Evaluation Team Response to 83E Round 2 Bidder Questions

Long-Term Contract Markups

Question: What markups to the Long-Term Contracts for transmission projects will the EDCs not accept as they shift risks associated with proposed projects in accordance with Section 2.2.5 of the RFP?

Response: The language in Section 2.2.5 of the RFP reflects the general principle that the Bidder, as the party best positioned to assess and manage the risks inherent in its project, bears the risks associated with the development, construction, financing and operation of the project, as well as the risks of changes in law or economic circumstances affecting the project. The Evaluation Team will not accept changes to the Long-Term Contracts that shift risks associated with the development, construction, financing and operation of the project, or change in law or economic circumstances and this principle is not confined to specific provisions of the Long-Term Contract.

Examples of unacceptable changes to risks associated with the development, construction, financing and operation of the project include, but are not limited to, changes to the Critical Milestones, changes to the COD criteria, changes related to delays in permitting, changes to the required Development Period Security and Operating Period Security, changes to the site control requirements, changes to indemnity provisions, changes to required insurance, delays arising from causes outside of Seller's control and delays associated with interconnection studies, interconnection facilities or network upgrades, or delays attributable to a government agency or utility.

Examples of change in law risk include, but are not limited to, compliance costs arising out of new or amended legal requirements, changes in Environmental Attribute programs, tracking, statutes and regulations and the effect on Bidder's ability to create, transfer and deliver Environmental Attributes, the consequences of a regulatory, judicial or governmental determination affecting the project or the parties' obligations, or failure to deliver that results from a change in law.

Examples of change in economic circumstances risk include, but are not limited to, tariffs, trade measures, and other cost increases affecting equipment or materials, availability, reduction or loss of tax credits, changes in tax law, and increases in Seller costs generally.

Because the risk allocation described in Section 2.2.5 of the RFP runs throughout the Long-Term Contract, and not any particular provision, Bidders should review the Long-Term Contract in its entirety when preparing their Bid. Consistent with the language in Section 2.2.5, a Bidder that wishes to propose changes to the Long-Term Contract must identify the specific change(s) in a markup of the Long-Term Contract adapted to the relevancy of its project, and the Evaluation Team reserves the right to reject any and all proposed changes.