

Appendix D

***Reservation of ESI Rights
and Other RFP Terms***

For

2012

Request For Proposals

For

***Long-Term, Supply-Side
Baseload Resources***

~~DRAFT~~

Entergy Services, Inc.

~~July 25,~~ August 28, 2012

APPENDIX D
RESERVATION OF ESI RIGHTS AND OTHER RFP TERMS

1. Reservation of Rights

Notwithstanding anything to the contrary, ESI and each of the Included Entergy Operating Companies 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 or, with respect to an Included Entergy Operating Company, cancel or suspend its participation in this RFP;
- modify this RFP, including, without limitation, any Appendix to this RFP (including, without limitation, Appendix H), or any of the dates, times or places related to the RFP process;
- accept, refuse to accept, consider, favor, disfavor, recommend, not recommend, pursue or reject any proposal, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, in consultation with the IM, reject or eliminate any proposal submitted in response to this RFP that is incomplete, is non-conforming, or contains irregularities (or waive any 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 (other than Entergy Competitive Affiliates) related to this RFP and suspend or terminate negotiations with any Bidder;
- discuss the terms of any proposal or any other material submitted by Bidder with, and obtain clarification or additional information concerning its proposal or such other material from, Bidder or its directors, officers, employees, agents, representatives, and advisors;
- request from Bidder information not detailed in or required by this RFP but that, in ESI's sole opinion, may be necessary or relevant to the evaluation of Bidder's proposal(s);
- receive, consider, pursue, or transact on opportunities to acquire resources offered outside of the RFP process as such opportunities arise or proposals offered in response to this RFP that are non-conforming or eliminated from consideration in this RFP;
- determine which Bidders or entities to allow or continue to allow to participate in the RFP process;
- invite further or supplemental submissions of proposals;
- sign or not sign Definitive Agreements with Bidders or other Persons relating to the Products solicited by this RFP;

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- retain, archive, or destroy any information or materials provided to or for the benefit of ESI 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 ESI, the Entergy Operating Committee or any director, officer, employee, or authorized agent or representative of ESI, any Included Entergy Operating Company, or any of their respective parents. The reservation of rights contained herein is in addition to other rights reserved or granted to ESI or any of its Affiliates elsewhere in this RFP or otherwise held by ESI or any of its Affiliates.

2. No Warranties or Liabilities

BY PARTICIPATING IN THE RFP PROCESS, EACH BIDDER AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN A DEFINITIVE AGREEMENT WITH BIDDER:

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF ESI OR ANY OTHER AFFILIATE OF ESI 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) ESI, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS 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.

3. Acceptance of Proposals

Without prejudice to ESI'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, ESI or any of its Affiliates (including the Included Entergy Operating Companies), and ESI, its Affiliates (including the Included Entergy Operating Companies), 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

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with this RFP unless and until a Definitive Agreement has been mutually executed and delivered by ESI 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 ESI and Seller. Notwithstanding anything to the contrary in this RFP, all proposals delivered to ESI shall become the sole and exclusive property of ESI upon receipt, and ESI shall have all rights and privileges of ownership of such property, subject to any provisions of this RFP relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between ESI and Bidder or Seller executed in connection with this RFP process.

4. 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, ESI's withdrawal from or suspension, cancellation, or termination of the RFP process, will ESI, any of its Affiliates 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, 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 Section 2.4 of Appendix B-1 (relating to refund of Proposal Submission Fees). Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

5. Bidder Disclosure of RFP Information

No Bidder may, without the prior consent of ESI, disclose to any other Person (except those participating in the same proposal, as described above, the RFP Administrator, the IM and the RFP evaluation teams (to the extent permitted in Section ~~2.2~~5.2 of Appendix F)) their participation in the RFP process (other than by attendance at any meeting to which more than one participant is invited by ESI, which attendance in and of itself will not violate this provision of this RFP). Further, no Bidder may disclose, collaborate on or discuss with any other Person (except for those Persons participating in the same proposal on Bidder's behalf or at Bidder's request, to the extent permitted in Section 7.3 of the Main Body, the RFP Administrator, and the IM) bidding strategies or the substance of proposals, including, without limitation, the price or any other terms or conditions of any contemplated, indicative or final proposal. Any such disclosure, collaboration or discussion would violate this RFP and the Proposal Submission Agreement and may result in the rejection of Bidder's proposal.

6. Consents and Regulatory Approvals

ESI or the applicable Included Entergy Operating Company(ies) will be responsible for obtaining all applicable regulatory approvals it (they) requires for any Transaction arising out of this RFP, including, without limitation, authorization from the FERC and any regulatory body

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with jurisdiction over such Included Entergy Operating Company(ies). The commencement of the Delivery Term under any Definitive Agreement for the purchase of power under the Baseload Product will be conditioned upon the receipt of regulatory approvals on terms acceptable to ESI or the applicable Included Entergy Operating Company(ies) in its([their](#)) sole discretion. Bidder/Seller will be responsible for obtaining and maintaining all consents, authorizations and regulatory approvals necessary for the performance of its obligations under the Definitive Agreement. Please consult Appendix C of this RFP for additional information regarding regulatory approvals and conditions precedent to the Delivery Term.

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