



***2017 Request for Proposals  
for  
Build-Own-Transfer  
Solar Photovoltaic Resources***

Entergy Arkansas, Inc.

December 12, 2017

**CONFIDENTIAL**

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## APPENDICES

<b>Appendices</b>	<b>Title</b>
Appendix A	Glossary
Appendix B	Term Sheet for Build-Own-Transfer Solar PV Asset Acquisitions
Appendix C	Preliminary Due Diligence and Attachments
Appendix D	Scope Book
Appendix E	Credit/Collateral Requirements

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## 1. RFP INFORMATION

### 1.1. Introduction

Entergy Arkansas, Inc. (“**EAI**”) hereby issues this 2017 Request for Proposals for Build-Own-Transfer Solar Photovoltaic Resources (including all appendices, this “**RFP**”). Through this RFP, EAI seeks to acquire, under a build-own-transfer (“**B-O-T**”) transaction structure, up to 200 MW of new-build solar photovoltaic (“**Solar PV**”) generation resources for service commencing by December 31, 2021, on terms set forth herein. A summary of key scoping items for this RFP, including capacity minimums and maximums, is provided in Section 1.5 below.

### 1.2. RFP Documents

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

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 is the term sheet for the B-O-T transaction(s) sought by this RFP (“**Term Sheet**”). The Term Sheet summarizes some of the key commercial terms of any B-O-T arrangement arising out of this RFP.

Appendix C contains questions and requests for material and other information that Bidders will be required to answer or provide in connection with any proposal submitted in this RFP.

Appendix D is a draft of the scope book (“**Scope Book**”) that is expected to be included in some form in any Definitive Agreement. The Scope Book will address, among other things, the scope of the Seller’s engineering, procurement, and construction work on the proposed project, the project execution plan, engineering, procurement, and construction standards and processes to be followed, and other technical information about the project.

Appendix E generally describes the credit support requirements for proposal submission, determination of Seller’s credit support requirements for proposals selected from this RFP, and preliminary credit support discussions between EAI and Bidders selected for potential contract negotiations

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

### 1.3. Bid Event Coordinator

EAI has engaged Entergy Services, Inc. (“ESI”) to assist with the administration of this RFP and has designated an ESI 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 EAI on all RFP-related matters, (ii) ensuring that Bidder RFP-related questions ESI receives 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 the RFP, and (v) managing other administrative matters relating to this RFP. The Bid Event Coordinator for this RFP is Ms. Jaime Williamson, who can be contacted through Power Advocate.

### 1.4. Independent Monitor

EAI has retained Mr. Wayne Oliver of Merrimack Energy Group Inc. to act as the 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 EAI’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 waynejoliver26@gmail.com or phone at (781) 856-0007.

### 1.5. RFP Scope Summary

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

Scope Item	Description
Resource Type	New Solar PV facility
Transaction Type	B-O-T acquisition of the proposed Facility and related assets, with Seller assuming full construction and financing risk prior to the Closing (see Section 2.1 below and Appendix B)
Capacity Requirements	Bidder is required to submit a proposal for the sale of the entire Facility. <ul style="list-style-type: none"> <li>• Minimum Guaranteed Capacity: 100 MW</li> <li>• Maximum Guaranteed Capacity: 200 MW</li> </ul>
Eligible Resources	The Solar PV resource(s) specified by Bidder in its registration of proposals submitted to EAI in this RFP (see Section 3.1 below)
Closing Date	EAI requires that the Closing occur no later than December 31, 2021
Technical Requirements	The Scope Book (Appendix D) provides general technical specs for the Facility and related engineering, procurement, and construction matters
Self-Build Option	EAI will <u>not</u> be offering a self-build resource as an alternative in this RFP

<b>Entergy Regulated and Competitive Affiliates</b>	Entergy Regulated Affiliates and Entergy Competitive Affiliates will be ineligible to submit proposals in this RFP
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The preceding table omits several items that are or could be considered key scoping items. The scope of this RFP is established by terms set forth in the entirety of the documents, materials, and information provided to Bidders in this RFP, including, without limitation, the Term Sheet, Scope Book, and Appendix E. The table is not, and should not be construed as, a substitute for the other provisions of this RFP.

**1.6. Pending Modification of RFP Documents**

Some terms included in the RFP documents are likely to change after the initial issuance of this RFP, including, without limitation, terms related to the B-O-T acquisition transaction structure. EAI is re-evaluating the timing of the Closing of the acquisition transaction to ensure that the transaction structure meets the criteria for EAI to receive the full amount of investment tax credits and other tax attributes available for the project and to enhance the transaction’s prospects of obtaining favorable regulatory treatment. It is expected that the transaction structure would be revised to require the Closing to occur prior to the Facility’s synchronization to the host utility’s electric grid. In the current structure, the Closing would occur after “final completion” of the project. Material modifications to the timing of Closing will necessitate changes to other transaction terms, some of which may affect the allocation of certain risks between the Seller and EAI. Regardless of whether or how the transaction structure is altered, however, the Seller’s core engineering, procurement, and construction responsibilities should remain the same, including its responsibility to build and achieve “substantial completion” of the project and provide EAI with a complete, fully permitted, fully functional solar PV generation facility meeting the requirements set forth in the Definitive Agreement for a lump sum. In addition, the Scope Book portion of the RFP (Appendix D) is being provided to bidders in preliminary draft form. The Scope Book, which addresses technical and other engineering, procurement, and construction-related elements of the projects sought by the RFP, is expected to be updated. Major adjustments to the technical specifications of the Facility included in the Scope Book are considered unlikely. Without limiting Section 5.6 below, EAI reserves the right to make other modifications to terms in the RFP documents and to provide updates to Bidders regarding such modifications from time to time.

**2. PROPOSALS**

**2.1. High-Level Overview of Select Commercial Terms**

As noted, this RFP is soliciting proposals for eligible Solar PV resources from 100 MW to 200 MW of Guaranteed Capacity under a B-O-T arrangement with EAI. The following highlights in summary form a few basic commercial terms and considerations for the resource acquisition(s) sought by this RFP. More detailed descriptions of the commercial terms and considerations for proposals and potential transactions under this RFP are located in Appendix B (Term Sheet), Appendix D (Scope Book), Appendix E (Credit/Collateral Requirements), and elsewhere in this RFP.

- *B-O-T Structure.* Under the required B-O-T structure, Seller would agree to develop, design, build, commission, test, and sell the proposed project for a pre-agreed purchase price payable by EAI at the Closing. EAI would buy the project and related assets from Seller after each of

the numerous conditions to the Closing has been fulfilled or waived. Prior to the Closing, Seller, as the project owner, would 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. If the transaction terminates and the Closing has not occurred, Seller would retain ownership and control of the project and related assets.

- *Purchase Price.* The purchase price for the Facility and the other project assets will be payable by EAI in one lump sum at the Closing and must be expressed in Bidder's proposal as a single fixed payment. EAI will not make progress or other advance payments toward the project purchase. Bidder's proposed purchase price should be submitted in the Commercial Tab within Power Advocate and should reflect an "all-in" price for the sale of the project to EAI considering the terms proposed in this RFP, including, without limitation, the Term Sheet, the Scope Book, and Appendix E, and Bidder's proposal. For each proposal Bidder submits, Bidder must provide two purchase prices, one that includes the cost of solar panels and another that excludes those costs. (The alternate pricing is required because EAI reserves the right to purchase and supply the solar panels for any selected project.) Bidder's price should take into account 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, taxes (including, without limitation, transfer, sales, and use taxes), Closing, asset transfer, transaction, contingency, warranty, credit, and all other Seller project costs and risks and Seller's required return on investment.
- *Tax Credits.* Buyer will require the exclusive entitlement to and/or receipt as of the Closing 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 that Buyer requires for the transaction (based on Bidder's proposal), and Buyer must be the original user of the Facility so that it qualifies for the credit.
- *Closing.* In Bidder's proposal, the Closing must be scheduled to occur no later than December 31, 2021.
- *Credit.* Under the terms of this RFP, Seller will be required to post credit support as outlined in Appendix E.

## **2.2. Proposal Development and Special Considerations**

Bidders are responsible for developing and submitting proposals in accordance with the terms of this RFP. Bidders are cautioned against relying solely or principally on the summaries included in Section 1.5 and Section 2.1 above when developing proposals for this RFP or submitting proposals without a reasonably complete understanding of the B-O-T transaction terms made available to Bidders prior to proposal submission. EAI expects that the terms, conditions, and technical requirements summarized in the Term Sheet, the Scope Book, and Appendix E 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 Term Sheet, the Scope Book, and Appendix E, when EAI evaluates Bidder’s proposal(s) and during any negotiation of the Definitive Agreement. In the event of any inconsistency between a provision in the Term Sheet and any other part of this RFP, including the Main Body and the Scope Book, the Term Sheet will control.

Bidders not wishing to agree to a term set forth or described in the Term Sheet must identify the specific term to which Bidder takes exception and provide a reasonably complete and detailed explanation of Bidder’s position in the “**Special Considerations**” section of its proposal. Special Considerations in which Bidder (i) reserves wholesale rights to make comments on terms or conditions included in a Definitive Agreement, (ii) makes widespread, wholesale, or fundamental changes to material terms or conditions set forth in the Term Sheet, (iii) conditions its proposal on the acceptance of material terms or conditions not accepted by EAI in the ordinary course of business or that would materially diminish the value of the resource to EAI or the viability of the proposal, (iv) takes exceptions to commercial terms without reasonably complete and detailed explanations, or (v) takes actions the effect of which would be similar to those resulting from the actions described in clauses (i)-(iv) are not contemplated and may be grounds for a proposal’s elimination from consideration in this RFP, following consultation with the IM. Bidder Special Considerations will be reviewed in the proposal evaluation phase of this RFP and may adversely (or positively) affect the proposal’s evaluation. No Bidder should withhold Special Considerations on terms in this RFP that it will object to or contest in any negotiation of a Definitive Agreement.

Notwithstanding anything in this RFP to the contrary, EAI’s acceptance or selection of a proposal containing exceptions in the Special Considerations section of Bidder’s proposal does not mean that EAI 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 Section 5.6 below, EAI reserves all rights in any 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 EAI 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.

### **3. RFP PROCESSES**

#### **3.1. RFP Schedule**

The RFP Schedule is critical for Bidders interested in participating in this RFP. The RFP Schedule in the table below sets forth the current milestone events and dates for this RFP.

<b>RFP Milestone</b>	<b>Target Date</b>
<b>Proposal Submission Fee Payment Deadline</b>	December 19, 2017 at 5:00 p.m. CPT
<b>Proposal Submission Deadline</b>	January 19, 2018 at 5:00 p.m. CPT
<b>Shortlist (if any)</b>	February 2018
<b>Notice to Bidders of EAI Selections</b>	March 2018



<b>Comprehensive Due Diligence and Contract Negotiations Begin</b>	March 2018
<b>Definitive Agreement(s) Executed</b>	July 2018
<b>Regulatory Approval Process Complete</b>	June 2019

Without limiting Section 5.6 below, EAI reserves the right to modify the RFP Schedule (including any milestone or milestone date) at any time in its sole discretion. EAI will endeavor to timely notify all participants in this RFP of any such modification.

### **3.2. Proposal Submission Fees**

Bidders are required to pay a Proposal Submission Fee of \$10,000.00 *for each registered proposal with a Proposal ID*. Proposals that are alternatives to each other, including, without limitation, proposals with different pricing or Closing dates, will be considered separate proposals. Assuming the original RFP schedule remains in effect, ESI will bill Bidder for the total Proposal Submission Fees due from Bidder by December 14, 2017. Bidder will be required to remit payment of the Proposal Submission Fee in full in accordance with the instructions provided in the invoice by no later than 5:00 p.m. CPT on the Proposal Submission Fee due date (December 19, 2017, in the original RFP Schedule). (Bidder will not be invoiced for any registered proposal withdrawn prior to invoicing.) **Bidder’s failure to pay the Proposal Submission Fee for a proposal by the Proposal Submission Fee payment deadline will cause Bidder to become ineligible to participate in this RFP with respect to such proposal.**

Proposal Submission Fees will be refunded to Bidders only under the following circumstances:

1. Bidder registers a proposal and pays the Proposal Submission Fee but does not complete Proposal Submission for that registered proposal;
2. Bidder registers a proposal, properly completes Proposal Submission, but subsequently withdraws the proposal prior to the Proposal Submission Deadline; or
3. EAI 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 EAI has completed its evaluation of proposals, Bidder’s Proposal Submission Fee(s) will not be returned.

### **3.3. Proposal Submission**

The proposal submission process requires each Bidder to submit to EAI:

- a completed Proposal Submission Template (Commercial Tab in Power Advocate);

- completed responses to the due diligence questionnaire (Appendix C) and Attachments, including, without limitation:
  - the requested generation profile for two years (Excel Sheet);
  - documents requested by the questionnaire;
  - the required demonstration that Bidder or Seller has the requisite control over the project site; 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 Power Advocate 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 Power Advocate. Bidder must deliver the complete Proposal Package(s) for its proposal(s) by the Proposal Submission Deadline 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 as required by this RFP. Proposals that do not include all required agreements, material, and information are untimely or improperly delivered may be considered non-conforming and eliminated from consideration in this RFP.**

#### **4. PROPOSAL EVALUATION AND SELECTION**

EAI will evaluate the proposals submitted in this RFP. EAI's evaluation process is designed to facilitate the fair and impartial evaluation of all proposals and to result in the selection of one or more proposals that meet the requirements of this RFP and EAI's needs at the lowest reasonable cost, taking into account commercial considerations, project viability, 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. The process is expected to include, without limitation, EAI's use of evaluation teams and subject matter experts, and will involve the IM as appropriate. As part of the evaluation process, EAI may from time to time reduce the number of proposals under evaluation and may develop a preliminary shortlist of proposals for continued evaluation (the "**Shortlist**").

During the evaluation process and at other times in this RFP, EAI may ask Bidder clarifying questions to obtain additional information that it believes may help with its understanding, review, analysis, or treatment of Bidder's proposal. Clarifying questions are expected to be communicated by the Bid Event Coordinator to Bidder via Power Advocate. EAI, through the Bid Event Coordinator, may also request Bidder's participation in one or more meetings to obtain clarification or additional information regarding a proposal. Bidder will be expected to provide responses to

clarifying questions posed by or for EAI and make available authorized officers, representatives, and advisors to participate in meetings requested by EAI and/or answer questions or provide information related to its proposal or participation in this RFP. A Bidder offering a proposal with a resource in the queue with MISO, a transmission owner, or other balancing authority for interconnection, deliverability, or transmission service at the time of proposal registration must promptly notify the RFP Bid Event Coordinator in the event the resource does not remain in the queue or obtain the requested service, or Bidder materially modifies the terms of its application or request for such service.

At an appropriate stage of the proposal evaluation process, members of EAI's resource planning group, utilizing in its discretion, among other things, analysis and other inputs provided by evaluation teams and subject matter experts for this RFP, will develop recommendations for the selection of proposals, if any, for inclusion on the Primary Selection List or the Secondary Selection List and will present those recommendations to the EAI Resource Planning and Operating Committee and EAI management. The "**Primary Selection List**" is a list setting forth the proposal(s) (if any) selected for negotiation of a Definitive Agreement. The "**Secondary Selection List**" is a list setting forth the proposal(s) (if any) selected for possible negotiation of a Definitive Agreement. The IM will review the recommendations of the members of EAI's resource planning group before the recommendations are presented to the EAI Resource Planning and Operating Committee and EAI management. Any selection of a proposal for the Primary Selection List or the Secondary Selection List will be made by the President and CEO of EAI (or his or her designee).

Once selections have been made, EAI will notify each Bidder that EAI has completed its evaluation of proposals and inform Bidder, with respect to each proposal submitted by Bidder, 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 this RFP, EAI expects to proceed to negotiate the final 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 EAI determines negotiations with one or more Bidders having a proposal on the Secondary Selection List are appropriate, EAI may negotiate commercial terms with such Bidders. A Bidder with a proposal on the Secondary Selection List will be released from the proposal three (3) months 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 Definitive Agreement under this RFP based on the proposal. A proposal not on either the Primary Selection List or the Secondary Selection List will be considered rejected. Any Bidder invited by EAI 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.

Without limiting Section 5.6 below, EAI's selection of a proposal does not constitute or indicate EAI's agreement, commitment, representation, or promise to transact on the basis of the selected proposal or EAI's acceptance of any term of the proposal. Under the terms of this RFP, EAI has no obligation, and makes no commitment or promise, of any kind, to enter into a transaction with any Bidder or to be bound by any term proposed by Bidder in this RFP, and, more generally, has no obligation or liability of any kind whatsoever to any Bidder or Seller in connection with or arising out

of this RFP, except to the extent otherwise expressly set forth in a binding, fully executed written agreement between EAI and Bidder or Seller.

## **5. MISCELLANEOUS RFP MATTERS**

### **5.1. Authorized Communication Channels**

For each Bidder, the communication restrictions set forth in this Section 5.1 became effective on the date the Confidentiality Agreement between such Bidder and EAI was executed and will continue through proposal selections. Except as otherwise expressly provided in this RFP, any and all communications by or on behalf or in support of any Bidder regarding this RFP must be submitted in writing to the Bid Event Coordinator through Power Advocate. Any contact or communication concerning this RFP (i) between Bidders, or representatives of Bidders, on the one hand, and personnel or employees of EAI or ESI other than the Bid Event Coordinator, on the other hand, or (ii) between different Bidders, or representatives of different Bidders, made without the express 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, subject to the terms of the applicable Confidentiality Agreement with EAI, and may communicate with the IM at any time. The Bid Event Coordinator will request input from EAI on all communications from the Bid Event Coordinator to any Bidder under this RFP. The IM is expected to receive and review in advance all written communications between the Bid Event Coordinator and Bidders. EAI's responses to Bidders or potential Bidders may reflect input from the IM.

### **5.2. Confidentiality Agreement**

The existence and terms of this RFP, and the communications between EAI or the IM and a Bidder concerning this RFP, are subject to and governed by the Confidentiality Agreement entered into by EAI and such Bidder. Nothing in this Section 5.1 above, this Section 5.2, or elsewhere in the RFP is intended to limit the terms of the Confidentiality Agreement.

### **5.3. 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.

### **5.4. Affiliate Rules and Codes of Conduct**

Each employee of EAI, ESI, any Entergy Operating Company, or any Entergy Competitive Affiliate must adhere to the Affiliate Rules and Codes of Conduct as applicable. To view online

versions of the Affiliate Rules and Codes of Conduct, please see [http://www.energy-arkansas.com/affiliate/?\\_ga=2.70874704.1975423521.1511191268-989881455.1510167232](http://www.energy-arkansas.com/affiliate/?_ga=2.70874704.1975423521.1511191268-989881455.1510167232)

## **5.5. 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 EAI or ESI in connection with this RFP or otherwise disadvantage EAI or ESI relative to its position with other Bidders without the prior written consent of EAI or ESI (as the case may be). 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. Bidder may be required to respond to subsequent diligence inquiries concerning the arrangements or agreements.

## **5.6. Reservation of EAI Rights and Other EAI RFP Protections**

(a) Notwithstanding anything to the contrary in this RFP, each of EAI and ESI 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, (i) cancel, suspend, withdraw, or terminate this RFP (including, without limitation, after the selection under this RFP of one or more proposals for the Primary Selection List or the Secondary Selection List) or cancel or suspend its participation in this RFP; (ii) modify this RFP, including, without limitation, any Appendix to this RFP or any of the dates, times, places, or terms set forth in this RFP or related to the RFP process; (iii) accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue, or reject any proposal submitted in this RFP, in its sole and absolute discretion, for any reason; (iv) without limitation of the generality of any of the other terms herein, reject or eliminate any proposal that it determines is incomplete, is non-conforming, or contains irregularities (or waive or disregard any deficiency, non-conformity, or irregularity in any proposal), or was made with the intent to create artificial prices, terms, or conditions or would have that effect; (v) carry out negotiations with any, some, or all Bidders or other Persons (other than any Entergy Competitive Affiliate or Entergy Regulated Affiliate) related to this RFP, and suspend or terminate negotiations with any Bidder or other Person at any time for any reason (including, without limitation, during contract negotiations); (vi) 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; (vii) request from Bidder any information not detailed in or required by this RFP but that, in EAI's or ESI's opinion, may be necessary or relevant to the evaluation of Bidder's proposal(s) or this RFP and utilize such information as EAI or ESI deems appropriate in connection with such evaluation or this RFP; (viii) receive, consider, pursue, and/or transact on (A) opportunities to acquire or contract for other resources offered or that become available outside of the RFP process as such opportunities arise or (B) proposals offered in response to this RFP that are non-conforming or have been eliminated from consideration in this RFP; (ix) invite at any time further proposals in or external to this RFP or supplemental submissions or modifications of previously submitted proposals in this RFP; (x) determine which Bidders, entities, or projects to allow, or continue to allow, to participate in the RFP process; (xi) pursue or transact on proposals offered in response to this RFP, regardless of any rank or

recommended order of proposals that may be developed or established in the RFP evaluation process, in order to limit exposure to a particular counterparty, technology or equipment type, location, contractor, or manufacturer, or a particular risk or set of risks, or achieve one or more other commercial objectives as EAI deems appropriate in its sole and absolute discretion; (xii) sign or not sign Definitive Agreement(s) with Bidders or other Persons relating to this RFP; (xiii) subject to the terms of the applicable Confidentiality Agreement with Bidder, retain, archive, or destroy any proposal information or material provided by or for Bidder to or for the benefit of EAI in this RFP or require the return of EAI's confidential information related to this RFP; and (xiv) 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 may be exercised individually by EAI, the EAI Resource Planning and Operating Committee, or any authorized director, officer, employee, or authorized agent or representative of EAI, ESI, or any of their respective parents. The reservation of rights contained herein is in addition to all other rights reserved or granted to EAI or any of its Affiliates elsewhere in this RFP or otherwise held by or available to EAI or any of its Affiliates.

(b) BY PARTICIPATING IN THE RFP PROCESS, EACH BIDDER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY SET FORTH IN A DEFINITIVE AGREEMENT WITH BIDDER, (i) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF EAI, ESI, OR ANY DIRECTOR, OFFICER, MEMBER, EMPLOYEE, AGENT, OR REPRESENTATIVE THEREOF 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 (ii) EAI, 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, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED IN A DEFINITIVE AGREEMENT.

(c) WITHOUT PREJUDICE TO EAI'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, EAI OR ANY OF ITS AFFILIATES. BY PARTICIPATING IN THE RFP PROCESS, EACH BIDDER AGREES THAT, EAI, ITS AFFILIATES, 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 EAI 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 EAI OR ANY OF ITS AFFILIATES AND SELLER.

(d) Each Bidder is responsible for all costs and expenses it incurs in connection with this RFP. Except as may be provided in a Definitive Agreement between Seller and EAI or other signed written agreement with Bidder or Seller and binding upon EAI or ESI, nothing in this RFP commits EAI or ESI to pay any RFP-related cost or expense.