



Appendix C

Reservation of ESI Rights and Other RFP Terms

For

2014

Request For Proposals

For

Capacity Credits

~~DRAFT~~

Entergy Services, Inc.

~~March 5,~~April 9, 2014

APPENDIX C
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 (including, without limitation, after the selection under this RFP of one or more Bidders for a Purchase Agreement) 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, or any of the dates, times or places set forth in the 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;
- without limitation of the generality of any of the other terms herein, 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 or other Person at any time, including, without limitation, as a result of any change in the capacity credit needs of the Included Entergy Operating Companies giving rise to this RFP or in ESI's projections of the price of Capacity Credits in MISO for the relevant Planning Years;
- 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 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) and utilize such information as ESI deems appropriate in connection with such evaluation of this RFP;
- receive, consider, pursue, or transact on (i) opportunities to acquire capacity, capacity credits, or other assets or resources offered or that become available outside of the RFP process as such opportunities arise or (ii) proposals offered in response to this RFP that are non-conforming or eliminated from consideration in this RFP;
- invite further proposals in or outside of this RFP or supplemental submissions of proposals;
- determine which Bidders or entities to allow, or continue to allow, to participate in the RFP process;

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- sign or not sign Purchase Agreement(s) with Bidders or other Persons relating to the Capacity Credits solicited by this RFP;
- subject to the terms of any applicable confidentiality agreement entered into between ESI and Bidder, retain, archive, or destroy any information or material 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 all other rights reserved or granted to ESI or any of its Affiliates elsewhere in this RFP or otherwise held by or available to 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 PURCHASE 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

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liability of any kind with respect to any such proposal or otherwise in connection with this RFP, unless and until a Purchase Agreement has been mutually executed and delivered by ESI 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 ESI or any of its Affiliates 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 provision 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, 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 Section 4.3 of the Main Body (relating to refund of Bidder Registration 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 the RFP Administrator) its 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 the RFP Administrator) 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 or elimination of Bidder from further participation in this RFP.

6. Consents and Regulatory Approvals

ESI and each applicable Included Entergy Operating Company will be responsible for obtaining all applicable regulatory approvals it requires for any transaction arising out of this RFP, including, without limitation, authorization from any regulatory body with jurisdiction over such Included Entergy Operating Company. The commencement of the Capacity Credit Term under any Purchase Agreement for the purchase and sale of Capacity Credits will be conditioned upon

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the receipt of regulatory approvals on terms acceptable to ESI or each applicable Included Entergy Operating Company in its sole and absolute 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 Purchase Agreement. Please consult Appendix B of this RFP for additional information regarding regulatory approvals and conditions precedent to the Capacity Credit Term.

7. Bidder Acceptance of this Appendix C

By participating in the RFP process, each Bidder agrees that it will be deemed to have accepted all of the rights and terms included in this Appendix C and to have agreed that its participation in the RFP is subject to such rights and terms. ESI and the Included Entergy Operating Companies are conducting this RFP and participating in the RFP process in reliance upon the foregoing understanding.

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