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Appendix F

***Process for
Protection of Proposal Information
for
Fall 2004
Request for Proposals (RFP)
for
Supply-Side Resources***

Entergy Services, Inc.

~~October 22, 2004~~ February 22, 2005

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Summary

SUMMARY

This Appendix F describes the process that ESI will follow in an attempt to ensure that information provided by Bidders in response to this Fall 2004 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 F outlines how ESI has designed its process for evaluating proposals submitted in response to the Fall 2004 RFP to achieve the following:

- the objective and impartial treatment of all Bidders; and
- compliance with all applicable legal and regulatory requirements, including Affiliate Rules and Codes of Conduct requirements.

Overview

OVERVIEW

This Appendix F details the various mechanisms put in place by ESI to protect the confidentiality of data provided by Bidders in the Fall 2004 RFP process, and to achieve the additional objectives outlined above, which mechanisms include the following:

1. Use of an Independent Monitor;
2. Reliance upon an RFP Administrator;
3. Protocols for Receipt of Bidder Registration Information;
4. Procedures for Receipt of Proposal Information and Protection of Confidentiality;
5. Protocols for the Protection of Market Sensitive Proposal Information; and
6. Affiliate Rules and Codes of Conduct.

1. Use of an Independent Monitor

Although not required by the Market Based Mechanism Order¹ issued by the LPSC, ESI has retained the Independent Monitor, ~~an independent consulting firm~~, in order (1) to oversee the design and implementation of the Fall 2004 RFP solicitation, evaluation, selection, and contract negotiation process

¹ General Order, Docket No. R-26172 Subdocket A, *In re: Development of Market-Based Mechanisms to Evaluate Proposals to Construct or Acquire Generating Capacity to Meeting Native Load*, Supplements the September 20, 1983 General Order, dated February 16, 2004.

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to ensure that it will be impartial and objective; and (2) 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. More specifically, the Independent Monitor serves the following roles as they relate to various steps in the Fall 2004 RFP process:

- 1.1 **Overall Design of the RFP** - The Fall 2004 RFP process has been designed with the advice and oversight of an Independent Monitor, in an attempt to ensure that the Fall 2004 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 Independent Monitor, who will redact certain information from the proposal documents and attempt to ensure the proper redaction of information that is needed for review of the proposals without also providing information from the proposals that would identify the Bidders. The Independent Monitor 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~~**Economic Evaluation**, and a report containing fuel information), which will then be made available to different subject matter ESI Fall 2004 RFP review teams, with different ESI reviewers seeing only those reports that include information they need to see in order to carry out their part of the proposal evaluation. This information segregation process is designed to protect Bidder confidentiality and ensure impartial evaluation of all proposals by ESI's Proposal Evaluation Team. 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 a randomly-generated identification number (other than for the credit evaluation process). This process will be completed before any proposal information is provided to members of the Proposal Evaluation Team.
- 1.3 **Proposal Submission Process** - The Independent Monitor will review information submitted by Bidders to determine whether the proposals meet the threshold requirements (as stated in Section 3 of the Fall 2004 RFP) and to determine whether additional information is needed. The Independent Monitor will oversee receipt of all proposals during the proposal submission period.
- 1.4 **Proposal Evaluation and Selection Process** - The IM will monitor ESI's proposal evaluation and selection to ensure that the Fall 2004 RFP process is objective and impartial to all Bidders. In addition, the Independent Monitor will review the precautions taken to restrict access to information from proposals only to those personnel who need to have such information for evaluation purposes, in an attempt to preserve the confidentiality of such information and to ensure an unbiased proposal evaluation process.

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- 1.5 **Oversight of Bidder Contact** – During the period prior to the selection of the primary award list and the secondary award shortlist, 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, the RFP Administrator will consult with the Independent Monitor to minimize the dissemination of information that explicitly identifies Bidders to members of ESI’s Proposal Evaluation Team 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 and the secondary award shortlist, the Independent Monitor will monitor all negotiations relating to such awarded or shortlisted proposals. The Independent Monitor also may participate in negotiations with Bidders as deemed necessary by the Independent Monitor.

2. Role of the RFP Administrator

Consistent with previous RFPs, ESI has a designated “RFP Administrator.” Under the supervision of the Independent Monitor, the RFP Administrator will serve in a multi-purpose role that includes the following responsibilities:

- 2.1 **Responsibility as Liaison** – The RFP Administrator shall serve as a liaison between all market participants and ESI with regard to Fall 2004 RFP-related matters.
- 2.2 **Responses to Bidder Questions** – The RFP Administrator shall ensure that Bidder questions are addressed, with all questions and answers posted on the Fall 2004 RFP Website, subject to provisions relating to confidentiality as discussed in Section 2.5 of ~~this~~ the Fall 2004 RFP main body.
- 2.3 **Distribution of Proposal Information** - The RFP Administrator shall ensure that proposal information is distributed to appropriate members of the Proposal Evaluation Team after review and approval by the Independent Monitor.
- 2.4 **Provision of Assistance to Independent Monitor** - The RFP Administrator shall work directly with the Independent Monitor with respect to all questions associated with a specific proposal and to assist the Independent Monitor in an administrative capacity in support of its 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

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Administrator, who will engage the Independent Monitor in accordance with Section 1.5 above prior to transmitting the information to the appropriate member of the Proposal Evaluation Team.

- 2.6 **Responsibility for Fall 2004 RFP Files** - The RFP Administrator shall ensure that all related Fall 2004 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 Independent Monitor and the RFP Administrator, both of whom will 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 ESI's Proposal Evaluation Team, as described below.²

Upon completion of the Bidder Registration process on ~~January 4~~ March 4, 2005, the Independent Monitor will prepare a summary report of Bidder Registration Forms received. This summary report will communicate only the following: (1) the actual number of Bidders submitting a Bidder Registration Form; and (2) the number of proposals for each product category. No information regarding the identity of Bidders will be communicated in this summary report. In addition, a separate report containing all Bidder entities will be provided to the ~~credit~~ Credit Factor Evaluator.

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 Fall 2004 RFP is kept confidential. ESI has designed procedures that its employees, agents, and consultants will be required to follow in conducting the proposal review process and the proposal evaluation process phases of the Fall 2004 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 proposals; 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 Factor Evaluators receive only the specific limited information that they need to carry out their factor evaluations.

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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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 ESI's Proposal Evaluation Team, and select agents and consultants. Also, these procedures are designed so that this information will be disclosed to individual Proposal Evaluation Team members 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 Fall 2004 RFP.

Immediately after the end of the proposal submission period, each proposal package will be reviewed thoroughly by the Independent Monitor, who will redact certain information from the proposal documents prior to giving any information from the proposals to any member of the Proposal Evaluation Team. This information redaction process will be accompanied by an automated process that generates separate data reports, with each report being provided only to those members of the Proposal Evaluation Team who are responsible for evaluating a particular aspect of the proposal response. (For example, the fuel Factor Evaluator will receive only information on the fuel-related issues, but no pricing information.) Prior to providing these data reports to members of the Proposal Evaluation Team, the Independent Monitor will review them to ensure that the data reports contain no information regarding the name, address, telephone number or other pertinent Bidder contact information. This process will be completed before any proposal information is provided to members of the Proposal Evaluation Team.

ESI has developed reporting software to generate the automated proposal data reports that will contain limited proposal data. There are three 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~~ economic evaluation team;
- (b) a report containing the proposal information regarding fuel supply issues for each proposal, which report will be provided to the Fuel Factor Evaluator(s); and
- (c) a report containing the proposal information for each proposal regarding the location of the Bidder's facility, which report will be provided to Transmission Factor Evaluator(s).

These proposal data reports will provide only the information required by the Factor Evaluator to perform the specified evaluation function for which that Factor Evaluator is responsible. The reports described above will exclude data specifically identifying the Bidder (*e.g.*, Bidder company name, Bidder company address and Bidder company contact information). While no process can ensure that the identity of the Bidder remains completely anonymous, 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 the preceding paragraph, the Independent Monitor will review the output of this automated system prior to the distribution of any information to the Proposal Evaluation

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Team members. During proposal evaluation, each proposal will be identified by its unique Proposal ID and/or Plant ID.

The Proposal Evaluation Team 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 award or shortlist, all information relating to such proposal will be provided to the appropriate negotiation team and to 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 RFP process and resource evaluation processes more generally. ESI and the Entergy Operating Companies, however, disclaim any liability to a Bidder for damages of any kind resulting from disclosure of any Bidder or proposal information. A copy of the form(s) of Employee Confidentiality Acknowledgement will be made available on the Fall 2004 RFP Website concurrent with the posting of the ~~Final~~ Fall 2004 RFP.

Proposals or other information or correspondence submitted in response to this Fall 2004 RFP will not be returned to Bidders. At the conclusion of this Fall 2004 RFP process (including regulatory review of specific transactions entered into as a result of this Fall 2004 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.

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 merchants and others who have intervened in regulatory proceedings pertaining to potential acquisitions of resources in connection with the RFP process 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.

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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/procurement, and operations functions, ESI has 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 Fall 2004 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 short-listed proposals, no member of the Proposal Evaluation Team shall provide any proposal information to any person within ESI who is not otherwise a part of the Proposal Evaluation Team, other than the information that may be provided to senior advisors and decision makers of ESI and the Entergy Operating Companies in the summary reports provided for in Section 4, above.
- 5.3. No proposal information shall be provided to any Proposal Evaluation Team member, other than the RFP Administrator, prior to the expiration of the proposal submission deadline or before review and approval by the Independent Monitor.
- 5.4. All files created in connection with the Fall 2004 RFP process shall be available only to the approved personnel. Approved personnel will include only the RFP Administrator and those Proposal Evaluation Team members with designated access to specific information.
- 5.5. ESI management is responsible for communicating to the Proposal Evaluation Team members the importance of compliance with these protocols, both at the outset of the Fall 2004 RFP process and on a continuing basis.
- 5.6. ESI personnel involved with the Fall 2004 RFP process will sign a confidentiality agreement that governs access to and uses of information contained in proposals and proposal documents.

6. Affiliate Rules and Codes of Conduct

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

- 6.1. Entergy Corporation Standards of Conduct
 - 6.1.1. Entergy Corporation Standards of Conduct regarding the relationship between Entergy Corporation's regulated and nonregulated subsidiaries
- 6.2. Codes of Conduct: Entergy Operating Company specific
 - 6.2.1. Internal Code of Conduct for EGS Texas and its affiliates

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

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- 6.2.2. Electric Affiliate Transaction Rules (Affiliate Rules) of the Arkansas Public Service Commission
- 6.2.3. Code of Conduct for Electric Utilities and Their Affiliates of the Public Utility Commission of Texas
- 6.2.4. ENOI Code of Conduct of the Council for the City of New Orleans
- 6.2.5. October, 1992 Settlement Agreement between Entergy and the Arkansas Public Service Commission
- 6.2.6. Appendix 3 to the Louisiana Public Service Commission's May 3, 1993 Order No. U-19904
- 6.2.7. March 26, 1998 Settlement Agreement between Entergy and the Council for the City of New Orleans
- 6.2.8. April 10, 1998 Settlement Agreement between Entergy and the Mississippi Public Service Commission

- 6.3. Codes of Conduct: Between Affiliated Power Marketers and the Entergy Operating Companies
 - 6.3.1. Crete Entergy Ventures, LLC Code of Conduct
 - 6.3.2. EKT LP Code of Conduct
 - 6.3.3. ENF Standards of Conduct
 - 6.3.4. ENGC Standards of Conduct
 - 6.3.5. ENIP 2 Code of Conduct
 - 6.3.6. ENIP 3 Standards of Conduct
 - 6.3.7. Entergy Nuclear Vermont Yankee, LLC Code of Conduct
 - 6.3.8. Entergy Solutions Supply Code of Conduct
 - 6.3.9. Entergy Power Ventures, L.P. Code of Conduct
 - 6.3.10. EWO Marketing Code of Conduct
 - 6.3.11. Koch Energy Trading Code of Conduct
 - 6.3.12. Northern Iowa Windpower Code of Conduct
 - 6.3.13. Warren Power Code of Conduct

- 6.4. Standards of Conduct: Between Transmission and any Wholesale Merchant Function Group
 - 6.4.1. FERC Transmission Standards of Conduct

A link to these Affiliate Rules and Codes of Conduct is posted on the Fall 2004 RFP Website.