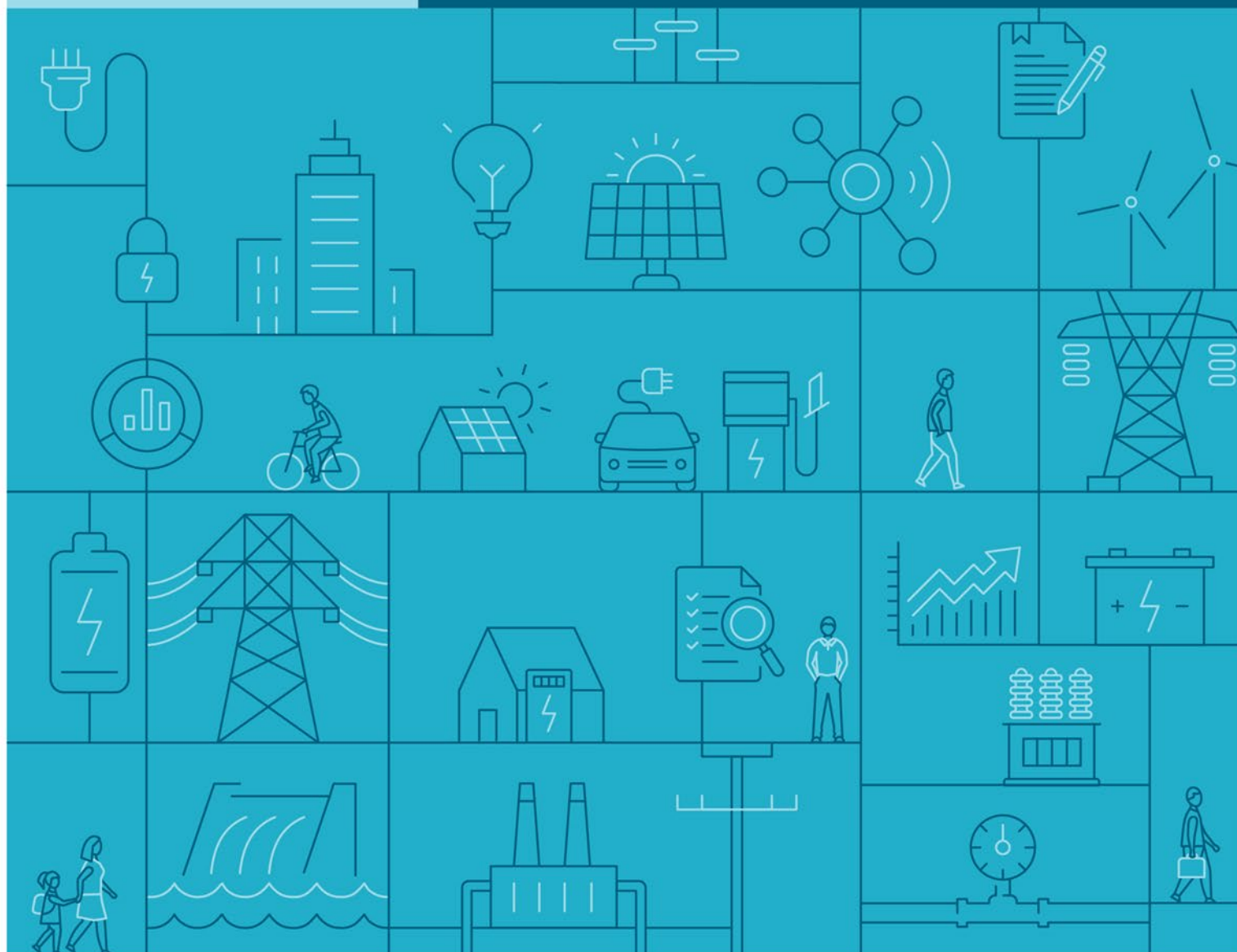




LTESA and Access Right Tender Rules

May 2024

NSW Consumer Trustee



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Defined terms

Unless otherwise defined in the table below, all defined terms in the EII Act and EII Regulation apply in this document.

Term	Definition
Access Right	Access rights allocated pursuant to an Access Scheme Declaration that authorises access to, and use of, the Access Rights Network.
Access Rights Network	The electricity transmission network as specified in the Access Scheme Declaration.
Access Scheme	An Access Scheme declared by the Minister under the EII Act, section 24, to apply in a renewable energy zone or part of a renewable energy zone.
Access Scheme Declaration	A declaration by the Minister in respect of an Access Scheme.
Advisers	Those persons with subject matter expert knowledge who may be invited by the Consumer Trustee to provide advice in relation to a Tender Round, including (without limitation) parties such as AEMO, the Infrastructure Planner, and other advisers.
AEMO	Australian Energy Market Operator Limited (ABN 94 072 010 327).
AER	Australian Energy Regulator.
Alternative Bid	Alternative Financial Value Bid or Alternative Product Bid, as further described in Section 2.4.
Alternative Financial Value Bid	A proposal which may form part of a Financial Value Bid, made by a Proponent to the Consumer Trustee following a Project Bid, where the Product(s) remains unchanged.
Alternative Product Bid	A proposal which may form part of a Financial Value Bid, made by a Proponent to the Consumer Trustee following a Project Bid, as further described in Section 2.2, including Section 2.2.2.
Bid	Project Bid and/or Financial Value Bid submitted by a Proponent in a Tender Round.
Bid Entity	The legal entity to be the counterparty to the PDA and/or LTESA, as proposed in accordance with Eligibility Criteria 16. This entity may be the same as the Proponent if it is the entity that has registered to participate in the Tender Round, and no different legal entity is submitted in accordance with Eligibility Criteria 16.
Consumer Trustee	The 'consumer trustee' appointed pursuant to the EII Act, section 60, being AEMO Services Limited (ABN 59 651 198 364).
Default Financial Value Bid	A proposal forming a Financial Value Bid, made by a Proponent to the Consumer Trustee following a Project Bid, as further described in Section 2.4.
EII Act	<i>Electricity Infrastructure Investment Act 2020 (NSW).</i>
EII Regulation	<i>Electricity Infrastructure Investment Regulation 2021 (NSW).</i>
Finance and Construction Criteria	The project commitment criteria named as the finance criteria and the construction criteria on the generator information page being the information resource established, maintained and published by AEMO under the NER, rule 3.7F, from time to time.
Financial Value Bid	A proposal made by a Proponent to the Consumer Trustee following a Project Bid, comprising a Default Financial Value Bid, and (if applicable) an Alternative Financial Value Bid, as further described in Section 2.4.

Term	Definition
Financial Value Assessment	The assessment of Financial Value Bids undertaken as part of the Tender Round, as further described in Section 2.5.
Financial Value Shortlist	Selected shortlist of Financial Value Bids, as further described in Section 2.5.
Infrastructure Investment Objectives Report or IIO Report	The Infrastructure Investment Objectives Report prepared by the Consumer Trustee under the EII Act, sections 45(2) or 45(3) (as applicable).
Infrastructure Planner	The 'infrastructure planner' appointed in respect of a REZ or part of a REZ (as applicable) pursuant to the EII Act, section 63.
LDS	Long-duration storage.
LTESA	A 'long-term energy service agreement' or 'LTES agreement' under the EII Act.
LTES Operator	The party responsible for the operation and management of the generation, LDS or firming infrastructure to which the LTESA relates.
NEM	National Electricity Market.
NER	National Electricity Rules made under the National Electricity Law, as it applies in NSW.
Person	Includes a natural person, a firm, a company, a corporation, a body corporate, a partnership, an unincorporated association or a government agency and any successor entity to those persons.
Portfolio Shortlist	Selected shortlist of Financial Value Bids developed after the portfolio assessment as described in Section 2.5.1.
Product/s	The product or products being procured in each Tender Round, including LTESAs and/or Access Rights, as further specified in the Tender Guidelines for each Tender Round.
Project	A physical electricity generation facility, storage facility or firming infrastructure built in relation to an LTESA or Access Right, including any proposed supporting network remediation and connection assets.
Project Bid	A bid made by a Proponent to the Consumer Trustee as further described in Section 2.2.
Project Development Agreement or PDA	A contract governing the construction and operation of a Project awarded an LTESA and/or an Access Right.
Project Eligibility Criteria	Criteria intended to ensure that only Projects with the requisite characteristics are considered together with the merit criteria as set out in Section 3.1.1.
Project Merit Criteria	Non-financial value criteria described in Section 2.3, reflecting the definition of "non-financial value criteria" in the EII Regulation.
Project Shortlist	Selected shortlist of Project Bids to progress to the Financial Value Bid stage, based on assessment against the Project Merit Criteria.
Proponent	An entity or person registered to participate, and participating in a Tender Round for the award of a Product, who will enter into the Tender Process Deed and is responsible for that entity or person's Project Bid and Financial Value Bid, including as a consortium.
Proponent Eligibility Criteria	Criteria intended to ensure that Proponents possess the requisite technical, financial, legal and commercial capabilities to be able to deliver the Project as set out in Section 3.1.2.
Recommended Bids	Bids selected by the Consumer Trustee for recommendation to the SFV for LTESAs and to the Infrastructure Planner for Access Rights.
Returnable Schedule	Schedules to be provided by the Proponent as part of the submission of a Bid as referred to in the Tender Guidelines.

Term	Definition
REZ	A 'renewable energy zone' under the EII Act.
Risk Management Framework	The 'risk management framework' developed by the Consumer Trustee pursuant to the EII Act, section 51.
Scheme Financial Vehicle or SFV	The counterparty to the LTESAs, Project Development Agreements and contracts for the payment of access fees, responsible for administering payments and, where applicable, collecting access fees for distribution to relevant entities.
Tender Guidelines	A document released by the Consumer Trustee applicable to one or more Tender Rounds as described in Section 1.5.
Tender Process Deed	A legally binding deed, setting out the terms under which Proponents participate in the Tender Round.
Tender Round	The competitive tender process by which LTESAs, and/or Access Rights, will be awarded pursuant to the EII Act and EII Regulation, as set out in Section 2.
Tender Rules	This document, made by the Consumer Trustee under the EII Act, section 47, and the EII Regulation, reg 42A(2)(a) that sets out how the Consumer Trustee will conduct competitive tenders through successive Tender Rounds in respect of the award of LTESAs and granting or increasing of Access Rights.

1 Background and purpose of this document

1.1 Overview of this document

These Tender Rules are made by AEMO Services Limited (ABN 59 651 198 364) in its capacity as the Consumer Trustee about the conduct of a competitive tender in relation to, as applicable:

- the award of LTESAs, pursuant to the EII Act, section 47(5); and
- the granting or increasing of Access Rights, pursuant to the EII Act, section 60(4), and EII Regulation, reg 42A(2)(a).

This document applies to all Tender Rounds commenced by the Consumer Trustee in or after January 2024 pursuant to the EII Act (unless and until superseded by new tender rules made by the Consumer Trustee in accordance with the EII Act (with any amendments), at the discretion of the Consumer Trustee).

To avoid doubt:

- the tender rules gazetted on 23 September 2022 (**September 2022 Tender Rules**), together with any associated materials published by the Consumer Trustee in respect of the September 2022 Tender Rules (including the relevant Tender Guidelines), continue to govern Tender Round 1 and are not impacted by this document. See also Section 1.3 of this document; and
- the tender rules gazetted on 24 March 2023 (**March 2023 Tender Rules**) together with any associated materials published by the Consumer Trustee in respect of the March 2023 Tender Rules (including the relevant Tender Guidelines), continue to govern Tender Round 2-4 and are not impacted by this document. See also Section 1.3 of this document.

This Section 1 summarises:

- the legislated requirements of this document;
- the content of the Tender Rules and other key relevant Tender Round documentation in relation to the process by which LTESAs are awarded and Access Rights are granted or increased; and
- considerations the Consumer Trustee must account for when undertaking Tender Rounds.¹

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

Section 3 introduces the eligibility and merit criteria that may be used in each Tender Round.

Section 4 sets out additional details on the competitive tender process in each Tender Round in relation to tender fees and tender security.

1.2 Requirements for the Tender Rules

This document outlines a process for the Consumer Trustee to recommend the award of LTESAs and the granting or increasing of Access Rights. These Tender Rules apply to competitive tenders conducted by the Consumer Trustee. These Tender Rules do not apply to any process (which may include a competitive tender) in relation to the conferral of Access Rights conducted by the Infrastructure Planner, or any process conducted by AEMO Services not in its capacity as Consumer Trustee.

1.2.1 Tenders involving LTESAs

Under the EII Act, sections 47(5) and (7), the Consumer Trustee is required to make and gazette rules to deal with the matters outlined below in Table 1, being these Tender Rules.

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

1.2.2 Tenders involving Access Rights

The Minister for Energy may, by order published in the NSW Government Gazette, make Access Scheme Declarations that apply in a REZ or part of a REZ. The Access Scheme Declarations authorise or prohibit access to, and use of, specified network infrastructure in a renewable energy zone by network operators and operators of generation and storage infrastructure.

Under the EII Regulation, reg 42A, the Consumer Trustee must carry out functions to make rules, undertake competitive tenders within specified timeframes, make recommendations to the Infrastructure Planner in relation to the granting or increasing of Access Rights and prepare a report for the Infrastructure Planner on the competitive tender and its recommendations, if:

- (a) an Access Scheme Declaration provides for situations in which the Infrastructure Planner may grant or increase an Access Right based on a recommendation from the Consumer Trustee; or
- (b) the Infrastructure Planner requests the Consumer Trustee to conduct a competitive tender in relation to granting or increasing Access Rights under an Access Scheme.

Accordingly, these Tender Rules will apply to any Tender Round conducted by the Consumer Trustee for the granting of Access Rights in respect of REZs that are the subject of an Access Scheme Declaration.

1.2.3 Precedence

Where the EII Act or EII Regulation are inconsistent with this document, the applicable provisions in the EII Act and EII Regulation will take precedence to the extent of any inconsistency.

¹ These considerations are further detailed in the separate Risk Management Framework (see especially Risk Management Framework, section 3.5).

1.2.4 Legislative requirements for Tender Rules involving LTESAs

Requirements for the Consumer Trustee in preparing Tender Rules for LTESAs under the EII Act and EII Regulation are summarised in Table 1 below.

Table 1: EII Act and EII Regulation requirements for Tender Rules

EII Act or EII Reg Ref	EII Act and EII Regulation requirement	Tender Rules document reference
s47(5)(a)	The eligibility criteria for making a tender bid	Section 3.1
s47(5)(b)	The notification of the opening of the competitive tender	Section 2.1
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
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	Section 1
s47(5)(g)	Matters prescribed by the regulations	See following 3 rows below
s47(5)(g) reg29(1)	Subject to EII Regulation, reg 28(2A), ² the rules dealing with the eligibility criteria for making a tender bid for generation infrastructure or long-duration storage infrastructure must not restrict: (a) the location in the NSW region in which the infrastructure may be constructed or operated, or (b) the type of technology or fuel that may be used to construct or operate the infrastructure	Section 3.1
s47(5)(g) reg29(2)	Subject to EII Regulation, reg 28(2A), ³ the rules may provide for: (a) the location in the NSW region in which the infrastructure may be constructed or operated, or (b) the type of technology or fuel that may be used to construct or operate the infrastructure, to be considered in the assessment of a tender bid	Section 3.2

² Refer to Table 3 below for description of EII Regulation, reg 28(2A).

³ Refer to Table 3 below for description of EII Regulation, reg 28(2A).

EII Act or EII Reg Ref	EII Act and EII Regulation requirement	Tender Rules document reference
s47(5)(g) reg29(3)	Subject to EII Regulation, reg 28(2A), ⁴ the rules must deal with the assessment of a tender bid against the non-financial value criteria for LTES agreements	Sections 2.3 and 3.2
s47(6)	The Consumer Trustee must consult with the AER prior to making the Tender Rules	Section 1.2.1
s47(7)	The Tender Rules are to be published in the Gazette	Section 1.2.1

1.2.5 Legislative requirements for Tender Rules involving Access Rights

Requirements for the Consumer Trustee in preparing Tender Rules for Access Rights under the EII Act and EII Regulation are summarised in Table 2 below.

Table 2: EII Act and EII Regulation requirements for Tender Rules for Access Rights

EII Act or EII Reg Ref	EII Act and EII Regulation requirement	Tender Rules document reference
s60(4)(c), reg 42A(2)(a)	Subject to EII Regulation, reg 42A(1), the Consumer Trustee must make rules, in consultation with the Infrastructure Planner, about the conduct of a competitive tender in relation to the granting or increasing of Access Rights	Section 1.2.2 and Sections 2 to 4

1.3 Content of the Tender Rules and Tender Round guidance

These Tender Rules provide a framework for prospective Proponents on the structure and design of Tender Rounds, and specifically in respect of the matters noted in Table 1 above. Where relevant, references are made to authorising legislation and regulations.

As detailed in Section 1.1, these Tender Rules are intended to apply to all future Tender Rounds run by the Consumer Trustee as the competitive process for LTESAs and/or Access Rights unless and until superseded by new tender rules made by the Consumer Trustee in accordance with the EII Act (with any amendments), at the discretion of the Consumer Trustee.

For each Tender Round announced by the Consumer Trustee, Tender Guidelines (see Section 1.5 below) will be published and, together with the Tender Rules and associated documentation specific to the Tender Round, will include the information reasonably required for a Proponent to compete in that Tender Round.

1.4 Considerations for Tender Rounds

In conducting Tender Rounds, the Consumer Trustee intends to ensure that Proponents participating in Tender Rounds have a clear understanding of the Consumer Trustee's objectives and the assessment process that will determine the Projects that best meet the Consumer Trustee's aims.

⁴ Refer to Table 3 below for description of EII Regulation, reg 28(2A).

1.4.1 Considerations for Tender Rounds involving LTESAs

For the award of LTESAs, the Consumer Trustee is required to conduct tenders in a way that is open, fair and transparent for all bidders, encourages genuine competition between the bidders, encourages competition between market participants and encourages tender bids from persons who are not already parties to LTESAs. The Consumer Trustee is also required to ensure the costs to it in carrying out a competitive tender are reasonable and must minimise the costs of making a tender bid for bidders. The Consumer Trustee may exercise its functions flexibly to accommodate recent trends and changes in electricity infrastructure technology, the NEM as well as NSW electricity customer and market participant behaviour.

Prior to conducting a tender for an LTESA that is not a fixed shape, fixed volume arrangement, the Consumer Trustee must be satisfied of the matters set out in EII Regulation, reg 26(2A).

Requirements for the Consumer Trustee in administering Tender Rounds for LTESAs under the EII Act and EII Regulation are summarised in Table 3 below.⁵

Table 3: EII Act and EII Regulation requirements for competitive tenders for LTESAs

EII Act or EII Reg Ref	EII Act or EII Reg requirement for competitive tenders for LTESAs	Where this requirement is reflected in these Tender Rules
s4(4)	Guidelines issued by the Minister regarding consultation and negotiation with the local Aboriginal communities in relation to relevant projects for the purposes of increasing employment and income opportunities for local Aboriginal communities must be taken into account by the Consumer Trustee.	'Community engagement, shared benefits and land use considerations' Merit Criteria 'Regional economic development' Merit Criteria
s9(1)	The plan for the NSW renewable energy sector (published pursuant to the EII Act, section 8(5)) must be taken into account by the Consumer Trustee in the exercise of its functions under the EII Act.	'Regional economic development' Merit Criteria
s47(3)	A competitive tender must be carried out in accordance with prescribed regulations and these Tender Rules.	Sections 1.2.1, 1.2.4, 1.4.1 See following eleven rows
s47(3)(a), reg 26(1)(a)-(b)	The Consumer Trustee must conduct a competitive tender in a way that encourages genuine competition between the bidders and that encourages competition between market participants.	Section 1.4.1
s47(3)(a), reg 26(1)(c)	The Consumer Trustee must conduct a competitive tender in a way that encourages tender bids from persons who are not already parties to LTES agreements.	Section 1.4.1
s47(3)(a), reg 26(1)(d)	The Consumer Trustee must conduct a competitive tender in a way that is transparent, open and fair for all bidders.	Section 1.4.1

⁵ Additionally, the Consumer Trustee must conduct competitive tenders and make recommendations in relation to LTESAs on the basis of the IIO Reports, pursuant to the EII Act, section 45(6), and more broadly, must exercise its functions in accordance with the EII Act and EII Regulation (including exercising its functions consistently with objectives of the EII Act, pursuant to the EII Act, section 3(3)).

EI Act or EI Reg Ref	EI Act or EI Reg requirement for competitive tenders for LTESAs	Where this requirement is reflected in these Tender Rules
s47(3)(a), reg 26(2A)	Before conducting a tender for the construction and operation of generation infrastructure LTES agreements that includes an option to exercise a derivative that is not a fixed shape, fixed volume derivative arrangement, the Consumer Trustee must be satisfied: (a) the arrangement is in the long-term financial interests of NSW electricity customers; (b) the arrangement allows for reasonable forecasting of financial impacts to NSW electricity customers (including impacts arising from the volume of electricity produced by the operator throughout the day and over the agreement term); and (c) the risk associated with the arrangement, including the basis risk, can be managed under the risk management framework.	Section 1.4.1
s47(3)(a), reg 26(3)	When conducting a competitive tender, the Consumer Trustee must consider recent trends and changes in electricity infrastructure technology, the national electricity market and the behaviour of customers and market participants.	Section 1.4.1
s47(3)(a), reg 26(4)	The assessment of the financial value of a tender bid must consider the effect of the infrastructure proposed to be constructed and operated under an LTES agreements on various items.	'Financial value' Merit Criteria Section 3.2
s47(3)(a), reg 26(5)	The Consumer Trustee must ensure the costs to the Consumer Trustee of carrying out a competitive tender are reasonable and minimise the costs of making a tender bid for bidders.	Section 1.4.1
s47(3)(a), reg 28(1)(a)	A person may not make a tender bid in a competitive tender if the relevant infrastructure is not connected (or proposed to be connected) to network infrastructure in the NSW region.	Eligibility Criteria 5
s47(3)(a), reg 28(1)(b), (2), (2C), (3)	A person may not make a tender bid in a competitive tender if an Access Right for the infrastructure has already been conferred on the person under an Access Scheme where the Access Right was conferred: • as a result of a competitive tender conducted by the Consumer Trustee,	Eligibility Criteria 3

EII Act or EII Reg Ref	EII Act or EII Reg requirement for competitive tenders for LTESAs	Where this requirement is reflected in these Tender Rules
	unless the Consumer Trustee is satisfied of exceptional circumstances it specified before conducting the tender;⁶ or other than by way of a competitive tender conducted by the Consumer Trustee, and the infrastructure project has achieved the Finance and Construction Criteria.	
s47(3)(a), reg 28(2A)	A person may not make a tender bid in a competitive tender for generation infrastructure if the infrastructure involves generation from wood waste from timber native to Australia.	Eligibility Criteria 12
s47(3)(a), reg 28(2B)	A person may not make a tender bid in a competitive tender for firming infrastructure if the infrastructure involves electricity generated from biomass from timber native to Australia.	Eligibility Criteria 12
s47(4)	A tender bid 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 LTES agreement.	Section 3.2
s48(2)	Financial value must be the primary consideration when recommending LTES agreements.	Sections 2.5, 2.5.1, 2.6 'Financial value' Merit Criteria
s48(3)	Recommendations for generation LTES agreements must relate to generation infrastructure in REZs unless the Consumer Trustee is satisfied that the generation LTES agreements shows Outstanding Merit.	Section 3.3
s48(4)(a)	The circumstances in which LTES agreements can show Outstanding Merit may be specified in the EII Regulation.	See following row
s48(4)(a) reg26A(1)-(2)	An LTES agreement showing Outstanding Merit includes the Consumer Trustee being satisfied it shows more merit than other LTES agreements for generation infrastructure recommended by the Consumer Trustee. In making a recommendation for generation infrastructure that is not or will not be part of	Section 3.3

⁶ The words "as a result of a competitive tender conducted by the Consumer Trustee" shown in this bullet point are inserted commencing 1 July 2024, pursuant to the Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024 (NSW). Prior to 1 July 2024, this bullet point is to be read as "an Access Right for the infrastructure has already been granted, unless the Consumer Trustee is satisfied of exceptional circumstances it specified before conducting the tender".

EII Act or EII Reg Ref	EII Act or EII Reg requirement for competitive tenders for LTESAs	Where this requirement is reflected in these Tender Rules
	a REZ, the Consumer Trustee must take into account: (a) the long-term financial interests of NSW electricity customers; (b) how the LTES agreement contributes to the infrastructure investment objectives; (c) the non-financial value criteria of the LTES agreement; and (d) the impact of generation infrastructure under the LTES agreement on congestion in the NSW region.	
s48(4)(b)	Regulations may make provision for or with respect to the matters to be taken into account by the Consumer Trustee in making recommendations.	See following rows
s48(4)(b) reg30(1)-(2)	The Consumer Trustee may include the following information in a recommendation to SFV: (a) information obtained or produced during a competitive tender process; and (b) information obtained or produced during the Consumer Trustee's assessment of a tender bid, including information obtained or produced at its direction, if produced or obtained for the benefit of Consumer Trustee or SFV.	Section 2.6
s48(4)(b) reg30(3)	When making a recommendation about an LTES agreement the Consumer Trustee must take into account non-financial value criteria for LTES agreements.	Sections 2.3, 2.6 and 3.2
s49(2)	Regulations may prescribe further circumstances in which an LTES agreement may not be made.	See following two rows
s49(2), reg31A(1)	An LTES agreement for generation infrastructure may not be made if the infrastructure involves generation from wood waste from timber native to Australia.	Section 3.1, Eligibility Criteria 12
s49(2), reg31A(2)	An LTES agreement for firming infrastructure may not be made if the infrastructure involves electricity generated from biomass from timber native to Australia.	Section 3.1, Eligibility Criteria 12

1.4.2 Considerations for Tender Rounds involving Access Rights

Requirements for the Consumer Trustee in administering Tender Rounds involving Access Rights under the EII Act and EII Regulation are summarised in Table 4 below.

Table 4: EII Act and EII Regulation requirements for competitive tenders for Access Rights

EII Act or EII Reg Ref	EII Act or EII Reg requirement for competitive tenders for Access Rights	Where this requirement is reflected in these Tender Rules
s60(4), reg 42A(2)(b)	The Consumer Trustee must conduct a competitive tender requested by the Infrastructure Planner: • within 60 days after the request; or • at the same time as the first competitive tender for an LTESA that occurs after 60 days after the request; or • if there is no competitive tender for an LTESA within 8 months of the request—by no later than 8 months after the request.	Sections 1.2.2, 1.4.2
s60(4), reg 42A(2)(c)	The Consumer Trustee must make recommendations to the Infrastructure Planner based on the outcome of the competitive tender.	Section 2.6
s60(4), reg 42A(2)(d)	The Consumer Trustee must prepare a report on the competitive tender and its recommendations and give the report to the Infrastructure Planner.	Sections 1.2.2, 2.6

1.5 Tender Guidelines

Tender Guidelines specific to one or more Tender Rounds will be published by the Consumer Trustee. The Tender Guidelines do not form part of the Tender Rules and may be amended, withdrawn, reissued or supplemented to at any time at the Consumer Trustee's discretion.

Tender Guidelines will set out:

- timing applicable to the relevant Tender Round;
- guidance to Proponents on matters relating to the tender and assessment process which the Consumer Trustee considers appropriate; including the Eligibility Criteria and Merit Criteria relevant to the Tender Round;
- general contextual information, for Proponent reference and information purposes only, that the Consumer Trustee considers relevant and appropriate; and
- other matters that the Consumer Trustee considers necessary for a Tender Round.⁷

To the extent that the Tender Guidelines may be materially inconsistent with the Tender Rules, the Consumer Trustee may, in its absolute discretion, notify Proponents as to the interpretation that will apply in order to resolve such inconsistency.

⁷ EII Act, section 47(5)(f).

2 Tender and assessment process

This Section summarises the Tender Round and competitive tender 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 generally undertake Tender Rounds.

Ahead of each Tender Round, the Tender Guidelines may provide guidance on:

- the procedure for making a Bid in that Tender Round; and
- the process steps for submission and assessment of Bids in that Tender Round.

All information provided by Proponents during the Tender Round may be assessed on an ongoing basis through to the end of the award and contracting stage, which may modify the process described in this section 2 for a Tender Round.

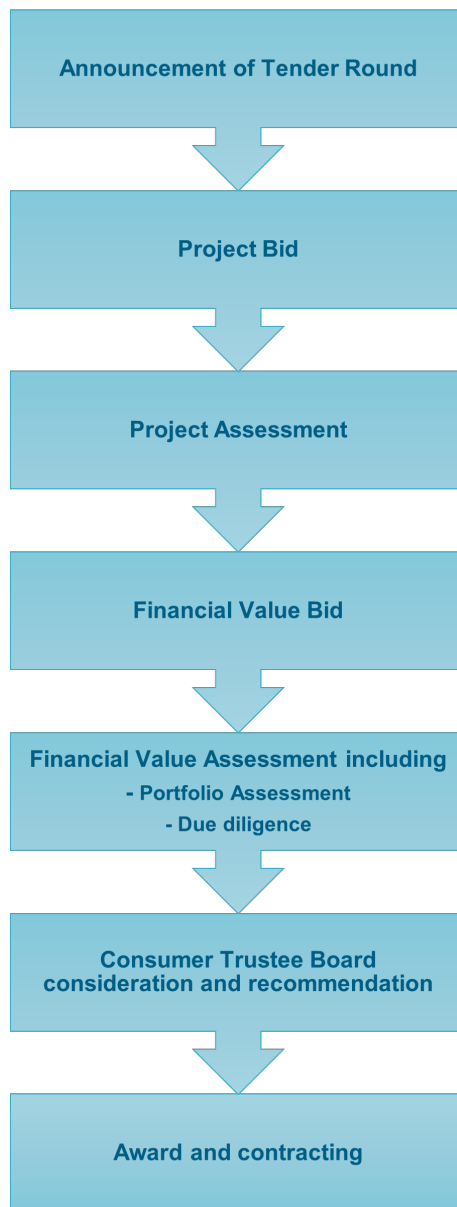


Figure 1: Tender and assessment process overview

2.1 Announcement of a Tender Round

On the basis of the Infrastructure Investment Objectives Report prepared by the Consumer Trustee in accordance with the EII Act, section 45 in respect of LTESAs, the Consumer Trustee will notify the market of an upcoming Tender Round and when it will commence via the Consumer Trustee website. The Tender Round process timeframes following notification of the upcoming Tender Round will be set out in the Tender Guidelines applicable to that Tender Round, with any updates noted on the Consumer Trustee's website.

2.2 Project Bid

2.2.1 Overview of Project Bid stage

For each Tender Round that is notified by the Consumer Trustee, the following documents will be made available through the Consumer Trustee's website:

- Tender Guidelines; and
- Tender Process Deed.

Proponents must register with the Consumer Trustee to receive communication updates and provide responses to the Proponent Eligibility Criteria summarised in Section 3.1.2.

An online application form and corresponding Returnable Schedules will be provided to registered Proponents.

Project Bids will be sought from all registered Proponents through the Consumer Trustee's online platform, subject to the provision of the Proponent Eligibility Criteria. Project Bids will be assessed and may be shortlisted to form the Project Shortlist ahead of the Financial Value Bid and Financial Value Assessment stage.

Proponents may submit questions regarding their Project Bid to the Consumer Trustee in accordance with the requirements set out in the Tender Guidelines. The Consumer Trustee may at its discretion make deidentified questions and clarifications available to all Proponents.

Project Bids must include sufficient information to allow the Consumer Trustee to undertake an assessment against the merit criteria outlined in Table 8.⁸ Further guidance on the information that will be required from Proponents is detailed in Section 3.

Project Bids received after the closing time may be accepted at the discretion of the Consumer Trustee. The Tender Guidelines may set out guidance on when the Consumer Trustee may admit a late Project Bid for assessment.

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

Project Bids must be completed by Proponents 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 Project Bid as non-compliant.

2.2.2 Alternative Product Bids

As part of the Project Bid stage in a Tender Round, the Consumer Trustee may stipulate conditions for allowing Alternative Product Bids to be submitted.

As Products will vary for each such Tender Round, the Consumer Trustee will provide guidance on the Project Bids and, where applicable, Alternative Product Bids in the Tender Guidelines or otherwise via its website. This guidance may include:

- the applicability of the Alternative Product Bid to a product;
- the number of Alternative Product Bids allowed; and

⁸ The Tender Guidelines may specify that a Project Merit Criteria will be assessed during the Financial Value Bid stage, rather than the Project Bid Stage.

- how an Alternative Product Bid is to be reflected in other areas of a Proponent's Bid.

The Consumer Trustee will assess Alternative Product Bids by Proponents against the same set of merit criteria in the Financial Value Assessment stage (as applicable) – see Section 2.5 below.

2.3 Project assessment

The purpose of a Project assessment is for the Consumer Trustee to shortlist Project Bids (Project Shortlist) to progress to the Financial Value Bid stage.

The Consumer Trustee conducts a Project assessment for all compliant Bids and includes:

- an eligibility criteria assessment of the Project as described in Section 3.1; and
- a merit assessment based on non-financial value criteria, being the Project Merit Criteria set out in Section 3.2,

to determine the Project Shortlist to progress to the Financial Value Bid and Financial Value Assessment.

At the Consumer Trustee's discretion, Advisers may be invited to provide advice to the Consumer Trustee on Project assessment.

The Consumer Trustee will notify Proponents whose Bids form part of the Project Shortlist prior to the Financial Value Bid stage.

2.4 Financial Value Bid

2.4.1 Overview of Financial Value Bids

The Consumer Trustee will invite Proponents whose Bids form part of the Project Shortlist to submit a Financial Value Bid for that Project for assessment against the 'Financial Value' Merit Criteria and the 'Commercial departures' Merit Criteria. The 'Commercial departures' Merit Criteria will be assessed against proposed contractual terms or information that the Consumer Trustee considers appropriate to provide Proponents.⁹

All Financial Value Bids will be assessed against the same merit criteria, irrespective of which Product is sought. The general process for the Financial Value Bid submission and assessment will be as follows:

- The Consumer Trustee will provide Returnable Schedules to Proponents whose Bids form part of the Project Shortlist to complete, including requests for financial value information and contractual departures.
- Proponents may submit questions regarding their Financial Value Bid to the Consumer Trustee in accordance with the requirements set out in the Tender Guidelines. The Consumer Trustee may at its discretion make deidentified questions and clarifications available to all Proponents.

Bids received after the closing time may be accepted at the discretion of the Consumer Trustee. The Tender Guidelines may set out guidance on when the Consumer Trustee may admit a late Financial Value Bid for assessment.

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 Bid as non-compliant.

2.4.2 Default Financial Value Bids and Alternative Bids

As part of the Financial Value Bid stage, the Consumer Trustee will set out the requirements for a Default Financial Value Bid and may stipulate conditions for allowing Alternative Bids to be submitted.

⁹ The Tender Guidelines may specify that a Project Merit Criteria will be assessed during the Financial Value Bid stage, rather than the Project Bid Stage.

As the Default Financial Value Bid may vary for each Tender Round, the Consumer Trustee will provide guidance on Default Financial Value Bids and, where applicable, Alternative Bids in the Tender Guidelines or otherwise via its website. This guidance may include:

- the number of Default Financial Value Bids and Alternative Bids allowed;
- where Alternative Bids are allowed to differ from the Default Financial Value Bid; and
- how an Alternative Bid is to be reflected in other areas of a Proponent's Bid (e.g., in contractual departures).

The Consumer Trustee will assess Alternative Bids by Proponents against the same set of merit criteria in the Financial Value Assessment stage (as applicable), with no specific merit awarded for adhering to the Default Financial Value Bid.

2.5 Financial Value Assessment

The Consumer Trustee will assess submitted Financial Value Bids that it considers compliant, including a merit criteria assessment to determine which Bids will be shortlisted and subject to due diligence and portfolio assessment (Financial Value Shortlist).

At the Consumer Trustee's discretion, Advisers may be invited to provide advice on the Financial Value Assessment.

Financial value will be the primary consideration for the Consumer Trustee.¹⁰ Financial value is further defined in the EII Regulation.¹¹

The Consumer Trustee will develop a Financial Value Shortlist based on overall merit (Table 7 and Table 8), the relevant Tender Round size guidance, the IIO Report, and the objectives and requirements of the EII Act and EII Regulation.

2.5.1 Portfolio assessment

The Consumer Trustee will develop a Portfolio Shortlist after assessing the cumulative impacts that may arise in consideration of the Financial Value Shortlist. The Consumer Trustee conducts this during or after the individual assessment of Financial Value Bids. It is intended to mitigate any aggregated adverse effects that may arise from the Financial Value Shortlist, subject to the primary consideration of financial value for final recommendation by the Consumer Trustee.

To maintain transparency in the portfolio assessment process, the scope of this assessment will be stipulated in the Tender Guidelines as relevant to the Products being tendered.

Following the development of the Portfolio Shortlist, the Consumer Trustee board will consider which Bids on the Portfolio Shortlist are recommended (Recommended Bids) to SFV for LTESAs and to the Infrastructure Planner for Access Rights.

2.5.2 Due diligence

At any time during the assessment process, the Consumer Trustee (supported by its Advisers, as required) may undertake due diligence on a Project and/or Financial Value Bid, including ongoing assessment of all information provided by Proponents during the Tender Round. Due diligence may include, but is not limited to:

- inviting Proponents to present their Bid to the Consumer Trustee and/or the Consumer Trustee's Advisers;
- commissioning or completing research, analysis and modelling to support assessments of Bids;
- contacting identified Project participant organisations, including referees, AEMO and/or the relevant network service providers to confirm or verify elements of Bids;
- contacting any relevant federal, state, territory, and international government agency; and/or

¹⁰ For LTESAs, EII Act, section 48(2).

¹¹ For LTESAs, EII Regulation, reg 26(4).

- receiving advice and input from the Consumer Trustee's Advisers relating to the assessment of Bids.

2.6 Consumer Trustee board consideration and recommendation

Within the Consumer Trustee, the Consumer Trustee board¹² is responsible and accountable for the final decision on any recommendations (Recommended Bids) to:

- the SFV, for a Tender Round for LTESAs; and
- the Infrastructure Planner.

Recommendation for Access Rights will be made in accordance with the Access Scheme Declaration, under the EII Act, section 24, and the EII Regulation, regs 42A(2)(c) and 42A(2)(d).

When making a recommendation to the SFV the Consumer Trustee may include information obtained or produced during:

- a competitive tender process;
- its assessment of a Bid (including information obtained or produced by a person acting at its direction), so long as such information was obtained or produced for the benefit of the Consumer Trustee and SFV.¹³

In making a recommendation for an LTESA, the Consumer Trustee must act consistently with the requirements of the EII Act and EII Regulation.¹⁴

Subject to requirements in the EII Act and EII Regulation, all assessment steps described in these Tender Rules will inform, but not constrain, the discretion of the Consumer Trustee board in making decisions acting in the long-term financial interests of NSW electricity customers.

In making recommendations to the SFV and Infrastructure Planner (as applicable), the Consumer Trustee board may be advised by and consider input from specialists and advisers (including both internal and external to the Consumer Trustee).

2.7 Award and contracting

The SFV is:

- the counterparty to, and will execute, the LTESAs and related agreements and contracts for the payment of fees for Access Rights, in accordance with its legal and governance requirements; and
- the responsible party for administering payments under those agreements.

In respect of Access Rights, which are granted under a Tender Round, the Infrastructure Planner:

- grants or increases an Access Right based on a recommendation from the Consumer Trustee, subject to the relevant Access Declaration Scheme; and¹⁵
- executes arrangements for the applicable Access Rights in accordance with its legal and governance requirements.

The decision to enter into/award the relevant Product to the successful Proponent ultimately remains a decision of the SFV or Infrastructure Planner (as applicable).¹⁶

¹² Subject to any delegations made by the board with respect to Recommended Bids.

¹³ EII Regulation, reg 30(1)-(2).

¹⁴ For example, financial value will be the primary consideration for the Consumer Trustee, and it must take into account the non-financial value criteria (being the Project Merit Criteria), as per EII Act, section 48(2), and EII Regulation, reg 30(3), respectively. The Consumer Trustee's recommendation is also subject to any specified circumstances in which LTESAs may not be made (see EII Act, section 49(2), EII Regulation, reg 31A).

¹⁵ EII Reg, reg 42A(1).

¹⁶ Participation in a Tender Round and the awarding of a Product does not reduce or affect the obligation of a Proponent to comply with any laws by which it is bound (including state and federal laws, regulations and other instruments under them). Proponents retain full responsibility for compliance with all laws. Participation in a Tender Round, and decisions by the Consumer Trustee, do not indicate that a Proponent has complied with any laws, and Proponents should not expect or request favourable treatment in seeking approvals or authorisations (or similar) required under any laws.

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
- Access Rights.

Where the Minister directs the Consumer Trustee to conduct a firming infrastructure competitive tender under the EII Act, section 47(2), the Consumer Trustee must prepare a fresh IIO Report.¹⁷ The IIO Report may include additional factors for the Consumer Trustee to consider in its assessment.

Projects seeking an LTESA and an Access Right must provide information to satisfy the eligibility and merit criteria, irrespective of which Product is sought.

3.1 Eligibility criteria

The eligibility criteria consist of both Project and Proponent components, as described in Table 5 and Table 6 respectively.

For each Tender Round, further guidance (if any) on the eligibility criteria and when during the Tender Round the assessment against the eligibility criteria will occur will be provided in the relevant Tender Guidelines issued by the Consumer Trustee.

None of the Eligibility Criteria, either individually or taken together, that apply to Generation LTESAs or LDS LTESAs, are intended to restrict:

- the location in the NSW region in which the infrastructure may be constructed or operated; or
- the type of technology or fuel that may be used to construct or operate the infrastructure,¹⁸ except as required by the EII Regulations.

3.1.1 Project Eligibility Criteria

Proponents must provide information to demonstrate that their Project meets the Project Eligibility Criteria set out in Table 5. Projects that do not meet all applicable Project Eligibility Criteria may cease to be further considered by the Consumer Trustee. The Consumer Trustee may make exceptions to the application of the Project Eligibility Criteria where, in its absolute discretion, it considers that there are grounds for the Project being further considered by the Consumer Trustee.

The Consumer Trustee may modify or disapply any Eligibility Criteria in the Tender Guidelines for a technology type or Product if it considers it:

- impractical or inappropriate¹⁹ to apply an Eligibility Criteria to that technology type or Product; or
- where the Eligibility Criteria is inconsistent with changes that are made to the EII Act or EII Regulation after the date of these Tender Rules,

to the extent that doing so is not inconsistent with:

¹⁷ EII Act, section 45(3).

¹⁸ EII Regulation, regs 29(1), (4).

¹⁹ The Consumer Trustee may consider that a modification or disapplication of the Eligibility Criteria is appropriate where that modification or disapplication is required in the Consumer Trustee's opinion to enable consistency with other programs or schemes, including the Australian Government's Capacity Investment Scheme

- the EII Act or EII Regulation; and
- eligibility criteria specified in the relevant Access Scheme Declaration in relation to Access Rights.

If this occurs, the Tender Guidelines will set out why the modification or disapplication of the Eligibility Criteria will occur.

Table 5: Project Eligibility Criteria

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
1	Project must involve generation from a renewable energy source. ²⁰	✓	✓		
2	Project must have a generation capacity of not less than 30 MW.	✓ ²¹	✓		
3	Project has not previously been awarded an: • LTESA; • Access Right where the Access Right was conferred under an Access Scheme as a result of a competitive tender conducted by the Consumer Trustee²²; or • Access Right where the Access Right was conferred under an Access Scheme other than by way of a competitive tender conducted by the Consumer Trustee, and the infrastructure project has achieved the Finance and Construction Criteria.	✓	✓	✓	✓
4	Project consists of storage units with registered capacity that can be dispatched for at least eight hours.			✓	

²⁰ However, this only applies to generation infrastructure with a generation capacity of not less than 30 megawatts – refer to EII Act, section 43(1)(a).

²¹ Subject to the eligibility criteria requirements in the relevant Access Scheme Declaration and the eligibility criteria requirements as determined by the Infrastructure Planner, this criterion will not be applied for Access Rights allocated after completion of the initial allocation as defined under the relevant Access Scheme Declaration, nor for storage projects seeking an Access Right under the relevant Access Scheme Declaration.

²² Except where the Consumer Trustee is satisfied there are "exceptional circumstances" which, if applicable, will be specified by the Consumer Trustee before conducting a competitive tender: EII Regulation, reg 28(1)(b), (2), and (3) (for LTESAs). The words "as a result of a competitive tender conducted by the Consumer Trustee" shown in this bullet point are inserted commencing 1 July 2024, pursuant to the Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024 (NSW). Prior to 1 July 2024, this bullet point is to be read as "Access Right where the Access Right was conferred under an Access Scheme".

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
5	Project must be registered or must state in its application that it intends to register, with AEMO for the central dispatch process under the NER in relation to the NSW region of the NEM.	✓	✓	✓	✓ ²³
6	Project was not identified as committed or existing in the AEMO Generation Information page published (by AEMO) on 14 November 2019, unless it is an expansion project to an existing storage or generation asset or the Project involves the addition of new storage or generation assets to existing shared infrastructure.	✓	✓	✓	✓
7	Project must have received a Secretary's Environmental Assessment Requirements (SEARs) or, if SEARs do not apply, have lodged a Development Approval application under the <i>Environmental Planning and Assessment Act 1979</i> (NSW) in relation to the Project. ^{24, 25}	✓	✓	✓	✓
8	Projects must be in receipt of a connection agreement or a network service provider response to a connection enquiry. ^{26, 27}		✓ ²⁸	✓ ²⁹	✓
9	Project must submit a Community Engagement Plan, that will become contractually binding upon award. ³⁰	✓	✓	✓	✓

²³ For demand response-based Projects, registration as a 'Demand Response Service Provider' (as defined in the NER) is required.

²⁴ This requirement may be removed for demand-response Projects.

²⁵ For Projects that have significant development planning approvals and formal documentation from relevant planning authorities that supersede SEARs documentation, the Consumer Trustee may choose to exercise its discretion in relation to how this Eligibility Criterion will apply – further detail of the type and scope of information required to satisfy this criterion may be provided by the Consumer Trustee in the Tender Guidelines.

²⁶ This requirement may be removed for demand-response Projects.

²⁷ For Projects only requiring modification or amendment to an existing connection agreement, the Consumer Trustee may choose to exercise its discretion in relation to how this Eligibility Criterion will apply – further detail of the type and scope of information required to satisfy this criterion may be provided by the Consumer Trustee in the Tender Guidelines.

²⁸ If an Access Right is sought for a Project, this eligibility criterion is not required to be met for an LTESA for that Project.

²⁹ If an Access Right is sought for a Project, this eligibility criterion is not required to be met for an LTESA for that Project.

³⁰ This requirement may be removed for demand-response Projects.

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
10	The Project is not in receipt of financial support in the form of project capital support, periodic payments or revenue underwriting from State or Commonwealth government.		✓	✓	✓
11	Project must not be impacted by an order served on a relevant operator prohibiting connection to the relevant network infrastructure, under EII Act, section 29.	✓	✓	✓	✓
12	Project must not use (as applicable): - for generation infrastructure, generation from wood waste from timber native to Australia; and - for firming infrastructure, generation from biomass from timber native to Australia.³¹		✓		✓
13	Project must be able to dispatch its registered capacity for a minimum specified duration. ³²				✓

3.1.2 Proponent Eligibility Criteria

Proponents must provide information demonstrating that they meet all Proponent Eligibility Criteria set out in Table 6. In doing so, Proponents must propose one Bid Entity (EC16), and where such Bid Entity is not the Proponent, the Proponent must also provide equivalent information demonstrating that the Bid Entity also meets (or, when established, will meet) the Proponent Eligibility Criteria (other than EC16).

If:

- a Proponent (including in respect of its Bid Entity, if applicable); or
- at the absolute discretion of the Consumer Trustee, Related Entities of the Proponent,

do not meet all Proponent Eligibility Criteria then the Consumer Trustee may cease to consider the Proponent further.

If the Bid Entity is established after the Proponent has submitted the Project Bid, when the Bid Entity is established the Proponent must provide information demonstrating that the Bid Entity meets all the Proponent Eligibility Criteria at that time. The Consumer Trustee may cease to consider the Proponent further if the Bid Entity does not meet all Proponent Eligibility Criteria, regardless of what stage the Tender Round is at.

³¹ EII Regulation, regs 28(2A), (2B). See also EII Regulation, reg 29(4).

³² For each Tender Round, the relevant minimum duration will be specified in the Tender Guidelines.

The Tender Guidelines may specify a deadline by which the Bid Entity must be established. The Consumer Trustee may cease to consider the Proponent further if the Bid Entity is not established by the deadline specified in the Tender Guidelines.

The Consumer Trustee may make exceptions to the application of the Proponent Eligibility Criteria where, in its absolute discretion, it considers that there are grounds for the Project being further considered by the Consumer Trustee.

Table 6: Proponent³³ Eligibility Criteria

Item	Criteria
14	The Proponent, and the Bid Entity (if different to the Proponent) must: (a) at the time of submitting the Project Bid, hold (or demonstrate that when established, it will hold) an Australian Business Number (ABN), and comply (or demonstrate that when established, it will comply) with all necessary authorisations that are material to the conduct of its business; (b) be one of: - an Australian entity incorporated under the Corporations Act 2001 (Cth); - a Commonwealth entity under section 10 of the <i>Public Governance, Performance and Accountability Act 2013</i> (Cth); - an Australian State or Territory owned (wholly or partly) corporation or a subsidiary of an Australian state or territory owned (wholly or partly) corporation; or - an Australian local government or council or an Australian organization that is purposed with representing and supporting local governments or councils. 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 Bid, per the contact listed on the Consumer Trustee website.
15	Proponent must not be named as an organisation on the Consolidated List maintained by the Australian Sanctions Office within the Department of Foreign Affairs and Trade.
16	Proponent must propose one Bid Entity.
17	Proponent 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 Tender Round.
18	Proponent must not have had a judicial decision relating to employee entitlements made against it (not including decisions under appeal), where the Proponent has failed to pay any amounts required to be paid following that judicial decision.
19	Proponent must not have been named as an organisation that has not complied with the <i>Workplace Gender Equality Act 2012</i> (Cth).
20	Proponent must comply with:

³³ These criteria will be applied, as appropriate, to the corporate group of which the Proponent is a part and/or the project vehicle.

Item	Criteria
	- obligations under employment contracts, industrial agreements, and awards; - 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 - applicable Workplace Health and Safety legislation.
21	Proponent must not, within the previous 10 years, have 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 (including that the Proponent has engaged in corrupt conduct).
22	If the Proponent is a 'reporting entity' under the <i>Modern Slavery Act 2018</i> (Cth) the Proponent must have complied with its obligations under that Act, including (if applicable) registering a Modern Slavery statement with the Commonwealth Attorney General's Department.

3.2 Merit criteria

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

The guidance provided in Table 7 and Table 8 will apply to future Tender Rounds. Further guidance (if any) specific to each Tender Round may be provided in the Tender Guidelines including for information that the Proponents must provide to assess the Project Bid and Financial Value Bid against the merit criteria and when during the Tender Round the assessment against the merit criteria will occur.

Every Bid from a Proponent must, unless exempted by regulation, include information about how the Bid will create employment and support industry in NSW if the person enters into an LTESA – see the 'Regional economic development' Merit Criteria in Table 8 below.³⁴

Also, the Consumer Trustee must take into account:

- (a) the guidelines about consultation and negotiation with local Aboriginal communities in relation to relevant projects for the purposes of increasing employment and income opportunities for the local Aboriginal community – see the 'Community engagement, shared benefits and land use considerations' Merit Criteria and the 'Regional economic development' Merit Criteria in Table 8 below; and
- (b) the approved plan for the NSW renewable energy sector – see the 'Regional economic development' Merit Criteria in Table 8 below.³⁵

The following is to be considered by the Consumer Trustee in assessment of a Bid, as set out in the Tender Guidelines:

- (a) the location in the NSW region in which the infrastructure may be constructed or operated; or
- (b) the type of technology or fuel that may be used to construct or operate the infrastructure.³⁶

The Consumer Trustee may modify or disapply any Merit Criteria in the Tender Guidelines for a technology type or Product if it considers it impractical or not appropriate³⁷ to apply a Merit

³⁴ For LTESAs, EII Act, section 47(4).

³⁵ For LTESAs, EII Act, section 4(4) and section 9(1) respectively.

³⁶ For LTESAs, EII Regulation, reg 29(2).

³⁷ The Consumer Trustee may consider that a modification or disapplication of the Merit Criteria is appropriate where that modification or disapplication is required in the Consumer Trustee's opinion to enable consistency with other programs or schemes, including the Australian Government's Capacity Investment Scheme.

Criteria to that technology type or Product, to the extent that doing so is not inconsistent with the EII Act or EII Regulation. If this occurs, the Tender Guidelines will set out the modification or disapplication of the Merit Criteria.³⁸

Table 7: Financial value merit criteria

Criteria	High-level description
Financial value	Effect of the Project on: • wholesale electricity costs; • the costs of network infrastructure, including REZ network infrastructure projects, required to support the infrastructure that will be constructed and operated under the LTESAs (including any fees associated with Access Rights to be allocated in relation to the network infrastructure); • the costs of other services associated with power system security; • the payments that will be required to be made by the SFV under LTESAs; • other matters the Consumer Trustee considers relevant.³⁹ The Tender Guidelines for the relevant Tender Round will set out how this criteria will apply to Access Rights.
Commercial departures	Materiality of departures from the proforma contractual terms forming part of the Tender Round.

Table 8: Project Merit Criteria

Criteria	High-level description
Impact on the electricity system	Impact of the Project on the operation of the NSW electricity system, including system benefits such as alleviating network congestion. This includes the Project's effects on other plants connected or expecting to connect prior to the Project, as well as the Project's impact on planned REZs.
Pathway to commercial operation	Evidence of the Project's technical and commercial progress and credibility of its pathway to reaching Commercial Operations Date considering risks to Project completion within proposed timeframes.
Organisational capacity to deliver Project	Evidence of capacity, capability and track record of the Proponent and other relevant entities involved in the Project to be able to deliver the Project.

³⁸ This includes assessing merit criteria at different stages or with different numbering than those outlined in Table 7 and Table 8.

³⁹ For LTESAs, EII Regulation, reg 26(4).

Criteria	High-level description
Community engagement, shared benefits and land use considerations	Evidence of efforts to: - Engage with local communities and stakeholders to foster local community support that is generally consistent with applicable NSW Government guidelines.⁴⁰ - Share financial benefits of the Project's construction and operations with local communities and stakeholders. - Improve land use considering environmental constraints and opportunities in the site selection process that is generally consistent with applicable NSW Government guidelines.⁴¹
Regional economic development	Demonstration and/or commitments to improve regional economic development including local supply chain, workforce and First Nations participation.⁴² The Consumer Trustee takes into account the guidelines regarding consultation and negotiation which consider and incorporate community interests in the design of the initiatives and are tailored specifically to local and/or First Nations communities and the plan for the NSW renewable energy sector board.
Reduction in scope 1 emissions to greenhouse gas⁴³	Demonstration of the extent to which the LTESA contributes to a reduction in scope 1 emissions of greenhouse gas in the NSW electricity sector.

3.3 Outstanding Merit

The Consumer Trustee can only recommend an LTESA for a generation Project that relates to generation infrastructure outside the geographic boundary of a REZ if it shows 'Outstanding Merit', per the EII Act, section 48(3). The EII Regulation further provides in relation to Outstanding Merit as follows:⁴⁴

- a circumstance in which an LTESA may show Outstanding Merit includes the Consumer Trustee being satisfied the LTESA shows more merit than other LTESAs for generation infrastructure recommended by it.⁴⁵
- when making a recommendation for an LTESA outside the geographic boundary of a REZ the Consumer Trustee must take into account:
 - the long-term financial interests of NSW electricity customers;
 - how the LTESA contributes to achieving the infrastructure investment objectives;
 - the non-financial value criteria of the LTESA; and
 - the impact of generation infrastructure under the LTESA on congestion in the NSW region.⁴⁶

⁴⁰ Or equivalent documents as updated or otherwise noted in Tender Guidelines.

⁴¹ Or equivalent documents as updated or otherwise noted in Tender Guidelines.

⁴² These commitments are to be reflected in an IAPP as part of a Bid, that will become contractually binding upon award in accordance with the Aboriginal Procurement Policy January 2021 (nsw.gov.au), or in equivalent documents as updated or otherwise noted in Tender Guidelines.

⁴³ Firming infrastructure only: EII Regulation, reg 29(3).

⁴⁴ Pursuant to EII Act, section 48(4), the regulations may provide for the circumstances in which an LTESA shows Outstanding Merit. The regulations currently provide for such circumstances in EII Regulation, reg 26A(1).

⁴⁵ EII Regulation, reg 26A(1).

⁴⁶ EII Regulation, reg 26A(2).

4 Tender fee and security

4.1 Tender fee

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

The tender fee is currently set as nil (i.e. no tender fee will be payable); however, future gazetted Tender Rules may include a fee to participate in Tender Rounds.

4.2 Bonding requirements

Tender Rounds require that Proponents make significant contractual commitments and the Consumer Trustee may require these commitments to be collateralised by financial bonding. To ensure the integrity of the Tender Rounds, Proponents may be required to provide bonding to support these commitments as specified in the Tender Guidelines. Unless otherwise notified by the Consumer Trustee, the bonding commitments will be based on the following milestones:

- Financial Value Bid stage – bonding (Security for Process Bond) to be provided at the Financial Value Bid stage to ensure a Project achieves contract close and to ensure the competitiveness and due administration of the Tender Rounds.
- Development and construction period – bonding to be provided at the execution of the LTESA and/or arrangements for Access Right for a dual purpose to secure against reaching financial close and the commercial operation date.

The bonding is expected to be sized to protect against potential losses the Consumer Trustee, Infrastructure Planner, and the SFV may incur should a Project not meet a legal commitment under the Tender Process Deed, a binding Bid, the PDA, LTESA or Access Right (as applicable).

Additionally, in assessing any potential losses of the SFV, a court assessing liquidated damages (in relation to a breach of contract to which the SFV is a party) is to take into account damages suffered by NSW electricity customers as if they were damages suffered by the SFV.⁴⁷

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

As bid bond requirements and sizes will vary by Tender Round and by Product, bid bond details for each Tender Round will be released as part of the Tender Guidelines issued for that Tender Round, including:

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

⁴⁷ EII Act, s 62(7).