

September 30, 2022

Independent Electricity System Operator (IESO)
E-LT1 RFP Team
1600-120 Adelaide Street West,
Toronto, ON M5H 1T1

Dear E-LT1 RFP Team,

Subject: Feedback on the draft E-LT1 RFP and draft E-LT1 Contract

Boralex Inc. (“Boralex” or “we”) is grateful for the opportunity to provide feedback on the draft E-LT1 RFP and draft E-LT1 Contract. Our views are closely aligned with those provided by the Power Advisory and the CanREA. Following is a list of points we wish to emphasize. These points are followed by a list of more specific items concerning the draft E-LT1 RFP and the draft E-LT1 Contract

1. E-LT1 RFP Capacity procurement targets: The Storage Target Capacity should be a minimum, but should not have a maximum limit (up to the E-LT1 overall target). Due to the flexibility and benefits provided to the grid by energy storage projects in contrast to non-storage projects, if in the selection process the incremental next lowest bid project is storage (i.e., if storage is cheaper than non-storage), then it should be awarded.
2. Deliverability Test: We would like to see more information on what makes a project Deliverable, Deliverable but competing, and Not Deliverable. Also, the results of the Deliverability Test will be available quite late in the RFP process (i.e., too close to the bid submission date). This may impact Proponent’s ability to react to the results of the Deliverability Test. Please consider accelerating the release of the Deliverability Test results.
3. Regarding Sec 3.6(a) of the RFP document: it is stated that *“Only one Proposal may be submitted in respect of an individual Long-Term Reliability Project. A Proponent must submit separate Proposals for each Long-Term Reliability Project. A Proponent may submit multiple Proposals subject to a maximum of [ten (10) Long-Term Reliability Projects per Qualified Applicant or Persons Controlled by a Qualified Applicant”*. We



suggest that IESO consider allowing submission of more than one project size/bid price variation for a Long-Term Reliability Project, as long as the total combined number of such proposals is 10 or less. We believe that this would allow both the IESO and the proponents to better fit the potential proposed project sizes into the maximum capacity that IESO will consider awarding for each category of projects. We note that the level of due diligence performed on the variants should be minimal, since all of the rated criteria and project documentation would be the same as the main bid. We would only expect the price, project size and HSAF/LSAF to change between a main bid and its variant.

4. We believe that the LT1 RFP rules and the Rated Criteria points should place greater emphasis on proposals and projects that have reliable Municipal Support and Indigenous Participation. Therefore:
 - the option to submit a project into the E-LT1 RFP without Municipal Support Resolution, not receive the support at a later date post award, and have the contract terminated with no penalty under Sec 2.14 (b) of the contract should be removed,
 - the option to decrease the Indigenous Community Participation down to 10% with no penalty (subject to providing a letter to that effect from the Indigenous Community) per Sec 16.7(b) of the draft contract should likewise be removed, and
 - the relative value of Municipal Support and Indigenous Community Participation vs. Duration of Service of a storage facility should be revisited: as it stands, a proposed 12 hour duration facility with no Indigenous Participation or Municipal support will receive the same criteria points as a project with lesser duration that has Indigenous Participation and Municipal support. The project with Municipal and Indigenous support should receive greater points as it delivers significantly reduced completion risk.
5. Sec 1.6(b) of the draft contract: The amendments should not be limited to those that *“alter or reduce the applicable Must-Offer Obligation only to the extent necessary to eliminate the need to incur...material costs...where such altered or reduced Must-Offer Obligation is as close as possible to the Must-Offer Obligation prior to such alteration or reduction”*. Rather, consistent with recent IESO precedents, the amendments should generally reflect the terms and conditions and agreements of the parties as contemplated prior to the introduction of the change to the IESO Market Rules (including in respect of the revenues that would reasonably be expected to be received, and the costs that would reasonably be expected to be incurred).
6. Sec 2.3(c) of the draft contract: We would propose a fixed Liquidated Damages Rate as opposed to the current variable rate i.e., being the higher of \$[150] per MW and the latest capacity auction clearing price per MW determined in accordance with the IESO Market Rules. Current phrasing creates high level of uncertainty that will not be favorable to project financing

7. Sec. 2.6(a) and 7.1(i) of the draft contract: The representation at Section 7.1(i) and the obligation at Section 2.6(a) of the Contract and the representation at Section 7.1(i) should be amended to enable the Supplier to lease the Facility (consistent with IESO precedents). Leasing is a well-established and accepted method of financing and allows for greater tax efficiencies that would translate to more competitive bid levels.
8. Sec 2.13 of the draft contract:
 - the draft formula for MCIA appears to be incorrect. Please provide an example of its intended use.
 - Subcategories P61 and P62 don't seem to include lithium. Please consider having a list of pre-approved indexes (can include materials, logistics, CPI) and suppliers can choose 2-3, and state the percentage of FCP affected by each of the indices
 - A dispute between Seller and Buyer regarding the Material Cost Index Adjustment should be subject to conflict resolution and should be referred to expert determination as opposed to arbitration.
9. Sec 10.2 and 10.5 of the draft contract: We would propose limiting the Supplier's monetary exposure in case of a termination for a Supplier Event of Default (other than that referred to in 10.1(p)) to the then current quantum of Completion and Performance Security

Following is a list of more specific items concerning the draft E-LT1 RFP and the draft E-LT1 Contract:

With regards to the E-LT1 RFP:

10. Sec 2.2(c): What will happen if an additional public holiday is declared during the contract period, thereby reducing the number of Business Days? Will the IESO guarantee a minimum number of Business Days per year in the contract? If yes, how many?
11. Prescribed Form "Access Rights Declaration": Section 3.6(c) of the RFP: As part of this form it is a requirement to submit "electronic copies of a detailed scale map together with one or more parcel registers in respect of the Project Site...." Can you please elaborate on what detail must be shown in the "detailed scaled map", and in what file format is the map to be prepared and submitted.

With regards to the draft E-LT1 Contract:

12. "State of Charge Limited" definition and use of the concept: We find that this definition and how the concept is applied are not clear to us. Please provide an example of the practical application of this definition.

13. Sec 2.3: Having an immovable contract term end of 2047 is in addition to the LDs for late COD in 2.2 e (iii). We propose that If the project pays LDs, then the project should get the benefit of full term of the contract.
14. Sec. 2.4(b): We would propose adding a cure period of 5 business days from the time of notification by the Buyer.
15. Sec. 2.8(c): Supplier should provide the buyer with a certificate of insurance outlining the terms and conditions of the insurance policies, instead of sharing the entire insurance contract.
16. Sec. 2.10: to provide further clarity, we suggest the following phrasing: "... no interest hereunder in any Environmental Attributes arising from the operation of the Facility or, except in respect of the Supplier's performance requirements expressly set forth under this Agreement, other products or services associated with..."
17. Sec 6.2(a): Could the Completion and Performance Security be in form of parental guarantee?
18. Sec 7.1(k): This representation should be deleted. Other provisions of this Contract already address non-performance of the Facility, including the Capacity Check Tests.
19. Sec. 7.1(l): For a battery storage facility, can you confirm that this clause means that the contract capacity will be [95%] of the nameplate capacity? Will the nameplate capacity be the same as the installed capacity or will IESO apply a UCAP factor (or equivalent) to account for the "load carrying capability" in the definition of Nameplate Capacity. Based on deliverability test results, will we be able to bid the Nameplate Capacity or the Maximum Contract Capacity (or installed capacity if different from nameplate)
20. Sec 7.1(m): We suggest introduction of a carve-out to the extent that any changes to such statements and information are notified to the Buyer in accordance with the Agreement. Please note that The Agreement contemplates Facility Amendments.
21. Sec 11.2(a) and 11.3(e): We suggest deletion of ", including the Supplier's failure to procure or maintain any fuel supply to be utilized by the Facility". The language proposed to be deleted seems to nullify in part the relief granted under 11.3(e).
22. Sec 11.02(g): Please include a note to draft to the effect that changes may be proposed to this Section based on new information regarding the pandemic or the Russo-Ukrainian military conflict based on new information regarding either arising before the execution of this Contract. We think flexibility is required given the evolving nature of these current events.
23. Sec 11.3: Supply chain constraints should be included as Force Majeure
24. Exhibit E-2: The minimum POCRF of 0.95 does not leave sufficient time for planned maintenance. The threshold should either be lowered or, alternatively, suppliers should be able to select 1 month per year in which they can do maintenance and be exempt from the 0.95 limit.
25. Exhibit M: The MPSAF applies fully whether the thresholds are exceeded by a single cent or one hundred dollars. This can potentially create monthly saw-tooth revenue

profiles, which complicate debt sizing with lenders. A gradual, or pro-rated MPSAF could help solve this problem.

26. Exhibit S (Regulatory Charge Credit): Reimbursement of GA is subject to 80% RTE, but RTE degrades over time. Can this limit also decrease over time?
27. Exhibit J: In Exhibit J, if CRF is [0.9] after a capacity test, then that would also mean that we couldn't offer that 'broken' 10% in the MAOQ of Exhibit F. It would be included in the availability non-performance charge ANPC. Would that not mean that suppliers would be doubly penalized for the same capacity shortfall in the Monthly Payment of Exhibit J, since we're hit with both the CRF and the ANPC?
28. Exhibit M: Will the MPSAF be based on average price blocks of the DAM or RTM?
29. Exhibit F: Could you please provide an example of how the MAOQ and AMCC would be calculated in the SF_m (Shortfall)?

We look forward to working with you and to our continued and ongoing involvement in the IESO E-LT1 and LT1 procurement programs. Please let us know if we can provide any additional information or clarification.

Best regards,

John Partyka
Director, Commercial Transactions,
[REDACTED]

