

# Capacity Investment Scheme

## First Nations and Social Licence Market Briefing Note

### Guidance on Merit Criterion 4 and Merit Criterion 7

May 2024



# Purpose

The Australian Government expects that as the energy transition develops, genuine and long lasting economic and social partnerships will emerge between the clean energy industry and communities to better support and seize the opportunities of a net-zero economy.

The purpose of this briefing note is to provide additional information to assist Proponents in preparing quality Bids that address the First Nations and social licence Merit Criterion 4 (MC4: First Nations engagement, community engagement and community benefits sharing, and Merit Criterion 7 (MC7: First Nations and Social Licence Commitments) for the upcoming Capacity Investment Scheme (CIS) Tender 1 – National Electricity Market (NEM) – Generation (Tender 1).

Both MC4 and MC7 are weighted at 25% at the Stage A and Stage B assessment process. Projects assessed as having low merit against any individual Merit Criterion (including social licence) may not be further assessed and may not be progressed to the Financial Value Shortlist.

Commitments made by Proponents will become contractually binding in the Capacity Investment Scheme Agreements and will be subject to monitoring and enforcement conditions if a Proponent is successful in the Tender 1 Process.

## **Why it is important Proponents invest in better First Nations and social licence outcomes**

- ✓ Drives better outcomes for First Nations communities, local communities, and regional economies.
- ✓ Assists the transition to renewables by building positive local experiences and developer reputations.
- ✓ Helps facilitate the timely delivery of future projects.
- ✓ Reduces delays and costs across the life of the project.

Fostering and enabling greater economic opportunities for First Nations communities, local community support, employment opportunities, shared community benefits and development of Australian supply chains are key principles in the rollout of Capacity Investment Scheme.

## **First Nations engagement and benefits**

First Nations people are important partners in the clean energy transformation. The Australian Government is committed to meaningful engagement with Aboriginal and Torres Strait Islander peoples to achieve our priorities, while contributing to Closing the Gap.

First Nations engagement and commitments will be assessed against MC4 and MC7, to form contractually binding commitments. The assessment is looking for evidence of respectful and productive engagement with First Nations communities, and for First Nations groups to be afforded genuine social and economic opportunities through Projects supported under the CIS.

This includes opportunities for ownership, revenue sharing and energy offtake agreement models for First Nation communities.

# Social licence criteria

This briefing note should be read in conjunction with the draft Capacity Investment Scheme Agreement (**CISA**), MC4 and MC7 under section 3.2 of the Tender Guidelines, the MC4 Returnable Schedule, the Financial Value Bid form, and the MC7 Returnable Schedule. The MC4 Returnable Schedule will be available to Proponents when applying for Stage A, and the Financial Value Bid form and MC7 Returnable Schedule will be available to Proponents who progress to Stage B of the assessment process.

In the event of any inconsistency between this note and the draft CISA, the Tender Guidelines, the Project Bid form or the Financial Value Bid form, then, in descending order of priority, the:

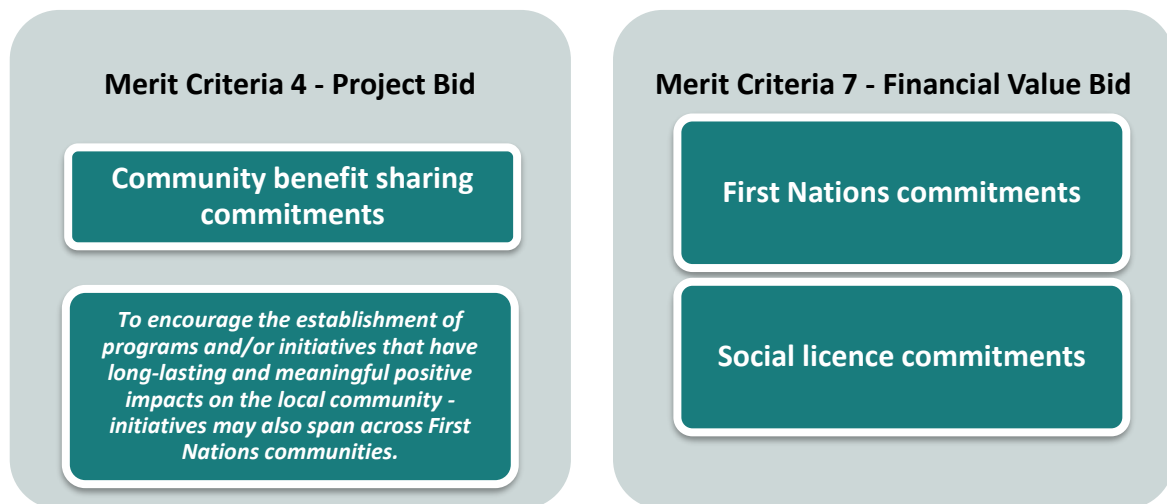
- Tender Guidelines;
- Project Bid form;
- Financial Value Bid form; and
- draft CISA,

will prevail over the content of this note to the extent of the inconsistency.

Capitalised terms have the meaning given to them in the Tender Guidelines, the draft CISA, the Project Bid form and the Financial Value Bid form (as applicable).

In accordance with section 3.2 of the Tender Guidelines, as part of the Bid responses, Proponents must:

- Demonstrate engagement with First Nations communities, stakeholders, and local communities and provide details of binding shared benefits commitments (under MC4)
- Provide First Nations and Social Licence Commitments (under MC7) as illustrated below.



Proponents are referred to:

- MC4: 'First Nations engagement, community engagement and benefits sharing' under section 3.2.1 of the Tender Guidelines.
- MC7: 'First Nations and Social Licence Commitments' under section 3.2.2 of the Tender Guidelines.
- The definition of 'Social Licence Commitments' is contained in Clause 1.1 of the draft CISA and refers to a Proponent's commitments to community benefit sharing, First Nations, and regional and economic benefits over the life of a proposed Project.

# Assessing First Nations and community engagement, and commitments

First Nations and community engagement and commitments will be competitively assessed.

Bids should provide evidence of early and culturally aware engagement with First Nations communities, an understanding of the local community and an understanding of the Project’s impacts on First Nations and local communities.

Bids that provide a strong range of commitments across all First Nations and social licence categories (MC4 and MC7) with a clear strategy to achieve them will be assessed favourably.

With reference to the assessment for Projects in NSW below, Bids in other jurisdictions are encouraged to make commitments similar to the objectives outlined in the NSW Renewable Energy Sector Board Plan for supply chain, employment, skills and knowledge transfer, First Nations participation, and fair and ethical practices, and should they choose to make such commitments their Bids may be found to be of higher merit.

Proponents must demonstrate how their strategies and approach to achieving their proposed Social Licence Commitments will drive meaningful change and positive outcomes for the communities they seek to operate in. Social Licence Commitments include a Proponent’s commitments to First Nations communities, and support for regional economic development in the renewables sector, including supply chain and workforce. **Under the CISA, First Nations and Social Licence Commitments made by Successful Proponents will become contractually binding.**

Commitments under MC4 relate to benefits for local community stakeholders only, but it is noted that these commitments may overlap somewhat with the commitments provided under MC7.

**Commitments made in the MC4 returnable schedule will become contractually binding under the CISA** and should not be duplicated in the MC7 returnable schedule, but reference to these commitments can be made in the Financial Value Bid.

The tables below outline the policy intention for the First Nations and Social Licence Commitments and provides examples of valued contributions that could support quality Bid responses.

## MC4 – First Nations engagement, community engagement and benefits sharing

MC4 Element	Policy intention	Examples of what we are looking for
Shared community benefit commitments	To encourage the establishment of programs and/or initiatives that have long-lasting and meaningful positive impacts on the local community. The quality and positive impact of the initiatives are valued over the quantum of initiatives and may span across First Nations communities.	✓ Inviting local community to coinvest in the Project with profit sharing arrangements with the community members. This can

MC4 Element	Policy intention	Examples of what we are looking for
		<p>be implemented by projects that are in construction or that are already in operation<sup>1</sup>.</p> <ul style="list-style-type: none"> <li>✓ Novel approaches to electricity access schemes where local communities benefit from lower prices and/or greater energy security through access to small scale solar and battery installations. Optimised infrastructure to benefit neighbouring community upgrades to degraded land/waterways located near the Project.</li> <li>✓ Commitments to minimise adverse environmental impacts and maintain high biosecurity standards.</li> </ul>

### MC7 – First Nations and Social Licence Commitments

MC7 Element	Policy intention	Examples of what we are looking for
First Nations	To provide First Nations people with opportunities to increase economic and social benefits.	<ul style="list-style-type: none"> <li>✓ Ownership, revenue sharing and energy offtake agreement models for First Nation communities.</li> <li>✓ Partnering with First Nations employment services during pre-construction to support hiring and ongoing management of First Nations workforce.</li> <li>✓ Funding commitments to subcontract with First Nations businesses.</li> <li>✓ Scholarships with local universities to support individuals transitioning from agricultural and mining sectors to the renewable sector.</li> <li>✓ Funding to support work readiness (i.e. driver’s licence attainment, secure accommodation, pre-apprenticeship training).</li> <li>✓ Bids that can demonstrate commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan objectives for First Nations participation may be found to be of higher merit.</li> </ul>
Local Employment	To encourage investment in local employment including skills, labour standards, training, and capacity building to support the development of the renewable energy workforce.	<ul style="list-style-type: none"> <li>✓ Evidence of workplace agreements between Proponents and organisations including with unions (e.g. agreed memoranda of understanding) that cover meeting high standard approaches to employment conditions, qualifications and training.</li> <li>✓ Appointment of a regional economic development lead to engage with local businesses to maximise use of the local industry over the project life.</li> <li>✓ Appointment of a renewable workforce participation lead who is employed to engage with the community in developing the design of initiatives, implement workforce upskilling and pre-employment programs and initiatives, including for underrepresented and disadvantaged groups, and adopt and maintain labour standards.</li> <li>✓ Contribution to, or funding of, locally based vocational education and training courses and actively working with existing government and industry bodies to deliver new training to meet industry needs.</li> <li>✓ Establishment of a learning hub for the project’s local schools to support early-stage education on renewable energy concepts, over operational life of the Project.</li> <li>✓ Funding scholarships for school leavers, internships, mentoring programs and return to work programs for women and mature age workers.</li> <li>✓ Bids that can demonstrate commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan</li> </ul>

<sup>1</sup> Note specific opportunities for economic contribution for First Nations groups should be included in MC7 during Stage B.



MC7 Element	Policy intention	Examples of what we are looking for
		objectives for employment, skills and knowledge transfer, and employment of underrepresented groups may be found to be of higher merit.
<b>Local Content</b>  <i>Local Content means: goods, services and labour procured from Australia and New Zealand.</i>	To maximise use of local content and to incentivise Projects to actively source Local Content or incorporate local content when possible, including locally sourced materials and suppliers that support the development of local supply chains, including in renewable components and materials.	<ul style="list-style-type: none"> <li>✓ Funding research and development programs to drive innovation within local and Australian supply chains.</li> <li>✓ Sourcing goods and services from local suppliers.</li> <li>✓ Funding to build the capacity of the local manufacturing sector.</li> <li>✓ Commitment to complete an Australian Industry Participation Plan.</li> <li>✓ Bids that can demonstrate commitments similar to those outlined in the NSW Renewable Energy Sector Board Plan objectives for supply chains may be found to be of higher merit.</li> </ul>

## First Nation and Social Licence Commitments for Projects in NSW

In accordance with section 3.2 of the Tender Guidelines, Projects in NSW applying for a CISA must take into account the First Nations Guidelines regarding consultation and negotiation with First Nations communities and the NSW Renewable Energy Sector Board Plan when developing First Nations and Social Licence Commitments under MC7. First Nations and Social Licence Commitments made under MC7 will be assessed against Table 7 in the Tender Guidelines, and also set out in Table 1 below, based on considerations in the NSW Renewable Energy Sector Board Plan. Proponents should note that:

- Minimum requirements and/or stretch goals do not apply to technologies not listed in Table 7 in the Tender Guidelines.
- Where a Project is not able to commit to any particular minimum requirement, the Proponent should stipulate which level of commitment it can commit to for the relevant requirement and demonstrate best efforts made to achieve the minimum requirements with detailed justifications (refer to further guidance in the following section).

**Table 1: For Projects in NSW - Minimum requirements and stretch goals related to MC7<sup>2</sup>**

Supply chain inputs criteria <sup>3</sup>	Minimum requirements			
	Wind	Solar	Pumped hydro	Battery storage
Before COD <sup>4</sup> – development and construction phase (% of total CAPEX)	40%	49%	66%	23%
After COD – operation and maintenance phase (% of total OPEX)	51%	71%	61%	35%
Steel product and components using locally milled steel (% of total Steel)	10%	95%	30%	95%
Supply chain inputs criteria	Stretch goals			
	Wind	Solar	Pumped hydro	Battery storage

<sup>2</sup> This section is based on the considerations in the NSW Renewable Energy Sector Board Plan.

<sup>3</sup> % for supply chain inputs refers to goods and services procured from in Australia & New Zealand as a percentage of the relevant metric indicated below.

<sup>4</sup> Includes all costs from project inception through to COD.

Supply chain inputs criteria <sup>3</sup>	Minimum requirements			
	Wind	Solar	Pumped hydro	Battery storage
Before COD – development and construction phase (% of total CAPEX)	72%	81%	86%	78%
After COD – operation and maintenance phase (% of total OPEX)	76%	81%	82%	79%
Steel product and components using locally milled steel (% of total Steel)	95%			
Investment and innovation in the supply chain	Minimum requirement and stretch goal			
Commitment made to local supply chain, including for investment, innovation and environmentally sustainable procurement (cost in real AU\$)	For Tender Round 5, Proponents to make a voluntary but contractually binding commitment to investment and innovation.			
Employment, skills and knowledge transfer criteria	Minimum requirement		Stretch goal	
Learning workers <sup>5</sup> (% of Total Project workforce)	20%		40%	
Apprentices (% of all trades positions on a Project)	20%		30%	
First Nations participation criteria	Minimum requirement		Stretch goal	
First Nations participation (% of TPCV <sup>6</sup> )	1.5%		10%, or the goal in the region-specific protocol under the First Nations Guidelines.	
Fair and ethical practice criteria	Minimum requirement		Stretch goal	
Employment of underrepresented groups <sup>7</sup> (% of Total Project workforce <sup>8</sup> )	15%		25%	
Environmentally sustainable procurement criteria	Numerical minimum requirements do not apply. Proponents are required to respond to evidence requirements to demonstrate environmentally sustainable procurement. This includes:			
	<ul style="list-style-type: none"> <li>• Alignment with NSW Net Zero Plan.</li> <li>• Alignment with NSW Circular Economy Policy Statement.</li> <li>• Sourcing materials according to EN15804, Green Building Council’s or other appropriate sustainability framework.</li> </ul>			

<sup>5</sup> Note: as defined in the NSW Renewable Energy Sector Board Plan, a “learning worker” is a worker without qualifications or who needs to update their qualifications or skills to meet the needs of the infrastructure project. This includes trainees and apprentices. Once defined as a learning worker, the worker maintains this status for the duration of the project. All workers on a project who undertake accredited training count towards the learning worker requirement, not just construction workers. The project workforce includes all people who contribute to the project. This includes people such as managers, engineers, finance team, environmental team, safety team, construction employees consisting of supervisors, those in leadership roles, tradespeople and operators. People who undertake training organised by the contractor prior to employment are counted as learning workers only if they are employed on the project. Training must be accredited vocational education and training (VET) or nationally recognised professional qualifications that meet the needs of the project and can be full or part qualifications (such as one or more units of competency). It may be subsidised by government funding or through a fee-for-service arrangement. Participants in the NSW Government Trade Pathways Program are to be included as learning workers and count towards achievement of this outcome.

<sup>6</sup> The TPCV should be calculated as the sum of “total capital expenditure (CAPEX) amount of the Project” and “total operational expenditure (OPEX) amount over the life of the Project in relation to the Project” as calculated in the MC7 IAPP Returnable Schedule. As the social licence IAPP will become contractually binding on award, TPCV will be a defined term that is contractually enforceable in the relevant Project Documents.

<sup>7</sup> Underrepresented groups include people with characteristics defined in the Anti-discrimination Act 1977 (NSW) and people who are long-term unemployed in addition to young people and women.

<sup>8</sup> Means the total working hours that the Proponent will engage to deliver the Project, calculated as the number of FTE days the Proponent will engage to deliver the Project over the term multiplied by 7.6 hours. As the social licence commitments IAPP will become contractually binding on award, TPW will be a defined term that is contractually enforceable in the relevant Project Documents.

# Guidance on Returnable Schedules

To ensure transparency and accountability, and the delivery of tangible benefits to local communities and economies, Proponents are required to provide firm financial values for their First Nations and Social Licence Commitments in the MC4 and MC7 Returnable Schedules. These commitments must be clearly articulated.

Proponents must specify exact financial values for **each** individual commitment in real Australian Dollars (A\$) as of the Tender Closing Date, which is the date on which a Proponent submitted its Bid as part of the Tender Process. Financial values should be absolute figures, not presented as ranges. In cases of uncertainty, Proponents must use the lower end of any estimated range as the firm value. Proponents must clearly define the period over which each commitment will be delivered. This ensures that the timeline for delivering social benefits is transparent and measurable, and Successful Proponents may be held to account for delivery of commitments.

Proponents must ensure that the commitments made in the MC4 Returnable Schedule (submitted as part of the Project Bid) and MC7 Returnable Schedules (submitted as part of the Financial Value Bid) are consistent with the “Social Licence Commitments” (encompassing community benefit sharing, First Nations and Social Licence Commitments) populated in the draft CISA as part of the Financial Value Bid. The Returnable Schedules are mandatory attachments and a Bid will be unsuccessful if these are not provided.

Pursuant to Section 4.29 of the Tender Guidelines, the community benefits, First Nations and Social Licence Commitments provided in the draft CISA as part of the Financial Value Bid will be contractually binding where the Proponent becomes a Successful Proponent and enters into a CISA with the Australian Government.

## First Nations and Social Licence Commitment expectations

Where a Proponent fails to provide First Nations and Social Licence Commitments for each category of the Returnable Schedule, their Bid may be scored lower relative to Bids that are otherwise of equivalent merit but are able to provide strong commitments across all categories.

Bids that do not provide commitments will be assessed based on a nil response and may be assessed as low merit where insufficient justification is provided to support their response. Where Proponents are unable to provide commitments for a particular category, the Proponent should:

- Demonstrate best efforts and a well-considered approach undertaken to maximise commitments across each of the categories, providing evidence such as procurement planning, market sounding, and engagement with suppliers or workforce groups.
- Provide a detailed justification as to the constraint (e.g. capacity, timeframe, or cost) that prohibits the requirements from being achieved, with evidence of the constraint. The robustness of the evidence and rationale provided will form part of the assessment.
- Proponents should consider making alternative commitments in the optional table, where it can demonstrate that these commitments support the Merit Criteria policy intent, to strengthen



their response. The alignment of any alternative commitments to the policy intent of the Merit Criteria, as outlined in this brief, will be considered in the assessment.

- Projects that have progressed beyond the development stage should submit their performance details against the relevant targets to date and provide commitments relevant to future phases, including operations and maintenance.

### **MC4 Returnable Schedule**

As outlined in section 3.2 of the Tender Guidelines, Proponents must provide binding commitments for the Project's shared community benefits (applicable to local community stakeholders only) in the completed MC4 Returnable Schedule. For further guidance on how to populate the MC4 Returnable Schedule, see the instructions tab in the excel workbook.

### **MC7 Returnable Schedule**

As outlined in section 3.2 of the Tender Guidelines – Proponents must provide binding commitments to improve First Nations economic and social outcomes, and regional economic development, by completing the MC7 Returnable Schedule.

Commitments provided in the MC4 returnable schedule, should not be duplicated in the MC7 returnable schedule.

An optional table is included in the MC7 Returnable Schedule to provide flexibility where Proponents decide to offer additional Social Licence Commitments beyond the framework provided.

- The optional table enables Proponents to further strengthen their Bids by making supplementary commitments to support initiatives and/or programs which align with the policy intent of MC7.
- The optional table may be utilised by Proponents that have unique and innovative First Nations or regional industry development initiatives that do not fit neatly within the parameters provided in the standard tables and/or may require different milestones or measures. Any commitments provided in this table should include clear milestones and be contractually binding upon award.

Projects in NSW applying for a CISA must complete the MC7 Returnable Schedule specific to NSW, as stipulated in the Tender Guidelines. For further guidance on how to populate the MC7 Returnable Schedule see the instructions tab in the excel workbook.

Neither the Commonwealth of Australia as represented by the Department of Climate Change, Energy, the Environment and Water (the Commonwealth) nor AEMO Services Limited (ABN 59 651 198 364) (AEMO Services) guarantees the accuracy, currency or completeness of any information contained in this document. To the maximum extent permitted by law, the Commonwealth and AEMO Services will not be responsible for any loss caused by reliance on it. The information in this document is not a substitute for obtaining professional advice. Each of the Commonwealth and AEMO Services retain discretion to score and assess bids and make recommendations in accordance with the Tender Guidelines and nothing in this document should otherwise be construed as limiting the Commonwealth's or AEMO Services discretions or other rights in the Tender Guidelines.

**Copyright** | © Commonwealth of Australia. The material in this publication is protected by copyright under Australian law.