

# LTESA and REZ Access Right Tender Rules

Consumer Trustee

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DRAFT FOR AUSTRALIAN ENERGY REGULATOR (AER) CONSULTATION

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## DEFINED TERMS

Please note: unless otherwise defined in the table below, all defined terms in the EII Act apply in this document.

Term	Definition
<b>Advisers</b>	Those persons with expert knowledge who may be invited by the Consumer Trustee to provide advice in relation to a Competitive Tender, including (without limitation) parties such as AEMO, the Infrastructure Planner, and other advisers
<b>AEMO</b>	Australian Energy Market Operator Limited
<b>Competitive Tender</b>	The process by which LTESAs will be awarded, as set out in Section 2
<b>Competitive Tender Management Framework</b>	An internal Consumer Trustee document outlining process and governance aspects of Competitive Tenders
<b>Consumer Trustee</b>	The Consumer Trustee appointed pursuant to Section 60 of the EII Act, being AEMO Services Ltd
<b>Default Conditions</b>	In respect of a Competitive Tender for an LTESA, the preferred terms and conditions put forward by the Consumer Trustee for the Project Development Agreement and/or LTESA and/or REZ Access Right to be entered into with the successful Proponent
<b>EII Act</b>	<i>Electricity Infrastructure Investment Act 2020</i> (NSW)
<b>EII Regulation</b>	<i>Electricity Infrastructure Investment Regulation 2021</i> (NSW)
<b>Financial Value Proposal</b>	A proposal made by a Proponent to the Consumer Trustee following a Project Proposal, as further described in Section 2.5
<b>IIO Report</b>	Infrastructure Investment Objective Report under Section 45(2)
<b>Infrastructure Planner</b>	The infrastructure planner appointed in respect of a REZ or part of a REZ (as applicable) pursuant to Section 63 of the EII Act
<b>LDS</b>	Long-duration storage
<b>LTESA</b>	Long-term energy service agreement
<b>LTES Operator</b>	Party responsible for the operation and management of the generation or long duration storage facility connected to an LTESA
<b>NEM</b>	National Electricity Market
<b>NER</b>	National Electricity Rules
<b>Probity Adviser</b>	The person appointed to provide probity advice to the Consumer Trustee in respect of Competitive Tenders, as further detailed in the Probity Framework
<b>Probity Framework</b>	An internal Consumer Trustee document outlining probity and conflict of interest management guidance and protocols in respect of Competitive Tenders
<b>Products</b>	LTESAs, or REZ Access Rights

<b>Project</b>	A physical electricity generation or storage facility built in connection to an LTESA or REZ Access Right, including any proposed supporting network remediation and 'shallow' connection assets
<b>Project Development Agreement</b>	A contract governing the construction and operation of a Project awarded an LTESA and/or a REZ Access Right
<b>Project Proposal</b>	A proposal made by a Proponent to the Consumer Trustee as further described in Section 2.3
<b>Proponent</b>	An entity or person participating in a Competitive Tender for the award of a Product
<b>REZ Access Right</b>	Access rights allocated under a declared access scheme that authorises access to a REZ
<b>REZ Scheme Administrator</b>	The person or body specified in the Minister's declaration pursuant to section 24(5)(a) of EII Act to administer a REZ access scheme,
<b>Risk Management Framework</b>	The risk management framework document developed by the Consumer Trustee pursuant to Section 51 of the EII Act.
<b>Scheme Financial Vehicle (SFV)</b>	The counterparty to the LTESAs and Project Development Agreements, responsible for administering payments and, where applicable, collecting access fees for distribution to relevant entities.
<b>Tender Guidelines</b>	A document outlining the tender process requirements and supporting information, and the requirements to satisfy eligibility and merit criteria, specific to that Competitive Tender
<b>Tender Process Deed</b>	A legally binding agreement, setting out the terms under which Proponents participate in the Competitive Tender
<b>Tender Rules</b>	This document, published by the Consumer Trustee under Section 47 of the EII Act that sets out how the Consumer Trustee will conduct Competitive Tenders in respect of the award of LTESAs and allocation of REZ Access Rights.

## 1 BACKGROUND AND PURPOSE OF THIS DOCUMENT

### 1.1 Overview of this document

This Section 1 summarises:

- the legislated requirement of this document (the Tender Rules);
- the content of the Tender Rules and other key relevant Competitive Tender documentation in relation to the process by which Long Term Energy Service Agreements (LTESAs) and Renewable Energy Zone (REZ) access rights are awarded; and
- considerations the Consumer Trustee must account for when undertaking Competitive Tenders.<sup>1</sup>

Section 2 summarises the tender and assessment process in which proponents will participate.

Section 3 introduces the eligibility and merit criteria used in the tender and assessment process.

Section 4 sets out additional details on the Competitive Tender process in relation to tender fees and tender security, and Section 5 describes the Evaluation Plan in relation to the tender.

### 1.2 Requirements for the Tender Rules

Under Sections 47(5) and (7) of the *Electricity Infrastructure Investment Act 2020* (NSW) (the EII Act), AEMO Services Ltd, acting as the Consumer Trustee, is required to make and gazette Tender Rules covering the items outlined below in Table 1. These Tender Rules must be gazetted before announcing and holding Competitive Tenders for LTESAs.

In accordance with Section 47(3) of the EII Act, a Competitive Tender must be carried out in accordance with any requirements prescribed by the regulations, and the Tender Rules made by the Consumer Trustee (this document). Under Section 47(6) of the EII Act, the Consumer Trustee must consult with the AER prior to making the Tender Rules. Details of this consultation can be found on the AER's website.

Under regulations made by the NSW Office of Energy and Climate Change,<sup>2</sup> the Consumer Trustee is further enabled to undertake Competitive Tenders for the allocation of REZ Access Rights, under delegation from the Infrastructure Planner. This document outlines a process applicable for the award of both LTESAs and REZ Access Rights. At the Consumer Trustee's discretion, both LTESAs and REZ Access Rights may be awarded in a single, combined process.

Where any future EII Regulation differs from the eligibility and merit criteria described in this document, the applicable criteria in the EII Regulation will take precedence to the extent of any inconsistency. Where appropriate, the applicable Tender Guidelines will outline any discrepancy and will state the superseding criteria.

**Table 1: EII Act requirements for Tender Rules**

EII Act Ref	EII Act requirement	Tender Rules document reference
s47(5)(a)	the eligibility criteria for making a tender bid	Section 3.1

<sup>1</sup> These considerations are further detailed in the separate Risk Management Framework released under Section 51 of the EII Act.

<sup>2</sup> [link to DPE regulation - TBC]

s47(5)(b)	the notification of the opening of the Competitive Tender	Section 2.2
s47(5)(c)	the procedure for making a tender bid, including the information required to be included in a bid	Section 2
s47(5)(d)	the fee payable for making a bid and requirements for bonds or other security	Section 4.1
s47(5)(e)	the assessment of a tender bid by the Consumer Trustee	Sections 2 and 3
s47(5)(f)	other matters the Consumer Trustee considers necessary	Sections 1 and 5 Access rights referred to in Section 1.2
s47(5)(g)	<p>matters prescribed by the regulations</p> <p><b>[Drafting note:</b></p> <p><b>(a) This row in Table 1 will need to be updated for any Regulations prior to July/Gazetta]</b></p> <p><b>(b) Please confirm appropriate "fixed date" prior to Gazetta]</b></p>	<p>No other such regulations as at <b>[insert fixed date prior to date of gazetta]</b></p>

### 1.3 Content of the Tender Rules

The intent of these Tender Rules is to provide guidance to prospective proponents on the structure and design of Competitive Tenders, specifically in respect of the matters noted in Table 1 above. The Consumer Trustee has sought to ensure the Tender Rules will provide sufficient information to enable broad participation and facilitate competition to deliver high quality tender submissions. Where relevant, references are made to authorising legislation and regulations.

These Tender Rules will apply to all future Competitive Tenders run by the Consumer Trustee for LTESAs and REZ Access Rights and will only be amended and re-gazetted if required, at the discretion of the Consumer Trustee.

For each Competitive Tender issued by the Consumer Trustee, a set of guidelines (Tender Guidelines) will be published and, together with the Tender Rules and associated documentation specific to the tender, will include all information reasonably required by a proponent to compete in that Competitive Tender.

### 1.4 Considerations for Competitive Tenders

In conducting Competitive Tenders, the Consumer Trustee will implement a clear and objective evaluation approach. The purpose of this is to ensure that proponents participating in Competitive Tenders have a clear understanding of the Consumer Trustee's objectives, and certainty in the evaluation process that will determine the projects that best meet the Consumer Trustee's aims.

#### 1.4.1 Requirements under the EII Act

Requirements for the Consumer Trustee in executing Competitive Tenders under the EII Act are summarised in Table 2 below.

**Table 2: EII Act requirements for competitive Tenders**

EII Act Ref	EII Act requirement	How this requirement is met
s4(4)	Guidelines issued by the Minister regarding consultation and negotiation with the local Aboriginal communities must be taken into account.	Merit Criteria 8: Regional economic development
s9(1)	The Plan for the NSW renewable energy sector board must be taken into account.	Merit Criteria 8: Regional economic development
s47(3)	Competitive Tenders must be carried out in accordance with prescribed regulations and these Tender Rules.	Section 1.2
s48(2)	Financial value must be the primary consideration when recommending LTESAs.	Merit Criteria 1: Financial value
s48(3)	Only generation LTESAs in REZs can be recommended unless the Consumer Trustee is satisfied that the generation LTESA shows outstanding merit. The	No such regulation as at [insert fixed date prior to gazetta].

EII Act Ref	EII Act requirement	How this requirement is met
	circumstances in which LTESAs can show outstanding merit may be specified in the EII Regulation. <sup>3</sup>	

#### 1.4.2 Requirements under EII Regulation

In addition to the EII Act requirements for Competitive Tenders noted above, EII Regulations also place requirements on Competitive Tenders. These Tender Rules are designed to enable flexibility between tender rounds to accommodate changes in electricity infrastructure technology, the NEM and customers and market participant behaviour. The design of each tender round, detailed in the Tender Guidelines, will be reflective of all relevant EII Regulations.

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<sup>3</sup> Section 48(4)(a) of the EII Act.

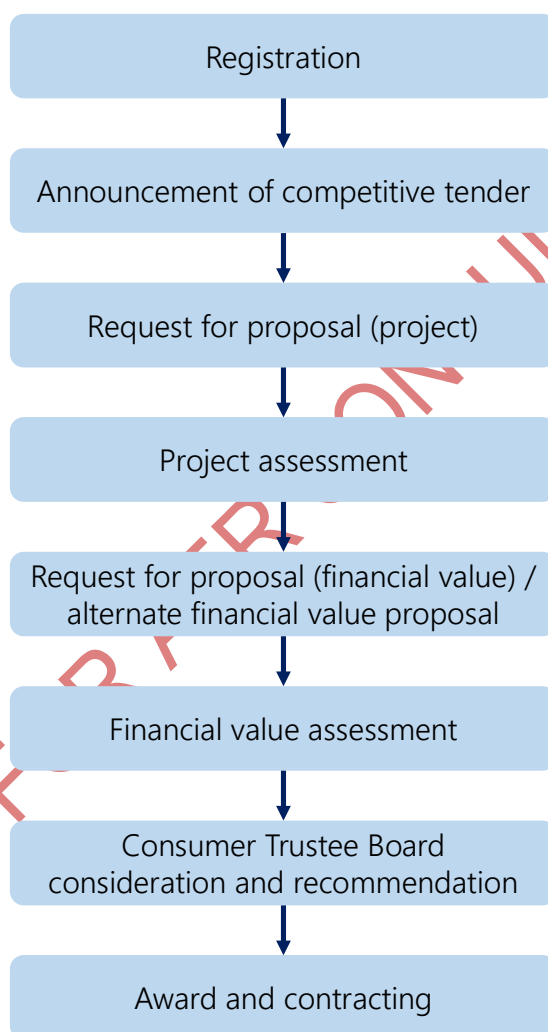


## 2 TENDER AND ASSESSMENT PROCESS

This section summarises the Competitive Tender and assessment process as shown below in Figure 1. The process set out in this section is intended to provide prospective proponents with an overview of how the Consumer Trustee will undertake Competitive Tenders.

Ahead of each Competitive Tender, the Tender Guidelines as described in Section 2.3, will outline the detailed:

- procedure for making a tender bid; and
- process steps for submission and assessment of proposals.



**Figure 1: Tender process overview**

## 2.1 Registration

Outside of a formal Competitive Tender, proponents may register with the Consumer Trustee to receive communication updates and provide responses to the proponent eligibility criteria summarised in Section 3.1.2.

While the registration step is optional and is not required under the EII Act, it may benefit eligible proponents who may have multiple projects and may be applying across multiple future Competitive Tenders; by saving them time and providing certainty that the Consumer Trustee already holds their information.

## 2.2 Announcement of a Competitive Tender

In line with the targets set out in the Infrastructure Investment Objectives (IIO) Report released every two years, the Consumer Trustee will notify the market of an upcoming Competitive Tender via updates on the Consumer Trustee website. The Competitive Tender process timeframes following notification of the upcoming Competitive Tender will be set out in the applicable Tender Guidelines, with any updates noted on the Consumer Trustee website

## 2.3 Request for proposal (project)

Once a request for proposal is announced, the following documents will be made available through the Consumer Trustee website:

1. Tender Guidelines – a document which will outline the process requirements and supporting information, including supporting information on eligibility and merit criteria specific to that tender.
2. Tender Process Deed – a legally binding document, setting out the terms under which Proponents may participate in the Competitive Tender.

Project Proposals will be sought from all Proponents through the Consumer Trustee's online platform. Project Proposals will be assessed and may be shortlisted ahead of the Financial Value Proposal and assessment stage.

Proponents may submit questions regarding their Project Proposal to the Consumer Trustee. The Consumer Trustee will make deidentified questions and clarifications available to all Proponents (without releasing commercially sensitive or confidential information).

Project Proposals must include sufficient information to allow the Consumer Trustee to undertake an assessment against the project merit criteria outlined in Section 3.2. Further guidance on the information that will be required from Proponents is detailed in Section 3.

Project Proposals received after the closing time will be deemed 'late'. A late response may only be admitted for assessment where:

- the Consumer Trustee's actions or omissions caused the delay in submission; or
- the Proponent can clearly document to the satisfaction of the Consumer Trustee that an event of exceptional circumstances caused the Project Proposal to be lodged after the applicable closing time. In these cases, the Consumer Trustee has sole discretion to determine the acceptance of a late Proposal, and will only do so if accepting a late submission would not compromise the integrity of the Competitive Tender.

An extension of time may be granted to all Proponents in exceptional circumstances at the discretion of the Consumer Trustee.

Project Proposals must be completed in full and include all information specified. If the specified information is not provided in the format required, the Consumer Trustee may seek supplementary information or clarification from Proponents; or may assess the Proposal as non-compliant.

#### 2.4 Project assessment

The purpose of a Project assessment is to shortlist submissions to progress to the request for proposal (financial value) stage.

Project assessment is conducted for all submitted Proposals and includes:

- an eligibility criteria assessment of the Proponent and the Project; and
- a merit criteria assessment to determine which Projects will be shortlisted to progress to the Financial Value Proposal and assessment.

As outlined in Section 48(3) of the EII Act, Projects that seek generation LTESAs that relate to infrastructure specified Section 43(1)(a) which are not located within the geographic bounds of a declared REZ must demonstrate 'outstanding merit'. The definition of 'outstanding merit' is prescribed in the EII Regulation<sup>4</sup> and will be applied at both the project and financial value assessment stage.

The Consumer Trustee will assess and determine which Project Proposals will be shortlisted to progress to the request for proposal (financial value) stage. At the Consumer Trustee's discretion, Advisers may be invited to provide advice to the Consumer Trustee on project assessment.<sup>5</sup>

Proponents will be notified if they have been shortlisted prior to the request for proposal (financial value) stage, and all proponents will be informed of their outcome at the conclusion of a Competitive Tender.

#### 2.5 Request for proposal (financial value)

Following shortlisting, selected Proponents will be invited to submit a Financial Value Proposal for assessment against Merit Criteria 1 (Financial Value) and Merit Criteria 2 (Commercial Terms). All Projects will be assessed against the same criteria, irrespective of which product (ie LTESA

<sup>4</sup> [EII Regulation reference]

<sup>5</sup> Any advice provided by parties external to the Consumer Trustee will be governed by an approved Competitive Tender Management Framework and Probity Framework

and/or REZ Access Right) is sought. The process for the Financial Value Proposal submission and assessment are outlined below.

1. Returnable schedules will be provided by the Consumer Trustee for Proponents to complete, including requests for financial value information and contractual departures.
2. Proponents may submit questions regarding their Financial Value Proposal to the Consumer Trustee. The Consumer Trustee will make deidentified questions and clarifications available to all Proponents (without releasing commercially sensitive or confidential information).

Submissions received after the closing time will be deemed 'late'. A late response will be admitted for assessment as described above Section 2.3.

If the specified information is not provided in the format required, the Consumer Trustee may seek supplementary information or clarification from Proponents or may assess the Financial Value Proposal as non-compliant.

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### 2.5.1 Alternate Financial Value Proposals

As part of the Financial Value Proposal for LTESAs, the Consumer Trustee may set out Default Conditions for Financial Value Proposals and stipulate conditions for allowing alternate Financial Value Proposals to be submitted. In these circumstances, Proponents may submit alternate offers to the Consumer Trustee, which propose variations to the Default Conditions. This does not apply for Projects that only seek a REZ Access Right, who will only pay the access fee in relation to the REZ Access Right.

As the Default Conditions for LTESAs will vary for each Competitive Tender round, specific guidance on alternate Financial Value Proposals will be published by the Consumer Trustee in the relevant Tender Guidelines. This guidance will include:

- the number of alternate Financial Value Proposals allowed;
- where alternate Financial Value Proposals are allowed to differ from the default conditions; and
- how an alternate Financial Value Proposal is to be reflected in other areas of a Proponent's Proposal (e.g., in contractual departures).

All compliant alternate Financial Value Proposals by Proponents will be assessed against the same set of merit criteria in the financial value assessment stage, with no specific merit awarded for adhering to the Default Conditions.

### 2.6 Financial value assessment

Assessment is conducted for all submitted Financial Value Proposals and includes a merit criteria assessment to determine which proposals will be shortlisted for due diligence and portfolio assessment.

At the Consumer Trustee's discretion, Advisers may be invited to provide advice on the financial value assessment.<sup>6</sup>

As outlined in Section 2.4 above, the definition of 'outstanding merit' (as prescribed under the EII Regulation<sup>7</sup>) will also be applied at the financial value assessment stage where applicable.

Per Section 48(2) of the EII Act, financial value will be the primary consideration for the Consumer Trustee when shortlisting for due diligence and portfolio assessment. Financial value is further defined in EII Regulation.<sup>8</sup>

A final shortlist of Financial Value Proposals will be developed ahead of due diligence and portfolio assessment, based on overall merit (Table 6 and Table 6) and the tender volume guidance detailed in the Tender Guidelines.

### 2.7 Due diligence

At any time during the assessment process, the Consumer Trustee may undertake due diligence on a Project and/or Financial Value Proposal. Due diligence may include, but is not limited to:

<sup>6</sup> Any advice provided by parties external to the Consumer Trustee will be governed by an approved Competitive Tender Management Framework and Probity Framework

<sup>7</sup> [EII Regulation reference]

<sup>8</sup> Regulation 16D(4) of the EII Regulation.

- inviting Proponents to present their proposal to the Consumer Trustee and/or the Consumer Trustee’s Advisers;
- commissioning or completing research, analysis and modelling to support assessments for their proposal;
- contacting identified Project participant organisations, including referees, AEMO and/or the relevant network service providers to confirm or verify elements of the proposals;
- contacting any relevant federal, state, territory, and international government agency; and/or
- disclosing proposal information that is reasonably required for the Consumer Trustee’s Advisers to assist with the assessment of the eligibility criteria and merit criteria.

## 2.8 Portfolio assessment

Portfolio assessment examines the cumulative impacts that may arise from the final shortlist of Financial Value Proposals. It is conducted after the individual assessment of Financial Value Proposals and is designed to mitigate any aggregated adverse effects that arise from the final shortlist of Financial Value Proposals.

To maintain transparency in the portfolio assessment process, Table 3 outlines the portfolio-level adverse outcomes that may be considered in this step. Where required, further detail will be provided in the Tender Guidelines.

**Table 3: Examples of how issues identified in the portfolio assessment stage may be considered**

Issue	Where this may impact a shortlisted project	How this may be considered in the portfolio assessment step
1. Adverse network effects	Where multiple shortlisted Projects are in a similar geographic location.	Generation limits may be imposed at specific locations to avoid adverse network impacts as a result of the Competitive Tender. These limits will be developed and applied at the portfolio assessment step, based on the proposals shortlisted. <sup>9</sup>
2. Adverse community effects	Where multiple shortlisted Projects without planning approval are in a similar geographic location.	One or more Projects may be excluded from further consideration to avoid cumulative impacts from multiple Projects which have the potential to significantly affect community support.
3. Supplier concentration risk	Where multiple shortlisted Projects are proposing to use the same contractors or original equipment manufacturers.	This will initially be assessed at the project level under Merit Criteria 4 – capacity to deliver. At the portfolio assessment step, more information may be sought by the Consumer Trustee to address any aggregate supplier capacity effects and the Consumer Trustee may not recommend one or more proposals to avoid supplier concentration risk.

<sup>9</sup> For example: if significant amounts of coincident generation were shortlisted for a given area in a Competitive Tender round, the Consumer Trustee may establish a geographical limit based on technical advice. This constraint would then limit the amount of new generation capacity in the area.

Issue	Where this may impact a shortlisted project	How this may be considered in the portfolio assessment step
4. <b>Counterparty concentration risk</b>	Where several shortlisted Projects are proposed by the same Proponent, <sup>10</sup> creating a material counterparty risk as determined by the Consumer Trustee.	A limitation on the number of proposals a Proponent can put forward in each Competitive Tender will be detailed in the Tender Guidelines.  In addition, the portfolio assessment step may consider aggregated risks associated with multiple contracts with a single counterparty, including related entities.
5. <b>Total Financial Value</b>	Where overly concurrent generation across the shortlisted and existing contracted Projects decreases financial value to consumers, as determined by the Consumer Trustee.	The assessment of financial value will also consider the collective value of proposals – assessing impact as a portfolio of generation, and on existing SFV contractual arrangements. This collective financial assessment will be applied at the portfolio assessment step. Where financial value is considered to be negatively affected, the Consumer Trustee may exclude one or more Projects from further consideration or impose appropriate conditions in an LTESA.
6. <b>Other adverse effects</b>	Where a shortlisted Project has a material detrimental effect to a higher ranked Project, as determined by the Consumer Trustee.	The Consumer Trustee will retain discretion to rule out Projects where they have material adverse impacts on other, higher scored shortlisted Projects.

Following the portfolio assessment, the Consumer Trustee board will consider and recommend a final selection of LTESAs to the SFV and the REZ Scheme Administrator for REZ Access Rights.

## 2.9 Consumer Trustee board consideration and recommendation

The Consumer Trustee board is responsible and accountable for the final decision on the recommendations to:

- the Scheme Financial Vehicle emerging from a Competitive Tender for LTESAs; and
- the REZ Scheme Administrator for REZ Access Rights.

Recommendation for REZ Access Rights will be made in line with the REZ access scheme declaration, per Section 24 of the EII Act.

The Consumer Trustee has outlined a clear and objective evaluation approach intended to deliver the outcomes aligned with the long-term financial interests of NSW electricity customers. However, the previous steps described in this section will inform, but not constrain, the discretion of the Consumer Trustee board in making decisions for the long-term financial interests of NSW electricity customers.

The Consumer Trustee board will be advised by an independent Probity Adviser with unfettered access to Competitive Tenders.

## 2.10 Award and contracting

The Scheme Financial Vehicle, as counterparty to the LTESAs and the responsible party for administering payments under the LTESAs, executes LTESAs under its discretion in accordance with the Risk Management Framework. Following the contract execution by the Scheme

<sup>10</sup> Or where a project is proposed by a party that has several awarded LTESAs.

Financial Vehicle, all compliance and monitoring obligations will commence as governed under the applicable LTESA and Project Development Agreement.

Similarly, the REZ Scheme Administrator executes REZ Access Right contracts under its discretion in accordance with the Risk Management Framework. Following the contract execution by the REZ Scheme Administrator, all compliance and monitoring obligations will commence as governed under the applicable REZ Access Right contract and Project Development Agreement.

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### 3 ELIGIBILITY AND MERIT CRITERIA

This section outlines the eligibility and merit criteria developed for:

- generation LTESAs;
- long duration storage (LDS) LTESAs;
- firming LTESAs; and
- REZ Access Rights.

Projects seeking an LTESA and a REZ Access Right must provide information to satisfy the eligibility criteria, irrespective of which product (ie LTESA and/or REZ Access Right) is sought.

#### 3.1 Eligibility criteria

The eligibility criteria consist of both project and proponent components, as described in Table 4 and Table 5 respectively.

For each Competitive Tender, information supporting the eligibility criteria will be specified in the Tender Guidelines issued by the Consumer Trustee.

##### 3.1.1 Project eligibility criteria

Proponents must provide information to demonstrate that their Project meets the project eligibility criteria set out in Table 4. Projects that do not meet all eligibility criteria will not proceed to merit assessment or be further considered by the Consumer Trustee.

**Table 4: Project eligibility criteria**

Item	Criteria	REZ Access Right	Generation LTESA	LDS LTESA	Firming LTESA
EC1	Project must involve generation from a renewable energy source. <sup>11</sup>	✓	✓		
EC2	Project must have a generation capacity of not less than 30 megawatts. <sup>12</sup>	✓	✓		
EC3	Project has not previously been awarded an LTESA or REZ Access Right. <sup>13</sup>	✓	✓	✓	✓
EC4	Project consists of storage units with registered capacity that can be dispatched for at least eight hours.			✓	
EC5	Project is registered or must state in its application that it intends to register, with	✓	✓	✓	✓

<sup>11</sup> Storage Projects seeking a REZ Access Right will not be required to meet this eligibility criteria.

<sup>12</sup> For Projects that use multiple sites, each site must be a minimum of 30 megawatts. Projects can aggregate multiple generating units to be a single generating unit above 30 megawatts to meet this criterion however aggregation approval is required from AEMO in accordance with NER clause 3.8.3. Further, this criterion will not be applied for REZ Access Rights allocated under 'Allocation Two' as defined under the access scheme declaration in accordance with Section 24 of the EII Act.

<sup>13</sup> Except where an existing REZ Access Rights holder is seeking further access rights for a modification to the project for an increase in project maximum capacity of ≥5%, in accordance with the process as set out in the relevant access scheme declaration made in accordance with Section 25 of the EII Act. Exceptional circumstances (if applicable) will be specified by the Consumer Trustee prior to each Competitive Tender.

Item	Criteria	REZ Access Right	Generation LTESA	LDS LTESA	Firming LTESA
	AEMO as scheduled or semi-scheduled (generation) in the NSW region of the NEM.				
EC6	Project is not identified as committed or existing in a generation information page published by AEMO on or before 14 November 2019. <sup>14</sup>	✓	✓	✓	✓
EC7 <sup>15</sup>	Where required, the Project must have received a Secretary's Environmental Assessment Requirements (SEARs) or have lodged an application under the <i>Environmental Planning and Assessment Act 1979 (NSW)</i> in relation to the Project.	✓	✓	✓	✓ <sup>16</sup>
EC8 <sup>17</sup>	Projects must be in receipt of a connection agreement or an NSP response to a connection enquiry. <sup>18</sup>		✓	✓	✓
EC9	Project must provide a binding community engagement plan as part of its submission.	✓	✓	✓	✓ <sup>19</sup>
EC10	The project is not in receipt of financial support in the form of project / revenue underwriting from prescribed programs. <sup>20</sup> Note: projects in receipt of financial support for pre-investment activities are eligible. Prescribed programs will be identified by the Consumer Trustee in the Tender Guidelines.	✓	✓	✓	✓
EC11	The project must not be subject to an order prohibiting connection to network infrastructure made under Section 29 of the EII Act.	✓	✓	✓	✓
EC12	Project must provide a binding Industry and Aboriginal participation plan as part of its submission. <sup>21</sup>	✓	✓	✓	✓
EC13	The Proponent must have all necessary rights to use any intellectual property required to carry out the Project.	✓	✓	✓	✓

<sup>14</sup> Brownfield extensions to projects committed or existing on or before 14 November 2019 must be registered separately with AEMO (i.e. have a unique DUID)

<sup>15</sup> This requirement may be removed for demand-response projects.

<sup>16</sup> If applicable (e.g., demand response-based projects may not require SEARs)

<sup>17</sup> This requirement may be removed for demand-response projects.

<sup>18</sup> If both an LTESA and REZ Access Right is sought, this eligibility criterion is not required to be met.

<sup>19</sup> This requirement may be removed for demand-response projects.

<sup>20</sup> The intent of this criterion is to exclude Projects that have already received a form of ongoing revenue support similar in nature to an LTESA. Prescribed programs will be detailed and updated in the Tender Guidelines.

<sup>21</sup> In accordance with the [Aboriginal Procurement Policy January 2021 \(nsw.gov.au\)](https://www.nsw.gov.au/aboriginal-procurement-policy)

### 3.1.2 Proponent eligibility criteria

Proponents must provide information demonstrating that they meet all eligibility criteria set out in Table 5. Proponents that do not meet all eligibility criteria will not have their proposals proceed to merit assessment or be further considered by the Consumer Trustee.

**Table 5: Proponent eligibility criteria**

Item	Criteria
EC14	<p>The Proponent must hold an Australian Business Number (ABN) and must be:</p> <ul style="list-style-type: none"> <li>i. an Australian entity duly incorporated under the <i>Corporations Act 2001</i> (Cth) and hold and comply with all necessary authorisations that are material to the conduct of the business of the Proponent, or</li> <li>ii. a Commonwealth entity under Section 10 of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth), or</li> <li>iii. an Australian local government or council.</li> </ul> <p>Note: In some limited circumstances, a legal entity other than those listed above may be accepted as an eligible Proponent. Any other entity that wants to participate must seek approval from the Consumer Trustee prior to submitting a proposal, per the contact listed on the Consumer Trustee website.</p>
EC15	The Proponent must not be named as an organisation on the list of persons and entities on the Australian Department of Foreign Affairs and Trade Consolidated List.
EC16	The Proponent must propose one contracted entity to be legally responsible for the Proponent's Project Proposal and Financial Value Proposal.
EC17	The Proponent and/or the contracted entity must not be, or become, bankrupt, insolvent, or be in, or enter into, administration, receivership or liquidation, or take advantage of any statute for the relief of insolvent debtors at any time during the Competitive Tender.
EC18	The Proponent and/or the contracted entity must not have had a judicial decision relating to employee entitlements made against it (not including decisions under appeal) and not have paid the claim.
EC19	The Proponent and/or the contracted entity must not have been named as an organisation that has not complied with the <i>Workplace Gender Equality Act 2012</i> (Cth).
EC20	<p>The Proponent must be in compliance with:</p> <ul style="list-style-type: none"> <li>i. obligations under employment contracts, industrial agreements, and awards</li> <li>ii. codes of conduct and practice relevant to conditions of service and to the relations between the proponent and the employees employed by the Proponent, and</li> <li>iii. applicable Workplace Health and Safety legislation.</li> </ul>
EC21	The Proponent must hold all insurances required by law.
EC22	The Proponent has not, within the previous 10 years, been subject to an inquiry by the NSW Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia) where a finding has been made against the proponent, or the opinion has been reached that that the proponent has engaged in corrupt conduct.
EC23	The Proponent has registered a Modern Slavery statement with the Australian Border Force.

### 3.2 Merit criteria

Proponents must provide information to demonstrate the merit of their proposal by providing evidence that satisfies the criteria detailed in the tables below.

The guidance provided in Tables 6 and 7 will apply to all Competitive Tenders. Further guidance and detail specific to each Competitive Tender will be provided in the Tender Guidelines.

Under Section 47(4) of the EII Act, every proposal from a Proponent must, unless exempted by the regulations, include information about how the proposal will create employment and support industry in New South Wales if the person enters into an LTESA — see MC8 in Table 7 below.

**Table 6: Merit criteria – financial value**

#	Criteria	Indicative factors to be considered under criterion
MC1	Financial value	<ul style="list-style-type: none"> <li>• Where applicable, financial cost measured by the:                             <ul style="list-style-type: none"> <li>○ relative projected impact of the LTESA payments on the costs and liabilities of the Scheme Financial Vehicle, considering the LTESA bid terms;</li> <li>○ impact of REZ access fee contributions;</li> <li>○ cost of network infrastructure, including REZ network infrastructure projects, required to support the Project; and</li> <li>○ costs of other services associated with power system security.</li> </ul> </li> <li>• Financial benefit of the Project to consumers in the form of reduced wholesale electricity costs.<sup>22</sup></li> </ul> <p><b>Note:</b> Alternate bids will be assessed separately.</p>
MC2	Commercial terms	<ul style="list-style-type: none"> <li>• Materiality of departures from the Consumer Trustee’s contractual terms.</li> </ul>

**Table 7: Merit criteria – project**

#	Criteria	Indicative factors to be considered under criterion
MC3	Impact on the electricity system	<ul style="list-style-type: none"> <li>• Impact of the Project on the operation of the NSW electricity system, including material adverse effects on other generation plant connected or expecting to connect prior to the Project, or impact on planned REZs.</li> </ul>
MC4	Pathway to commercial operation	<ul style="list-style-type: none"> <li>• Credibility of pathway to:                             <ul style="list-style-type: none"> <li>○ secure debt and equity funding;</li> <li>○ reach key development approvals;</li> <li>○ obtain market registration, a connection agreement from the relevant network service provider and meet the relevant Generator Performance Standards; and</li> <li>○ secure key project construction, operations, and offtake contracts.</li> </ul> </li> </ul>
MC5	Organisational capacity to deliver Project and other characteristics	<ul style="list-style-type: none"> <li>• Capacity of the company and key people to deliver the Project, engage constructively with government, coordinating bodies and the relevant communities and operate the Project in accordance with industry best practice.</li> <li>• Capability and capacity of suppliers and contractors to meet timeframes.</li> </ul>

<sup>22</sup> Note this assessment will consider the Project as a whole, not only the component with an LTESA

		<ul style="list-style-type: none"> <li>• Credit worthiness of the organisations delivering the Project, including financiers.</li> </ul>
MC6	Land use considerations	<ul style="list-style-type: none"> <li>• Evidence (including, where appropriate, modelling) of consideration of potential land use and environmental constraints and opportunities in the site selection process that is generally consistent with applicable NSW Government guidelines, including the <i>Large-scale solar energy guideline</i>, <i>Wind Energy Guideline</i>, and relevant documents in the <i>Rapid Assessment Framework</i>.<sup>23</sup></li> </ul>
MC7	Community engagement and shared benefits	<ul style="list-style-type: none"> <li>• Evidence (including, where appropriate, modelling) of meaningful efforts to engage with local communities and stakeholders to foster local community support that is generally consistent with applicable guidelines in the <i>NSW Rapid Assessment Framework</i>, including <i>Undertaking Engagement Guidelines for State Significant Projects</i> and the <i>Social Impact Assessment Guideline</i>.<sup>24</sup></li> <li>• Initiatives to share the financial benefits of the Project with local communities.</li> </ul>
MC8	Regional economic development	<p>Demonstration and/or commitments to:</p> <ul style="list-style-type: none"> <li>• local supply chain inputs;</li> <li>• supporting investment, local innovation, and commercialisation opportunities;</li> <li>• maximising local employment, skills development, and knowledge transfer;</li> <li>• First Nations focused skills development opportunities, and economic participation, working with First Nations people;</li> <li>• ensuring fair and ethical practice in the workforce and supply chain; and</li> <li>• promoting environmentally sustainable procurement throughout the supply chain.</li> </ul>

### 3.3 Outstanding Merit

The Consumer Trustee can only recommend a Project outside the geographic boundary of a REZ if it shows 'outstanding merit', under Section 48(3) of the EII Act. A definition of outstanding merit is prescribed in EII Regulation<sup>25</sup>, and outlined in the Tender Guidelines.<sup>26</sup>

<sup>23</sup> Or equivalent documents as updated, and noted in Tender Guidelines

<sup>24</sup> Ibid.

<sup>25</sup> [EII Regulation Reference]

<sup>26</sup> Section 48(4)(a) of the EII Act.

## 4 TENDER FEE AND SECURITY

### 4.1 Tender fee

For any Competitive Tender, a tender fee may be payable by the Proponent to the Consumer Trustee.

The tender fee is currently set as nil (ie no tender fee will be payable), however it is noted that future gazetted updates to the Tender Rules may include a fee to participate in Competitive Tenders.

### 4.2 Bid bonds

Competitive Tenders require Proponents to make significant contractual commitments and the Consumer Trustee will require these commitments to be collateralised by financial bonding. The objective of this is to ensure the integrity of the Competitive Tenders.

For probity reasons, all Proponents will be required to provide bonding to support these commitments. The key project commitments are expected to be based on the following milestones:

1. Financial value proposal stage – bonding to be provided at the Financial Value Proposal stage to ensure a Project achieves contract close.
2. Development and construction period - bonding to be provided at signing of the LTESA and/or REZ Access Right for a dual purpose to secure against reaching financial close and commercial operation date.

The bonding is expected to be sized to protect against potential losses the Consumer Trustee, Infrastructure Planner, and the Scheme Financial Vehicle may incur should a Project not meet a legal commitment under a binding tender bid, LTESA or REZ Access Right.

The sizing of the bonding will reflect the commitments of the parties and the characteristics of the rights granted.

As bid bond sizes will vary by tender and by product, bid bond details for each Competitive Tender will be released as part of the Tender Guidelines, including:

- the form of bonding that is acceptable; and
- the quantum of bonding required at each milestone.

## 5 EVALUATION PLAN

The Consumer Trustee will develop and apply an evaluation plan to guide the evaluation process and ensure that the merit assessment of proposals is applied appropriately. The Consumer Trustee will provide feedback to unsuccessful Proponents on matters related to their Competitive Tender submissions. In providing feedback, it will not disclose any information that could compromise the commercial interests of the Consumer Trustee, the Infrastructure Planner, the SFV, or any other respondent. The Probity Adviser will review and provide comment on the evaluation plan.