



***Appendix F***  
***Process For***  
***Protection of Proposal Information***

***For***

***2012***  
***Request For Proposals***  
***For***  
***Long-Term, Supply-Side***  
***Baseload Resources***

Entergy Services, Inc.  
August 28, 2012

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

## **APPENDIX F PROCESS FOR PROTECTION OF PROPOSAL INFORMATION SUMMARY**

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

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

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

### **OVERVIEW**

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

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

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

Because numerous departments and personnel in the ESI organization are involved in the resource planning, asset management/supply procurement, and operations functions, ESI has implemented specific protocols for the protection of proposal information to limit access to specific

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<sup>1</sup>This Appendix F includes safeguards to ensure that confidential RFP information is not shared with Entergy Competitive Affiliates. As specified in Sections 1.7 and 1.9, respectively, of the Main Body, Entergy Competitive Affiliates are ineligible to participate in this RFP and developmental resources, such as an Entergy self-build resource, are not Eligible Resources and therefore are precluded from supporting a proposal.

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market-sensitive proposal information provided by Bidders in this RFP, including the protocols listed below:

- (i) No proposal information shall ever be disclosed to any Entergy Competitive Affiliate or to members of the Self-Supply Commercial Team or the Self-Supply Support Team, except to the extent that such information is made public.
- (ii) Subject to Sections 8.1 and 8.2 below, prior to the selection of proposals to the Primary Selection List and Secondary Selection List, no proposal information shall be provided to any person within ESI who is not a member of an RFP Evaluation Team or the RFP Administrative Team, other than the information that may be provided to senior advisors and decision-makers of ESI and the Included Entergy Operating Companies as provided for in Section 8.3, below.
- (iii) No proposal information shall be provided to any member of an Evaluation Team prior to the Required Proposal Submission Time or before review and approval by the IM.
- (iv) All files created in connection with the RFP process shall be available only to approved personnel. Approved personnel will include only the IM, the RFP Administration Team, and those members of the Evaluation Teams with designated access to specific information.
- (v) ESI management is responsible for communicating to the members of the Evaluation Teams the importance of compliance with these protocols, both at the outset of the RFP process and on a continuing basis.
- (vi) ESI personnel involved with the RFP process shall sign a confidentiality acknowledgement that governs access to and uses of information contained in proposals and proposal documents.

## **2. Affiliate Rules**

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

- i. FERC Transmission Standards of Conduct, codified at 18 CFR § 358;
- ii. FERC Market-Based Rate Affiliate Restrictions, codified at 18 CFR § 35.39;
- iii. FERC Cross-Subsidization Restrictions on Affiliate Transactions, codified at 18 CFR §§ 35.43-44;
- iv. Arkansas Affiliate Transaction Rules, as applicable;
- v. Council for the City of New Orleans Code of Conduct for Entergy New Orleans, Inc.

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- vi. October, 1992 Settlement Agreement between Entergy and the Arkansas Public Service Commission;
- vii. Appendix 3 to the Louisiana Public Service Commission's May 3, 1993 Order No. U-19904;
- viii. March 26, 1998 Settlement Agreement between Entergy and the Council for the City of New Orleans;
- ix. April 10, 1998 Settlement Agreement between Entergy and the Mississippi Public Service Commission;
- x. October 19, 2000 Gas Settlement Agreement between the Council for the City of New Orleans and Entergy New Orleans, Inc.; and
- xi. Entergy Corporation Standards of Conduct regarding the relationship between Entergy Corporation's regulated and unregulated subsidiaries.

A link to the Entergy Affiliate Rules Compliance Website is posted on the 2012 Baseload RFP Website.

**3. Code of Conduct for Self-Supply Commercial Team**

The Self-Supply Commercial and the Self-Supply Support Teams will adhere to the provisions of Acknowledgements of Confidentiality, which will require, among other things, that the members of the Self-Supply Commercial Team and the Self-Supply Support Team will refrain from participation in the RFP evaluation process.

**4. Use of Independent Monitor**

ESI has retained the IM in order to (1) oversee the design and implementation of this RFP's solicitation, evaluation, selection, and contract negotiation process to ensure that the process is impartial and objective, (2) provide an objective, third-party perspective concerning ESI's efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder, including to designated personnel responsible for developing the self-supply proposal (including with respect to cost estimates, performance data and other information related to such proposal), and (3) otherwise assist ESI in its efforts to ensure that this RFP is conducted in a fair and impartial manner. The IM's role is described in the Scope of Work Activities, which is posted on the 2012 Baseload RFP Website.

During each of the following phases in the RFP process, the IM will perform specific roles, as generally described below:

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

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**4.2. Proposal Review.** All proposals submitted by Bidders will be reviewed and screened by the IM. The IM will work with members of the RFP Administrative Team to redact certain information from the proposal documents to ensure that information needed for review of the proposals is retained without the disclosure of proposal information that would identify Bidders to persons who do not need such information. The IM also will oversee the segregation of information from Bidder's Proposal Template, responses to Appendix G-1, G-2, G-3 or G-4 (as applicable) and Special Considerations ("Proposal Package"), which will then be made available to the applicable Evaluation Teams, with each of the teams receiving only the information needed in order to carry out its part of the proposal evaluation. This information segregation process is designed to protect Bidder confidentiality and ensure impartial evaluation of all proposals by the Evaluation Teams. While no process can ensure that a Bidder's identity remains completely anonymous, the intention of this process is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process.

**4.3. Proposal Submission Process.** The IM and, as necessary, members of the RFP Administrative Team will review information submitted by Bidders to determine whether the proposals meet the Preliminary Shortlist Requirements specified in Section 2.3 of the Main Body and to determine whether additional information is needed or appropriate. The IM, the RFP Administrator and, as necessary, other members of the RFP Administrative Team will oversee receipt of all proposals during the Proposal Submission Period.

**4.4. Proposal Evaluation and Selection Process.** The IM will monitor the proposal evaluation and selection process to ensure that the RFP process is objective and impartial and to provide an objective, third-party perspective concerning ESI's efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder, including the commercial team responsible for developing and submitting the self-supply proposal (the "Self-Supply Commercial Team"). In addition, the IM will review the precautions taken to restrict access to proposal information to only those members of the Evaluation Teams who need such information for evaluation purposes.

**4.5. Oversight of Bidder Contact.** During the period prior to the creation of the Primary Selection List and/or the Secondary Selection List, the IM will obtain and review copies of all written communications from the RFP Administrator to Bidders in advance of ESI's issuance of such communications. To the extent any Bidder is contacted pursuant to Section 5.2 of this Appendix F, the RFP Administrator will consult with the IM before initiating contact to minimize the dissemination of information that explicitly identifies Bidders to Evaluation Team members that do not need such information.

**4.6. Contract Negotiation Process and Due Diligence Process.** After Bidders have been notified of their proposal's inclusion on the Primary Selection List or the Secondary Selection List, the IM will monitor all negotiations relating to such proposals. If the self-supply proposal is selected

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for the Primary Selection List, the IM will monitor and, as it deems appropriate, participate in any discussions between members of the Evaluation Team(s) and the Self-Supply Commercial Team. If the self-supply proposal is selected to the Secondary Selection List, unless and until the self-supply proposal is selected to the Primary Selection List, the IM shall participate in all discussions between the Evaluation Team(s) and the Self-Supply Commercial Team. The IM also may participate in negotiations with Bidders as it deems necessary.

#### **5. Role of RFP Administrator**

As it has in prior RFPs, ESI has designated an individual to serve as the “RFP Administrator.” The RFP Administrator will serve, under the IM’s supervision, in a multi-purpose role that includes, but is not limited to, the following responsibilities:

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

**5.2. Processing of Questions.** In the event that ESI needs to contact a Bidder to clarify the terms of its proposal or to request additional information, ESI will rely on the RFP Administrator to perform those functions and communicate directly with Bidders. The IM will obtain and review in advance copies of all written communications from ESI to Bidders. Bidders will be required to submit their written responses to such communications to the RFP Administrator, who will engage the IM in accordance with Section 4.5 above prior to transmitting the information to the appropriate Evaluation Team.

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

#### **6. Role of RFP Administration Team**

For this RFP, ESI has established an RFP Administration Team, which shall consist of the RFP Administrator, the Director, SPO Planning Analysis, the Manager, SPO Project and Performance Management, and the Director, SPO Asset Operations, none of whom are members of any Evaluation Team or the Self-Supply Commercial Team. The role of the RFP Administration Team includes, but is not limited to, the following responsibilities:

**6.1. Responses to Bidder Questions.** The RFP Administration Team will ensure that Bidder questions are addressed, with questions and answers posted on the 2012 Baseload RFP Website, subject to Section 7.1 of the Main Body.

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

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

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

Bidders will register for the RFP in accordance with the instructions provided in Appendix B-1 (Detailed Instructions for Bidder Registration). Information submitted to ESI through the Bidder Registration Process will be submitted to the RFP Administrator. Only the IM, the RFP Administrator and, if necessary, members of the RFP Administration Team will have access to and review the information received from Bidders in the Bidder Registration Process.

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

Bidders will submit proposals in response to the RFP in accordance with the instructions provided in Appendix B-2 (Detailed Instructions for Proposal Submission). A key process objective of the RFP process is to ensure that information provided by Bidders in response to this RFP is kept confidential. ESI has designed procedures that its employees, agents, and consultants will be required to follow in conducting the proposal review process and the proposal evaluation process phases of the RFP. These procedures are described in the Main Body and in Appendices B-1 and B-2. These procedures are designed to preserve, to the extent practicable, the confidentiality of any confidential information contained in Bidders' proposals, including, but not limited to, the identities of Bidders, proposal pricing and other terms and conditions of their proposals, and include such protections as requiring the submission, via electronic mail, of Bidder's Proposal Packages to the RFP Administrator and the redaction of Bidder's Proposal Packages so that different members of the Evaluation Teams receive only the limited information needed to carry out their evaluations. These procedures are intended to provide reasonable assurance to Bidders that, except as noted below with respect to legal or regulatory requirements, information contained in their proposals will be disclosed (i) only to the appropriate members of the Evaluation Teams, and only to the extent necessary for the sole purpose of resource evaluation, and (ii) only to select agents and consultants utilized by ESI/the Evaluation Teams, and only to the extent necessary for them to perform their respective functions in connection with this RFP.

**8.1. Basic Preliminary Protective Measures.** Immediately after the end of the Proposal Submission Period, each Proposal Package will be reviewed by the IM, who will work with members of the Administrative Team to redact certain information from the Proposal Package prior to giving any information from the proposals to any member of any Evaluation Teams. Proposal data will then

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be provided only to those members of the Evaluation Teams who are responsible for evaluating that particular aspect of the proposal response. For example, the member of the VAT responsible for fuel evaluation will receive only information on fuel-related issues, but no non-fuel pricing information. Prior to providing this information to the Evaluation Teams, the IM will review the information to ensure that it does not contain the name, address, telephone number, email, or other pertinent Bidder contact information or other information that otherwise identifies the identity of Bidder (except in those instances where the identity of the Bidder is required in order to complete a particular evaluation activity). This process will be completed before any proposal information is provided to members of any Evaluation Teams.

#### Phase I Executive Report

After completion of the Proposal Submission Process, the IM may prepare an Executive Report (the “Phase I Executive Report”), which will communicate the following: (1) the total number of Bidders submitting proposals; (2) the total number of resources for which proposals have been submitted; (3) the number of proposals submitted for each fuel type; (4) the total number of resources, proposals, and capacity by planning region; and (5) any additional information that the recipients of the Executive Report may request and that the IM concurs is appropriate to provide. The Phase I Executive Report will be communicated only to the Entergy Operating Committee, the Chief Executive Officer of Entergy Corporation, the Senior Vice President and Chief Accounting Officer of Entergy Corporation, the Executive Vice President and Chief Financial Officer of Entergy Corporation, the Executive Vice President and Chief Operating Officer of Entergy Corporation and the Group President of Utility Operations of Entergy Corporation and, as needed and with the concurrence of the IM, to other senior executives of Entergy Corporation or any direct or indirect subsidiary thereof.

#### Phase II Executive Report

After Phase I of the RFP is completed and the preliminary shortlist of proposals that will move forward to Phase II of the RFP has been finalized, the IM may prepare a second Executive Report (the “Phase II Executive Report”) that will communicate the following with respect to the proposals included on the preliminary shortlist: (1) Proposal IDs; (2) fuel type; (3) capacity amount; (4) resource location (by planning region); and (5) any additional information that the recipients of the Phase II Executive Report may request and that the IM concurs is appropriate to provide. The Phase II Executive Report will be communicated only to the Entergy Operating Committee, the Chief Executive Officer of Entergy Corporation, the Senior Vice President and Chief Accounting Officer of Entergy Corporation, the Executive Vice President and Chief Financial Officer of Entergy Corporation, the Executive Vice President and Chief Operating Officer of Entergy Corporation and the Group President of Utility Operations of Entergy Corporation and, as needed and with the concurrence of the IM, to other senior executives of Entergy Corporation or any direct or indirect subsidiary thereof.

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**8.2. Proposal Data.** Proposal information will be segregated and distributed to the Evaluation Teams as follows:

- a) operational and economic information will be provided to members of the EET;
- b) fuel pricing information will be provided only to members of the VAT responsible for the fuel evaluation;
- c) technical, environmental, operational, commercial and other information related to the viability of the proposal will be provided to appropriate members of the VAT;
- d) resource location and power delivery information will be provided to members of the DAT; and
- e) credit information will be provided to members of the CET.

The proposal information described above will be provided only as required by the Evaluation Teams to perform the specified evaluation function for which each team is responsible. The proposal information provided to the Evaluation Teams will exclude data specifically identifying the Bidder (Bidder company name, Bidder company address and Bidder company contact information, etc.). As part of the proposal information provided to the Evaluation Teams, the IM will work with members of the RFP Administrative Team to redact as necessary Bidder's Proposal Package prior to providing the information to Evaluation Team(s). While no process can ensure that the identity of the Bidder remains completely anonymous, subject to the activities of the VAT, CET and DAT, the intention is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process. As described in Section 8.1 above, the IM will review all proposal information prior to distribution to members of the Evaluation Teams. During proposal evaluation, each proposal will be identified by its unique Proposal ID and/or Resource ID.

**8.3. Evaluation Team Reports.** The Evaluation Teams will prepare reports informed by results of their analysis of the proposals. The Evaluation Team reports will be reviewed by the RFP Administrative Team as well as senior advisors and other decision-makers of ESI and the Included Entergy Operating Companies. Once a proposal has been selected for either the Primary Selection List or the Secondary Selection List, all information relating to such proposal may be made available to the team tasked with negotiating the Definitive Agreement, to appropriate executives and other decision-makers of ESI and the Included Entergy Operating Companies and, with the concurrence of the IM, to the Economic Evaluation Team. ESI reserves the right to disclose, with the concurrence of the IM, proposal information to additional ESI personnel as necessary to address unforeseen circumstances that may materialize and materially affect the evaluation of proposals. All Entergy personnel and other agents and consultants having access to confidential information in this RFP will be contractually and/or professionally bound to protect the confidentiality of confidential Bidder

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information and to use it for no other purpose besides activities related to the RFP process and resource evaluation processes. Notwithstanding the foregoing, and without limiting Appendix D, ESI and the Included Entergy Operating Companies expressly disclaim and have no liability to any Bidder for damages of any kind resulting from any disclosure of any Bidder or proposal information.

**8.4. Post-RFP Treatment of Proposals and Related Information.** Proposals and any correspondence or other material (including electronic material) provided to ESI in connection with this RFP will not be returned to Bidders. At the conclusion of the RFP process (including regulatory review of any transaction entered into as a result of this RFP), all proposals will be either destroyed or archived by ESI in accordance with internal policies governing the storage and retention of records and subject to the procedures described in this section providing for the treatment of such proposals as confidential and subject to any applicable Affiliate Rules.

**8.5. Certain Permitted Disclosures of Proposal Information.** All information contained in a proposal or otherwise provided by Bidder to ESI in connection with this RFP may be: (i) required to be disclosed by ESI or an Entergy Operating Company pursuant to any applicable law, rule, or regulation or in any proceeding or investigation involving ESI or such Entergy Operating Company and (ii) subject to review by one or more of the regulatory bodies, including their staffs, having jurisdiction over ESI or an Entergy Operating Company in connection with any proceeding or investigation involving ESI or such Entergy Operating Company, or by any other Governmental Authority with jurisdiction over ESI or an Entergy Operating Company over any matter related, directly or indirectly, to this RFP, and may be subject to legal discovery or disclosure. By submitting a proposal in response to this RFP, Bidder agrees to (a) allow ESI and any Entergy Operating Company to use any of the information contained in any of its proposals or otherwise submitted to ESI in connection with this RFP in filings, pleadings, responses to information requests, testimony, or evidence in any proceeding before or investigation involving any such regulatory body or other Governmental Authority and, without limiting the generality of the foregoing, (b) disclose any of such information when required to do so as described above. In the event such information is to be so disclosed, ESI will use good faith efforts to attempt to obtain from such Governmental Authority (or other Person to whom such disclosure is being made), prior to the disclosure of such information, a confidentiality agreement or protective order or other mechanism to protect the confidentiality of such information and limit its dissemination. ESI can provide and makes no assurance of the outcome of any such attempt. ESI advises Bidders that intervenors have sought access to confidential Bidder information about potential resource acquisitions in prior regulatory proceedings relating to previous ESI requests for proposals or in which one or more of the Entergy Operating Companies have been involved, and similar requests for access could be made in proceedings relating to this RFP.

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