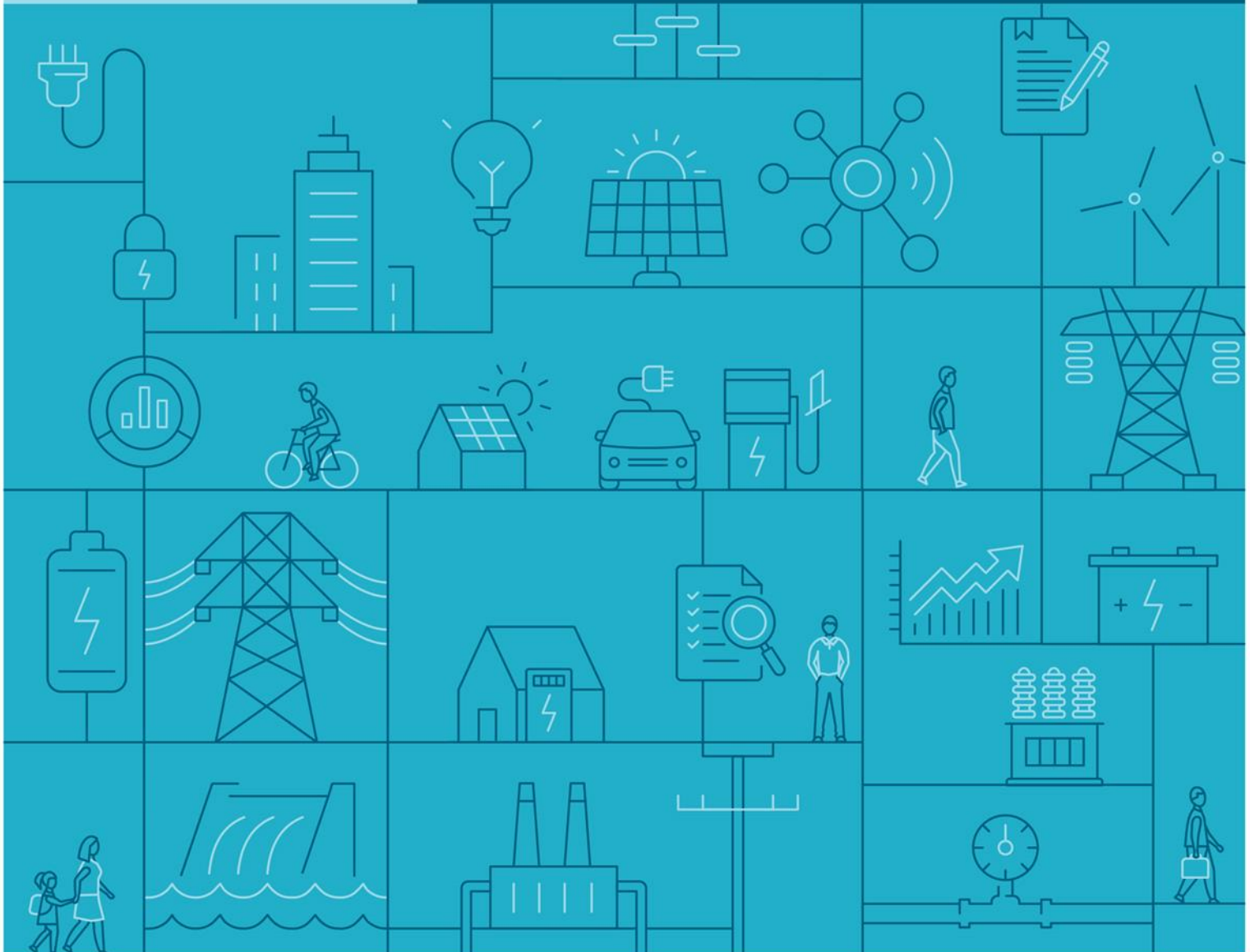




LTESA and Access Right Tender Rules

September 2022

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	Subject to Section 1.2.2, 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 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).
Alternative 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 2.5.
Bid	Project Bid and/or Financial Value Bid submitted by a Proponent in a Tender Round.
Bid Entity	The legal entity to be responsible for the Proponent's Project Bid and Financial Value Bid, and counterparty to the PDA and/or LTESA, as proposed in accordance with Eligibility Criteria 16.
Consumer Trustee	The 'consumer trustee' appointed pursuant to 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 2.5.
EII Act	<i>Electricity Infrastructure Investment Act 2020</i> (NSW).
EII Regulation	<i>Electricity Infrastructure Investment Regulation 2021</i> (NSW).
Eligible Proponent	A Proponent who has met the Proponent Eligibility Criteria outlined in Section 3.1.2 and has progressed to the Project Bid stage in a given Tender Round.
Financial Value Bid	A proposal made by a Proponent to the Consumer Trustee following a Project Bid, comprising a Default Financial Value Bid, and potentially an Alternative Bid as further described in Section 2.5.
Financial Value Shortlist	Selected shortlist of Financial Value Bids to be progressed to portfolio assessment, as further described in Section 2.6.
Infrastructure Investment Objectives Report or IIO Report	The Infrastructure Investment Objectives Report prepared by the Consumer Trustee under EII Act, section 45(2).
Infrastructure Planner	The 'infrastructure planner' appointed in respect of a REZ or part of a REZ (as applicable) pursuant to 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.

Term	Definition
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 at the conclusion of the portfolio assessment stage as described in Section 2.6.1.
Product	LTESAs and/or Access Rights.
Project	A physical electricity generation or storage facility built in relation to an LTESA or Access Right, including any proposed supporting network remediation and 'shallow' connection assets.
Project Bid	A Bid made by a Proponent to the Consumer Trustee as further described in Section 2.3.
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 and at an appropriate stage of development progress to assessment against the merit criteria as set out in Section 3.1.1.
Project Shortlist	Selected shortlist of Project Bids to progress to the Financial Value Bid stage, based on assessment against the non-financial merit criteria described in Section 2.4.
Proponent	An entity or person participating in a Tender Round for the award of a Product, 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.
REZ	A 'renewable energy zone' under the EII Act.
Risk Management Framework	The 'risk management framework' developed by the Consumer Trustee pursuant to EII Act, section 51.
Scheme Financial Vehicle or SFV	The counterparty to the LTESAs and Project Development Agreements, responsible for administering payments and, where applicable, collecting access fees for distribution to relevant entities.
Selected Proponent	In respect of a Proponent, any person whose Project is selected as set out in Section 2.8.
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 subject to Section 1.2.2 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 EII Act, section 47 and (subject to Section 1.2.2) 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:

- the award of LTESAs, pursuant to the EII Act, section 47(5); and
- subject to Section 1.2.2 below, the granting or increasing of access rights, pursuant to the EII Act, section 60(4), and EII Regulation, reg 42A(2)(a).

Important Note: The application of certain sections of these Tender Rules which relate to the granting or increasing of access rights (**AR Provisions**) is subject to Section 1.2.2. Section 1.2.2 specifies when the AR Provisions are operative, and this document should be read accordingly.

This Section 1 summarises:

- the legislated requirements of this document, including the operation of the AR Provisions;
- 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 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, subject to Section 1.2.2, the granting or increasing of Access Rights.

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. These Tender Rules must be gazetted before conducting Tender Rounds for LTESAs.

In accordance with 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 these Tender Rules. Under 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

Under the EII Regulation, reg 42A, the Consumer Trustee must carry out functions to make rules, undertake competitive tenders in accordance with those rules and make recommendations to the Infrastructure Planner in relation to the granting or increasing of Access Rights 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

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

- (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.

The Consumer Trustee does not purport to exercise the functions set out in EII Regulation, reg 42A, and the AR Provisions in this document are not operative, unless and until:

- either (a) or (b) above has occurred; and then
- the Consumer Trustee has published a notice on the Consumer Trustee website for the applicable Tender Round specifying that fact and any further details and stipulations as may be required (**AR Provisions Operation Date**).

Prior to the AR Provisions Operation Date, these Tender Rules and any associated materials (including the relevant Tender Guidelines), are to be read down to the extent they refer to any functions or activities of the Consumer Trustee relating to Access Rights.

The Consumer Trustee may make any further amendments to these Tender Rules (including re-gazettal) and to the Tender Guidelines following the application of these Tender Rules to Access Rights.

1.2.3 Precedence

Where the EII Act or EII Regulation differ from this document, the applicable criteria in the EII Act and EII Regulation will take precedence to the extent of any inconsistency.

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 2.2
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
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 rows below
s47(5)(g) reg29(1)	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	Section 3.1

EII Act or EII Reg Ref	EII Act and EII Regulation requirement	Tender Rules document reference
	(b) the type of technology or fuel that may be used to construct or operate the infrastructure	
s47(5)(g) reg29(2)	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
s47(5)(g) reg29(3)	must deal with the assessment of a tender bid against the non-financial value criteria for LTES agreements	Sections 2.4 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), 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.

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 replaced by re-gazettal (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.

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)(a).

Requirements for the Consumer Trustee in administering Tender Rounds for LTESAs under the EII Act and EII Regulation are summarised in Table 3 below.²

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.	Merit Criteria 7: Community engagement and shared benefits Merit Criteria 8: Regional economic development
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.	Merit Criteria 5: Organisational capacity to deliver Project and other characteristics Merit Criteria 8: Regional economic development
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 two 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

² Additionally, the Consumer Trustee must conduct competitive tenders and make recommendations in relation to LTESAs on the basis of the IIO Reports, pursuant to EII Act, section 45(6) and more broadly, must exercise its functions consistently with objectives of the EII Act, pursuant to EII Act, section 3(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
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
s47(3)(a), reg 26(2A)(a)	<p>Before conducting a tender for the construction and operation of generation infrastructure LTESAs that includes an option to exercise a derivative that is not a fixed shape, fixed volume derivative arrangement, the Consumer Trustee must be satisfied:</p> <ul style="list-style-type: none"> (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 LTESA on various items.	Merit Criteria 1 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), (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, unless the Consumer Trustee is satisfied of exceptional circumstances it specified before conducting the tender.	Eligibility Criteria 3
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

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
s48(2)	Financial value must be the primary consideration when recommending LTESAs.	Sections 2.6, 2.6.1, 2.7 Merit Criteria 1: Financial value
s48(3)	Recommendations for generation LTESAs must relate to generation infrastructure in REZs unless the Consumer Trustee is satisfied that the generation LTESA shows Outstanding Merit.	Section 3.3
s48(4)(a)	The circumstances in which LTESAs can show Outstanding Merit may be specified in the EII Regulation.	See following row
s48(4)(a) reg26A(1)-(2)	<p>An LTESA showing outstanding merit includes the Consumer Trustee being satisfied it shows more merit than other LTESAs for generation infrastructure recommended by the Consumer Trustee.</p> <p>In making a recommendation for generation infrastructure that will not be part of a REZ, the Consumer Trustee must take into account:</p> <ul style="list-style-type: none"> (a) the long-term financial interests of NSW electricity customers; (b) how the LTESA contributes to the infrastructure investment objectives; (c) the non-financial value criteria of the LTESA; (d) the impact of generation infrastructure under the LTESA on congestion in the NSW region. 	Section 3.3
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 row
s48(4)(b) reg30(1)-(2)	<p>Consumer Trustee may include the following information in a recommendation to SFV:</p> <ul style="list-style-type: none"> (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 produced under its direction, if produced or obtain for the benefit of Consumer Trustee or SFV. 	Section 2.7
s48(4)(b) reg30(3)	When making a recommendation about an LTESA the Consumer Trustee must take into account non-financial value criteria for LTESA.	Sections 2.4, 2.7 and 3.2

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 in accordance with the rules	Sections 1.2.2, 1.2.5, 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 2.7

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; and
- general contextual information, for Proponent reference and information purposes only, that the Consumer Trustee considers relevant and appropriate.

To the extent that the Tender Guidelines may materially differ from 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.

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 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.

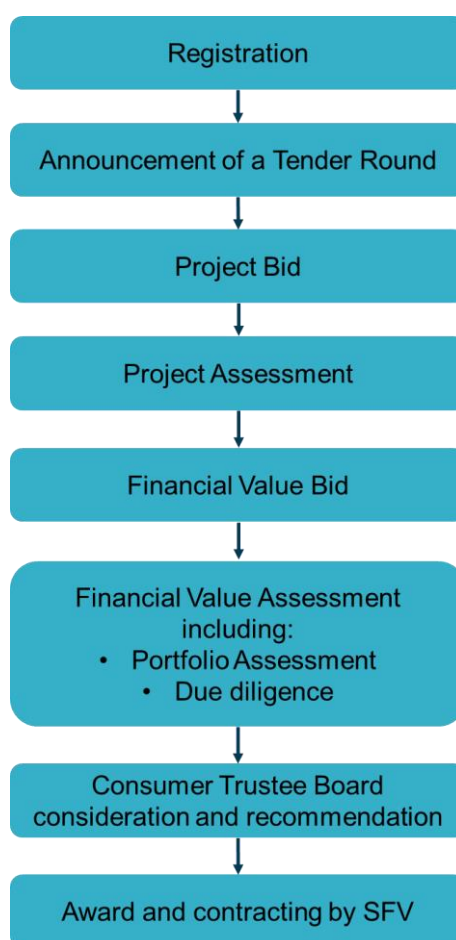


Figure 1: Tender and assessment process overview

2.1 Registration

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.

2.2 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, 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.

2.3 Project Bid

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.

An online application form and corresponding Returnable Schedules will be provided to Eligible Proponents who have executed and returned the Tender Process Deed.

Project Bids will be sought from all Eligible Proponents through the Consumer Trustee's online platform. 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. 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 9. 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.

2.4 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 submitted 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 progress to the Project Shortlist prior to the Financial Value Bid stage.

2.5 Financial Value Bid

2.5.1 Overview of Financial Value Bids

The Consumer Trustee will invite Proponents whose Bids progress to the Project Shortlist to submit a Financial Value Bid for that Project for assessment against Merit Criteria 1 (Financial Value) and Merit Criteria 2 (Commercial departures). Merit Criteria 2 will be assessed against proposed contractual terms or information that the Consumer Trustee considers appropriate to provide Proponents.

All Financial Value Bids will be assessed against the same merit criteria, irrespective of which Product (i.e., LTESA and/or Access Right) 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 progressed to 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. 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.

2.5.2 Default and Alternative Bids

As part of the Financial Value Bid, 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.

As the Default Financial Value Bid will 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 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.

2.6 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 for 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.³ Financial value is further defined in the EII Regulation.⁴

³ For LTESAs, EII Act, section 48(2).

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

The Consumer Trustee will develop a Financial Value Shortlist ahead of due diligence and portfolio assessment, based on overall merit (Table 8 and Table 9) and the relevant Tender Round size guidance.

2.6.1 Portfolio assessment

The Consumer Trustee will develop a Portfolio Shortlist after assessing the cumulative impacts that may arise from the Financial Value Shortlist. The Consumer Trustee conducts this after the individual assessment of Financial Value Bids, and it is designed to mitigate any aggregated adverse effects that 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, Table 5 outlines the portfolio level adverse outcomes that (by way of example) may be considered by the Consumer Trustee in this step.

Table 5: Examples of how issues identified in the portfolio assessment stage may impact a shortlisted Project

Issue	Where this may impact a shortlisted Project
1. Adverse network effects	Where multiple shortlisted Projects are in a similar geographic location.
2. Adverse community effects	Where multiple shortlisted Projects without planning approval are in a similar geographic location.
3. Supplier concentration risk	Where multiple shortlisted Projects are proposing to use the same contractors or original equipment manufacturers.
4. Counterparty concentration risk	Where several shortlisted Projects are proposed by the same Proponent, ⁵ creating a material counterparty risk as determined by the Consumer Trustee.
5. Other adverse effects	Where a shortlisted Project has a material detrimental effect to a higher ranked Project, as determined by the Consumer Trustee.

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

2.6.2 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. 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
- receiving advice and input from the Consumer Trustee's Advisers relating to the assessment of Bids.

⁵ Or where a Project is proposed by a party that has several awarded LTESAs.

2.7 Consumer Trustee board consideration and recommendation

Within the Consumer Trustee, the Consumer Trustee board⁶ 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 EII Regulation, reg 42A(2)(c).

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.⁷

In making a recommendation for an LTESA, the Consumer Trustee must act consistently with the requirements of the EII Act and EII Regulation.⁸

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).

2.8 Award and contracting

The SFV, as counterparty to the LTESAs and the responsible party for administering payments under the LTESAs, executes LTESAs and related agreements in accordance with its legal and governance requirements.

Similarly, the Infrastructure Planner 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 (Selected Proponent) ultimately remains a decision of the SFV or Infrastructure Planner (as applicable).⁹

⁶ Subject to any delegations made by the board with respect to Recommended Bids.

⁷ EII Regulation reg 30(1)-(2).

⁸ 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.

⁹ 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;¹⁰ and
- Access Rights.

Where the Minister directs the Consumer Trustee to conduct a firming competitive tender under EII Act, section 47(2), the Consumer Trustee must prepare a fresh IIO Report. 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 (i.e. LTESA and/or Access Right) is sought.

3.1 Eligibility criteria

The eligibility criteria consist of both Project and Proponent components, as described in Table 6 and Table 7 respectively.

For each Tender Round, further guidance (if any) on the eligibility criteria 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.¹¹

3.1.1 Project Eligibility Criteria

Proponents must provide information to demonstrate that their Project meets the Project Eligibility Criteria set out in Table 6. Projects that do not meet all Project Eligibility Criteria will not proceed to merit assessment or be further considered by the Consumer Trustee. The Consumer Trustee may make exceptions where, in its absolute discretion, it considers that there are grounds for the Project proceeding to merit assessment.

Table 6: Project eligibility criteria

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
EC1	Project must involve generation from a renewable energy source.	√ ¹²	√		
EC2	Project must have a generation capacity of not less than 30 MW. ¹³	√	√		

¹⁰ Additional firming-specific eligibility and/or merit criteria may be provided prior to a tender for firming LTESAs.

¹¹ EII Regulation, reg 29(1).

¹² Storage projects seeking an Access Right will not be required to meet this eligibility criteria.

¹³ This criterion will not be applied for REZ Access Rights allocated after completion of the initial allocation as defined under the CWO REZ Draft Access Scheme Declaration.

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
EC3	Project has not previously been awarded an LTESA or REZ Access Right. ¹⁴	✓	✓	✓	✓
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 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.	✓	✓	✓	✓
EC7 ¹⁵	The 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.	✓	✓	✓	✓ ¹⁶
EC8 ¹⁷	Projects must be in receipt of a connection agreement or a network service provider response to a connection enquiry. ¹⁸		✓	✓	✓
EC9	Project must submit a Community Engagement Plan, that will become contractually binding upon award.	✓	✓	✓	✓ ¹⁹

¹⁴ 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).

¹⁵ This requirement may be removed for demand-response Projects.

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

¹⁷ This requirement may be removed for demand-response Projects.

¹⁸ If an Access Right is sought, this eligibility criterion is not required to be met.

¹⁹ This requirement may be removed for demand-response projects.

Item	Criteria	Access Right	Generation LTESA	LDS LTESA	Firming LTESA
EC10	Project is not in receipt of financial support in the form of project / revenue underwriting from prescribed programs. ²⁰ Note: Projects in receipt of financial support for pre-investment activities are eligible.	✓	✓	✓	✓
EC11	Project must not be subject to an order prohibiting connection to network infrastructure made under EII Act, section 29.	✓	✓	✓	✓
EC12	Project must provide an IAPP as part of its Bid, ²¹ that will become contractually binding upon award.	✓	✓	✓	✓
EC13	Proponent must have all necessary rights to use any intellectual property required to carry out the Project.	✓	✓	✓	✓

3.1.2 Proponent Eligibility Criteria

Proponents must provide information demonstrating that they meet all Proponent Eligibility Criteria set out in Table 7. Proponents that do not meet all Proponent Eligibility Criteria will not have their Bids proceed to merit assessment or be further considered by the Consumer Trustee. The Consumer Trustee may make exceptions where, in its absolute discretion, it considers that there are grounds for the Project proceeding to merit assessment.

Table 7: Proponent²² eligibility criteria

Item	Criteria
EC14	Proponent must hold an Australian Business Number (ABN) and must be: <ul style="list-style-type: none"> 1. 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 2. a Commonwealth entity under <i>Public Governance, Performance and Accountability Act 2013</i> (Cth), section 10, or 3. an Australian local government or council. <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 Bid, per the contact listed on the Consumer Trustee website.</p>

²⁰ 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.

²¹ In accordance with the [Aboriginal Procurement Policy January 2021 \(nsw.gov.au\)](#)

²² 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
EC15	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	Proponent must propose one Bid Entity.
EC17	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.
EC18	Proponent 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	Proponent must not have been named as an organisation that has not complied with the <i>Workplace Gender Equality Act 2012</i> (Cth).
EC20	Proponent must comply with: <ul style="list-style-type: none"> • 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.
EC21	Proponent must hold all insurances required by law.
EC22	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 (including that the Proponent has engaged in corrupt conduct).
EC23	If the Proponent is a 'reporting entity' under the <i>Modern Slavery Act 2018</i> (Cth) 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 Bid by providing evidence that satisfies the criteria detailed in the tables below.

The guidance provided in Tables 8 and 9 will apply to all Tender Rounds. Further guidance (if any) specific to each Tender Round may be provided in the Tender Guidelines.

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 MC8 in Table 9 below.²³

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 MC7 and MC8 in Table 9 below; and
- (b) the approved plan for the NSW renewable energy sector – see MC5 and MC8 in Table 9 below.²⁴

Table 9 includes the following to be considered by the Consumer Trustee in assessment of a Bid:

- (c) the location in the NSW region in which the infrastructure may be constructed or operated, or
- (d) the type of technology or fuel that may be used to construct or operate the infrastructure.²⁵

²³ For LTESAs, EII Act, section 47(4).

²⁴ For LTESAs, under the EII Act, section 4(4) and section 9(1) respectively.

²⁵ For LTESAs, EII Regulation, reg 29(2).

Table 8: Financial value merit criteria

#	Criteria	Indicative factors to be considered under criterion
MC1	Financial value	<p>Effect of the Project on:</p> <ul style="list-style-type: none"> 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; 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.²⁶ <p>Note: Alternative Bids will be assessed separately.</p>
MC2	Commercial departures	Materiality of departures from the Consumer Trustee's contractual terms.

Table 9: Project merit criteria

#	Criteria	Indicative factors to be considered under criterion
MC3	Impact on the electricity system	Impact of the Project on the operation of the NSW electricity system, including material adverse effects on other plant connected or expecting to connect prior to the Project, or impact on planned REZs.
MC4	Pathway to commercial operation	<p>Credibility of pathway to:</p> <ul style="list-style-type: none"> secure debt and equity funding; reach key development approvals; obtain market registration, a connection agreement from the relevant network service provider and meet the relevant Generator Performance Standards; and secure key project construction, operations, and offtake contracts.
MC5	Organisational capacity to deliver Project and other characteristics	<ul style="list-style-type: none"> 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. Capability and capacity of suppliers and contractors to meet timeframes. Credit worthiness of the organisations delivering the Project, including financiers.
MC6	Land use considerations	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> . ²⁷
MC7	Community engagement and shared benefits	<p>Evidence 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>.²⁸</p> <p>Initiatives to share the financial benefits of the Project with local communities.</p>

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

²⁷ Or equivalent documents as updated or otherwise noted in Tender Guidelines.

²⁸ Or equivalent documents as updated or otherwise noted in Tender Guidelines.

#	Criteria	Indicative factors to be considered under criterion
MC8	Regional economic development	<p>Demonstration and/or commitments to:</p> <ul style="list-style-type: none"> • local supply chain inputs; • supporting investment, local innovation, and commercialisation opportunities; • maximising local employment, skills development, and knowledge transfer; • First Nations focused skills development opportunities, and economic participation, working with First Nations people; • ensuring fair and ethical practice in the workforce and supply chain; and • promoting environmentally sustainable procurement throughout the supply chain. <p>The Consumer Trustee takes into account the guidelines regarding consultation and negotiation with local Aboriginal communities and the plan for the NSW renewable energy sector board.</p>

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 EII Act, section 48(3). The EII Regulation further provides in relation to Outstanding Merit as follows:²⁹

- 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.³⁰
- when making a recommendation for an LTESA outside the geographic boundary of a REZ the Consumer Trustee must consider:
 - 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.³¹

²⁹ Pursuant to EII Act s 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).

³⁰ EII Regulation reg 26A(1).

³¹ EII Regulation reg 26A(2).

4 Tender fee and security

4.1 Tender fee

For any Tender Round, 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 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 Tender Rounds.

For probity reasons, all Proponents will be required to provide bonding to support these commitments. 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 probity, competitiveness and due administration of the Tender Rounds.
- Development and construction period – bonding to be provided at signing of the LTESA and/or 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).

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

As bid bond 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:

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