



Appendix E

Reservation of ESI Rights and Other RFP Terms

For

2016 Request For Proposals

For

***Long-Term Renewable
Generation Resources***

For

Entergy New Orleans, Inc.

DRAFT

Entergy Services, Inc.

~~May 6~~ July 13, 2016

APPENDIX E RESERVATION OF ESI RIGHTS AND OTHER RFP TERMS

1. Reservation of Rights

Notwithstanding anything to the contrary, each of ESI and ENOI may, and expressly reserves the right to, at any time, and from time to time, without prior notice, and without assigning or providing any reason therefor:

- cancel, suspend, withdraw, or terminate this RFP (including, without limitation, after the selection under this RFP of one or more Bidders for a Definitive Agreement) or cancel or suspend its participation in this RFP;
- modify this RFP, including, without limitation, any Appendix to this RFP or any of the dates, times, or places set forth in this RFP or related to the RFP process¹ ;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue, or reject any proposal, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any proposal that is incomplete, is non-conforming, or contains irregularities (or waive or disregard any deficiency, non-conformity, or irregularity in any proposal), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some, or all Bidders or other Persons (other than (i) any Entergy Regulated Affiliate except ENOI or (ii) any Entergy Competitive Affiliate) related to this RFP, and suspend or terminate negotiations with any Bidder or other Person at any time, including, without limitation, as a result of (a) any change in any of the resource needs of ENOI, (b) any adverse diligence finding by ESI or ENOI, or (c) any other issue related to the potential Transaction arising during negotiations of any LOI, Definitive Agreement, or other agreement, including, without limitation, any issue arising out of any special consideration submitted by Bidder in its proposal or any new or modified rule, regulation or other law;
- discuss the terms of any proposal or any other material submitted by Bidder with, and obtain clarification or additional information concerning such proposal or such other material from, Bidder or its directors, officers, employees, agents, representatives, and advisors;
- request from Bidder any information not detailed in or required by this RFP but that, in ESI's sole opinion, may be necessary or relevant to the evaluation of Bidder's proposal(s) and utilize such information as ESI deems appropriate in connection with such evaluation ~~of~~^{of} this RFP;

1.1.1. _____

¹ Modifications to this RFP will be posted on ESI's website for this RFP; although ESI will attempt to notify prospective ~~bidders~~^{Bidders} of any material modifications to this RFP, Bidders should monitor the website on a regular basis for updates that could affect Bidder.

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

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- receive, consider, pursue, and/or transact on (i) opportunities to acquire or contract for other assets or resources offered or that become available outside of the RFP process as such opportunities arise or (ii) proposals offered in response to this RFP that are non-conforming or have been eliminated from consideration in this RFP;
- invite further proposals in or ~~external to~~outside of this RFP or supplemental submissions or modifications of previously submitted proposals in this RFP;
- determine which Bidders or entities to allow, or continue to allow, to participate in the RFP process;
- pursue or transact on proposals offered in response to this RFP regardless of any rank order of proposals established in the RFP evaluation process, in order to limit exposure to a particular counterparty, technology type or vintage, manufacturer, or resource or a particular set of risks, diversify its power supply portfolio, gain experience with one or more generation technologies or resources, or achieve one or more other commercial goals as ESI or ENOI deems appropriate;
- sign or not sign Definitive Agreement(s) with Bidders or other Persons relating to the Products solicited by this RFP;
- in consultation with the IM, accept or reject any recommendation of any consulting engineer engaged by ESI in connection with the Self-Build Option (if any) or any proposal submitted in this RFP;
- subject to the terms of any applicable confidentiality agreement entered into between ESI and Bidder, retain, archive, or destroy any information or material provided to or for the benefit of ESI in the Proposal Submission Process; ~~and~~
- taking actions it deems appropriate after selections have been made, including, without limitation, conducting analyses of proposals, updating evaluations of proposals, correcting errors in prior analyses of proposals, accounting for contingencies, and re-ranking proposals; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this RFP and the RFP process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised individually by ESI, the Entergy Operating Committee (until the termination or cancellation of the Entergy System Agreement), the operating committee for ENOI, or any director, officer, employee, or authorized agent or representative of ESI, ENOI, or any of their respective parents. The reservation of rights contained herein is in addition to all other rights reserved or granted to ESI or any of its Affiliates elsewhere in this RFP or otherwise held by or available to ESI or any of its Affiliates.

2. No Warranties or Liabilities

BY PARTICIPATING IN THE RFP PROCESS, EACH BIDDER AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN A DEFINITIVE AGREEMENT WITH BIDDER:

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

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF ESI, ENOI, OR ANY OTHER AFFILIATE OF ESI IN CONNECTION WITH THIS RFP IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND
- (B) ESI, ITS AFFILIATES, AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, AND ADVISORS, AS WELL AS THE IM, SHALL HAVE NO LIABILITY TO ANY BIDDER, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFP.

3. Acceptance of Proposals

Without prejudice to ESI's rights under the Proposal Submission Agreement or at law or in equity, no proposal submitted by any Bidder shall be deemed accepted by, or otherwise binding upon, ESI or any of its Affiliates (including ENOI) and ESI, its Affiliates (including ENOI) and their respective directors, officers, members, employees, agents, and representatives shall have no obligation or liability of any kind with respect to any such proposal or otherwise in connection with this RFP, unless and until a Definitive Agreement has been mutually executed and delivered by ESI or any of its Affiliates and Seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by ESI or any of its Affiliates and Seller. Notwithstanding anything to the contrary in this RFP, all proposals delivered to ESI shall become the sole and exclusive property of ESI upon receipt, and ESI shall have all rights and privileges of ownership of such property, subject to any provision of this RFP relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between ESI and Bidder or Seller executed in connection with this RFP process.

4. Bidder Costs and Expenses

Each Bidder is solely responsible for all costs and expenses it incurs in connection with this RFP. Through its participation in this RFP, each Bidder agrees that under no circumstance, including, without limitation, ESI's withdrawal from or suspension, cancellation, or termination of the RFP process, will ESI, any of its Affiliates, or any of their respective directors, officers, members, partners, employees, agents, representatives, or advisors have any responsibility or liability of any kind to Bidder, its Affiliates, or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors, or lenders for any cost

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or expense directly or indirectly incurred by Bidder (no matter how incurred) in connection with the RFP process, except to the limited extent provided in Section 5.32 of the Main Body (relating to Bidder Registration Fee refunds). Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

5. Bidder Disclosure of RFP Information

No Bidder may, without the prior consent of ESI, disclose to any other Person (except those participating in the same proposal, to the extent permitted in Section 7.7 of the Main Body, the RFP Administrator, and the Independent Monitor) its participation in the RFP process, other than by attendance at any meeting to which more than one participant is invited by ESI, which attendance in and of itself will not violate this provision of this RFP. Further, no Bidder may disclose, collaborate on, or discuss with any other Person (except those participating in the same proposal, to the extent permitted in Section 7.7 of the Main Body, the RFP Administrator, and the Independent Monitor) bidding strategies or the substance of proposals, including, without limitation, the price or any other terms or conditions of any contemplated, indicative, or final proposal. Any such disclosure, collaboration, or discussion would violate this RFP and the Proposal Submission Agreement and may result in the rejection of Bidder's proposal or elimination of Bidder from further participation in this RFP.

6. Consents and Regulatory Approvals

Bidder/Seller will be responsible for obtaining and maintaining all consents, authorizations, and regulatory approvals necessary for the performance of its obligations under the Definitive Agreement. Please consult Appendices B-1 and B-2 of this RFP for additional information regarding regulatory approvals and conditions precedent to the Delivery Term.

ENOI will be responsible for obtaining all applicable regulatory approvals it requires for any Transaction arising out of this RFP, including, without limitation, authorization from any Governmental Authority with jurisdiction over ENOI. The commencement of the Delivery Term under any PPA arising out of this RFP will be conditioned upon the receipt of regulatory approvals on terms acceptable to ESI or ENOI in its sole and absolute discretion.

7. Bidder Acceptance of Appendix E

By participating in the RFP process, each Bidder ~~acknowledges and~~ agrees that ~~(i)~~ it will be deemed ~~for all purposes~~ to have accepted all of the rights and terms included in this Appendix E, ~~(ii) and to have agreed that~~ its participation in this RFP is ~~expressly~~ subject to such rights and terms, ~~and (iii)~~. ESI and ENOI are conducting this RFP and participating in the RFP process in reliance upon the ~~acknowledgments and agreements in this Section 7~~ foregoing agreement.

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