantor (if any), to the extent such a rating exists. Bidder must provide the annual audited financial statements for the past two (2) years and the current year reviewed quarterly financial statements of Bidder (or, if different from Bidder, Seller) and the proposed Seller Parent Guarantor, if any. The financial statement needs to include the independent auditor's opinion and notes to the financial statements, the balance sheet, the income statement, and the cash flow statement.

## **2.5. Interconnection, Deliverability, and Transmission Considerations**

This Section 2.5 identifies and addresses certain interconnection, deliverability, and transmission requirements or matters that Bidders should consider as they prepare a proposal for this RFP. EML requires that any proposed resource interconnect directly to the EML Transmission System.

### **2.5.1. Required Interconnection, Deliverability, and Transmission Service**

Seller will be required under the Definitive Agreement to obtain, and bear the full costs and risks of the arrangement, procurement, receipt, and maintenance of, the interconnection, deliverability, and transmission service necessary for the resource to make available and deliver to the Physical Delivery Point the full energy output, Capacity, and Other Electric Products of the resource and as

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<sup>4</sup> A letter of intent, memorandum of understanding, or other similar document contemplating the subsequent negotiation of a definitive agreement regarding Bidder's control of the project site will not satisfy the site control requirement.

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required by this RFP, including, without limitation, (i) the electric interconnection of the resource to the host utility (EML) at a transmission voltage level and the establishment of the Electric Interconnection Point as a separate (and the exclusive) commercial pricing or settlement node for the resource (with the resource being the only source of energy injection at the Electric Interconnection Point for settlement purposes), (ii) ERIS and NRIS in an amount equal to at least the guaranteed Capacity of the Solar PV or Wind facility (as set forth in the proposal and the Definitive Agreement), and (iii) for PPAs, the financial settlement of energy and Other Electric Products at the EML Load Node. The Closing (BOT transactions) and Delivery Term commencement (PPA transactions) will be conditioned on the completion of all upgrades, improvements, and other actions necessary for the receipt of such service and recognition by MISO and/or other applicable Balancing Authorities that such services have been obtained and are in full force and effect.

The interconnection, deliverability, and transmission costs for which Seller will be responsible include, among others, the costs of upgrades and improvements assigned to Seller under the applicable interconnection, deliverability, or transmission agreement with MISO, the transmission owner, and/or Balancing Authority, except to the extent stated to be the exclusive cost responsibility of the applicable transmission provider, transmission owner, or Balancing Authority under the applicable tariffs, rules, regulations, or requirements of, or generator interconnection or other agreements with, such transmission provider, transmission owner, or Balancing Authority, and, for PPAs, transformer, line losses, and congestion charges. As with other Bidder costs, Bidder will be responsible for reflecting these costs in Bidder's proposed pricing. Under the terms of this RFP, each Bidder is required to provide, among other things, transmission interconnection and Network Upgrade cost estimates for "**Transmission Owner's Interconnection Facilities**", "**Standalone Network Upgrades**", and Network Upgrades (each as defined in the MISO Tariff) and include those cost estimates in the purchase price breakdown in Appendix D-1 or D-2 (as applicable), Attachment A.

EML expects to seek to qualify any resource selected from this RFP as a Network Resource of EML in MISO. The Definitive Agreement will require Seller, subject to EML's direction to the contrary, to take all actions necessary or advisable to cause the resource to be qualified and/or recognized in MISO as a Network Resource of EML in MISO, with full network integration transmission service, and to cause EML to be eligible for and receive all transmission rights and entitlements associated with the contract Capacity of the resource, including, without limitation, auction revenue rights and financial transmission rights.

### **2.5.2. Interconnection Service Applications**

Under the current MISO Rules, the receipt of interconnection service from MISO, including, without limitation, ERIS and NRIS, requires the submission to MISO of a generator interconnection application under the applicable generator interconnection process. To maintain the schedule contemplated by this RFP, Bidder or a Bidder Affiliate must have obtained, or be in the queue to obtain, a GIA with MISO and EML for the proposed resource that supports its proposal(s) and meets the requirements of this RFP, including, without limitation, those described in Section 1.9 and this Section 2.5. The GIA must provide that the project has or will receive (or, if there is no GIA, the GIA application must request the project's receipt of) at least the amount of ERIS and NRIS necessary for the resource to obtain the amount of ERIS and NRIS specified in clause (ii) of Section 2.5.1 above.

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Bidder must provide a complete and accurate copy of the submitted MISO generator interconnection service application as part of its Proposal Package.

### **2.5.3. Product Deliveries and Financial Settlement**

It is not necessary for Bidder or Seller to have received for the proposed resource the results of a MISO Definitive Planning Phase (DPP) study, or any other interconnection, deliverability, or transmission service study, or executed the GIA or any other agreement necessary for receipt of the interconnection, deliverability, and transmission service required hereunder in order for Bidder to submit a proposal. Except to the extent ESL otherwise agrees in writing, pending execution of the GIA for Bidder's proposed resource, a resource in the MISO DPP queue must remain in the DPP queue (or have transitioned to an executed GIA) to be an Eligible Resource in this RFP. If during the pendency of this RFP the resource does not remain in the queue to obtain the required service (or transitioned to an executed GIA) or loses the right to obtain or receive such service, or Bidder materially modifies the terms of its application or request for such service, Bidder must promptly notify the Bid Event Coordinator, and any Bidder proposal backed by such resource will be subject to elimination. Bidders should bear in mind that the generator interconnection, deliverability, and transmission processes utilized by MISO operate on timelines and contain requirements that are independent of this RFP and may necessitate the expenditure of costs by Bidders for their proposed resources to remain in the queue or eligible to participate in this RFP.

For any PPA arising out of this RFP, Seller will be required to make available Contract Capacity and deliver Contract Energy and Other Electric Products at the Physical Delivery Point. The financial settlement of Contract Energy and any Other Electric Products provided by Seller under the PPA will reflect the basis differential, if any, for energy or Other Electric Products between the CP Node at the applicable Physical Delivery Point and the EML Load Node in the applicable market (*e.g.*, day-ahead or real-time) and related deliverability, loss, and congestion costs. In addition, Seller will be required to register and transfer Environmental Attributes to Buyer, which shall be accomplished by the means specified by Buyer and in accordance with the requirements of the Model PPA.

### **2.5.4. Market Participant Services**

For PPAs, subject to certain limitations, EML will have, throughout the Delivery Term, the right to determine from time to time whether EML (or a designee) or Seller will serve as the “**Market Participant**” (as defined in the MISO Tariff) for the generation resource before MISO and how the resource will be registered with MISO. EML currently expects that it will require Seller to serve as the Market Participant for the resource and to register the proposed resource with MISO as a Capacity Resource. As the Market Participant for the resource, Seller would be responsible for, among other things, submitting financial schedules to MISO for deliveries of energy and Other Electric Products from the resource under the Definitive Agreement. Without limiting the other provisions of this Section 2.5 or either model PPA, Seller will be responsible for and bear any and all costs and risks associated with financially scheduling energy and Other Electric Products, including, without limitation, electric losses, MISO fees, charges, and other costs related thereto (*e.g.*, financial scheduling fees, administrative costs, transaction charges). If EML directs that the proposed resource be registered with MISO other than as a Capacity Resource (*e.g.*, as a Load Modifying Resource), EML currently

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expects that EML would serve as the Market Participant for the resource. In such event, Seller will be required to cooperate with EML to ensure that the registration and any qualification of the resource in MISO consistent with EML's directions (*e.g.*, as a Load Modifying Resource) are made in accordance with MISO Rules and EML's reasonable requirements, including, without limitation, with regard to generator availability forecasting. Please see Appendix C-1 or C-2, as applicable, for additional information regarding Seller's responsibilities and obligations if Seller is the Market Participant for a contracted PPA resource under this RFP.

Any BOT Agreement based on a proposal in this RFP will require Seller and Buyer to commit to enter into a "**MISO Agreement**." Among other things, the MISO Agreement will obligate Buyer or its designee to serve as the Market Participant for the resource, subject to the potential transfer of its Market Participant rights and duties to Seller if the BOT transaction terminates prior to the Closing. The costs that Buyer or its designee incurs as the Market Participant for the resource before the Closing will be for Seller's account. The MISO Agreement will include certain limitations on Buyer's or its designee's rights and liabilities as the Market Participant and impose certain obligations on Seller during the period before the Closing that reflect Buyer's contingent rights to the resource.

## **2.6. PPA Cost Recovery**

Seller will be required to absorb the risks of the possible disallowance, disapproval, or denial of recovery by the MPSC and/or other Governmental Authorities of EML costs incurred in connection with a PPA arising out of this RFP ("**Cost Recovery Risks**"), excluding certain limited Cost Recovery Risks that will remain with EML ("**EML-Allocated Cost Recovery Risks**"). EML-Allocated Cost Recovery Risks include (i) costs incurred by EML in connection with the applicable PPA for which recovery was expressly disallowed, disapproved, or denied by the MPSC in its final order approving the PPA as in the public interest and prudent, provided EML accepted the order as satisfying the MPSC regulatory approval condition to commencement of the PPA Delivery Term, and (ii) costs incurred by EML in connection with the applicable PPA due exclusively to the active fault of EML. Cost Recovery Risks expected to be borne by Sellers include, without limitation, unrecovered costs to replace Contract Capacity, Contract Energy, Environmental Attributes, and Other Electric Products not provided to EML by Seller under the applicable PPA. EML is willing to consider (but is under no obligation to accept) Special Considerations or proposals from Bidders that propose with specificity a different treatment or apportionment between EML and Seller of Cost Recovery Risks and provide supporting rationale. Any proposed treatment of Cost Recovery Risks that would allocate all or substantially all Cost Recovery Risks to EML is not contemplated.

## **2.7. Environmental Considerations**

Among other things, Bidder must include in its responses to Appendix D a viable environmental compliance plan and provide reasonable support for the viability of the plan. The plan must include reasonable descriptions of Bidder's plan to engineer, design, develop, procure, build, test, own/lease, operate, maintain, and repair the project (including the project site) in compliance with all applicable environmental laws (including regulations), permits, authorizations, and other requirements. Bidder must show that a recent "Phase I" or more comprehensive environmental site assessment of the project site has been performed, environmental and other due diligence has been completed for the project

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(including the project site), and action plans have been established to a level sufficient to support all permitting and material environmental attribute accreditation activities.

## **2.8. Design and Operating Considerations**

### **2.8.1. BOT Resources**

The following is a list of certain required generating resource equipment and design features for any Solar PV BOT resource offered into this RFP:

- PV Module Manufacturer and Model from a pre-approved list (see Appendix 7: Approved Manufacturers and EPC Contractors List of Appendix B-2: Scope Book for Solar BOT (“**Solar Scope Book Appendix 7**”))
- PV Annual Degradation: no more than 0.5% on average
- PV Module Product Warranty: minimum ten (10) years
- PV Module Power Warranty: minimum 25 years
- Inverter Manufacturer from Approved List (see Solar Scope Book Appendix 7)
- Inverter Voltage Rating: 1,500 VDC
- Inverter Product Warranty: minimum five (5) years
- Racking System Manufacturer from Approved List (see Solar Scope Book Appendix 7)
- Tracker Warranty: minimum five (5) years for moving parts, ten (10) years for structural parts
- Design Lifetime of the Facility: minimum 30 years
- Design Wind Speed, ASCE 7: Risk Category III
- Battery Manufacturer from Approved List (if Bidder offers a battery option with the proposal) (see Solar Scope Book Appendix 7)
- Battery Product Warranty: minimum ten (10) years (if Bidder offers a battery option with the proposal)
- High Voltage Overhead Transmission Standard (see Appendix 10 of Appendix B-2: Scope Book for Solar BOT)
- Collector Substation Standard (see Appendix 9 of Appendix B-2: Scope Book BOT).

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Equipment and design requirements and related terms for Solar PV BOT resources are set forth in Appendix B-2.

Bidders should be prepared to submit a comprehensive response to the due diligence requests for information on these and other subjects related to the EPC of proposed Facilities.

### **2.8.2. PPA Resources**

The following is a list of certain required generating resource equipment and design features for any Solar PV PPA resource offered into this RFP:

- PV Module Manufacturer and Model from a pre-approved list (see Exhibit 1 (Approved Manufacturers List) to Attachment B-1 to Schedule B of Appendix C-1 (Model Solar PPA) (“**Solar PPA Exhibit 1**”))
- Inverter Manufacturer from Approved List (see Solar PPA Exhibit 1)
- Racking System Manufacturer from Approved List (see Solar PPA Exhibit 1)
- Design Wind Speed, ASCE 7: Risk Category III (see item 1 of Attachment B-1 to Schedule B of Appendix C-1 (Solar PPA))
- Battery Manufacturer from Approved List (if Bidder offers a battery option with the proposal) (see Solar PPA Exhibit 1).

The following is a list of certain required generating resource equipment and design features for any Wind PPA resource offered into this RFP:

- Wind Turbine Manufacturer from a pre-approved list (see Exhibit 1 (Approved Manufacturers List) to Attachment B-1 to Schedule B of Appendix C-2 (Model Wind PPA) (“**Wind PPA Exhibit 1**”))
- Transformer Manufacturer from Approved List (see Wind PPA Exhibit 1)
- Switchgear Manufacturer from Approved List (see Wind PPA Exhibit 1)
- Design Wind Speed, ASCE 7: Risk Category III (see item 1 of Attachment B-1 to Schedule B of Appendix C-2 (Model Wind PPA))
- Battery Manufacturer from Approved List (if Bidder offers a battery option with the proposal) (see Wind PPA Exhibit 1).

Equipment and design requirements and related terms for PPA resources, including, without limitation, terms on the potential addition of manufacturers to PPA Exhibit 1, are set forth in Attachment B-1 to Schedule B of Appendix C-1 (Model Solar PPA) and Appendix C-2 (Model Wind PPA).

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Bidders should be prepared to submit a comprehensive response to the due diligence requests for information on these and other subjects related to the EPC of proposed Facilities.

## **2.9. Supplier Diversity**

Any project arising out of this RFP is expected to generate commercial opportunities for businesses that supply goods and services to the resources solicited by this RFP. EML has an interest in understanding the effects of proposed projects on businesses located in the state of Mississippi and on small and small disadvantaged businesses. Appendix F includes information regarding local and diverse suppliers that Bidders are required to provide as part of their Proposal Packages and/or should consider when developing the terms of their proposals.

## **3. SELF-BUILD OPTION**

EML may submit into this RFP one or more Solar PV projects as self-build options (each, a Self-Build Option, and together, the Self-Build Options). Each Self-Build Option must be for a Solar PV facility that is consistent with the RFP's design criteria for developmental generation resources and within the capacity requirements defined in this RFP.

A Self-Build Option may utilize existing infrastructure and resources at EML sites, including existing administrative or plant support infrastructure (e.g., office facilities). Generation from the facilities may interconnect with the existing EML transmission facilities located at or near the site.

ESL will require that the completed submission for any Self-Build Option, including the cost estimate for the Self-Build Option (a **"Self-Build Option Proposal"**), and any proposal offered in this RFP by an Entergy Competitive Affiliate, be submitted to the Bid Event Coordinator and the IM prior to the receipt of proposals from all other Bidders, and no later than 5 p.m. CPT on the day before the first day of the Proposal Submission Period (the **"Self-Build Option Proposal Submission Deadline"**).

The IM, in consultation with ESL, may choose to retain an independent consulting engineer to evaluate the reasonableness of the construction cost estimates of the Self-Build Options and, potentially, to undertake a similar evaluation for any other resource supporting a proposal submitted in this RFP. The IM may instead choose to assess the reasonableness of such estimates by reference to other relevant and competent information available to the IM. The IM will consult with ESL to (i) determine a process for selecting and retaining the independent consulting engineer, (ii) develop the scope of work to be performed by the consulting engineer, and (iii) determine how the engineer's report will be utilized in this RFP. In addition, ESL may retain an independent consulting engineer to estimate the cost to Buyer to have an independent owner/buyer's engineer monitor the development and construction of a proposed third-party resource after selection through the completion of construction and provide related engineering services to protect Buyer's interest.

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## 4. RFP PROCESSES

### 4.1. RFP Schedule Overview

The RFP Schedule is critical for Bidders interested in participating in this RFP. The RFP Schedule in Table 3 below sets forth the milestone events and the corresponding milestone dates for this RFP. The milestone events and dates are subject to change. After consultation with the IM, notice of any change to the then-current RFP Schedule will be posted on the 2022 EML Fall Renewables RFP Website.

**Table 3. RFP Schedule**

<b>RFP Milestone</b>	<b>Milestone Date*</b>
<b>Bidders Conference</b>	December 6, 2022
<b>Bidder Registration Period</b>	8:00 a.m. CPT on January 3, 2023, until 5:00 p.m. CPT on <b>January 20, 2023</b>
<b>Proposal Submission Fee Payment Deadline</b>	5:00 p.m. CPT on <b>February 1, 2023</b>
<b>Self-Build Option Proposal Submission Period</b>	8:00 a.m. CPT on January 24, 2023, until 5:00 p.m. CPT on <b>January 29, 2023</b>
<b>Proposal Submission Period (for all proposals other than for Self-Build Options)</b>	8:00 a.m. CPT on January 30, 2023, until 5:00 p.m. CPT on February 2, 2023
<b>Updated Pricing for Phase 1 2021 MISO South DPP Queue</b>	<b>5:00 p.m. CPT on April 21, 2023</b>
<b>Primary/Secondary Selections Announced</b>	<b>May 2023</b>
<b>Due Diligence and Negotiations Begin</b>	<b>May 2023</b>
<b>Definitive Agreements Executed</b>	June 2023
<b>Regulatory Approval Process Complete</b>	November 2023

\*Each of the milestone dates in the table is a target date subject to change.

Without limiting Reservation of Rights and Other RFP Protections below, EML reserves the right to modify the RFP Schedule (including any milestone or milestone date) at any time in its sole discretion. EML will endeavor to timely notify all participants in this RFP of any such modification.

### 4.2. Bidders Conference

A Bidders Conference for potential Bidders and other stakeholders (collectively, the “**Bidders Conference**”) is scheduled to take place on December 6, 2022. The Bidders Conference will give participants a high-level overview of, and other information concerning, this RFP and related processes and is open to all interested Persons. EML personnel, ESL personnel, and the IM will be available at the Bidders Conference to provide an overview of the RFP Schedule, the Bidder Registration Process, the Proposal Submission Process, the evaluation process, and proposed transaction terms and conditions, and to respond to previously submitted requests for information about this RFP. ESL will post written materials presented during the Bidders Conference on the 2022 EML Fall Renewables RFP Website. Bidders are advised that those materials may not duplicate all the information provided

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during the Bidders Conference and some of the information may be or may become outdated and/or no longer accurate over time.

Responses to questions received during the Bidders Conference will be posted on the 2022 EML Fall Renewables RFP Website. To the extent inconsistencies exist between the RFP documents and the Bidders Conference presentation or the responses to questions received during the Bidders Conference posted on the 2022 EML Fall Renewables RFP Website or provided verbally, the RFP documents will control.

#### **4.3. Bidder Registration Process**

To be eligible to submit a proposal, Bidder must complete the Bidder Registration Process during the Bidder Registration Period. Bidder Registration will begin at 8:00 a.m. CPT on the Bidder Registration start date specified in the applicable RFP Schedule and end at 5:00 p.m. CPT on the Bidder Registration end date specified in the applicable RFP Schedule (the “**Bidder Registration Period**,” and the deadline for Bidder Registration, the “**Bidder Registration Deadline**”).

To register for this RFP, Bidders are required to submit a completed Bidder Registration Agreement and the documentation requested therein to the Bid Event Coordinator, copying the IM, via email at the respective addresses provided in Bid Event Coordinator and Independent Monitor sections above, by the Bidder Registration Deadline. Bidders will bear the risk of failing to submit a completed Bidder Registration Agreement and the documentation requested therein by the Bidder Registration Deadline. The Bidder Registration Agreement must be executed by an officer or other representative of Bidder who is authorized to sign on Bidder’s behalf. Only Bidders registered in accordance with this RFP will be permitted to submit proposals in this RFP, and only proposals registered in accordance with this RFP will be eligible for submission. After completion of Bidder Registration, the Bidder will receive evaluation identification numbers for each registered proposal.

The following documentation is required to be submitted in this RFP to complete the Bidder Registration Process and to receive the necessary identification numbers and the results of the creditworthiness evaluation of the Seller Parent (if any) for Proposal Submission:

- Bidder Registration Agreement
- Bidder Registration Form
- The annual audited financial statements for the past two (2) years and the current year reviewed quarterly financial statements of Bidder (or, if different from Bidder, Seller) and the proposed Seller Parent Guarantor, if any (the financial statement needs to include the independent auditor’s opinion and notes to the financial statements, the balance sheet, the income statement, and the cash flow statement).
- The executed GIA with MISO and EML or the MISO DPP Application for the 2021 MISO DPP Queue or earlier studies.

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- Only for Wind PPAs:
  - The approved Technical Assistance Letter or approved Incidental Take Permit and Habitat Conservation Plan for the project; or
  - The final or the most current draft of the Technical Assistance Letter, or drafts of the Incidental Take Permit and Habitat Conservation Plan, for the project pending the letter and/or plan's approval by the United States Department of Fish and Wildlife.

#### Evaluation Identification Numbers:

Following submission of its completed Bidder Registration Agreement and the documentation requested therein, Bidder will be issued a unique Bidder ID, a Resource ID for each registered resource, and a Proposal ID for each registered proposal. Bidder IDs, Resource IDs, and Proposal IDs will be used by Bidders in the Proposal Submission Process and in connection with the evaluation of proposal information received by ESL. The use of Bidder IDs, Resource IDs, and Proposal IDs is part of ESL's process to ensure that appropriate protections are in place to minimize the dissemination of information that explicitly identifies Bidders to individuals not involved in the RFP evaluation.

#### Seller Parent Creditworthiness:

If Bidder has provided the financial information required at the time of Bidder Registration by this RFP, Bidder will receive the results of the Credit Evaluation Team's ("CET") assessment of the creditworthiness of the proposed Seller Parent prior to proposal submission. The creditworthiness evaluation results will establish whether a proposed Seller Parent's creditworthiness has been determined to be "acceptable" for purposes of the proposal evaluation. An offset of 50% against the seller's liquid credit support requirement is available for proposals when the seller will provide a guaranty in accordance with Appendix E from a Seller Parent with an "acceptable" credit rating. The offset is subject to Entergy's corporate cap on aggregate credit exposures to counterparties and their affiliates. If the Seller Parent is evaluated to be not "acceptable", a Seller Parent Guaranty will not offset any of the seller's liquid credit support obligations to the buyer in the applicable RFP transaction, subject to the Seller Parent's credit rating becoming "acceptable" during the negotiation, or, if a Seller Parent Guaranty is provided, after execution of a Definitive Agreement. Bidder will be responsible for developing and submitting proposals in this RFP that take into account (including in proposal pricing) the results of the creditworthiness evaluation and complying with the terms of Appendix E.

#### **4.4. Proposal Submission Fees**

Bidders are required to pay a Proposal Submission Fee of \$10,000 for *each* proposal registered in the RFP. Proposals that are alternatives to each other will be considered separate proposals, including proposals that include differences in pricing, the commercial operation date, the length of delivery term (PPAs only), and any other difference, and should be registered as separate proposals. Bidders will be permitted to offer multiple proposals for the optional battery energy storage system for its proposed resource. Each battery proposal for the resource will be considered an alternative proposal and will result in an incremental \$1,000 Proposal Submission Fee for each such proposal. No Proposal Submission Fee will be due for Self-Build Option Proposals (EML would be paying itself).

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ESL will bill Bidder the total Proposal Submission Fee due from Bidder for each proposal for this RFP within three (3) Business Days following the end of the Bidder Registration Period. Bidder will be required to remit payment of the Proposal Submission Fee(s) in full in accordance with the instructions provided in the invoice. Payment will be due by the date specified in the applicable RFP Schedule (the “**Proposal Submission Fee Payment Deadline**”). **Bidder’s failure to submit the Proposal Submission Fee for a proposal by the Proposal Submission Fee Payment Deadline will result in the elimination of such proposal from this RFP.**

In the event it is unclear which proposal was not supported by payment of the required Proposal Submission Fee, EML will have the discretion to determine which proposal to eliminate or what other action(s) to take.

Proposal Submission Fees will be refunded to Bidders only in the following circumstances:

- Bidder registers a proposal and pays the Proposal Submission Fee but does not complete Proposal Submission for the registered proposal;
- Bidder registers a proposal, properly completes Proposal Submission, but subsequently withdraws the registered proposal prior to the Proposal Submission Deadline; or
- EML cancels or terminates this RFP prior to completion of the evaluation of proposals for the Primary Selection List or the Secondary Selection List.

If Bidder, or any proposal submitted by Bidder, becomes ineligible or is eliminated from this RFP for any reason other than a reason set forth in the bulleted items immediately above, including, without limitation, if no proposals are selected for either the Primary Selection List or the Secondary Selection List after EML has completed its evaluation of proposals, Bidder’s Proposal Submission Fee(s) will not be returned.

#### **4.5. Proposal Submission**

The Proposal Submission Process requires each Bidder to submit the following to EML for each proposal registered in this RFP:

- A Proposal Submission Agreement signed by an officer or other representative of Bidder who is authorized to sign the agreement and tender the submitted proposal(s) on Bidder’s behalf;
- A completed Proposal Submission Template (Excel sheet);
- A completed Viability Self-Assessment;
- A completed Due Diligence Questionnaire (Appendix D-1 or D-2, as applicable) and related attachments (as a point of emphasis, Bidders may not submit one set of responses and attachments covering two or more proposals), including, without limitation:
  - the requested generation profile for two years (Excel Sheet);

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- documents requested by the questionnaire;
- the required demonstration that Bidder or Seller has the requisite control over the project site; and
- a project summary;
- A completed, executed Form of Credit Certification (Attachment F of Due Diligence); and
- All other documents and information that Bidder is required to provide under this RFP for the proposal submitted (collectively, including the executed Proposal Submission Agreement, the “**Proposal Package**”).

All proposal submissions are required to be made through PowerAdvocate to the Bid Event Coordinator. Bidders should not send, and the Bid Event Coordinator will not accept, paper copies of proposals or proposals delivered other than through PowerAdvocate. Bidder must deliver the complete Proposal Package(s) for its proposal(s) by the Proposal Submission Deadline or the Self-Build Option Proposal Submission Deadline, as applicable, for the proposal(s) to be considered for this RFP.

After the Bid Event Coordinator has electronically received Bidder’s completed Proposal Package, Bidder will receive a confirmation of receipt from the Bid Event Coordinator. Bidder should contact the Bid Event Coordinator if a confirmation is not received within one (1) Business Day after Bidder’s submission of the Proposal Package.

**Bidder will bear the risk of any failure of Bidder to submit the completed Proposal Package by the Proposal Submission Deadline or the Self-Build Option Proposal Submission Deadline, as applicable, as required by this RFP. Proposals not delivered in accordance with the requirements of this RFP are untimely and may be eliminated from consideration in this RFP. Proposals that do not include all agreements, material, and information required by this RFP may be considered non-conforming and rejected on that basis.**

## 5. PROPOSAL EVALUATION

Following the Proposal Submission Deadline, the RFP evaluation will begin. The evaluation process is designed to facilitate the fair and impartial evaluation of all proposals and to result in the selection of one or more proposals that meet the requirements of this RFP and EML’s needs at the lowest reasonable cost, taking into account commercial considerations, project viability, reliability, risk, and other relevant factors. The process will be conducted in a carefully controlled manner, using procedures, methods, evaluation criteria, and assumptions that will be developed prior to the receipt of proposals. The process is expected to include, without limitation, the use of evaluation teams and subject matter experts, and will involve the IM as appropriate. As part of the evaluation process, EML may from time to time reduce the number of proposals under evaluation and may develop a preliminary shortlist of proposals for continued evaluation (the “**Shortlist**”).

After the Proposal Submission Deadline, the IM and the RFP Administration Team will provide redacted data and information from the proposals received to the evaluation teams at approximately the same time. All proposals, including the Self-Build Option(s), will be evaluated on a consistent basis

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by the evaluation teams, which will not include any member of the Entergy self-build commercial team or self-build support team. Each of the evaluation teams, the RFP Administration Team, and the Bid Event Coordinator will have the right to ask Bidder clarifying questions to obtain additional information that it believes may help with its understanding, review, or analysis of Bidder's proposal. Clarifying questions are expected to be communicated by the Bid Event Coordinator to Bidder through PowerAdvocate. The Bid Event Coordinator may also request Bidder's participation in one or more meetings to obtain clarification or additional information regarding a proposal. Bidder will be expected to provide responses to clarifying questions and provide additional information requested through PowerAdvocate and/or make available authorized officers, representatives, and advisors to participate in meetings to answer questions (as requested).

At an appropriate stage of the proposal evaluation process, members of the RFP Administration Team, utilizing in its discretion, among other things, analysis and other inputs provided by evaluation teams and subject matter experts for this RFP, will develop recommendations for the selection of proposals, if any, for inclusion on the Primary Selection List or the Secondary Selection List and will present those recommendations to the EML Resource Planning and Operating Committee and EML management. The "Primary Selection List" is a list setting forth the proposal(s) (if any) selected for negotiation of a Definitive Agreement. The "Secondary Selection List" is a list setting forth the proposal(s) (if any) selected for possible negotiation of a Definitive Agreement. The IM will review the recommended selections before the recommendations are presented to the EML Operating Committee. Any selection of a proposal for the Primary Selection List or the Secondary Selection List will be made by the President and CEO of EML (or designee).

After the selection process has been completed, the Bid Event Coordinator will notify each Bidder, for each proposal it submitted, whether the proposal is on the Primary Selection List (if any), the Secondary Selection List (if any), or has been eliminated from further consideration in this RFP. Without limiting its rights under this RFP, EML expects to proceed to negotiate the final terms of a Definitive Agreement with a Bidder having a proposal on the Primary Selection List. If those negotiations terminate or are suspended, or if EML determines negotiations with one or more Bidders having a proposal on the Secondary Selection List are appropriate, EML may negotiate commercial terms with such Bidders. A Bidder with a proposal on the Secondary Selection List will be released from the proposal three (3) months after notification of the proposal's placement on the Secondary Selection List, unless within that period Bidder has been invited to negotiate the terms of a Definitive Agreement under this RFP based on the proposal. A proposal not on either the Primary Selection List or the Secondary Selection List will be considered rejected. Any Bidder invited by EML to finalize a Definitive Agreement will be expected to use its reasonable best efforts to finalize, execute, and deliver such Definitive Agreement as promptly as possible.

EML's selection of a proposal does not constitute or indicate EML's agreement, commitment, representation, or promise to transact on the basis of the selected proposal or EML's acceptance of any term of the proposal. Under the terms of this RFP, EML has no obligation, and makes no commitment or promise, of any kind, to enter into a transaction with any Bidder or to be bound by any term proposed by Bidder in this RFP, and, more generally, has no obligation or liability of any kind whatsoever to any Bidder or Seller in connection with or arising out of this RFP, except to the extent otherwise expressly set forth in a binding, fully executed written agreement between EML and Bidder or Seller.

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## **6. MISCELLANEOUS RFP MATTERS**

### **6.1. Authorized Bidder Communications Channels**

Except as otherwise expressly provided in this RFP, all communications, including questions, regarding this RFP must be submitted in writing to the Bid Event Coordinator (using the contact information provided above in the Bid Event Coordinator section). Any contact or communication concerning this RFP (i) between Bidders, or representatives of Bidders, on the one hand, and personnel or employees of ESL other than the Bid Event Coordinator, on the other hand, or (ii) between different Bidders, or representatives of different Bidders, made without the specific, prior written consent of the Bid Event Coordinator, is, in each case, not allowed and grounds for disqualification of the non-compliant Bidder(s). Bidders are, of course, permitted to communicate internally within their organizations and externally with their representatives with regard to this RFP as necessary.

### **6.2. Posting Questions**

Bidders and other interested Persons are invited to submit questions and comments about this RFP to the Bid Event Coordinator. All questions or comments regarding this RFP must be submitted in writing via email sent to [EMLRenewablesRFP@entergy.com](mailto:EMLRenewablesRFP@entergy.com) (for questions and comments prior to Bidder Registration) or through PowerAdvocate (after Bidder Registration). Interested Persons are requested to submit questions as promptly as possible to ensure the timely receipt of EML's or ESL's response. ESL requests that all questions be submitted to the Bid Event Coordinator by no later than one week prior to the day of the Self-Build Option Proposal Submission Deadline.

Subject to ESL's consideration of the confidentiality concerns, ESL intends to post all questions submitted by Bidders, as well as ESL's responses to those questions, to the 2022 EML Fall Renewables RFP Website. All questions will be posted anonymously, to shield the identity of Bidders who posed the questions. ESL's objective in posting questions and answers publicly is to afford Bidders equal access to information potentially relevant to their proposals. Bidders should frame their questions, if possible, so that the answers do not require the disclosure of information that is confidential to ESL or EML, or any of their respective Affiliates. If ESL receives a question that calls for, in its opinion, an answer that would contain such confidential information and the provision of such confidential information is necessary and appropriate for ESL's response, then ESL will respond to the question in writing, via PowerAdvocate after Bidder Registration, but only if Bidder posing the question has executed and returned to ESL a confidentiality agreement in form and substance acceptable to ESL.

ESL expects to provide answers to questions received during the Proposal Submission Period only to the extent the questions are specific to an actual proposal submission issue (and those answers may or may not be posted on the 2022 EML Fall Renewables RFP Website).

### **6.3. Contact with MISO**

Under the MISO Tariff, MISO currently provides functional supervision of the Entergy Transmission System and acts as transmission provider with respect to the granting of transmission service, including interconnection service, on the Entergy Transmission System or on other

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transmission systems under MISO's functional supervision. Inquiries about these aspects of the Entergy Transmission System or other transmission systems in MISO under MISO's functional supervision should be directed to MISO at its South Region Transmission Planning Office, (504) 846-7100. Bidders are directed to the MISO website, [www.misoenergy.org](http://www.misoenergy.org), for information about MISO.

#### **6.4. Affiliate Rules and Codes of Conduct**

All employees of ESL, any Entergy Operating Company, or any Entergy Competitive Affiliate must adhere to the Affiliate Rules and Codes of Conduct as applicable. A link providing access to complete copies of the Affiliate Rules and Codes of Conduct is available at the 2022 EML Fall Renewables RFP Website.

#### **6.5. Multi-Person Bids**

If Bidder is comprised of more than one Persons, the individual members may enter into contribution, indemnity, allocation, sharing, or other similar arrangements or agreements amongst themselves to allocate their respective rights and obligations; however, no such agreement or arrangement will affect any right reserved to EML or ESL in connection with this RFP or otherwise disadvantage EML relative to its position with other Bidders without ESL's prior written agreement, either on its own behalf or as agent of EML. Bidder must fully disclose to the Bid Event Coordinator all such contribution, indemnity, allocation, sharing, or similar arrangements or agreements. Disclosure may be accomplished by means of a written letter to the Bid Event Coordinator by the Proposal Submission Deadline or the Self-Build Proposal Submission Deadline, as applicable. Bidder may be required to respond to subsequent diligence inquiries concerning the arrangements or agreements.

#### **6.6. Reservation of Rights and Other RFP Protections**

Notwithstanding anything to the contrary, EML and ESL may, and expressly reserves the right to, at any time, and from time to time, without prior notice, and without assigning or providing any reason therefor:

- Cancel, suspend, withdraw, or terminate this RFP (including, without limitation, after the selection in this RFP of one or more proposals for a Definitive Agreement) or cancel or suspend its participation in this RFP;
- Modify this RFP, including, without limitation, any Appendix to this RFP or any of the dates, times, or places set forth in this RFP or related to the RFP process;
- Accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue, or reject any proposal, in its sole and absolute discretion, for any reason;
- Reject or eliminate any proposal submitted in response to this RFP that it determines is incomplete, is non-conforming, or contains irregularities (or waive or disregard any deficiency, non-conformity, or irregularity in any proposal), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- Carry out negotiations with any, some, or all Bidders or other Persons related to this RFP, and suspend or terminate negotiations with any Bidder or other Person at any time, including,

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without limitation, as a result of (a) any change in any of the resource needs of EML, (b) any adverse diligence finding by EML or ESL, or (c) any other issue related to the potential Transaction arising during negotiations of any letter of intent, term sheet, Definitive Agreement, or other agreement, including, without limitation, any issue arising out of any special consideration submitted by Bidder in its proposal or any new or modified rule, regulation, or other law (including any change or prospective change in MISO rules);

- Discuss the terms of any proposal or any other material submitted by Bidder with, and obtain clarification or additional information concerning, such proposal or such other material from, Bidder or its directors, officers, employees, agents, representatives, and advisors;
- Request from Bidder any information not detailed in or required by this RFP but that, in EML's or ESL's sole opinion, may be necessary or relevant to the evaluation of Bidder's proposal(s) or this RFP and utilize such information as EML or ESL deems appropriate in connection with such evaluation of this RFP;
- Receive, consider, pursue, and/or transact on (i) opportunities to acquire or contract for other assets or resources offered or that become available outside of the RFP process or (ii) proposals offered in response to this RFP that are non-conforming or have been eliminated from consideration in this RFP;
- Invite further proposals in or outside of this RFP or supplemental submissions or modifications of previously submitted proposals in this RFP;
- Determine which Bidders, or entities, or projects to allow, or continue to allow, to participate in the RFP process;
- Consult with the IM on any matter related to this RFP;
- Pursue or transact on proposals offered in response to this RFP regardless of any rank or recommended order of proposals that may be developed or established in the RFP evaluation process in order to limit exposure to a particular counterparty, technology or equipment type, location, contractor, or vintage, manufacturer, or resource or a particular set of risks, diversify its power supply portfolio, gain experience with one or more generation technologies or resources, avoid or mitigate transmission or interconnection concerns, or achieve one or more other commercial goals as EML or ESL deems appropriate;
- Sign or not sign Definitive Agreement(s) with Bidders or other Persons relating to the Product solicited by this RFP;
- Supplement, update, refine, or otherwise modify its proposal evaluation process, including, without limitation, any models or modeling data and assumptions;
- Subject to the terms of any applicable confidentiality agreement entered into between ESL and Bidder, retain, archive, or destroy any information or material provided to or for the benefit of ESL in the Proposal Submission Process; and
- Take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFP and the RFP process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised individually by EML or ESL, the operating committee for EML, or any director, officer, employee, or authorized agent or representative of EML, ESL, or any of their respective parents, and each is without limitation of any other such right of EML or ESL in this RFP, including this Section 6.6. The reservation of rights contained herein is in addition to all other rights reserved or granted to EML or

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any of its Affiliates (including ESL) elsewhere in this RFP or otherwise held by or available to EML or any of its Affiliates (including ESL).

#### **6.7. No Warranties or Liabilities**

BY PARTICIPATING IN THE RFP PROCESS, EACH BIDDER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN A DEFINITIVE AGREEMENT WITH BIDDER:

(A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF EML, ESL, OR ANY OTHER AFFILIATE OF EML IN CONNECTION WITH THIS RFP IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND

(B) EML, ITS AFFILIATES (INCLUDING ESL), AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND ADVISORS, AS WELL AS THE IM, SHALL HAVE NO LIABILITY TO ANY BIDDER, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFP.

#### **6.8. Acceptance of Proposals**

Without prejudice to EML's rights under the Proposal Submission Agreement or at law or in equity, no proposal submitted by any Bidder shall be deemed accepted by, or otherwise binding upon, EML or any of its Affiliates (including ESL), and EML, each of its Affiliates (including ESL), and their respective directors, officers, members, employees, agents, and representatives shall have no obligation or liability of any kind with respect to any such proposal or otherwise in connection with this RFP, unless and until a Definitive Agreement has been mutually executed and delivered by EML or any of its Affiliates and Seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by EML or any of its Affiliates and Seller. Notwithstanding anything to the contrary in this RFP, all proposals delivered to ESL shall become the sole and exclusive property of EML upon receipt, and EML shall have all rights and privileges of ownership of such property, subject to any provision of this RFP relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between EML and Bidder or Seller executed in connection with this RFP process.

#### **6.9. Bidder Costs and Expenses**

Each Bidder is solely responsible for all costs and expenses it incurs in connection with this RFP. Through its participation in this RFP, each Bidder agrees that under no circumstance, including, without limitation, EML's or ESL's withdrawal from or suspension, cancellation, or termination of the

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RFP process, will EML, any of its Affiliates (including ESL), or any of their respective directors, officers, members, partners, employees, agents, representatives, or advisors have any responsibility or liability of any kind to Bidder, its Affiliates, or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors, or lenders for any cost or expense directly or indirectly incurred by Bidder (no matter how incurred) in connection with the RFP process, except to the limited extent provided in the Proposal Submission Fees section of the Main Body (relating to Proposal Submission Fee refunds).

#### **6.10. Sale of Bidder or Project**

The sale, conveyance, assignment, or transfer of control or ownership, in whole or in part, direct or indirect, of any resource registered by or for Bidder or any Affiliate thereof to participate in this RFP and/or Bidder's or any such Affiliate's rights with respect to any registration and/or proposal submitted into this RFP is not contemplated and may result in the resource's or proposal's elimination from this RFP, including after any selection of the proposal for the Primary Selection List or Secondary Selection List. Bidder must promptly notify the Bid Event Coordinator of any sale, conveyance, assignment, or transfer of control or ownership, in whole or in part, direct or indirect, of any resource registered by or for Bidder or any Affiliate thereof to participate in this RFP and/or Bidder's or any such Affiliate's rights with respect to any registration and/or proposal submitted into this RFP.

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