



***2020 Request for Proposals  
for  
Solar Photovoltaic Resources  
for  
Entergy Louisiana, LLC***

Entergy Services, LLC

~~April~~June 16, 2020

**CONFIDENTIAL**

**TABLE OF CONTENTS**

1. RFP INFORMATION ..... 1

    1.1. Introduction ..... 1

    1.2. Entergy Louisiana ..... 1

    1.3. RFP Documents ..... ~~32~~

    1.4. ELL Solar RFP Website & PowerAdvocate ..... ~~54~~

    1.5. Bid Event Coordinator..... ~~54~~

    1.6. Independent Monitor ..... ~~65~~

    1.7. Louisiana Public Service Commission Staff ..... ~~65~~

    1.8. Eligible Participants ..... ~~65~~

    1.9. Eligible Technologies..... ~~65~~

    1.10. Eligible Resources ..... ~~76~~

2. PROPOSALS ..... ~~98~~

    2.1. BOT Proposals - High-Level Overview of Select Commercial Terms ..... ~~98~~

    2.2. PPA Proposals - High-Level Overview of Select Commercial Terms ..... ~~1312~~

    2.3. Proposal Development and Special Exceptions ..... ~~1514~~

    2.4. Threshold Requirements ..... ~~1615~~

    2.5. Interconnection, Deliverability, and Transmission Considerations ..... ~~1817~~

    2.6. PPA Cost Recovery ..... ~~2120~~

    2.7. Environmental Considerations ..... ~~2120~~

    2.8. Design and Operating Considerations..... ~~2221~~

    2.9. Supplier Diversity..... ~~25~~

3. SELF-BUILD OPTION ..... ~~2221~~

4. RFP PROCESSES ..... ~~2322~~

    4.1. RFP Schedule Overview ..... ~~2322~~

    4.2. Bidder Registration ..... ~~2624~~

    4.3. Proposal Submission Fees..... ~~2625~~

    4.4. Proposal Submission ..... ~~2726~~

5. PROPOSAL EVALUATION ..... ~~2827~~

    5.1. Overview and Assessments ..... ~~2827~~

    5.2. Notification of Evaluation Results; Commercial Negotiations ..... ~~3735~~

6. MISCELLANEOUS RFP MATTERS ..... ~~3735~~

<b>6.1. Authorized Bidder Communications Channels.....</b>	<b><u>3735</u></b>
<b>6.2. Posting Questions .....</b>	<b><u>3836</u></b>
<b>6.3. Questions Involving Confidential Information.....</b>	<b><u>3836</u></b>
<b>6.4. Contact with MISO .....</b>	<b><u>3937</u></b>
<b>6.5. Confidentiality Procedures for Bidder Registration and Proposal Submission Information .....</b>	<b><u>3937</u></b>
<b>6.6. Affiliate Rules and Codes of Conduct .....</b>	<b><u>3937</u></b>
<b>6.7. Multi-Person Bids.....</b>	<b><u>3937</u></b>

## APPENDICES

Appendices	Title
Appendix A	Glossary
Appendix B-1	Model BOT Agreement
Appendix B-2	Model Scope Book
Appendix C	Model PPA
Appendix D	Preliminary Due Diligence and Attachments  Attachment A – Cost Components Attachment B – Hourly Profiles Attachment C – MFS Bidder Questions Attachment D – Annual Energy Quantities
Appendix E	Reservation of Rights
Appendix F	Credit/Collateral Requirements
Appendix G	Protection of Proposal Information
Appendix H	Operation and Maintenance Services Scope
Appendix I	Supplier Diversity

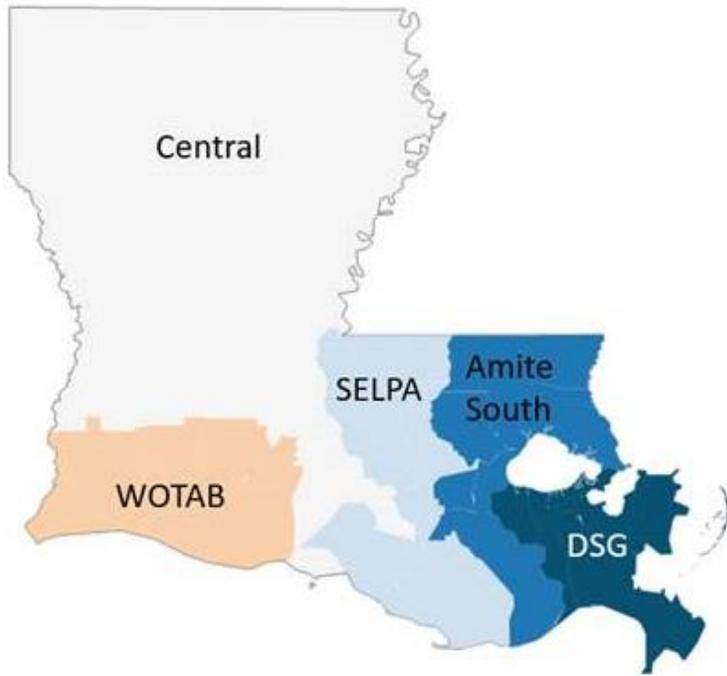
## 1. RFP INFORMATION

### 1.1. Introduction

Entergy Services, LLC (“**ESL**”), acting as agent for Entergy Louisiana, LLC (“**ELL**”), hereby issues this 2020 Request for Proposals for Solar Photovoltaic Resources for Entergy Louisiana, LLC (including all appendices, this “**RFP**”). Through this RFP, ELL seeks to acquire, on and subject to the terms set forth herein, up to ~~250~~300 MW (AC) of energy, Capacity, ~~capacity-related benefits~~Capacity-Related Benefits (such as ZRCs and capacity credits), Other Electric Products, and Environmental Attributes from eligible new-build Solar PV generation resources for service commencing no later than December 31, 2023. The resources are being solicited to help ELL meet its long-term resource planning objectives as outlined in ELL’s Integrated Resource Plan submitted in LPSC Docket No. I-34694, including, without limitation, increased depth and diversity of its generation resource portfolio. A summary of the scope of the RFP is set forth in Section 1.11 below.

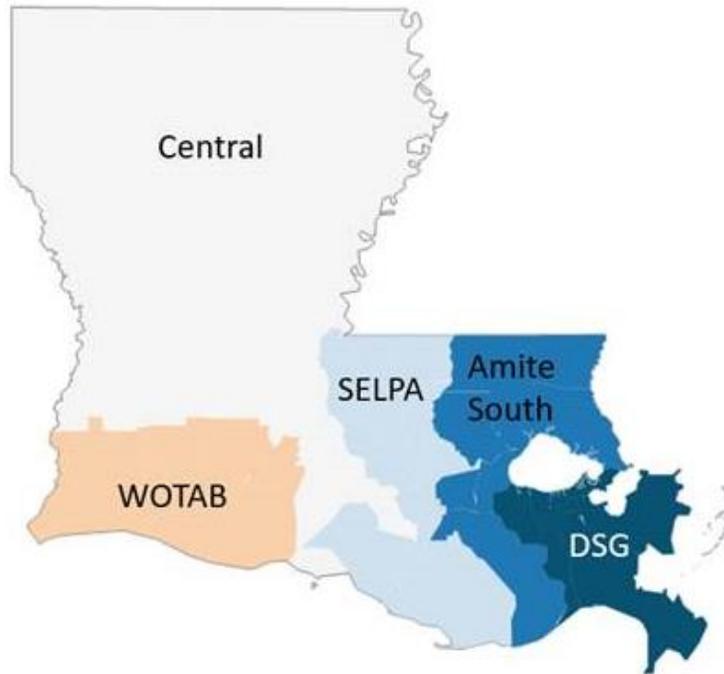
### 1.2. Entergy Louisiana

ELL supports continued growth in Louisiana through investment in generation and other infrastructure that provide customers with clean, affordable, and reliable electricity. Through this RFP, ELL is seeking cost-effective Solar PV resources that can provide energy, fuel diversity, environmental, locational, and other benefits to ELL customers. The Solar PV resources are required to be located in the Southeast Louisiana Planning Area (“**SELPA**”), a region in ELL’s service territory that includes the “Amite South” sub-region and “DSG,” itself a sub-region of Amite South, and to be interconnected at completion directly to the ELL Transmission System. Siting new solar generation in SELPA may enable ELL to deactivate legacy gas units in SELPA when economic to do so and to develop “green tariff” options for customers that have expressed an interest in accessing attributes of renewable energy. ELL’s strong preference is that the Solar PV resources procured through this RFP be located within Amite South. The following map shows SELPA, including Amite South and DSG.



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

2020 ELL SOLAR RFP



This map is approximate. If a bidder is unclear whether a resource is located within SELPA (or Amite South or DSG), the bidder can submit the MISO-designated J number coordinates for the resource to the Bid Event Coordinator and the Bid Event Coordinator will respond with a determination whether the resource is located within SELPA (or Amite South or DSG) or coordinate clarifying questions before making such a determination.

### 1.3. RFP Documents

This RFP consists of a Main Body and ten appendices. Among other things, the Main Body (i) offers general information about this RFP, (ii) describes the resource and transaction structure that ELL 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 Independent Monitor (“**IM**”), and (v) provides a high-level overview of the proposal evaluation and selection process.

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

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 for the build-own-transfer (“**BOT**”) type of asset purchase transaction(s) sought by this RFP (“**Model BOT Agreement**”). The Model BOT Agreement will be the agreement used for any BOT asset purchase arrangement arising out of this RFP. (See Section 2.1 below)

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

Appendix C is the form power purchase agreement (“**PPA**”) for the power purchase transaction(s) sought by this RFP (“**Model PPA**”). The Model PPA will be the agreement used for any power purchase arrangement arising out of this RFP. (See Section 2.2 below)

Appendix D contains questions and requests for material and other information that Bidders will be required to answer or provide as part of its Proposal Package.

Appendix E contains an express reservation of ELL’s and ESL’s rights in this RFP; warranty, liability, and contract acceptance disclaimers; terms addressing the disclosure of RFP related information by ELL, ESL, and Bidders in this RFP, Bidder’s responsibility for RFP-related costs, and regulatory approvals; and Bidder’s deemed acceptance of the rights and terms contained in Appendix E and ELL’s reliance upon such acceptance.

Appendix F 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 G provides information on the protocols ELL has established to ensure that (i) the RFP process will be impartial and objective, (ii) Bidders’ commercially sensitive information will be protected, (iii) all proposals will be treated in a consistent fashion, and (iv) no proposal from any particular Bidder will receive undue preference.

Appendix H is a draft model contract for operation and maintenance services for BOT solar resources proposed in this RFP (“**Model O&M Agreement**”). Bidders may, but are not required by this RFP to, offer to provide such services.

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

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

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 ELL may clarify, elaborate upon, or adjust the terms of this RFP in response to developments that may affect or require attention in this RFP, ELL 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, or for other reasons.

#### 1.4. ELL Solar RFP Website & PowerAdvocate

The official website for this RFP is <https://spofossil.energy.com/ENTRFP/SEND/2020ELLSOLARRFP/index.htm> (the “**2020 ELL Solar RFP Website**”). This RFP and related material and information are posted on the 2020 ELL Solar RFP Website and available for review. The 2020 ELL Solar RFP Website will be updated from time to time with additional material and information concerning this RFP. Interested Persons are responsible for monitoring the 2020 ELL Solar 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 (i) submit proposals and documents and communicate with ESL upon the completion of the Bidder Registration Process and (ii) have access to RFP documents.

#### 1.5. Bid Event Coordinator

ELL 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 ELL on all RFP-related matters, (ii) ensuring that Bidder RFP-related questions ESL received during the pendency of this RFP are addressed in an appropriate manner, (iii) receiving, recording, and maintaining Bidder RFP proposals, (iv) working with the IM 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**.” The full set of the Bid Event Coordinator’s duties, and the role of the RFP Administration Team, are set forth in Appendix G.

The Bid Event Coordinator for this RFP is Ms. Emilee Bentz, who can be contacted prior to Bidder’s completion of the Bidder Registration Process via email at [ellrfp@energy.com](mailto:ellrfp@energy.com) and afterwards through PowerAdvocate. PowerAdvocate information will be provided to Bidders at the time or shortly after Bidder completes the Bidder Registration Process.

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

## 1.6. Independent Monitor

ELL has retained Mr. Wayne Oliver of Merrimack Energy Group, Inc. to act as the Independent Monitor (“**IM**”) 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 ELL’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 (781) 856-0007.

## 1.7. Louisiana Public Service Commission Staff

The Louisiana Public Service Commission (“**LPSC**”) has assigned Staff to consult on various aspects of this RFP to ensure that its design, implementation, evaluation, selection, and contract negotiation processes are impartial and objective and to provide an objective, third-party perspective on ELL’s efforts to ensure that all proposals are treated consistently and without undue preference to any Bidder. Bidders wishing to communicate with LPSC Staff about this RFP should use the following contact information:

Ms. Lauren Temento Evans  
Staff Attorney  
Louisiana Public Service Commission  
P.O. Box 91154  
Baton Rouge, Louisiana 70821-9154  
Email: [Lauren.Temento@la.gov](mailto:Lauren.Temento@la.gov)

## 1.8. Eligible Participants

ELL invites proposals from all potential suppliers capable of meeting the conditions and requirements identified in this RFP (“**Eligible Participants**”). Proposals from QFs 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 entity. For additional information concerning multi-party Bidders, please see Section 6.7 below. Otherwise Eligible Participants that do not comply with the terms, conditions, and requirements of this RFP may be determined by ELL, after consultation with the IM, to be ineligible to continue to participate in this RFP.

## 1.9. Eligible Technologies

Generation technologies permitted for proposals responsive to this RFP (“**Eligible Technologies**”) are limited to Solar PV technologies. Bidders may offer a commercially-proven lithium ion battery energy storage technology as a separately priced option for the Solar PV facility, but may not condition selection of the proposal based on the Solar PV facility on the selection of a

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

battery energy storage component. The battery energy storage system must be DC coupled with a minimum four-hour discharge. 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 technologies, wind, 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.

**1.10. Eligible Resources**

Generation resources that (i) will produce its energy output from an Eligible Technology, (ii) have an existing generator interconnect agreement with MISO or are included and remain in the 2018 or 2019 MISO DPP Queue, (iii) are new-build generation resources, (iv) will interconnect directly to the ELL Transmission System in SELPA, (v) are single resources, and (vi) meet the other criteria for participation in this RFP are “**Eligible Resources.**” Generation resources located at separate facilities will be considered multiple resources and may not be combined or aggregated to form a “system” of generation resources.

**1.11. Scope Summary**

The following table provides a high-level summary of key scoping items for this RFP.

Item	
<b>Resource Type</b>	New-build Solar PV facility; must have an existing GIA with MISO or be included in the 2018 or 2019 MISO DPP Queue (Sections 1.9, 1.10, 2.5)
<b>Resource Location</b>	The resource is required to interconnect directly to the ELL Transmission System in SELPA, preferably within the Amite South sub-region (AMS) (Sections 1.2, 1.10, 2.5)
<b>Transaction Types</b>	<p><i>BOT transaction(s):</i> BOT acquisition of the proposed Facility and related assets, with Seller assuming construction and financing risk prior to the Closing (Section 2.1, Appendix B-1)</p> <p><i>PPA transaction(s):</i> PPA for Contract Energy, Contract Capacity, Capacity-Related Benefits, Other Electric Products, and Environmental Attributes from the Facility (Section 2.2, Appendix C)</p>
<b>Capacity</b>	<p><i>Total Capacity sought from BOT transaction(s) and self-builds:</i> Up to <del>250</del><u>300</u> MW (AC) (Section 2.1)</p> <p><i>Total Capacity sought from PPA transaction(s):</i> Up to <del>400</del><u>150</u> MW (AC) (Section 2.2)</p> <p><i>Total Capacity sought in this RFP:</i> Up to <del>250</del><u>300</u> MW (AC) (Sections 1.1, 2.1, 2.2)</p>

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

	<p><i>Capacity minimums and maximums for any individual resource (-BOT, self-build, and PPA transactions) (Sections 1.1, 2.1, 2.2):</i></p> <ul style="list-style-type: none"> <li>• Minimum Guaranteed Capacity: 50 MW (AC)</li> <li>• Maximum Guaranteed Capacity: <del>400</del>150 MW (AC) (PPA transactions) MW (AC) and 150 MW (AC) (BOT transactions)</li> </ul> <p><i>Scope of Capacity Sale - BOT transaction:</i> Any proposed BOT transaction must be for a sale of the entire Facility</p> <p><i>Scope of Capacity Sale - PPA transaction:</i> Subject to limited exceptions specified in the Model PPA, any proposed PPA transaction must be for all Contract Energy, Contract Capacity, Capacity-Related Benefits, Other Electric Products, and Environmental Attributes from the Facility</p>
<b>Battery and O&amp;M Options</b>	<p><i>For both BOT and PPA transactions:</i></p> <p>Battery energy storage system: DC coupled; minimum four-hour discharge; commercially proven lithium ion technology (Section 1.9, Appendices B-1, B-2, and C)</p> <p><i>Only for BOT transactions:</i></p> <p>Short-term operation and maintenance service contract: two to five year service term, starting at the Substantial Completion Payment Date; contract terms based on the Model O&amp;M Agreement (Section 2.1, Appendix H)</p>
<b>Guaranteed Substantial Completion/Delivery Term Start Date</b>	No later than May 31, 2023 (subject to extensions for force majeure and/or a related Seller election of up to from 140-180 days) (Sections 1.1, 2.1, 2.2, 2.4) <sup>1</sup>
<b>PPA Delivery Term</b>	A minimum of ten (10) consecutive years and a maximum of twenty (20) consecutive years (Sections 2.2, 2.4)
<b>Self-Build Option</b>	Self-build options are not precluded (Section 3)
<b>Entergy Competitive Affiliates</b>	Entergy Regulated Affiliates and Entergy Competitive Affiliates are not precluded from submitting proposals (Section 1.8)

The preceding table omits many items that are or could be considered key scoping items, including numerous 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, the Model

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

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

PPA, the Scope Book (BOT transactions only), and Appendix F. The table in this Section 1.11 is not, and should not be construed as, a substitute for the other provisions of this RFP.

## 2. PROPOSALS

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

This RFP seeks proposals for eligible resources ranging in size from 50 MW to 150 MW (AC) of Guaranteed Solar PV Capacity through one or more BOT acquisitions transactions with ELL. The following highlights, in summary form, a few basic commercial terms and considerations for the resource acquisition(s) sought by this RFP. Details of the commercial terms of BOT transactions and considerations for BOT proposals and potential BOT transactions under this RFP are located in Appendix B-1 (Model BOT Agreement), Appendix B-2 (Scope Book), Appendix F (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 project to Buyer for a pre-agreed purchase price. Buyer would buy the project and related assets from Seller (not its equity) at the consummation of the purchase (“**Closing**”), 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 “FNTP” 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 would transfer to Buyer shortly after substantial completion, at the Substantial Completion Payment Date. The Model BOT Agreement, which reflects the BOT structure, is essentially a hybrid contract incorporating EPC principles (roughly, Articles 2-15) and generation asset acquisition terms (roughly, Articles 16-24).
- *Purchase Price.* The purchase price for the 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 funding (20% payment), [which is ELL’s preference](#) or, [if Bidder elected in the applicable proposal a greater percentage of the purchase price to be paid at the Closing, the amount of such payment percentage, up to 75%](#) or from unaffiliated third parties (75% payment, except as provided in Appendix F). The balance of the purchase price, less a holdback securing the completion of agreed punchlist items, will be payable at the Substantial Completion Payment Date. Assuming Seller’s performance of the remaining work, the punchlist holdback will be paid at

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

Final Completion. There will be no progress, mobilization, or other comparable payments of the purchase price.

The BOT purchase price offered by Bidders 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, maintenance, repair, replacement, interconnection, deliverability, transmission (including, without limitation, required upgrades), real property, reporting, access, regulatory, permitting, 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), Closing, asset transfer, transaction, contingency, warranty (including, without limitation, the project wrap 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 BOT Agreement, the Scope Book, and Appendix F, 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 as a single fixed price. Bidder’s proposed purchase price should be included in Appendix D, Attachment A (Cost Components).

- *Tax Credits.* Buyer will require at the Closing the exclusive entitlement to and transfer of all applicable investment tax credits, bonus depreciation, and similar tax benefits associated with the project. Bidder/Seller must be able to demonstrate that the Facility was under construction in time to qualify for the federal investment tax credit provided for pursuant to Section 48 of the Internal Revenue Code of 1986, as amended (“**ITC**”), that Buyer requires for the transaction. In addition, Buyer must be the original user of the Facility so that it qualifies for the ITC. Under the terms of this RFP, each Bidder is required to provide a guaranteed ITC percentage for the project property (30% (if project construction began per the IRS rules and guidance in 2019), 26% (2020), 22% (2021), or 10% (2022)) (see the Proposal Submission Template (Commercial Tab in PowerAdvocate)). Subject to strictly limited exceptions, Buyer will not bear the risk of a loss of the guaranteed ITC benefits due to delays in the date the resource is placed in service under the federal investment tax credit laws. If the resource is not placed in service by October 31, 2023, Seller may be required to post a letter of credit as security for the possible lost ITC benefits to Buyer, and if not placed in service by December 15, 2023, Seller may owe liquidated lost ITC-based damages to Buyer, as specified in the Model BOT Agreement and described in Appendix F. Seller’s ITC-related (and other Tax) representations and warranties 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.
- *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 ELL electric grid. The Closing will be conditioned on numerous Closing conditions, including, among others, the delivery of an agreed ITC tax opinion to Buyer, the

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

transfer to Buyer of clear title to the purchased assets (excepting only permitted encumbrances), the accuracy of Seller representations and warranties, and the provision of necessary credit support.

- *Substantial Completion.* The BOT Agreement will include a guaranteed substantial completion date (which may be adjusted by change order, as described below). Assuming FNTP occurs, the resource will be required to achieve Substantial Completion by the guaranteed substantial completion date, which, except as set out below in “Change Orders,” must be, when the BOT Agreement is signed, on or before May 31, 2023. 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.
- *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 140 days. This RFP permits Bidders to propose a guaranteed substantial completion date that is later than May 31, 2023, in exchange for a corresponding reduction in the cap on force majeure extensions. For example, if Bidder proposes that the guaranteed substantial completion date be 60 days after May 31, 2023, the force majeure extension limit would decrease by 60 days (from 140 to 80 days). This RFP also allows Bidders to propose a guaranteed substantial completion date that is earlier than May 31, 2023. The force majeure cap will be increased one day for each day that the guaranteed substantial completion date is defined as before May 31, 2023, up to a maximum of 40 additional days. Any change order for force majeure will be exclusively for project schedule relief; Seller will be solely responsible 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.
- *Project Warranty.* Seller will be required to provide a comprehensive “wrap” warranty of the project work performed by or for Seller. ~~The~~Unless Bidder has proposed a longer wrap warranty period in the selected proposal, the warranty will expire on the second anniversary of the Substantial Completion Payment Date. An exception will apply to covered defects identified or repairs made in the ~~second~~final year of the warranty period. For those defects or repairs, the warranty will extend for a period of one year after repair of the defect. Seller will be required to transfer all the underlying unexpired contractor warranties to Buyer at the Closing (but not the EPC contracts themselves). Seller will be granted the right to enforce the

Formatted: Font: Not Italic

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

2020 ELL SOLAR RFP

warranties to the extent relevant to a wrap warranty claim made by Buyer during the warranty period. Seller will have the ability to offer to perform operation and maintenance services for the project pursuant to the terms of the Model O&M Agreement on pricing terms and for a contract term set forth in its proposal (Bidder may offer operation and maintenance agreements of different lengths and with pricing that differs based on contract term), but may not condition the wrap warranty (or its BOT proposal) on Buyer's acceptance of Seller's operations and maintenance proposal.

- *Credit.* Under the terms of this RFP, Seller will be required to post and maintain credit support as provided in the Model BOT Agreement and Appendix F (and to certify at proposal submission its understanding and acceptance of the core credit support terms). Appendix F includes other essential information concerning the production and disclosure of financial information as part of the Bidder Registration Process and Proposal Submission Process, certain credit support elections to be made by Bidders, the evaluation of credit information and proposals by the Credit Evaluation Team, liquid credit support milestone dates and amounts, potential liquid credit support offsets, and limitations on Bidder special considerations related to credit terms.
- *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, ELL 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 FNTP, Closing, or Substantial Completion to occur before the 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 example, if Seller terminates the BOT Agreement for Buyer's material breach before the Closing, Buyer must pay to Seller the sum of (i) the direct costs Seller incurred to perform its work prior to termination and specified related termination costs, plus (ii) a designated percentage of such costs. The payment will be subject to a cap (a small percentage of the purchase price) if the termination is before the FNTP date, i.e., prior to commencement of construction. In consideration for the termination payment, Buyer may elect to acquire the project. If Seller terminates for Buyer's material default after the Closing but before the Substantial Completion Payment Date, Buyer must pay to Seller (a) the balance of the purchase price and specified related termination costs, less (b) the costs Seller did not incur to complete its work and the aggregate amount (if any) that Seller owes Buyer under the BOT Agreement or any related agreement on the termination date. If Buyer terminates before the Closing due to certain Seller events of default, Seller must pay to Buyer a defined per-project-MW termination fee, plus any delay liquidated damages owed to Buyer on the termination date. If Buyer terminates after the Closing due to certain Seller events of default,

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

2020 ELL SOLAR RFP

Seller must pay to Buyer (1) Buyer's "cover" costs (the costs Buyer incurred to complete Seller's work) plus a defined percentage of such costs, plus (2) any lost project ITC, plus (3) the diminution in value resulting from any reduced project ~~capacity~~Capacity (e.g., 100 MW plant is only 90 MW) or the loss of the "wrap" warranty, guaranty, or liquidated damage provisions benefitting Buyer, net of any replacement provisions obtained by Buyer included in costs covered by clause (1), plus (4) all other amounts due from Seller to Buyer under the BOT Agreement and any related agreement on the termination date, less (5) the unpaid portion of the total purchase price. If the unpaid portion of the purchase price exceeds the sum due Buyer, Buyer will pay the excess to Seller. (For specific percentages and fees, please see the Model BOT Agreement.)

The foregoing is not intended, and should not be construed, as an exhaustive listing of important commercial terms for any BOT arising out of this RFP. Please refer to Appendix B-1 for the Model BOT Agreement.

## 2.2. PPA Proposals - High-Level Overview of Select Commercial Terms

This RFP also solicits PPA proposals for eligible Solar PV resources sized from 50 MW to ~~100~~150 MW (AC) of Guaranteed Solar PV Capacity. The following highlights, in summary form, a few 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 are located in Appendix C (Model PPA), Appendix F (Credit/Collateral Requirements), and elsewhere in this RFP.

- *PPA Products.* The PPAs being sought are for the long-term purchase of unit-contingent Contract Energy, Contract Capacity, Capacity-Related Benefits, Other Electric Products, and Environmental Attributes from an eligible resource and related services. 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~~transaction.
- *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 ELL would pay to Seller for all inputs, goods, services, work, and costs and risks related to, and products associated with, the provision, generation, and delivery to ELL 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.

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

- *Energy Delivery Requirements.* PPAs will include guaranteed annual energy delivery minimums entitling ELL 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. 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 the planning period recognized by the applicable Balancing Authority (May 31 under the current MISO Rules), ELL will have an option, exercisable at no cost to ELL, 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, ELL's right to curtail energy deliveries and force majeure, Seller will be required to deliver to ELL, and ELL will be required to purchase from Seller, all energy from the ~~contract~~[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 ELL Load Node. Seller will be responsible for any basis differential between the product price at the Physical Delivery Point and the product price at the ELL Load Node and related costs.
- *Credit.* Under the terms of this RFP, Seller will be required to post and maintain credit support as set forth in the Model PPA and outlined in Appendix F ([and to certify at proposal submission its understanding and acceptance of the core credit support terms](#)). [Appendix F includes other essential information concerning the production and disclosure of financial information as part of the Bidder Registration Process and Proposal Submission Process, certain credit support elections to be made by Bidders, the evaluation of credit information and proposals by the Credit Evaluation Team, liquid credit support milestone dates and amounts, potential liquid credit support offsets, and limitations on Bidder special considerations related to credit terms.](#)
- *Cost Recovery.* As described more fully in Section 2.6 below, in PPAs arising out of this RFP, Sellers will be required to absorb the risks of the possible disallowance, disapproval, or denial of recovery by the LPSC and other Governmental Authorities of ELL's costs incurred in connection with a PPA arising out of this RFP, excluding certain limited Cost Recovery Risks (the ELL-Allocated Cost Recovery Risks) that will remain with ELL.
- *Liability Transfer.* ELL 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

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

a variable interest entity or derivatives, or any other applicable accounting standard or requirement.

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 for the Model PPA.

### **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 contract entered into with ELL or an Affiliate of ELL. Bidders are cautioned against relying solely or principally on the summaries included in Section 1.5, Section 1.11, Section 2.1, and Section 2.2 above when developing proposals for this RFP, submitting proposals without a reasonably complete understanding of the terms set forth in the model agreements made available to Bidders prior to proposal submission, or assuming that ELL will entertain or accept material changes to the model agreements, the terms of which were developed specifically for this RFP and apply to all Bidders.

ELL expects that the terms, conditions, and technical requirements of this RFP, including, without limitation, the [appropriate](#) model [agreements](#)~~agreement~~, the Scope Book (BOT transactions only), and Appendix F, 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 [agreements](#)~~agreement~~, the Scope Book, and Appendix F, when ESL evaluates 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 the Scope Book (BOT transactions only), the Model BOT Agreement (BOT transactions only), or the Model PPA (PPA transactions only), the model agreement will control.

Subject to the other terms of this RFP, including, without limitation, Section C of Appendix F and Section 2.8 below, Bidders are permitted to make special exceptions to terms included in the model agreements and the 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 showing the proposed modification(s) to or resulting from each provision it is unwilling to accept along with reasonably complete and reasonably detailed explanations for each such modification and (ii) if applicable, a reasonably complete list and detailed explanation of each special exception to any terms included in the Scope Book in the Special Exceptions – Scope Book Sheet on the Commercial Tab in PowerAdvocate (BOT transactions only). 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 or the Scope

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

Book (BOT transactions only), (c) conditions its proposal on the acceptance of material terms or conditions not accepted by ELL in the ordinary course of business or that would materially diminish the value of the resource to ELL or the viability of 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 F, 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 to the Scope Book (and summaries thereof) will be reviewed in the proposal evaluation phase of this RFP. The results of ESL'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 or, 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, ELL's acceptance or selection of a proposal containing redlines of the applicable model agreement or the Scope Book or other special exceptions does not mean that ELL 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, Appendix E, and Section C of Appendix F, ELL 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 ELL does not accept or agree to any particular exception or any proposed compromise, and the right to terminate negotiations if Bidder or Seller requires Bidder or Seller to agree to any particular exception as a condition to continued discussions.

#### **2.4. Threshold Requirements**

Subject to the other terms of this RFP, ESL will consider only proposals submitted in accordance with and meeting the requirements of Section 4 below. 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**"). Any proposal not meeting the Threshold Requirements will be considered non-conforming and may be eliminated by ESL 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 statements contained in this RFP are made subject to the Reservation of Rights set forth in Appendix E of this RFP and the terms and acknowledgements set forth in the Proposal Submission Agreement.

- The proposal must be for a BOT transaction or a PPA transaction (or an ELL 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 PPA proposals, the proposed Delivery Term must be no less than ten (10) consecutive years and no more than twenty (20) consecutive years and, subject to certain exceptions permitted by this RFP, must be proposed to start no later than May 31, 2023. ELL prefers that the Delivery Term start on May 31, 2023, to align with the start of the MISO planning year. For BOT proposals, subject to certain exceptions permitted by this RFP/the Model BOT Agreement, the guaranteed substantial completion date must be no later than May 31, 2023, and ELL must be assured that the placed in service date of the proposed resource will occur on or before December 15, 2023.
- A PPA proposal must offer at least 50 MW and no more than ~~400~~150 MW of Capacity for Solar PV technology at the Physical Delivery Point (to be financially settled, for PPA proposals, at the ELL Load Node). A BOT proposal must offer at least 50 MW and no more than 150 MW of Capacity for Solar PV technology at the Physical Delivery Point.
- Bidders must provide a completed hourly generation profile of the proposed resource and explain how it was derived. The profile should be based upon 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 life of the resource (BOT transactions).<sup>2</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 Solar PV generating facilities 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 ELL under the MISO Tariff.

---

<sup>2</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.

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

- The proposed resource must be capable of providing the offered amount of energy, Capacity, and Other Electric Products to ELL at the Physical Delivery Point.
- Bidders 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 requirements of this RFP.
- For PPA proposals, Bidder must include in the Proposal Package the accounting and credit certifications required under, and prepared, executed, and submitted in accordance with the requirements of, Sections 5.1.4 and 5.1.6 below, respectively.
- 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, 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. The financial statement needs to include the auditor's opinion and notes to the financial statements, the balance sheet, the income statement, and the cash flow statement.

Please see Section 5.1 below for additional information on the Threshold Requirements, including the evaluation of proposals for satisfaction of the requirements.

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

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

### **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 required by this RFP, including, without limitation, (i) the electric interconnection of the resource to the host utility (ELL) 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 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

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

ELL 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, Stand Alone 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 Attachment A.

ELL expects to seek to qualify any resource selected from this RFP as a Long-Term Network Resource of ELL in MISO. The Definitive Agreement will require Seller, subject to ELL'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 Long-Term Network Resource of ELL in MISO, with full network integration transmission service, and to cause ELL 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, the MISO generator interconnection application supporting a proposal offered into this RFP must have been submitted no later than April 2019. The application must request 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. Bidder must provide a complete and accurate copy of the submitted MISO generator interconnection service application as part of its Proposal Package.

It is not necessary for Bidder or Seller to have received for the proposed resource the results of a MISO DPP study, or any other interconnection, deliverability, or transmission service study, or executed the MISO generation interconnection agreement (GIA) or any other agreement necessary for receipt of the interconnection, deliverability, and transmission service required hereunder in order

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

2020 ELL SOLAR RFP

for Bidder to submit a proposal. Except to the extent ESL otherwise agrees in writing, pending execution of the MISO GIA for Bidder's proposed resource, the resource must remain in the MISO Definitive Planning Phase (DPP) queue to remain an available resource in this RFP. If a resource proposed by Bidder in this RFP does not remain in the queue to obtain the required service or loses the right to obtain or receive such service during the pendency of this RFP, 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.

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

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 ELL 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, throughout the Delivery Term, ELL will have the right to determine from time to time whether ELL (or a designee) or Seller will serve as the "**Market Participant**" for the generation resource before MISO and how the resource will be registered with MISO. ELL 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 the 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 ELL directs that the proposed resource be registered with MISO other than as a Capacity Resource (e.g., as a Load Modifying Resource), ELL currently expects that ELL would serve as the Market Participant for the resource. In such event, Seller will be required to cooperate with ELL to ensure that the registration and any qualification of the resource in MISO consistent with ELL's directions (e.g., as a Load Modifying Resource) are made in accordance with MISO Rules and ELL's reasonable requirements, including, without limitation, with regard to generator availability

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

forecasting. Please see Appendix C 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 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 LPSC and/or other Governmental Authorities of ELL 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 ELL ("**ELL-Allocated Cost Recovery Risks**"). ELL-Allocated Cost Recovery Risks include (i) costs incurred by ELL in connection with the applicable PPA for which recovery was expressly disallowed, disapproved, or denied by the LPSC in its final order approving the PPA as in the public interest and prudent, provided ELL accepted the order as satisfying the LPSC regulatory approval condition to commencement of the PPA Delivery Term, and (ii) costs incurred by ELL in connection with the applicable PPA due exclusively to the active fault of ELL. 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 ELL by Seller under the applicable PPA. ELL 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 ELL 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 ELL 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, permits, authorizations, and other requirements. Bidder must show that due diligence has been completed for the project (including the project site) and action

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

2020 ELL SOLAR RFP

plans established to a level sufficient to support all permitting and material environmental attribute accreditation activities.

## 2.8. Design and Operating Considerations

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

- PV Module Manufacturer and Model from Approved List (see Appendix 7: Approved Manufacturers and EPC Contractors list of the Scope Book)
- PV Annual Degradation: no more than 0.6% on average
- PV Module Product Warranty: minimum ten (10) years
- PV Module Power Warranty: minimum 25 years
- Inverter Manufacturer from Approved List (See Scope Book)
- Inverter Voltage Rating: 1,500 V<sub>DC</sub>
- Inverter Product Warranty: minimum five (5) years
- Racking System Manufacturer from Approved List (see Appendix 7: Approved Manufacturers and EPC Contractors list of the Scope Book)
- Racking System Product Warranty: minimum five (5) years for moving parts, ten (10) years for structural parts
- Design Lifetime of the Plant: minimum 25 years
- Design Wind Speed, ASCE 7: Risk Category III
- Battery Manufacturer from Approved List (if Bidder offers a battery option with the proposal)
- Battery Product Warranty: minimum ten (10) years (if Bidder offers a battery option with the proposal).

Other equipment and design requirements for 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.

## 2.9 Supplier Diversity

Any project arising out of this RFP is expected to generate commercial opportunities for businesses that supply goods and services to Solar PV or, potentially, battery storage facilities. ELL has an interest in understanding the effects of proposed projects on businesses located in the state of Louisiana and on small and small disadvantaged businesses. Appendix I 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

ELL may submit into this RFP one or more projects as self-build options (each a “**Self-Build Option**” and together the “**Self-Build Options**”). Each Self-Build Option will be a Solar PV facility

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

2020 ELL SOLAR RFP

built consistent with the design criteria for generation resources set forth in the RFP and within the capacity requirements defined in the RFP.

A Self-Build Option may utilize existing infrastructure and resources at ELL sites, including existing administrative or plant support infrastructure (e.g., office facilities). Generation from the facilities may interconnect with the existing ELL transmission switchyard 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 Friday before the first day of the Proposal Submission Period (the “**Self-Build Option Proposal Submission Period**”). After the Proposal Submission Deadline, the IM and the Bid Event Coordinator will provide redacted data and information from the proposals received to the Evaluation Teams (see Section 6 below) at approximately the same time. All proposals, including the Self-Build Option(s), will be evaluated on a consistent basis, as described in certain appendices to this RFP and in this Main Body, and, subject to the other terms hereof, on the time frame set forth in Section 4.1 below. As discussed in more detail in Appendix G, the Evaluation Teams (see Section 6 below) will not include any member of the Entergy self-built commercial team or support services team working on the Self-Build Options and will operate independent of these two teams.

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.

## 4. RFP PROCESSES

### 4.1. RFP Schedule Overview

#### 4.1.1. RFP Schedule Summary

The RFP Schedule is critical for Bidders interested in participating in this RFP. The RFP Schedule in the table below sets forth the milestone events and, as of the [Final RFP Documents](#) issuance date, the corresponding ~~target~~[milestone](#) dates for this RFP. The milestone events and dates

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

are subject to change. After consultation with the IM, notice of any change to the then-current RFP Schedule will be posted on the 2020 ELL Solar RFP Website.

<b>RFP Milestone</b>	<b>Target Milestone Date</b>
<b>Draft RFP Documents Issued</b>	April 16, 2020
<b>Bidders Conference</b>	April 28, 2020
<b>Comment Deadline for Draft RFP Documents</b>	May 22, 2020
<b>Final RFP Documents Issued</b>	June 16, 2020
<b>Bidder Registration Period</b>	8:00 a.m. CPT on July 6, 2020, until 5:00 p.m. CPT on July 10, 2020*
<b>Proposal Submission Fee Payment Deadline</b>	5:00 p.m. CPT on July 22, 2020*
<b>Self-Build Option Proposal Submission Deadline (for Self-Build Options and proposals from Entergy Competitive Affiliates)</b>	5:00 p.m. CPT on August 7, 2020*
<b>Proposal Submission Deadline (for other than a Self-Build Option Proposal)</b>	5:00 p.m. CPT on August 13, 2020*
<b>Notice to Bidders of ELL Primary and Secondary Selection List Selections</b>	October 22, 2020*
<b>Comprehensive ELL Due Diligence and Definitive Agreement Negotiations Begin</b>	October 23, 2020*
<b>Bidder(s) Remaining on Secondary Selection List Released from Proposals</b>	January 22, 2021*
<b>Definitive Agreements Executed</b>	August 2, 2021*
<b>Regulatory Approval Process Complete</b>	August 2, 2022*

\* The milestone dates accompanied by an asterisk are target dates.

Without limiting the generality of Appendix E, ESL reserves the right to modify the RFP Schedule (including any milestone or milestone date) at any time in its sole discretion. ESL will endeavor to timely notify all participants in this RFP of any such modification.

#### 4.1.2. Draft and Final RFP Documents

~~The RFP documents dated April 16, 2020, are drafts and remain under internal review. They are being circulated in draft form to allow interested Persons an opportunity to consider and comment on the drafts. Comments are encouraged, particularly from potential Bidders and interested Governmental Authorities. ESL will accept written feedback on the RFP documents until the deadline for delivering comments (under the RFP Schedule as of the date of the draft RFP documents, May 22, 2020) (“Comment Deadline”). ESL desires to receive all comments on the draft RFP documents by the Comment Deadline in order to have sufficient time to process and~~

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

develop a final position on the comments, and make any necessary language adjustments, by the date scheduled for publication of the final RFP documents. All comments should be directed to the Bid Event Coordinator, as contemplated by Section 6.2 below. ~~ESL is under and assumes no obligation to change any term of any RFP document in response to any comment submitted by any prospective Bidder or other Person.~~

~~ESL will consider input received from potential Bidders, Governmental Authorities, other interested Persons up to the Comment Deadline, and, as part of their ongoing review of the RFP documents, employees and representatives of ESL. ESL will issue the final RFP documents after the Comment Deadline. ESL will make those modifications to the draft RFP documentation that it, in its sole discretion, determines will enhance or improve this RFP or are otherwise appropriate. Changes to the initial drafts may or may not be material to this RFP. ESL expects to post the final RFP documents to the 2020 ELL Solar RFP Website on or about June 16, 2020 (under the RFP Schedule as of the date of the draft RFP documents). Although ESL does not anticipate changing the content of the RFP documents after the final versions are posted, it reserves the right to make such changes.~~

Draft RFP documents were made publicly available on April 16, 2020. The RFP documents dated June 16, 2020, have been posted and are the final RFP documents for the RFP, subject to ESL's and ELL's reservation of rights under Appendix E. The final RFP documents reflect consideration of input received during the comment period of the RFP Schedule.

#### **4.1.3. Bidders Conference**

~~ELL has scheduled a teleconference/webeast A Technical Conference and Bidders Conference for potential Bidders and other stakeholders on the date set out in the RFP Schedule for a Technical Conference and Bidders Conference (collectively, the "**Bidders Conference**") took place on April 28, 2020. 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. ELL and ESL personnel and the IM will be available at the Bidders Conference to answer questions about the RFP Schedule, the Bidder Registration Process, the Proposal Submission Process, the evaluation process, technical RFP issues, and proposed transaction terms and conditions, and to respond to other requests for information about this RFP. ESL will post written materials presented during the Bidders Conference on the 2020 ELL Solar RFP Website. Bidders are advised that those materials may not duplicate all of the information provided during the Bidders Conference and some of the information may be or may become outdated and/or no longer accurate.~~

Responses to questions received during the Bidders Conference will be posted on the 2020 ELL Solar RFP Website. ~~Please refer to Sections 6.2 and 6.3 below and Appendix G for additional information concerning questions submitted in connection with this RFP.~~ 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 2020 ELL Solar RFP Website or provided verbally, the RFP documents will control.

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

## 4.2. Bidder Registration

To be eligible to submit a proposal, Bidder must complete the Bidder Registration Process, as described in this Section 4.2 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, all Bidders will be required to submit a completed Bidder Registration Agreement (including the Bidder Registration Form attached thereto) to the Bid Event Coordinator, copying the IM, via email at the respective addresses provided in Sections 1.5 and 1.6 above, by the Bidder Registration Deadline. Bidders will bear the risk of failing to submit a completed Bidder Registration Agreement 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.

Following submission of its completed Bidder Registration Agreement, Bidder will be issued a unique Bidder ID. In addition, each registered resource and proposal will receive its own Resource ID and Proposal ID. 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 Evaluation Team members who do not need to know that information.

## 4.3. Proposal Submission Fees

Bidders are required to pay a Proposal Submission Fee of \$5,000 for *each* proposal registered in the RFP. Proposals that are alternatives to each other will be considered separate proposals and must be registered as such. For example, proposals with differing guaranteed Substantial Completion or Delivery Term start dates, purchase prices (such as PPA pricing that is fixed in one proposal and fixed with an escalation provision in another proposal), resource Capacity, or annual guaranteed energy quantities (PPAs) will be considered alternatives to each other. Bidders will be permitted to offer multiple proposals for the optional battery energy storage system and the optional operation and maintenance service contract for its proposed resource. The initial battery proposal for the resource will not be considered an alternative proposal and Bidder will not be assessed a Proposal Submission Fee for its submission. Each subsequent battery proposal for the resource will be considered an alternative proposal and will result in an incremental \$1,000 Proposal Submission Fee for such proposal. The submission of any proposal for the operation and maintenance service contract for a resource will have no effect on the Proposal Submission Fees payable by Bidder. No Proposal Submission Fee will be due for Self-Build Option Proposals (as ELL would be paying itself).

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

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, ESL 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:

1. Bidder registers a proposal and pays the Proposal Submission Fee but does not complete Proposal Submission for the registered proposal;
2. Bidder registers a proposal, properly completes Proposal Submission, but subsequently withdraws the registered proposal prior to the Proposal Submission Deadline; or
3. ELL 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 items 1 through 3 above, including, without limitation, if no proposals are selected for either the Primary Selection List or the Secondary Selection List after ELL has completed its evaluation of proposals, Bidder’s Proposal Submission Fee(s) will not be returned.

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

The “**Proposal Submission Process**” requires each Bidder to submit to ESL:

- a completed Proposal Submission Template (Commercial Tab in PowerAdvocate);
- completed responses to the due diligence questionnaire (Appendix D) and related attachments, including, without limitation:
  - the requested generation profiles for two years (Excel Sheet);
  - the documents requested by the questionnaire;
  - a completed Self-Assessment questionnaire;
  - the required demonstration that Bidder or Seller has the requisite control over the project site;
  - executed accounting (if required of Bidder) and credit-based certifications described in Sections 5.1.4 and 5.1.6, forms of which are attached to Appendices D (accounting) and F (credit);

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

- any and all special considerations (see Section 2.3 above); and
- a project summary; and
- 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 (collectively, 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, in order 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

### 5.1. Overview and Assessments

Following the Proposal Submission Deadline, the RFP evaluation will begin. In Phase I of this RFP ("**Phase I**"), proposals will be assessed for compliance with the Threshold Requirements. Proposals remaining in this RFP after the Threshold Requirements compliance review will then be evaluated in Phase I to identify the most economic proposals and significant high-level risks or RFP nonconformities associated with such proposals. Based on the Phase I evaluation results, ELL may reduce the number of proposals under consideration and may develop a preliminary shortlist of proposals (the "**Shortlist**"). Phase I will end after the completion of the Phase I evaluation of proposals and the establishment of the Shortlist or the determination by ELL that the Shortlist is not necessary for this RFP. In Phase II of this RFP ("**Phase II**"), proposals placed on the Shortlist or otherwise remaining in this RFP will be evaluated in greater detail. Applying qualitative and quantitative assessments, the proposals in Phase II will be assigned a proposal ranking and a recommended disposition. A final list setting forth the proposal(s) (if any) selected for negotiation of a Definitive Agreement (the "**Primary Selection List**") and the proposal(s) (if any) selected for possible negotiation of a Definitive Agreement (the "**Secondary Selection List**") will be created.

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

After the selection process has been completed and any selections made by ELL, the Bid Event Coordinator will notify each Bidder, with respect to 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 Exhibit E, ELL expects to proceed to negotiate the 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 ELL determines negotiations with any Bidder having a proposal on the Secondary Selection List are appropriate, ELL may negotiate commercial terms with one or more Bidders on the Secondary Selection List.

The proposal evaluation process in this RFP will be carried out by five (5) separate evaluation teams (each an “**Evaluation Team**”):

- the Economic Evaluation Team (“**EET**”);
- the Viability Assessment Team (“**VAT**”);
- the Accounting Evaluation Team (“**AET**”);
- the Transmission Evaluation Team (“**TET**”); and
- the Credit Evaluation Team (“**CET**”).

The roles and responsibilities of the Evaluation Teams are described in this section. ESL may include as a member on any Evaluation Team, or contract with, any third-party agent, consultant, advisor, expert, contractor, or representative to assist in the evaluation of proposals as ESL deems necessary or appropriate.

Another team, the RFP Administration Team, will act to ensure that each Evaluation Team has the information needed to perform its analysis and act to facilitate the evaluation of proposals by all Evaluation Teams so that the evaluation process results in the proper assessment of the economics and other relevant elements of the proposals. The RFP Administration Team, with ELL’s approval, may also eliminate proposals from this RFP based on the team’s independent review of the proposals or recommendations or input provided by one or more of the Evaluation Teams. In addition, the Bid Event Coordinator may consult with members of the RFP Administration Team from time to time on matters related to questions whether information regarding a proposal may be needed by or should be made available to an Evaluation Team. The RFP Administration Team will also prepare and distribute the results of this RFP to appropriate individuals at ELL and may recommend to ELL the placement of proposals on the Primary Selection List or the Secondary Selection List or the elimination of proposals.

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 from any of the Evaluation Teams, the RFP Administration Team, or the Bid Event Coordinator 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

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

clarification or additional information regarding a proposal. Upon the Bid Event Coordinator's reasonable request and reasonable prior notice, Bidder will be expected to make available its duly authorized officers, representatives, and advisors to participate in meetings requested by the Bid Event Coordinator, ESL, or ELL and/or answer questions or provide information related to its proposal or participation in this RFP.

The evaluation process is designed to facilitate the fair and impartial evaluation of all proposals received in this RFP and to result in the selection of one or more proposals that meet the RFP's requirements and ELL's needs at the lowest reasonable cost [to ELL's customers](#), taking into account 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. ESL will document key assumptions and model constructs and provide this documentation to the IM before the receipt of proposals; however, the Evaluation Teams will retain full discretion to use the evaluation methods and assumptions they consider appropriate to identify those proposals that best meet the needs of ELL and the requirements and objectives of this RFP.

Any Bidder invited by ELL to finalize a Definitive Agreement will be expected to use its reasonable best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary or appropriate to finalize, execute, and deliver such Definitive Agreement as promptly as possible.

#### **5.1.1. Threshold Requirements Assessments**

After the Proposal Submission Deadline, the necessary Evaluation Teams and/or the RFP Administration Team will review the proposals offered into this RFP in order to determine compliance with the Threshold Requirements. Proposals that fail to satisfy the Threshold Requirements may be eliminated from this RFP on that basis or may be allowed to continue in the evaluation process. The retention of a proposal that fails to fulfill the Threshold Requirements after the initial Threshold Requirements evaluation does not preclude the subsequent elimination of the proposal from this RFP on account of the Threshold Requirements failure(s) or for other reasons.

#### **5.1.2. Economic Assessments**

The EET is responsible for evaluating the economics of proposals received in this RFP and developing the economic ranking of such proposals. The EET's evaluation will rely on tools and methods commonly used by ESL and ELL for long-term planning and resource evaluations, including, without limitation, spreadsheet modeling and production cost modeling by the Aurora program. It may also utilize and rely on additional tools and methods that the EET deems necessary or appropriate for the effective assessment of proposal economics, including, but not limited to, qualitative considerations [and/or alternative structures that may be requested by ELL](#). The EET may perform sensitivity analyses.

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

A preliminary process for the economic evaluation of proposals offered into the RFP follows. The actual process is expected to reflect adjustments made from time to time to the preliminary process.

Economic Evaluation Methodology

The EET will perform a customer net-benefit analysis to identify the most economic proposals submitted into this RFP. The economic evaluation will estimate a proposal's net benefit or cost to ELL customers by subtracting the total cost of each proposal, as determined by the EET, from the associated benefits. As part of the evaluation, the EET will utilize a production cost model (Aurora) to measure the variable supply cost savings produced by each proposal when added to ELL's resource portfolio. These variable supply cost savings will be coupled with capacity benefits, terminal value benefits (if applicable), and an assessment of each proposal's fixed costs to determine a customer net benefit for each proposal.

Formatted: Not Highlight

The RFP economic evaluation will include the following relevant cost and benefit components, as they apply to each proposal.

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

<u>Economic Evaluation Components (as applicable)</u>	
<u>Costs</u>	<u>Benefits</u>
<u>Acquisition Cost</u>	<u>Long-term Avoided Capacity Value</u>
<u>Transmission &amp; Interconnection Costs</u>	<u>ELL Variable Supply Cost Savings</u> <u>(measured in AURORA)</u>
<u>Land Acquisition Cost</u> or <u>Land Lease Costs</u>	<u>Terminal Value Benefits</u>
<u>On-going Fixed O&amp;M</u>	<u>Other Benefits</u> <u>(if applicable)</u>
<u>Imputed Debt Cost</u>	
<u>All-in PPA Energy Pricing</u>	
<u>Property Tax and Insurance Expense</u>	
<u>Other Costs</u> <u>(if applicable)</u>	

### 5.1.3. Viability Assessments

The VAT reviews and assesses the technical, environmental, energy source supply, and commercial merits of proposals. Each Bidder will be required to provide a self-assessment for each proposal it submits into this RFP.

The viability assessment will be carried out by subject matter experts (each, an “SME”) who are members of the VAT. The subject matter expertise of VAT team members for this RFP includes:

- Plant & Equipment/Operations;

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

- Environmental;
- Commercial;
- Real Estate; and
- Other disciplines, as appropriate.

Each VAT SME will be responsible for providing an overview and assessment of each proposal with respect to his or her area(s) of expertise.

#### Phase I

In Phase I, near the beginning of the RFP evaluation, the VAT and/or the RFP Administration Team will review proposals for satisfaction of the Threshold Requirements. The VAT and/or the RFP Administration Team will use information obtained from Bidder in its review, including Bidder's responses to the questions and requests included in Appendix D. Bidders are expected to provide complete responses to Appendix D (as applicable) at the time they submit their proposals. **FAILURE TO PROVIDE COMPREHENSIVE RESPONSES TO APPENDIX D INQUIRIES COULD NEGATIVELY AFFECT A PROPOSAL'S THRESHOLD REQUIREMENTS EVALUATION OR OVERALL VIABILITY ASSESSMENT.** After the Threshold Requirements review, the VAT will review proposals remaining in this RFP for significant high-level risks or RFP nonconformities associated with such proposals that may be considered in the development of the Shortlist.

#### Phase II

In Phase II, the VAT will review the proposals remaining after Phase I to develop a more complete risk assessment and overall risk/viability profile of the proposals. The VAT's Phase II viability evaluation will be based on a qualitative assessment of various criteria in the general risk categories. This qualitative assessment will incorporate quantitative measures that result in an overall rating for a proposal. A criteria and category rating will be developed for the proposal by scoring multiple criteria in several risk categories, using pre-defined criteria. The weighted sum of each risk category's result will be totaled to determine the VAT's overall rating of the proposal. The final viability rating will be factored into the evaluation of proposals by the RFP Administration Team.

The VAT's Phase II risk and viability evaluations will include assessments of resource capabilities, project development risks, environmental compliance risks, construction risks, completion risks, proposed commercial terms (including Special Considerations), resource deliverability, regulatory considerations, and other factors the VAT determines may bear on a proposal's risk and viability. The VAT may seek and incorporate into its viability assessments (in both Phase I and II) input from other Evaluation Teams. Without limiting Appendix E, ESL and ELL will have the right to reject a proposal on the ground that the proposal, in the judgment of the applicable Evaluation Team(s), ESL or ELL, does not meet the criteria for viability established in connection with this RFP or otherwise is not viable.

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

2020 ELL SOLAR RFP

#### 5.1.4. Accounting Assessments

The AET will perform an assessment to determine the accounting treatment of proposed PPAs and accounting implications of the proposed Definitive Agreement. The assessment will include, but is not limited to, an analysis of:

- for PPAs, whether the proposed PPA contains a lease and, if so, whether the lease would result in the recognition of any long-term liability for ELL or its Affiliates under the rules in effect during the term of the proposed PPA, in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 842;
- for PPAs, whether the legal entity owning the subject generation asset during the contract term is a variable interest entity (“VIE”), and if so, the entity required to consolidate the VIE throughout the term of the proposed PPA, in accordance with FASB ASC 810;
- for PPAs, whether the proposed PPA is or includes a derivative and, if so, the appropriate accounting for the derivative, in accordance with FASB ASC 815; and
- whether there are any other adverse accounting implications or effects to ELL or any of its Affiliates arising out of the proposed Definitive Agreement.

The AET’s accounting assessment of PPA proposals will include assessments based on the existing accounting standards at the time of the AET’s assessment and/or those in effect during the term of any PPA arising out of a proposal hereunder. Its assessment may also include assessments based on accounting standards that may be in effect if the AET determines that such standards will or may apply to any PPA arising out of a proposal hereunder and that it is feasible and appropriate for the AET to evaluate the proposal applying such standards.

ELL will not enter into a PPA or any related agreement pursuant to this RFP that will or may result in the recognition of a long-term liability on the books of ELL (or any of its Affiliates), whether the long-term liability is due to lease accounting, the accounting for a VIE or derivatives, or any other applicable accounting standard. Upon ESL’s request, Bidder must include in the Proposal Package a certification from Bidder that, to the best of Bidder’s knowledge, the proposed PPA will not result in, under the accounting standards in effect at the time of the certification or that will be in effect at any time during the contract term of the proposed PPA, the recognition of a long-term liability by ELL or any of its Affiliates on its or any of its Affiliates’ books. The certification must be prepared under the direction of and signed by the Principal Accounting Officer or other officer of Bidder, or a parent thereof, who performs a managerial accounting function, has expertise in the recognition of long-term liabilities by purchasers in PPAs, and has been involved in the preparation of the proposal (“**Accounting Officer**”). The certification must be prepared and dated reasonably contemporaneous with the submission date of the Proposal Package.

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

If Bidder is required to provide the accounting certificate described above, the Accounting Officer must promptly notify the Bid Event Coordinator in writing if and after Bidder becomes aware (i) prior to the submission of the Proposal Package that it will be unable to provide the accounting certificate described above, specifying the reasons therefor, or (ii) after the submission of the Proposal Package containing his or her certification that there has been any development, event, or circumstance that would change, or could reasonably be expected to change, the accounting treatment of the proposed PPA included in the Proposal Package or otherwise would cause, or could reasonably be expected to cause, the certification of the Accounting Officer to be inaccurate or incomplete in any material respect, specifying the reasons therefor.

Bidder will be required to make available to the AET or ESL all information and materials, including any and all assumptions made by Bidder, any of its Affiliates, or any of its or their representatives (*e.g.*, accountants), necessary for or reasonably requested by the AET or ESL to verify and/or independently determine the accounting treatment associated with a PPA proposed by Bidder and otherwise conduct its evaluation of Bidder's proposal.

#### **5.1.5. Transmission Assessments**

The TET is responsible for assessing the interconnection, deliverability, and transmission costs and risks associated with proposals received in this RFP, identifying and estimating for this RFP the timing, scope, and costs of transmission upgrades required to interconnect and deliver the energy output of the proposed resources to the applicable Electric Interconnection Point, reviewing proposals for compliance with the interconnection, deliverability, and transmission requirements of this RFP, evaluating other interconnection, deliverability, and transmission aspects of proposals, and informing the RFP Administration Team of the results of its assessment. Its cost estimating responsibilities will include, without limitation, developing and providing to the RFP Administration Team cost estimates associated with interconnection, deliverability, or transmission upgrades not identified in a Bidder's proposal but identified by the TET or appropriately identified in the proposal but, in the TET's opinion, misestimated.

The TET will utilize existing tools, and may develop and/or utilize additional tools, to perform its evaluations in this RFP. The TET's proposal evaluation will include analysis similar to ESL's standard analysis for long-term transmission system reliability planning and deliverability matters. The TET may perform sensitivity and other analyses that the team finds to be of value. The TET will use information Bidders provide in their Proposal Packages, any supplemental information Bidders provide to the TET or the RFP Administration Team regarding the proposal, and other information available to the TET and allowed to be used in such analysis.

The specific analyses the TET expects to perform in its evaluation of proposals includes the following:

- NRIS deliverability analysis
- ERIS deliverability analysis

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

- Standard steady state power flow analysis to identify potential projects based on ESL’s annual TPL-001-4 analysis and ESL’s Local Planning Guidelines and Criteria
- Transient Stability, Voltage Stability, and Short Circuit analyses per TPL-001-4 and ESL’s Local Planning Guidelines and Criteria
- Cost estimating and scheduling analysis for interconnection and transmission facilities.

In conducting its proposal evaluations, the TET will be considering, among other things, the deliverability of power from the proposed resource, the resource’s effect on system reliability and the deliverability of power from other resources, and the adequacy of interconnection, deliverability, and transmission cost estimates and upgrades identified in the proposals to meet all applicable NERC, MISO, and ELL requirements, criteria, and standards and all applicable laws.

#### **5.1.6. Credit/Collateral Assessments**

The CET will analyze each proposal to assess potential credit risks and attendant collateral requirements and credit costs. The CET’s evaluation seeks to assure that Seller’s credit quality, when considered in the context of a Bidder’s proposal to ELL, complies with Entergy’s corporate risk management standards for solar resource RFPs, and that any requirement for material credit support associated with the proposal is made known to Bidder in advance and can be appropriately considered in the preparation and evaluation of the proposal. Appendix F contains important additional information about the credit evaluation process and the credit requirements for this RFP.

Bidder’s Proposal Package must contain a completed certification, in substantially the form attached to Appendix F as Annex F-1, from Bidder that (i) it has reviewed and understands to its satisfaction the terms of Appendix F and the credit provisions of the Model BOT Agreement or the Model PPA, as applicable to its proposal, and has considered such terms in the development of the Proposal(s), (ii) its proposal pricing reflects to its satisfaction the costs, terms, and risks of the credit support that Seller and Seller Parent Guarantor is or may be required to provide for the proposed transaction under the terms of Appendix F and the applicable Definitive Agreement, and (iii) it accepts, and has taken no special exception to any of, the core credit terms of Appendix F or the applicable Definitive Agreement. The certification must be prepared under the direction of and signed by the Treasurer or other officer of Bidder, or a parent thereof, who performs a managerial credit oversight function, has expertise in solar project financing and providing credit support to buyers of new-build generation facilities or power therefrom, and has been involved in the preparation of the proposal (“**Treasury Officer**”). The certification must be prepared and dated reasonably contemporaneous with the submission of the Proposal Package.

#### **5.1.7. Resource Selection**

Using inputs provided by the Evaluation Teams, the RFP Administration Team will prepare a final report that ranks the evaluated proposals, provides the results of the RFP, and may make recommendations for selection of proposals on the Primary Selection List (if any) and, if it determines a Secondary Selection List is appropriate, on the Secondary Selection List. The RFP

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

Administration Team will select proposals recommended to be included on the Primary Selection List (if any) or the Secondary Selection List (if any) based on a variety of factors, including, but not limited to, relative economics, ability to meet relevant planning objectives (including diversification of Solar PV technology, experience with battery energy storage systems, resource location considerations, and resource composition), deliverability, viability, accounting, and transactional considerations. The RFP Administration Team will provide the final report to members of the ELL Operating Committee and other authorized recipients of the report that the RFP Administration Team deems appropriate. Any selections will be made by the President and CEO of ELL (or designee).

## **5.2. Notification of Evaluation Results; Commercial Negotiations**

After the completion of Phase II, the Bid Event Coordinator will communicate to each Bidder the status of its proposal(s) and whether additional discussions or negotiations are warranted. As noted, ELL expects to negotiate the final terms of a Definitive Agreement with Bidder(s) on the Primary Selection List (if any), and may negotiate such terms with Bidder(s) on the Secondary Selection List (if any). Proposals not making either list will be considered rejected. A Bidder with a proposal on the Secondary Selection List will be released from its proposal ninety (90) days 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 PPA under this RFP based on that proposal.

ESL's receipt of a proposal or the placement of a proposal on any preliminary compliance list, the Shortlist (or any other "short list" of proposals), the Primary Selection List, or the Secondary Selection List does not constitute or indicate ESL's or ELL's agreement, commitment, representation, or promise to transact on the basis of the proposal or ESL's or ELL's acceptance of any term of the proposal. Without limiting Appendix E, each of ESL and ELL (i) has no obligation, and makes no commitment or promise, of any kind, to enter into a Transaction with any Bidder, including a Bidder with a proposal on the Primary Selection List, or to be bound by any term proposed by Bidder in this RFP, and (ii) more generally, has no obligation or liability of any kind whatsoever in connection with or arising out of this RFP except as and to the extent expressly set forth in a Definitive Agreement or a provision binding upon ESL or ELL in a letter of intent which ESL or ELL is a party.

## **6. MISCELLANEOUS RFP MATTERS**

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

The following communication restrictions became effective on April 13, 2020, and will continue through Bidder notification of the creation of the Primary Selection List (if any) and the Secondary Selection List (if any). 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 Section 1.5). 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,

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

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 to 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 [ellrfp@entergy.com](mailto:ellrfp@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 ELL'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 ~~start day~~ of the [Self-Build Option Proposal Submission Period](#) ~~Deadline~~.

Formatted: Font color: Auto

Subject to ESL's consideration of the confidentiality concerns described in Section 6.3 below, ESL intends to post all questions submitted by Bidders, as well as ESL's responses to those questions, to the 2020 ELL Solar 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.

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 ~~such~~those answers may or may not be posted on the 2020 ELL Solar RFP Website).

## 6.3. Questions Involving Confidential Information

Bidders should frame their questions, if possible, so that the answers do not require the disclosure of information that is confidential to ESL or ELL, 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 if 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.

Similarly, Bidder's questions should be structured to avoid, if possible, the disclosure of Bidder's confidential information. If Bidder believes that certain Bidder information contained in a question it intends to submit is confidential, it is strongly urged to attempt to exclude such information, whether by redaction or other means, and then to submit the question. If Bidder believes it is necessary or advisable to submit the question without redacting or otherwise shielding its confidential information, Bidder should, without divulging its confidential information, notify the Bid Event Coordinator in writing of the purpose of the question and the nature of the confidential information so that ESL can determine whether Bidder's question requires the disclosure, either by Bidder or by ESL, of Bidder's confidential information, or whether such disclosure is unnecessary or

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

can be avoided. If ESL determines that the disclosure of confidential Bidder information is necessary and appropriate, ESL will execute a confidentiality agreement acceptable to ESL so that the question may be submitted. Questions containing confidential Bidder information that are submitted timely will be answered by ESL by electronic mail or express mail sent to Bidder.

#### **6.4. 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 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.

#### **6.5. Confidentiality Procedures for Bidder Registration and Proposal Submission Information**

ESL has procedures that its employees, agents, and consultants participating in the evaluation of proposals will be required to follow in order to protect the confidentiality of Bidder information provided in response to this RFP. The procedures are described in detail in Appendix G of this RFP – Process for Protection of Proposal Information.

#### **6.6. 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 2020 ELL Solar RFP Website.

#### **6.7. Multi-Person Bids**

If Bidder is comprised of more than one Person, 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 ESL or ELL in connection with this RFP or otherwise disadvantage ELL relative to its position with other Bidders without ESL's prior written agreement, either on its own behalf or as agent of ELL. 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.

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