



Appendix D

*Process for
Protection of Proposal Information
For
July 2009
Request For Proposals (RFP)
For
Baseload Supply-Side Resources*

Entergy Services, Inc.
July 30, 2009

Appendix D

Process for Protection of Proposal Information

SUMMARY

This Appendix D describes the process that Entergy Services, Inc. (“ESI”) will follow to ensure that information provided by Bidders in response to this July 2009 Request for Proposals for Baseload Supply-Side Resources (“July 2009 Baseload RFP”) is kept confidential, and is not improperly disclosed to or used by any employee, consultant, or other representative of ESI or any other Entergy affiliate.

Additionally, this Appendix D outlines how ESI has designed its process for evaluating proposals submitted in response to the July 2009 Baseload RFP to achieve the following:

- the objective and impartial treatment of all Bidders, including Entergy self-supply alternatives; and
- compliance with all applicable legal and regulatory requirements, including the applicable Affiliate Rules.

OVERVIEW

This Appendix D details the various mechanisms put in place by ESI to protect the confidentiality of information provided by Bidders in the July 2009 Baseload RFP process, and to achieve the additional objectives outlined above, which mechanisms include the following:

1. Use of Independent Monitor;
2. Reliance upon an RFP Administrator;
3. Adherence to protocols for Receipt of Bidder Registration Information;
4. Adherence to procedures for Receipt of Proposal Information and Protection of Confidentiality;
5. Adherence to protocols for the Protection of Market-Sensitive Proposal Information; and
6. Compliance with applicable Affiliate Rules.

1. Use of Independent Monitor

In order to ensure that this RFP is conducted in a fair and impartial manner, ESI has retained Potomac Economics, an independent consultant, as the Independent Monitor (“IM”), in order to (1) oversee the design and implementation of the July 2009 Baseload RFP solicitation, evaluation, selection, and contract negotiation process to ensure that it will be impartial and objective; and (2)

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provide an objective, third-party perspective concerning ESI's efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder or to the consideration of the self-supply alternative. The role of the Independent Monitor is described in the Scope of Work Activities.¹ The IM performs specific roles during each of the following phases in the July 2009 Baseload RFP process:

- 1.1 **Overall Design of the RFP** – The July 2009 Baseload RFP process has been developed with the advice and oversight of the IM, in an attempt to ensure that the July 2009 Baseload RFP process is designed and implemented in a fair and impartial manner and is consistent with principles associated with a market-based procurement process.
- 1.2 **Proposal Review** – All submitted proposals will be reviewed and screened by the IM, who will redact certain information from the proposal documents to ensure that information that is needed for review of the proposals is retained without also providing information from the proposals that would identify the Bidders to persons who do not need to receive that information. The IM also will oversee the segregation of information from the proposals into confidential reports (*e.g.*, a report containing credit-related information only, a report containing only information necessary for the economic evaluation, and the redacted special considerations to a proposal), which will then be made available to the applicable evaluation teams, with each team seeing only the report that includes information needed by that team in order to carry out that team's part of the proposal evaluation. The IM may consult with one or more persons within the Entergy System Planning & Operations organization who is not a member of an evaluation team regarding whether proposal information in the "Special Considerations" section may be needed by a particular evaluation team. This information segregation process is designed to protect Bidder confidentiality and ensure impartial evaluation of all proposals by the evaluation teams. While no process can ensure that the identity of the Bidder remains completely anonymous, the intention of this process is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process. These confidential reports will provide only the information required for the evaluator to perform the specified function, with the name of the Bidder withheld and substituted with an identification number (other than for the credit evaluation process). This process will be completed before any proposal information is provided to the evaluation teams.
- 1.3 **Proposal Submission Process** – The IM will review information submitted by Bidders to determine whether the proposals meet the threshold requirements (as stated in Section 2.3.1 of the July 2009 Baseload RFP) and to determine whether additional

¹ The Scope of Work Activities is posted on ESI's RFP Website at <https://emo-web.no.entergy.com/ENTRFP/index.htm>

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information is needed. The IM will oversee receipt of all proposals during the proposal submission period.

- 1.4 **Proposal Evaluation and Selection Process** – The IM will monitor the proposal evaluation and selection process to ensure that the July 2009 Baseload RFP process is objective and impartial and to provide an objective, third-party perspective concerning ESI’s efforts to ensure that all proposals are treated in a consistent fashion and that no undue preference is provided to any Bidder or to the self-supply alternative. In addition, the IM will review the precautions taken to restrict access to information from proposals only to those members of the evaluation teams who need to have such information for evaluation purposes, so as to preserve the confidentiality of such information and to ensure an unbiased proposal evaluation process.
- 1.5 **Oversight of Bidder Contact** – During the period prior to the selection of the Primary Award List, the IM will obtain and review copies of all written communications from ESI’s RFP Administrator to Bidders in advance of ESI’s issuance of such communications. With respect to contacts conducted pursuant to Section 2.5 of this Appendix D, the RFP Administrator will consult with the IM to minimize the dissemination of information that explicitly identifies Bidders to members of the evaluation teams that do not need to know such information.
- 1.6 **Contract Negotiation Process and Due Diligence Process** – After notification of the selection of the Primary Award List, the IM will monitor all negotiations relating to such awarded proposals. The IM also may participate in negotiations with other Bidders as deemed necessary by the IM. The IM will review, in advance, all materials and recommendations to be made to the Entergy Operating Committee relating to the consideration of the Entergy self-supply alternative to ensure that the process is objective, impartial, and at arms-length.

2. Role of the RFP Administrator

Consistent with previous RFPs, ESI has a designated “RFP Administrator.” Under the supervision of the IM, the RFP Administrator will serve in a multi-purpose role that includes, but is not limited to, the following responsibilities:

- 2.1 **Responsibility as Liaison** – The RFP Administrator will serve as a liaison between all market participants and ESI with regard to July 2009 Baseload RFP-related matters.
- 2.2 **Responses to Bidder Questions** – The RFP Administrator will ensure that Bidder questions are addressed, with all questions and answers posted on the July 2009 Baseload RFP Website, subject to provisions relating to confidentiality as discussed in Section 2.2 of the July 2009 Baseload RFP main document.

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- 2.3 **Distribution of Proposal Information** – The RFP Administrator will ensure that proposal information is distributed to appropriate members of the evaluation teams after review and approval by the IM.
- 2.4 **Provision of Assistance to Independent Monitor** – The RFP Administrator will work directly with the IM with respect to all questions associated with a specific proposal and to assist the IM in an administrative capacity in support of the IM’s efforts to ensure appropriate processes and procedures are being followed.
- 2.5 **Processing of Questions** – In the event that ESI needs to contact a Bidder for purposes of clarifying proposal terms or requesting additional information, ESI will rely on the RFP Administrator to communicate directly with Bidders. The IM will obtain and review copies of all written communications to be issued by ESI to Bidders in advance of ESI’s issuance of such communications. Bidders will submit their written responses to the RFP Administrator, who will engage the IM in accordance with Section 1.5 above prior to transmitting the information to the appropriate evaluation team.
- 2.6 **Responsibility for July 2009 Baseload RFP Files** – The RFP Administrator will ensure that all related July 2009 Baseload RFP files and information are properly organized, stored, and secured so as to protect adequately the confidentiality of information in accordance with the processes and procedures described herein.

3. Protocols for Receipt of Bidder Registration Information

All information submitted to ESI through the Bidder registration process will be included in a confidential database accessible only to the IM, RFP Administrator, and IT Support. Only the IM and RFP Administrator review the information received from Bidders and oversee the preparation of reports that transmit some of the information contained in proposals to different members of the RFP evaluation teams, as described below.²

4. Procedures for Receipt of Proposal Information and Protection of Confidentiality

A key process objective of the market-based RFP process is to ensure that information provided by Bidders in response to this July 2009 Baseload RFP is kept confidential. ESI has designed procedures that its employees, agents, and consultants will be required to follow in

² Certain technical personnel responsible for computer systems and information necessarily will have access to the confidential database. However, this access will be solely for the purpose of providing computer-related technical support.

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conducting the proposal review process and the proposal evaluation process phases of the July 2009 Baseload RFP. These procedures are designed to preserve, to the extent practicable, the confidentiality of any confidential information contained in Bidders' proposals, including, but not limited to, the identities of Bidders and the proposal prices and other terms and conditions of their proposals. These procedures include use of: (a) electronic submission of proposals³; and (b) the creation and use of data reports for the evaluation of each proposal. These reports are based on information provided to ESI in the proposals submitted by Bidders, with identifying information about the Bidder redacted so that different members of the evaluation teams receive only the specific limited information that they need to carry out their evaluations.

These procedures are intended to provide reasonable assurance to Bidders that, except as noted below with respect to legal or regulatory requirements, information contained in their proposals will be disclosed only to the relevant members of the evaluation teams, and select agents and consultants. Also, these procedures are designed so that this information will be disclosed to members of the evaluation teams only to the extent necessary for the sole purpose of resource evaluation and will be disclosed to other agents and consultants only to the extent necessary for them to perform their respective functions in connection with this July 2009 Baseload RFP.

- 4.1. Immediately after the end of the proposal submission period, each proposal package will be reviewed by the IM, who will redact certain information from the proposal documents prior to giving any information from the proposals to any member of the evaluation teams. This information redaction process will be accompanied by a process that generates separate data reports, with each report being provided only to those members of the evaluation teams who are responsible for evaluating a particular aspect of the proposal response. Prior to providing these data reports to the evaluation teams, with the exception of the report provided to the Credit Evaluation Team, the IM will review the reports to ensure that they contain no information regarding the name, address, telephone number, email, or other pertinent Bidder contact information, or that they otherwise do not contain information that identifies the Bidder. This process will be completed before any proposal information is provided to members of the evaluation teams.

- 4.1.1. Upon completion of the proposal submission process, the IM will prepare an Executive Report which will communicate the following: (1) the actual number of Bidders submitting proposals; (2) the number of proposals submitted for each product category; and (3) any additional information that such executives may request and that the IM concurs is appropriate to

³ Please note that, for the July 2009 Baseload RFP, the RFP Web Portal that has been implemented and used in other recent ESI RFP processes will not be used. Instead, Bidders will use the Bidder Proposal Submission Form (see Appendix C), which may be submitted by electronic mail or by fax, with originals delivered within two working days from the proposal due date. For purposes of the July 2009 Baseload RFP, the electronic submission of proposals refers to such electronic mail or fax submission.

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provide. The Executive Report will be communicated only to the Entergy Operating Committee and to the Group President of Utility Operations and, upon request and with the concurrence of the IM, to other senior executives.

4.2. There are two distinct proposal data reports:

(a) a report containing information regarding the operational and economic characteristics of the proposal, which report will be provided to members of the Economic Evaluation Team (“EET”); and

(b) a report containing the proposal information for each proposal regarding applicable information to validate credit credentials, which report will be provided to a Credit Evaluation Team (“CET”).

These proposal data reports will provide only the information required by the RFP evaluation teams to perform the specified evaluation function for which each team is responsible. The report to the EET described above will exclude data specifically identifying the Bidder (*e.g.*, Bidder company name, Bidder company address and Bidder company contact information, etc.). In addition to these reports, the IM will also redact as necessary Bidder’s responses to any special considerations to a proposal that are deemed important to the evaluation, prior to providing the information to an evaluation team(s). While no process can ensure that the identity of the Bidder remains completely anonymous, subject to the activities of the CET, the intention is to provide the maximum reasonably practicable level of assurance of anonymity in order to maintain a fair and consistent evaluation process. As described in Section 4.1, the IM will review the output of this automated system prior to the distribution of any information to members of the evaluation teams. During proposal evaluation, each proposal will be identified by its unique Proposal ID.

4.3. The evaluation teams will prepare reports that summarize information from the data reports described above and from the results of analysis of the various proposals. These summary reports will be reviewed by senior advisors and other decision-makers of ESI and the Entergy Operating Companies. In addition, once a proposal has been selected for the Primary Award List, all information relating to such proposal will be provided to the appropriate negotiation team and to appropriate executives and other decision-makers of ESI and the Entergy Operating Companies. All Entergy personnel and other agents and consultants having access to confidential information as described above will be contractually and/or professionally bound to protect the confidentiality of confidential Bidder information and to use it for no other purpose besides activities related to the July 2009 Baseload RFP process and resource evaluation processes, more generally. ESI and the Entergy Operating Companies,

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however, disclaim any liability to a Bidder for damages of any kind resulting from disclosure of any Bidder or proposal information.

- 4.4. Proposals or other information or correspondence submitted in response to this July 2009 Baseload RFP will not be returned to Bidders. At the conclusion of this July 2009 Baseload RFP process (including regulatory review of specific transactions entered into as a result of this July 2009 Baseload RFP), all proposals will be either destroyed or archived by ESI, subject to the procedures described in this section providing for the treatment of such proposals as confidential and subject to any applicable Codes of Conduct.
- 4.5. All information contained in a proposal (a) may be required to be disclosed by ESI or any Entergy Operating Company pursuant to (i) applicable law, rule, or regulation or (ii) any legal proceeding involving ESI or any affiliates; and (b) may be subject to review by one or more of the regulatory commissions having jurisdiction over ESI and/or any of the Entergy Operating Companies, and/or their staffs in connection with regulatory proceedings, or any other Governmental Authority with jurisdiction relating to these matters, and may be subject to legal discovery. By submitting a proposal, the Bidder agrees to allow ESI to (a) use any of the information contained in the proposal as information, testimony or evidence in any proceeding before any such regulatory commissions, or in any proceeding before any other Governmental Authority with jurisdiction relating to these matters; and (b) disclose any of the information contained in the proposal when required to do so as described above; provided, however, that in the event such information is to be so disclosed, ESI will use its reasonable efforts to attempt to obtain from such authority, or other entity to whom such disclosure is being made, approval of a confidentiality agreement or protective order or other mechanism to protect the confidentiality of such information and to limit its dissemination.

ESI MAKES NO ASSURANCE OF THE OUTCOME OF ANY SUCH ATTEMPT, AND ADVISES BIDDERS THAT SOME PARTIES WHO HAVE INTERVENED IN REGULATORY PROCEEDINGS PERTAINING TO POTENTIAL ACQUISITIONS OF RESOURCES IN CONNECTION WITH PREVIOUS RFPs AND IN OTHER PROCEEDINGS IN WHICH ESI AND/OR ONE OR MORE OF THE ENTERGY OPERATING COMPANIES ARE INVOLVED HAVE SOUGHT ACCESS TO CONFIDENTIAL BIDDER INFORMATION.

5. Protocols for the Protection of Market-Sensitive Proposal Information

Because there are numerous departments and personnel in the ESI organization involved in the resource planning, asset management/supply procurement, and operations functions, ESI has

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implemented specific protocols for the protection of proposal information to limit access to specific market-sensitive proposal information provided by Bidders in response to ESI's July 2009 Baseload RFP, which protocols are listed below:

- 5.1 No proposal information will ever be disclosed to any Entergy Competitive Affiliates, except to the extent that such information is made public.
- 5.2 Prior to the selection of the proposals to the Primary Award List, no member of the RFP evaluation teams shall provide any proposal information to any person within ESI who is not otherwise a part of the RFP evaluation teams, other than the information that may be provided to senior advisors and decision-makers of ESI and the Entergy Operating Companies in the summary report provided for in Section 4.1, above.
- 5.3 No proposal information shall be provided to any member of the RFP evaluation teams prior to the expiration of the proposal submission deadline or before review and approval by the IM.
- 5.4 All files created in connection with the July 2009 Baseload RFP process shall be available only to the approved personnel. Approved personnel will include only the IM, the RFP Administrator, and those members of the RFP evaluation teams with designated access to specific information.
- 5.5 ESI management is responsible for communicating to the members of the RFP evaluation teams the importance of compliance with these protocols, both at the outset of the July 2009 Baseload RFP process and on a continuing basis.
- 5.6 ESI personnel involved with the July 2009 Baseload RFP process will sign a confidentiality acknowledgement that governs access to and uses of information contained in proposals and proposal documents.

6. Affiliate Rules

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

- 6.1 Federal Energy Regulatory Commission ("FERC") Transmission Standards of Conduct codified at 18 CFR §358
- 6.2 FERC Market-Based Rate Affiliate Restrictions codified at 18 CFR §35.39
- 6.3 FERC Cross-Subsidization Restrictions on Affiliate Transaction codified at 18 CFR §§35.43-44
- 6.4 Arkansas Affiliate Transaction Rules
- 6.5 Texas Affiliate Transaction Rules, as applicable
- 6.6 Council for the City of New Orleans Code of Conduct for Entergy New Orleans, Inc.

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- 6.7 October, 1992 Settlement Agreement between Entergy and the Arkansas Public Service Commission
- 6.8 Appendix 3 to the Louisiana Public Service Commission's May 3, 1993 Order No. U-19904
- 6.9 March 26, 1998 Settlement Agreement between Entergy and the Council for the City of New Orleans
- 6.10 April 10, 1998 Settlement Agreement between Entergy and the Mississippi Public Service Commission
- 6.11 October 19, 2000 Gas Settlement Agreement between the Council for the City of New Orleans and Entergy New Orleans, Inc.
- 6.12 Entergy Corporation Standards of Conduct regarding the relationship between Entergy Corporation's regulated and nonregulated subsidiaries

A link to these Affiliate Rules is posted on the RFP Website.

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