



NSW Electricity Infrastructure Tenders

Guidelines – Tender Round 3

May 2023



ACKNOWLEDGEMENT TO COUNTRY

AEMO Services would like to acknowledge the Traditional Owners of country throughout Australia and recognise their continuing connection to land, water and culture.

We pay our respect to their Elders, past and present.



IMPORTANT NOTICE

ACKNOWLEDGEMENT

The provisions of the *Electricity Infrastructure Investment Act 2020* (NSW) (EII Act), *Electricity Infrastructure Investment Regulation 2021* (NSW), associated regulations and Regulatory Instruments made from time to time, and the Tender Rules apply to the Tender Rounds. This document includes a description of requirements of the EII Act, EII Regulation, associated regulations and Regulatory Instruments and Tender Rules but is not a substitute for, and does not derogate from, those requirements.

To the extent that these 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.

DISCLAIMER

This document has been prepared by AEMO Services Limited (ABN 59 651 198 364) as the NSW Consumer Trustee (AEMO Services). It is subject to the [Tender Conditions in Section 5](#) and any other disclaimers or notices provided with this document.

The objective of the Tender Round is to receive offers for Products from persons that are interested in undertaking the Project and have the capacity, capability, and experience to do so. This document has been prepared to assist Proponents (and their Associates and Consortium Members) in making their own evaluation of the Project and does not purport to contain all the information that Proponents (and their Associates and Consortium Members) may require.

This document is not an offer document and is not intended to give rise to any contractual relationship. Proponents (and their Associates and Consortium Members) should conduct, and must rely entirely on, their own independent investigations, review, preparation of Bids, and analysis of the Tender Round, the Project and the information set out in this document or otherwise provided during the Tender Round, and not on this document.

This document provides a summary of the relevant parts of the EII Act, EII Regulation and associated regulations and policies as at 12 May 2023. Legislation and regulations may be subject to change.

The Tender Round is conducted under the EII Act, the EII Regulation and any other relevant associated regulations and Regulatory Instruments made from time to time. Further regulations and Regulatory Instruments (not yet made) may apply to a Tender Round including after it commences and these regulations and Regulatory Instruments may be required to apply to the Tender Round. Proponents are expected to comply with these instruments throughout the Tender Round, including where amendments to them take effect during the Tender Round. In this Tender Round new regulations could include, for example, changes to the NEL and NER. Any new regulations will be notified by the Consumer Trustee through the Consumer Trustee's website. This document may include generalisations and assumptions about future policy outcomes. This document or the information in it may be subsequently amended, withdrawn, reissued, or supplemented at any time. This document does not constitute legal or business advice and should not be relied on as a substitute for obtaining detailed advice about the EII Act, EII Regulation, the NEL, the NER, or any other applicable Laws, regulations, Regulatory Instruments, regulatory documents, reports, procedures, or policies.

AEMO Services has taken care in the preparation of the information contained or referred to in this document but cannot guarantee its accuracy or completeness. Accordingly, to the maximum extent permitted by law, AEMO Services and its Associates involved in the preparation of this document:

- a. do not give any warranty or make any representation, express or implied, as to the completeness, accuracy, adequacy, or correctness of the information contained or referred to in this document or any information which may be provided in connection with it or the Tender Round, and
- b. expressly disclaim any and all liability relating to or resulting from:
 - i. the use of, or reliance on, such information by any person, a Proponent (including a Consortium Member) or any of their respective Associates, including in the preparation and submission of a Bid (including any decision not to prepare or submit a Bid); or
 - ii. the exercise of any discretion, or the making of any decision, by AEMO Services or its Associates in relation to the Tender Round, including in the assessment of any Bid by a Proponent and its Consortium Members and their respective Associates.

CONFIDENTIALITY

Other than information publicly disclosed on AEMO Services' website dedicated to the Tender Round, all Disclosed Information is confidential information about AEMO Services and its activities. Proponents, Consortium Members and their respective Associates are subject to the confidentiality obligations set out in, and are not permitted to disclose or to use any such information other than as permitted by, the [Tender Conditions at Section 5.9](#) of these Guidelines.

All persons are also bound by the non-disclosure obligations imposed by section 75 of the EII Act. Under that provision a person must not, subject to certain specified exemptions, disclose information obtained in connection with the administration or execution of the EII Act. That section also sets out the consequences of non-compliance being penalties applicable to individuals and corporations.

ROLE OF OTHER ENTITIES

In accordance with section 60(3) of the EII Act, the Consumer Trustee is to act independently and in the long- term financial interests of NSW electricity customers. In conducting activities in connection with this document and in the exercise of its statutory functions under the EII Act, AEMO Services as the NSW Consumer Trustee may consult with and share Proponent information with the Assisting Entities and other relevant entities with regulated roles in the National Electricity Market (NEM), subject to the requirements of the EII Act. Further information for Proponents regarding the sharing of Proponent information, the role of EnergyCo and other relevant entities is set out in [Section 3](#), [Section 5](#) and [Section 6](#) of these Guidelines.

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Tender Round 3 details





A. Welcome to Tender Round 3

Welcome to Tender Round 3. The Products available in this Tender Round are generation and long-duration storage infrastructure LTESAs.

This tender process is designed to support quality Projects capable of delivering electricity infrastructure that are in the long-term financial interests of NSW electricity customers.

The Consumer Trustee has published its [Infrastructure and Investment Objectives \(IIO\) Report \(2022\)](#) – its plan for exercising certain functions to assist with meeting NSW's future electricity needs. The IIO Report (2022) outlines a development pathway for the next twenty years and a tender plan for the next decade.

What Proponents can bid for

Tender Round 3 allows Proponents to bid for:

Product	Indicative tender size
Generation LTESA	2500 GWh p.a. ¹
Long-duration storage (LDS) LTESA	Up to 550 MW

The Consumer Trustee may exercise discretion to recommend a greater or lesser volume of LTESAs than the indicative size in the IIO Report, where it is consistent with the requirements in the EII Act and in the long-term financial interests of NSW electricity customers.



Select the Product you are seeking

WHAT PROPONENTS CAN BID FOR

Two Products are available for Projects intending to connect to existing transmission & distribution infrastructure



Generation LTESA

OR



LDS LTESA

¹ Approximately equates to 950 MW depending on technology mix.



B. Important dates*

	Step	Date
	Tender Announcement Date	22 May 2023
	Tender Commencement Date, including registrations opening	22 May 2023
	Registration Closing Date and Time	16 June 2023 at 5pm
	Project Bid Closing Date and Time	25 June 2023 at 11.59pm
	Invite to submit Financial Value Bid	August 2023*
	Financial Value Bid Closing Date	August 2023*
	Notify unsuccessful Proponents	December 2023*
	Announce Selected Bids	December 2023*

* Note: these dates are indicative for Tender Round 3. Final dates will be published on the AEMO Services website, or notified as applicable via email to registered Proponents.



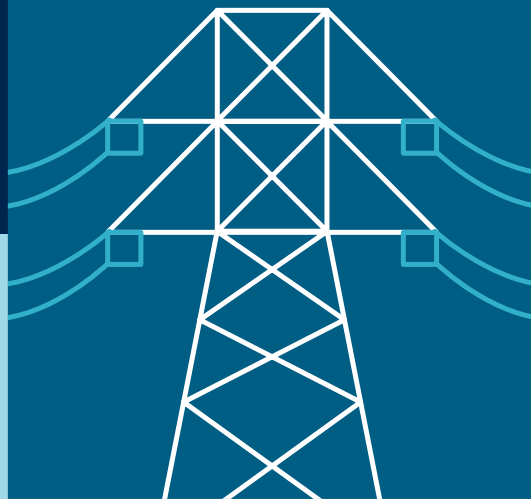
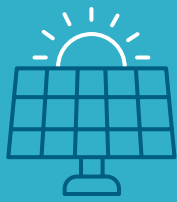
C. How to use this guide: where to start

Tender step	Proponent requirements	Assessment stage
(including hyperlinks)		
<u>Tender Commencement Date</u>	Register to participate in the Tender Round Proponent Eligibility Criteria Criteria to ensure that Proponents possess the requisite technical, financial, legal, and commercial capabilities to be able to deliver the Project.	-
<u>Project Bid</u>	Provide executed Tender Process Deed Project Eligibility Criteria Criteria to ensure that only eligible Projects progress to assessment against the Merit Criteria. Project Merit Criteria	<u>Project Assessment</u>
	 Merit Criteria 3 – Impact on electricity system	
	 Merit Criteria 4 – Pathway to commercial operation	
	 Merit Criteria 5 – Organisational capacity to deliver Project	
	 Merit Criteria 6 – Community engagement, shared benefits and land use considerations	
	 Merit Criteria 7 – Regional economic development	
<u>Financial Value Bid</u>	Provide Security for Process Bond Financial Value Merit Criteria	-
	 Merit Criteria 1 – Financial value	<u>Financial Value Assessment + Portfolio Assessment and due diligence</u> including assessing: - Outstanding Merit (if applicable) - Long-term financial interests
	 Merit Criteria 2 – Commercial departures	
<u>Recommendations</u>	-	Consumer Trustee’s risk management and statutory compliance considerations
<u>Award</u>	-	SFV awards contracts



D. Application of Tender Conditions

Participation in the Tender Round is subject to compliance with the [Tender Conditions](#) and execution of the [Tender Process Deed](#).



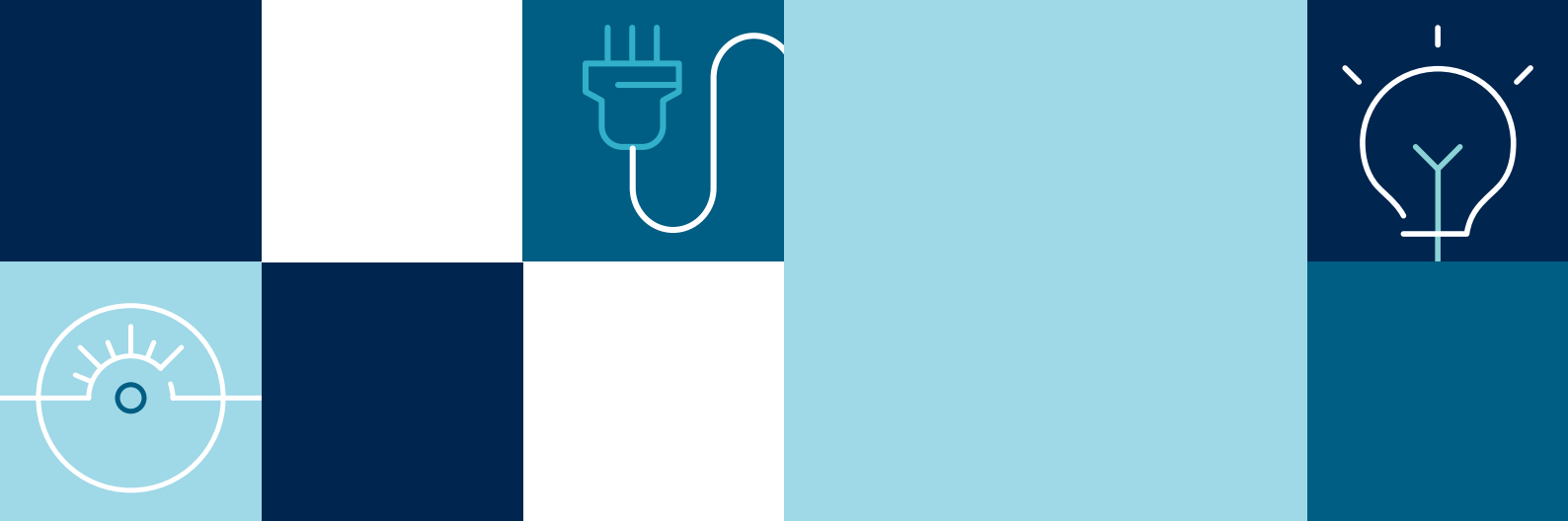
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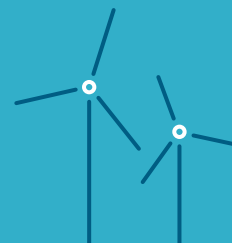
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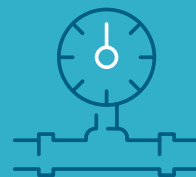
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Tender Guidelines





1 Introduction

These Tender Guidelines (Guidelines) provide information to prospective Proponents planning to participate in Tender Rounds pursuant to a tender conducted in accordance with the *Electricity Infrastructure Investment Act 2020* (NSW).

These Guidelines will support Proponents in the preparation of high quality and competitive Bids.

1.1 About AEMO Services

AEMO Services is an independent subsidiary of the Australian Energy Market Operator (AEMO) and is a key partner in the implementation of the NSW Government's [Electricity Infrastructure Roadmap \(Roadmap\)](#) through its appointment as the NSW Consumer Trustee.

As the NSW Consumer Trustee, AEMO Services must act independently and in the long-term financial interests of NSW electricity customers.² This responsibility is at the core of everything that AEMO Services does as the NSW Consumer Trustee.

In this capacity, the Consumer Trustee undertakes coordinated planning of long-term investment, design, and conducts competitive tenders under the EII Act to facilitate this investment, authorise REZ transmission infrastructure, and provide financial risk management and advice.

AEMO Services' competitive tenders are directed to incentivise investment in electricity generation, storage, and firming infrastructure through LTESAs and network access rights in REZs.

1.2 About Tender Rounds

The tender process is designed to recommend quality Projects capable of delivering infrastructure that is in the long-term financial interests of NSW electricity customers.

Energy transformation in NSW

AEMO Services' tenders are intended to support the energy transformation in NSW without getting in the way of what the market delivers best: innovation and drive to find new and better ways of delivering critical energy. Its competitive nature means that the market is expected to shape the mix of projects supporting our legislated investment objectives.

Multiple Products available

Multiple Products may be available in each Tender Round. Two Products are available in this Tender Round, Generation LTESA and LDS LTESA.

Flexible LTESA capacities

In any Tender Round, the Consumer Trustee has the discretion to recommend LTESAs for greater or lesser capacity than that indicated in the IIO Report, providing flexibility to adjust to market signals in a competitive environment. In exercising its discretion, the Consumer Trustee acts in the long-term financial interests of NSW electricity customers.

Regular Tender Rounds

The Consumer Trustee has a rolling 10-year plan for competitive tenders under the IIO Report. The frequency of Tender Rounds and forward schedule allows Proponents to choose when to Bid based on the maturity of their Projects and technology types.

This flexibility is expected to deliver higher quality Bids. It also gives the Consumer Trustee the flexibility to accommodate recent trends and changes in electricity infrastructure technology and the NEM, as well as customer and market participant behaviour.

Open to NSW

Tender Rounds are open to all projects that meet the Eligibility Criteria of being in the NSW region of the NEM to maximise market participation in each Tender Round, including new market participants in subsequent Tender Rounds that have not previously participated in a Tender Round.

Certainty and transparency of process

The tender process is designed to provide certainty and transparency to Proponents participating in the process. A clear, consistent process supported by comprehensive and strategic information delivery is expected to attract more Proponents and yield higher quality and more competitive Bids.

² Section 60(3) of the EII Act.

1.3 Structure of this document

Section with hyperlink	Content
Tender Round 3 details	Provides specifications for the Tender Round, including available Products, size, tender dates and important information for Proponents.
Section 1: Introduction	Introduction to AEMO Services, structure of the Guidelines and the Tender Round.
Section 2: LTESAs	Descriptions of the Products available in this Tender Round.
Section 3: Tender and assessment process	Describes the steps of the tender and of assessment processes from the Tender Commencement Date to the award of LTESAs by the Scheme Financial Vehicle (SFV). Detailed instructions to Proponents on requirements to respond to the Eligibility and Merit Criteria (as prescribed in the Tender Rules).
Section 4: Assessment Criteria	Includes the Eligibility Criteria and Merit Criteria, details of information and evidence that must be provided by Proponents to demonstrate the merit of their Bid in the assessment process.
Section 5: Tender Conditions	Legal terms and conditions applicable to these Guidelines and the Tender Round.
Section 6: Regulatory context	Background on AEMO Services as the NSW Consumer Trustee and other entities under the NSW Electricity Infrastructure Roadmap, applicable legislation and regulatory landscape that govern the Tender Rounds.
Project Documents	Includes proforma Project Documents applicable to all combinations of Products.
Glossary	

2 LTESAs



This section provides an overview of the LTESAs, including their commercial characteristics.

There are two LTESA Products available in this Tender Round:

- **Generation LTESA** – covers all eligible generation infrastructure.
- **Long-Duration Storage LTESA** – covers all eligible long-duration storage (LDS) infrastructure.

2.1 Overview

LTESAs

An **LTESA** is a financial derivative contract between an LTES Operator and the SFV that is intended to provide an LTES Operator with mitigation against unexpectedly low electricity prices and exposure to upside where electricity prices are higher. The LTESA achieves this by providing the LTES Operator with a series of options to enter into fixed length derivative arrangements.

The indicative tender size for LTESAs in this Tender Round is in line with the Consumer Trustee's [2 December 2022 IIO Report](#).³

Item	Indicative tender size	Location
Generation LTESA	2500 GWh p.a. ⁴	All NSW ⁵
Long duration storage (LDS) LTESA	Up to 550 MW	

The indicative tender size for Tender Round 3 is informed by the latest IIO Report. The Consumer Trustee has flexibility and discretion to recommend LTESAs for greater or lesser capacity than that indicated in the IIO Report, provided that the recommendations are consistent with the requirements in the EII Act, including the long-term financial interests of NSW electricity customers.

The volume of Projects recommended by the Consumer Trustee in Tender Round 3 may vary depending on factors that are revealed through the market process, such as:

- The commitment dates presented by each Project.
- The financial value represented by each Project.
- Whether recommending a Project for an LTESA is in the long-term financial interests of NSW electricity customers.

Table 1 below, provides a summary of the Generation and LDS LTESA features.

Table 1: Summary of LTESA features

Product type	Feature
<u>Generation LTESA</u>	• A series of 2-year options to enter a cash settled swap, for a contract term of up to 20 years. • Available to all Projects in NSW that became committed after 14 November 2019.⁶ • A repayment mechanism applies under certain circumstances.
<u>LDS LTESA</u>	• A series of 2-year options to receive an annuity payment, for a contract term of up to 14 years for chemical batteries and 40 years for pumped hydro. The contract term is the lesser of 40 years or asset life for any other LDS technologies. • Available to all Projects in NSW that became committed after 14 November 2019.⁷ • A repayment mechanism applies under certain circumstances.

³ December 2022 IIO report retained the 2021 Development Pathway for generation and long-duration storage.

⁴ Approximately equates to 950 MW depending on technology mix.

⁵ Tender Rounds are open to all Projects that meet the Eligibility Criteria of being in the NSW region of the NEM.

⁶ Provided that the Eligibility Criteria are met.

⁷ Provided that the Eligibility Criteria are met.



2.2 Generation LTESA

This section summarises the key features of the Generation LTESA.

A Generation LTESA is a financial derivative contract, that provides an LTES Operator with a series of options to access a Fixed Price, cash settled swap under the terms of the agreement.

The award of a Generation LTESA is conditional upon entry into and compliance with two primary contractual Project Documents:

- [Project Development Agreement](#) (PDA) – includes obligations on the LTES Operator to achieve Financial Close, construct and commission the Project, and comply with various social licence commitments.
- [LTESA](#) – includes the specific terms of the derivative arrangements and ongoing operational obligations on the LTES Operator.

For Generation LTESAs awarded, the SFV will be the counterparty to the relevant Project Documents.

Table 2: Key commercial terms - Generation LTESAs

Term	Description
LTESA Maximum Capacity (or a similarly defined term)	The generation capacity that a Project intends to be registered with AEMO to dispatch up to into the NEM.
Contracted Percentage	The percentage of a Project's Maximum Capacity, and output, that is contracted to the LTESA.
Contract term	The period over which options to enter swap periods are available under the LTESA, commencing after the first option date.
Fixed Price	The fixed price per megawatt hour of the swap payment triggered on exercise of the option. The Fixed Price is in fixed nominal dollars and is not escalating.
Repayment Threshold Price	A fixed price per megawatt hour higher than the Fixed Price, that is used to calculate potential repayments. The Repayment Threshold Price is in fixed nominal dollars and is not escalating. The repayment mechanism applies in non-exercise periods if the LTES Operator's Dispatch-Weighted Average Price (DWAP) is above the Repayment Threshold Price. Seventy-five (75) percent of the revenue above the threshold is paid to the SFV, which is capped at the historical cumulative net payments from the SFV to the LTES Operator and is reduced where the LTES Operator has entered an eligible contract.⁸
Option period	The fixed duration of the cash settled swap is two financial years except if there is only one year remaining within the contract term in which case it is one financial year. Option periods begin on 1 July and end on 30 June.
Exercise Notice period	Notice of intention to exercise an option must be provided at least 6 months, but not more than 12 months, prior to the beginning of an option period.
Contractual shape	Generation following, with the energy quantity of the swap based on the Project's dispatched generation measured at the NSW Regional Reference Node.
Green rights and other products (incl. capacity)	In exercise periods, the SFV is entitled to products or revenues from existing or new markets, including, applicable green rights (such as Large-scale Generation Certificates (LGCs)) and other economic rights conferred on the Project by regulation for its capacity or generation.
Negative price provision	The minimum wholesale price in swap payment calculations is set to zero.
Minimum Generation	In exercise periods, the LTES Operator must pay the SFV a shortfall sum if the Project's generation is below the Minimum Generation. It is set at an amount of energy in MWh equal to $75\% \times \text{forecast P90 annual sent-out generation for the relevant swap period}$.

⁸ Under certain conditions, a Power Purchasing Agreement with an electricity off-taker would be an example for an eligible contract in a non-exercise year. Eligible Contract is defined in LTESA template long-form agreement.

2.3 LDS LTESA

This section summarises the key features of the LDS LTESA.

An LDS LTESA is a financial derivative contract that provides an LTES Operator with a series of options to access a variable annuity payment. If the option is exercised, the annuity payment will be in the form of a top up to net operational revenues achieved by the Project.

The award of an LDS LTESA is conditional upon entry into and compliance with two primary contractual Project Documents:

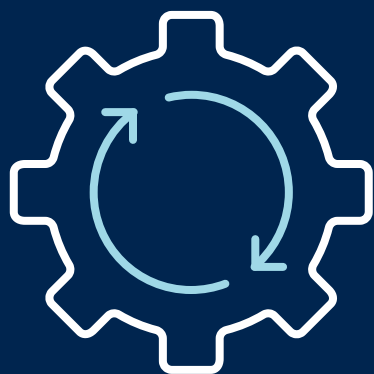
- [Project Development Agreement](#) (PDA) – includes obligations on the LTES Operator to achieve Financial Close, construct and commission the Project, and comply with various social licence commitments.
- [LTESA](#) – includes the specific terms of the derivative arrangements and ongoing operational obligations on the LTES Operator.

For LDS LTESAs awarded, the SFV will be the counterparty to the relevant Project Documents.



Table 3: Key commercial terms – LDS LTESAs

Term	Description
Contract term	The period over which options to enter annuity periods are available under the LTESA, commencing after the first option date.
Annuity Cap	The annuity amount bid (in \$/year), being the maximum annuity that may be paid by the SFV to the LTES Operator.
Net Revenue Threshold	A net revenue threshold in \$/year, above which additional provisions apply for the annuity payment and repayment mechanism.
Escalation	The Annuity Cap and Net Revenue Threshold escalate each year at the lesser of CPI or 3%.
Option period	The fixed duration of the cash settled swap is two financial years except if there is only one year remaining within the contract term in which case it is one financial year. Option periods begin on 1 July and end on 30 June.
Exercise Notice period	Notice of intention to exercise an option must be provided at least 6 months, but not more than 12 months, prior to the beginning of an option period.
Net Operational Revenue	Intended to cover all revenue streams for the Project that are received by the LTES Operator, netted off against permitted costs. This would include gross revenue generated through the wholesale energy market, ancillary markets, network support, any future emerging markets and any other eligible contracts, minus certain costs including the cost of purchasing energy to generate these revenues.
LTESA annuity payment calculation	The annuity payment is limited such that it equals the lesser of: • Annuity Cap, or • $\text{Annuity Cap} - 75\% \times (\text{Net Operational Revenues} - (\text{Net Revenue Threshold} - \text{Annuity Cap}))$.
Repayment mechanism	The repayment applies where the LTES Operator's net operational revenue is above its Net Revenue Threshold. The repayment mechanism has the following features: • Repayment applies to the amount by which net operational revenue exceeds the Net Revenue Threshold. • A standardised benefit-sharing percentage of 50% applies to the repayment calculation up to the maximum recovery. • Maximum recovery through the repayment mechanism is 100% of historical cumulative net payments from SFV to LTES Operator.



3 Tender and assessment process

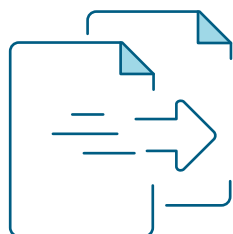
All Tender Round Bids are subject to the same assessment process, irrespective of the Product(s) being sought.

This section outlines the tender and assessment process that applies to all Proponents. The Consumer Trustee may vary this process, including cancelling the tender, where the Consumer Trustee considers that this is in the long-term financial interests of NSW electricity customers.

Proponents and Projects for each Tender Round are required to demonstrate compliance with the [Eligibility Criteria](#) before being competitively assessed against the [Merit Criteria](#).

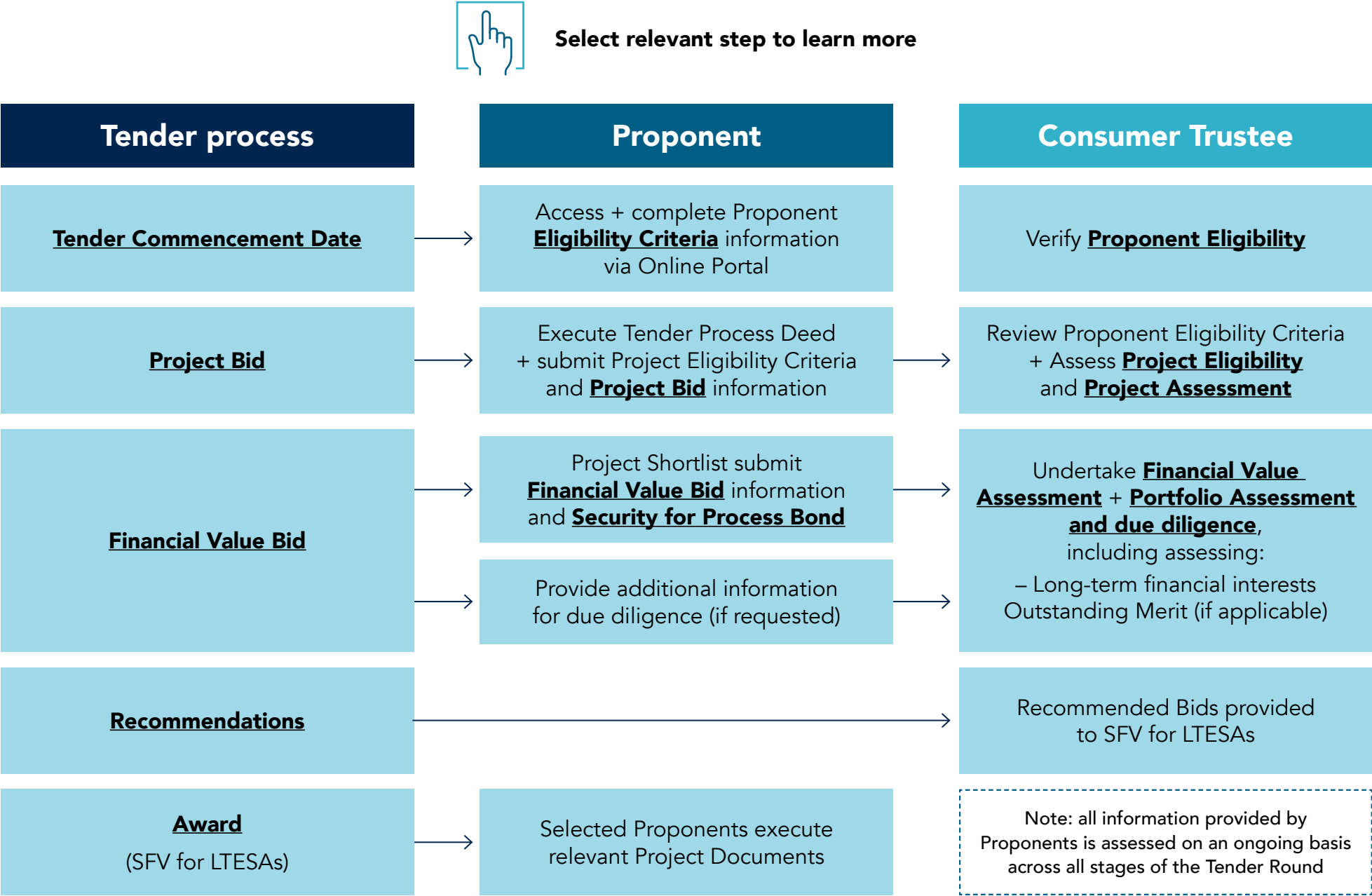
The primary consideration of the Consumer Trustee's assessment process is the extent to which a Bid offers financial value and is otherwise consistent with the requirements in the EII Act, including that its recommendation is in the long-term financial interests of NSW electricity customers.

An overview of the tender process is illustrated in [Figure 1](#).



The Online Portal will store the information submitted by Proponents and their Projects. This information will be accessible by the Proponents for future Tender Rounds. Proponents from previous Tender Rounds can access their previous submissions through the Online Portal, use this information as a reference and make any necessary changes for future Tender Rounds. This will make the participation process easier and less time-consuming. To manage data risk, Proponents may request for their information to be removed from the online portal if they do not intend to participate in future Tender Rounds.

Figure 1: Overview of the tender process



3.1 Tender process

3.1.1 Submission of Bids and documents

From the Tender Commencement Date, Proponents will receive access to the registration form and Proponent Eligibility Criteria. Successfully registered Proponents must submit their Bids in two stages – [Project Bid](#) and [Financial Value Bid](#). Bids must be submitted via an electronic application form, supported by completed Returnable Schedules and other specified documents to be uploaded on the Consumer Trustee's [website](#). Further details on the information and supporting documents required at each Bid stage are provided in the remainder of this section and [Section 4 – Assessment Criteria and Bid documentation](#).

Tender Process Deed

Proponents seeking to participate in the Tender Round must enter into a deed to govern the terms of engagement during the tender process for the Tender Round (Tender Process Deed).

The [Tender Process Deed](#) must be executed at the Project Bid stage and contains customary provisions regarding the tender process, obligations relating to the protection of confidential information and limitations of liability. The Tender Process Deed also governs the arrangements for the provision of, and recourse to, the Security for Process Bond required as part of the submission of a Financial Value Bid.

Proponents should read [Section 5.19](#) of these Guidelines in order to complete and execute the Tender Process Deed. If a submitted Tender Process Deed is incomplete or not properly executed, the Consumer Trustee may assess the Bid as Non-Compliant. Non-Compliant Bids may not be considered further, at the Consumer Trustee's discretion.

Security for Process Bond

The terms governing the Security for Process Bond are set out in the Tender Process Deed. The Security for Process Bond is calculated as \$4,000/MW, capped at \$800,000 per Project. The MW used for calculating the Security for Process Bond is the Project's intended Maximum Capacity, and in the case of a Generation LTESA, multiplied by the Contracted Percentage. If there is more than one Bid Variable for Contracted Percentage submitted as part of the Bid, the Process Bond Amount (as defined in the Tender Process Deed) will be calculated on the basis of the greatest Bid Variable for Contracted Percentage for that Bid.

Proponents will be required to provide the [Security for Process Bond](#) at the time of submitting a Financial Value Bid. This bonding is intended to mitigate the risk of a Proponent being successful in the Tender Round but then failing to sign relevant Project Documents reflecting the successful Bid. Financial Value Bids must be capable of acceptance by the SFV for the Validity Period. Subject to the terms of the Tender Process Deed, an unsuccessful Proponent in a Tender Round, or a Selected Proponent that duly enters into the relevant Project Documents and provides the Initial Security, will have the Security for Process Bond returned.

Security for development and construction is also required to be provided by the party to the PDA or LTESA (as applicable) within 20 Business Days of contract execution. This security is intended to provide collateral where a Project fails to meet Financial Close or commercial operation or fails to meet certain other obligations, in accordance with the relevant Project Documents. The terms governing the provision of this security are set out in the relevant Project Documents.

Q&A Process

The Consumer Trustee will operate a limited online question-and-answer process to facilitate the Tender Round. Proponents may submit clarification questions to the Consumer Trustee no later than seven (7) Business Days before the corresponding:

- [Project Bid Closing Date and Time](#) (during Project Bid preparation).
- [Financial Value Bid Closing Date and Time](#) (during Financial Value Bid preparation).

Proponents should prepare any questions in a manner that does not disclose sensitive or confidential information. The Consumer Trustee will aim to respond to questions within five (5) Business Days (subject to the number, materiality and complexity of questions received) and share deidentified questions and clarifications with all Proponents.

Please note that, the Consumer Trustee:

- is under no obligation to answer any question and, the Tender Conditions will govern any responses;
- will endeavour to make responses available to all Proponents (without identifying the party that submitted the relevant question);
- understands that some specific questions or responses (e.g., regarding a particular Project) are sensitive and it would be appropriate not to circulate the response. If a Proponent does not wish a question or response to be made available to others, it must identify the question as 'Commercially sensitive – not for circulation', together with an explanation of why the information is Project specific and sensitive for the Consumer Trustee to consider. The Consumer Trustee may, in its absolute discretion, decide whether to answer the question, including if a generic answer may still be given to all Proponents. The Consumer Trustee may seek probity advice to guide this decision.

Late Bids

Registrations received after the Registration Closing Date and Time and Project Bids received after the Project Bid Closing Date and Time and Financial Value Bids received after the Financial Value Bid Closing Date and Time (Late Bids) may be accepted at the discretion of the Consumer Trustee. For example, the Consumer Trustee may admit Late Bids for assessment if:

- actions or omissions by the Consumer Trustee caused the delay in submission; or
- the Proponent can clearly document to the satisfaction of the Consumer Trustee that an event of exceptional circumstances caused the Bid to be lodged after the closing time.

In these cases, the Consumer Trustee, in its absolute discretion, will determine the acceptance of a Late Bid and will only do so if accepting a Late Bid would not compromise the integrity of the Tender Round.

Extensions

At its discretion, the Consumer Trustee may grant an extension of time to all Proponents.

Additional instructions or materials

The Consumer Trustee may issue additional instructions or materials such as Returnable Schedules, guidance notes, or legal documentation (e.g. Project Documents) ahead of the relevant [Project Bid Closing Date and Time](#) or [Financial Value Bid Closing Date and Time](#). These additional instructions or materials can be issued at the Consumer Trustee's absolute discretion.

Accuracy and completeness of information

Proponents must ensure that all required information is complete and accurate. All Proponents should note section 74 of the EII Act, which prohibits the giving of false or misleading information with penalties applicable to individuals and corporations. If a Proponent cannot provide the required information, this must be stated in the Bid and reasons given.

If the required information is incomplete or provided in a format inconsistent with the requirements of these Guidelines, the Consumer Trustee may seek supplementary information or clarification from Proponents; or may assess the Bid as Non-Compliant. Equally, if required documentation is incomplete, not properly executed (in the case of a deed/agreement), or is provided in a format inconsistent with the requirements of these Guidelines and the Tender Process Deed, the Consumer Trustee may assess the Bid as Non-Compliant. Non-Compliant Bids may not be considered further, at the Consumer Trustee's discretion.

External advice

The Consumer Trustee may seek advice or support from subject matter experts and advisers. The Consumer Trustee's subject matter experts and advisers will be subject to market standard obligations to the Consumer Trustee (for example, regarding confidentiality, conflicts, and probity).

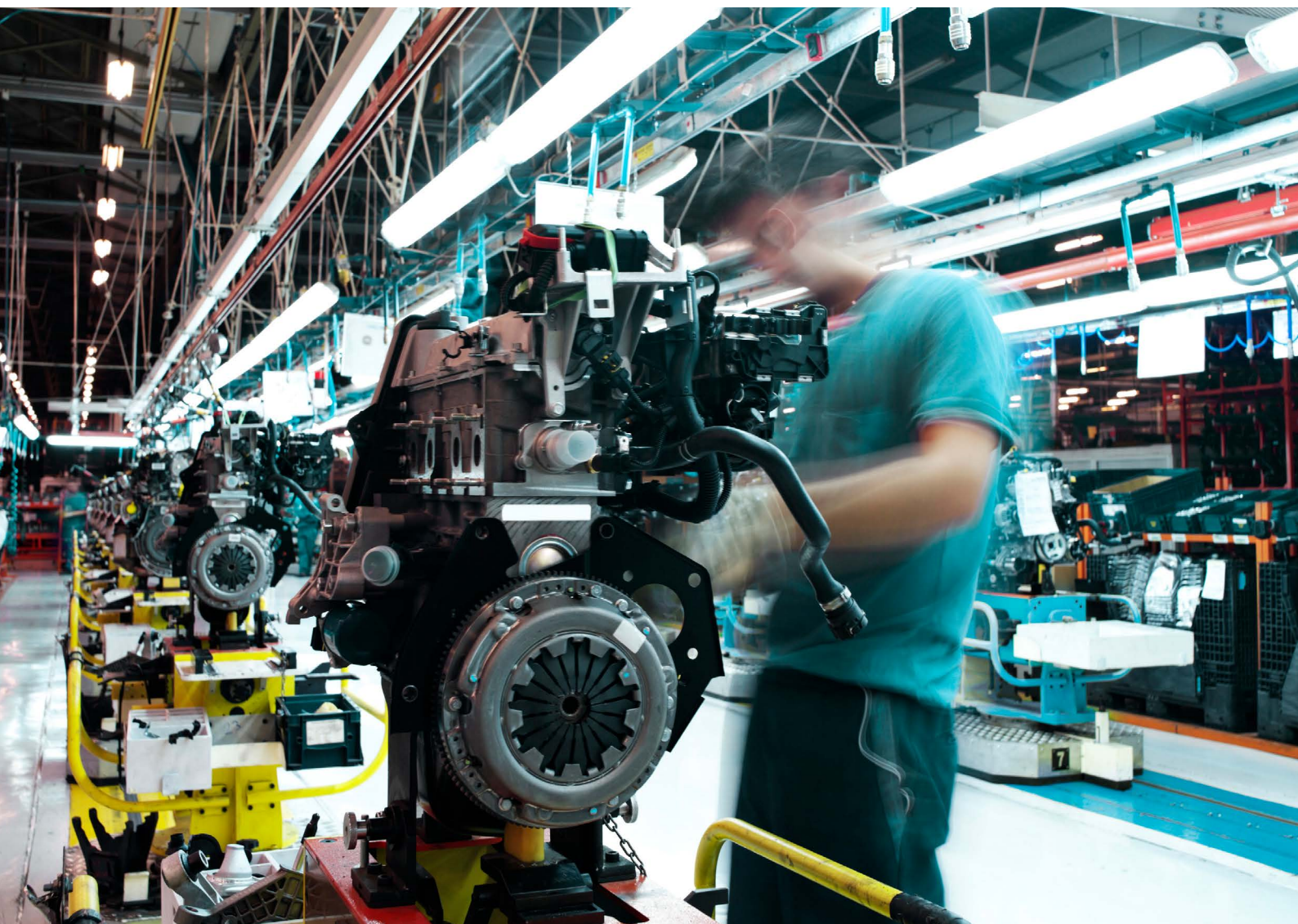
The role of EnergyCo and other relevant entities

When undertaking the Tender Round, the Consumer Trustee may seek input, or will receive, advice and inputs from a range of credible parties.

EnergyCo may provide the Consumer Trustee with technical input as a subject matter expert on matters related to Eligibility Criteria, Merit Criteria and Portfolio Assessment.

AEMO may provide input on a Project's expected network impacts as the system operator.

The Consumer Trustee will engage with, and share Proponent information with, these and other relevant entities in the context of its obligation to act independently and in the long-term financial interests of NSW electricity customers under the EII Act.



3.1.2 Tender Round Announcement

The Consumer Trustee will notify the market of an upcoming Tender Round and when it will commence via the Consumer Trustee's [website](#).

Tender step	Information to complete (including hyperlink)
Tender Commencement Date	Register to participate in the Tender Round Proponent Eligibility Criteria Criteria to ensure that Proponents possess the requisite technical, financial, legal, and commercial capabilities to be able to deliver the Project.

3.1.3 Project Bid

From the [Tender Commencement Date](#), Proponents will receive access to the registration form and Proponent Eligibility Criteria. Upon successfully submitting the registration form, access will be granted to Project Bid forms and Returnable Schedules needed to complete their Project Bids via the Online Portal.

Proponents must also submit an executed Tender Process Deed with their Project Bid – Proponents should read [Section 5.19](#) in order to complete and execute the Tender Process Deed.

Tender step	Information to complete (including hyperlink)
Project Bid	Tender Process Deed
	Project Eligibility Criteria Criteria to ensure that only eligible Projects progress to assessment against the Merit Criteria.
	Project Merit Criteria
	 Merit Criteria 3 – Impact on the electricity system
	 Merit Criteria 4 – Pathway to commercial operation
	 Merit Criteria 5 – Organisational capacity to deliver Project
	 Merit Criteria 6 – Community engagement, shared benefits and land use considerations
	 Merit Criteria 7 – Regional economic development



3.1.4 Default Financial Value Bids and Alternative Financial Value Bids

At the Financial Value Bid Stage of Tender Round 3, Proponents must submit a Default Financial Value Bid.

To provide flexibility and encourage commercial innovation, Proponents may submit an Alternative Financial Value Bid, in addition to a Default Financial Value Bid, where the prescribed Bid Variables are adjusted.

The tables below set out the key commercial terms and Bid Variables that must be supplied by each Proponent in order to submit a compliant Bid for a Generation LTESA and LDS LTESA, respectively. Proponents must submit a Default Financial Value Bid and may submit an Alternative Financial Value Bid in accordance with the below Bid Variables for each [Financial Value Bid](#).

Generation LTESA

Key commercial term	Default Financial Value Bid	Alternative Financial Value Bid
Option terms		
Contract term	20 years	Bid Variable (reducing the contract term by making the end date of the LTESA less than 20 years after the start date)
Exercise notice period	Min 6 months before Option Period	Min 6 months before Option Period
Repayment Threshold Price	Bid Variable	Bid Variable
Escalation	Fixed nominal (not escalating)	Bid Variable See Generation LTESA Alternative Financial Value Bid explanation below.
Cash settled swap terms (if option is exercised)		
Option Period	2 years	2 years
Fixed Price	Bid Variable	Bid Variable (which may be a schedule of distinct fixed prices, for each swap start date, in either nominal or real dollars)
Maximum Capacity	Bid Variable	Bid Variable
Contracted Percentage	Bid Variable	Bid Variable
Contracted shape	Generation following	Generation following
Green rights and other products (incl. capacity)	Bundled i.e. includes electricity, green rights and other products	Bundled i.e. includes electricity, green rights and other products
Negative price provision	Zero price floor	Zero price floor
Minimum Generation	An amount of energy in MWh equal to $75\% \times$ forecast P90 annual sent out generation across each 2-year swap period.	An amount of energy in MWh equal to $75\% \times$ forecast P90 annual sent out generation across each 2-year swap period.

Bid price options: Generation LTESA Alternative Financial Value Bid

Bid prices in the Default Financial Value Bid are fixed nominal, i.e., 0% escalation. In the Alternative Financial Value Bid, there is flexibility for the Proponent to alter this if it will allow it to provide competitively lower prices. Instead of fixed nominal, the Proponent may provide its Bid prices as:

- A schedule of Fixed Prices varying by relevant swap start date, in nominal dollars.
- A schedule of Fixed Prices varying by relevant swap start date, in real dollars (2024) subject to annual CPI escalation.
- A single Fixed Price that is subject to fixed or annual CPI escalation.

CPI escalation may include a cap on annual escalation or apply only to a percentage of the fixed price.

Alternative Financial Value Bids based on CPI escalation are expected to reflect the change in risk allocation in their Bid prices.

LDS LTESA

Key commercial term	Default Financial Value Bid	Alternative Financial Value Bid
Option terms		
Contract term	14 years for chemical batteries and 40 years for pumped hydro. Lesser of 40 years or asset life for any other LDS technologies.	Bid Variable Up to 14 years for chemical batteries or 40 years for pumped hydro. Up to the lesser of 40 years or the asset life for any other LDS technologies.
Exercise notice period	Min 6 months before Option Period	Min 6 months before Option Period
Net Revenue Threshold	Bid Variable	Bid Variable
Escalation	Annually at the lesser of Consumer Price Index (CPI) or 3%	Annually at the lesser of Consumer Price Index (CPI) or Bid Variable
Annuity terms (if option is exercised)		
Option Period	2 years	2 years
Maximum Capacity	Bid Variable	Bid Variable
Annuity Cap	Bid Variable	Bid Variable (which may be a schedule of annuity caps varying by relevant annuity start date in fixed nominal dollars or subject to CPI escalation under a cap (Bid Variable) on annual escalation). See LDS LTESA Alternative Financial Value Bid explanation below.

Bid price options: LDS LTESA Alternative Financial Value Bid

The Alternative Financial Value Bid provides greater flexibility for the Proponent in setting their Annuity Cap and escalation. Proponents can use this flexibility to better reflect how changes in contracting and financing arrangements will affect the required Annuity Cap in specific periods within the LDS LTESA term. In the Alternative Financial Value Bid, the Proponent may provide its Annuity Cap as:

- A schedule of Annuity Caps varying by relevant swap start date in fixed nominal dollars or subject to annual CPI escalation under a cap on annual escalation.
- A single Annuity Cap that is subject to fixed or annual CPI escalation.

CPI escalation should include a cap on annual escalation which is a Bid Variable (that may be set to 0%).

3.1.5 Project Assessment

Project Assessment applies to all compliant Project Bids, irrespective of the [Product the Proponent selects](#).

Its purpose is to select a shortlist of Project Bids (Project Shortlist) to progress to the Financial Value Bid stage. All information provided by Proponents is assessed on an ongoing basis.

Review Proponent Eligibility Criteria and assess Project Eligibility Criteria

- All Proponents must provide information to satisfy the [Proponent Eligibility Criteria](#). Proponents not meeting all Eligibility Criteria may cease to be further considered by the Consumer Trustee.⁹
- The Project Eligibility Criteria are designed to ensure that only eligible Project Bids at an appropriate stage of development are assessed for merit.
- Projects that do not meet all Eligibility Criteria may cease to be further considered by the Consumer Trustee.¹⁰

Assess Project Merit Criteria

- Project Bids are assessed and scored against the [Project Merit Criteria](#).
- Low scoring Project Bids against any Merit Criteria may not be assessed further and may not be shortlisted for progression to the Financial Value Bid stage.
- High scoring Project Bids (Project Shortlist) may be invited to progress to the [Financial Value Bid](#) stage.

Treatment of future commitments related to social licence

[Merit Criteria 6](#) and [7](#) encompass social licence commitments. Proponents are required to outline their commitments in their Project Bids. These commitments are assessed during the Project Assessment and the commitments form a schedule to the relevant Project Documents. These commitments will be binding and subject to contractual monitoring and enforcement regimes under the Project Documents. The enforcement regimes are intended to ensure Proponents make consistent efforts toward meeting their commitments but provides for substitution of social licence commitments in exceptional circumstances where commitments become impossible or unreasonable to meet.

Treatment of hybrid projects bidding for Generation LTESA

Hybrid Projects are defined as co-located generation and storage assets which either:

- share a common AEMO registration;
- share a common connection point; or
- have a direct connection that allows for the storage asset to be charged directly from the generation asset.

Proponents bidding Hybrid Projects will be assessed against the Merit Criteria for both the generation and storage components of the Project. Proponents bidding Hybrid Projects will contractually commit to deliver all components of the Project (generation and storage) and this will be reflected according in the Project Documents.

⁹ The Consumer Trustee may make exceptions where, in its absolute discretion, it considers that there are grounds for the Project to be considered further by the Consumer Trustee – see Tender Rules 3.1.2.

¹⁰ The Consumer Trustee may make exceptions where, in its absolute discretion, it considers that there are grounds for the Project to be considered further by the Consumer Trustee – see Tender Rules 3.1.1.

Staged Projects and/or Projects with multiple connection points

Proponents with staged Projects and/or Projects with multiple connection points may need to consider how to participate in a Tender Round. The Consumer Trustee has not defined what constitutes a staged Project and will make this decision on a case-by-case basis after assessing the Project. The following are indicators of a staged Project:

- the Project has multiple grid connections and AEMO registrations.
- each stage of the Project is capable of being owned by different equity holders, financed by different debt providers or built by different engineering, procurement and construction contractors.
- stages of the Project may share infrastructure, but an initial stage is not necessarily dependent on a subsequent stage.

Projects that Bid wholly in a single Tender Round will be assessed against the Merit Criteria and Eligibility Criteria as a single Project.

Refer to [Section 3.1.6](#) of these Guidelines for further guidance on staged Projects and Projects with multiple connection points and how the Project may Bid and be treated in the Project Documents.



3.1.6 Guidance on staged projects and projects with multiple connection points (Generation LTESA only)

Project features	How Project may participate in a Tender Round	Treatment of Project Documents	Examples
A Project delivered over multiple stages with a single connection point (using the same technology type)	The Project has a single connection point and should be Bid in a single Tender Round.	If successful, the Project will execute a single PDA and sing LTESA. The first LTESA option will be available once all Project stages are operational.	A 600 MW solar farm is being developed in two stages connecting to a single connection point. The Project must bid for an LTESA in a single Tender Round and the first LTESA option will be available once the final stage is operational.
A Project delivered over a single stage with multiple connection points (using the same technology type)	Option 1: Submit one Bid for the Project including all connection points in a single Tender Round. Option 2: Submit multiple Bids for parts of the Project including various connection points in one Tender Round or in several Tender Rounds.	If successful, the Project will execute a PDA and LTESA for each connection point (i.e., multiple PDAs and multiple LTESAs) that has been Bid in a Tender Round.	A 600 MW solar farm is being developed and connecting to two separate connection points each for 300 MW. The completion of this Project and connection of the two components is not staged. Option 1: The Proponent may Bid the full Project as a single Bid in a Tender Round. Option 2: The Project may Bid 300 MW connecting to a single connection point in a Tender Round and return to bid the additional 300 MW in a later round.
Project delivered over multiple stages with multiple connection points (using the same technology type)	Option 1: submit one Bid for all stages with multiple connection points in a Tender Round Option 2: Submit one Bid for each stage and connection point in one Tender Round or in several Tender Rounds.	If successful, the Project will execute a PDA and LTESA for each stage of the Project that connects to a different connection point (i.e. multiple PDAs and multiple LTESAs) that has been Bid in a Tender Round.	A 600 MW solar farm is being developed in two stages of 300 MW each that have separate connection points. The completion of each stage and connection will occur at two different points in time. Option 1: The Proponent may bid the full Project as a single Bid in a Tender Round. Option 2: The Project may Bid 300 MW connecting to a single connection point in a Tender Round and return to Bid the additional 300 MW in a later round.

3.1.7 Financial Value Bid and Alternative Financial Value Bid

The Project Shortlist may be invited to submit a Financial Value Bid with the relevant Returnable Schedules. [Alternative Financial Value Bids](#) will be assessed against the same [Financial Value Merit Criteria](#). All information provided by Proponents is assessed on an ongoing basis.

Step	Information to complete (including hyperlink)
Financial Value Bid	 Merit Criteria 1 – Financial value
	 Merit Criteria 2 – Commercial departures
	Provide Security for Process Bond

Default Financial Value Bid

Proponents in the Project Shortlist must submit the online application form and corresponding Returnable Schedules. Proponents must submit their Default Financial Value Bid:

- Aligned with prescribed Default Financial Value Bid Variables.
- Include completed Returnable Schedules and marked up or compare versions of Project Documents.
- Include the [Security for Process Bond](#).

Alternative Financial Value Bids

Proponents may also submit one Alternative Financial Value Bid. An Alternative Financial Value Bid is in addition to the Default Financial Value Bid without additional [Security for Process Bond](#) requirements.

The Alternative Financial Value Bid may differ from the Default Financial Value Bid by proposing different Bid Variables. Alternative Financial Value Bids will be assessed against the same Financial Value Merit Criteria.

Proponents must submit their Alternative Financial Value Bid using a separate set of Returnable Schedules for Merit Criteria 1 and Merit Criteria 2, to be submitted concurrently with the Default Financial Value Bid.

The Consumer Trustee may, at its discretion, amend or request that shortlisted Proponents amend the permitted Bid Variables or some Alternative Financial Value Bids in a Tender Round, at any stage of the tender process. In these cases, all the shortlisted Proponents at the relevant stage of assessment will be notified of the conditions and timeframe to prepare their Alternative Financial Value Bids.

Merit Criteria 2 – Commercial departures

Proponents are strongly encouraged not to propose material amendments to the Project Documents. However, where a Proponent proposes departures to any Project Documents, the Proponent must submit a:

- Completed departure table (Returnable Schedule), including the reason for requesting each departure.
- Marked-up version or compare version of the relevant [Project Documents](#) with their proposed changes in a form that is ready for acceptance.
- Clean versions of the Project Documents in a form that they are ready for execution by the Proponent, including the Community Engagement Plan and IAPP to be inserted as Schedules to the PDA (i.e. requiring no further changes, including parties' details and execution clause) capable of acceptance.



3.1.8 Financial Value Assessment

Financial value is the primary consideration for the Consumer Trustee when assessing Financial Value Bids.¹¹

The Financial Value Assessment of all Financial Value Bids is conducted against Merit Criteria 1 and 2, including Alternative Financial Value Bids.

Assess Merit Criteria 1

[Merit Criteria 1](#) is assessed using the Bid Variables and the Project information submitted by Proponents.

The assessment of Merit Criteria 1 will consider the following Bid aspects:

- 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 LTESA;
- the costs of other services associated with power system security;
- the payments that will be required to be made by the SFV under LTESAs; and
- other matters the Consumer Trustee considers relevant.¹²

[Section 4.2.2](#) Merit Criteria 1 of these Guidelines outlines how the Consumer Trustee will assess these Bid aspects.

The Consumer Trustee will use a set of scenarios to consider multiple plausible outcomes in its scoring for Merit Criteria 1. The selected scenarios may change by Tender Round, and may contain permutations of:

- Electricity market outcomes.
- LTESA exercise behaviour.
- Weather reference years.
- Other considerations (e.g. LGC price outcomes).

Scenarios are developed internally by the Consumer Trustee to ensure Financial Value Bids can demonstrate value to NSW electricity customers across a range of future outcomes.

Scoring is based on each aspect of Merit Criteria 1 and each modelled scenario.

Further guidance may be provided in the Merit Criteria 1 market briefing materials.

¹¹ In accordance with section 48(2) of the EII Act.

¹² EII Regulation, Reg 26(4).

Assess Merit Criteria 2

[Merit Criteria 2](#) assesses the materiality of any departures from the proforma Project Documents.

Financial Value Bids with no requested departures from the proforma Project Documents are expected to score the highest against Merit Criteria 2, followed by any Financial Value Bids with minimal departures. Amendments that materially deteriorate the risk position of the SFV will result in a lower score or may restrict the Financial Value Bid from being considered any further in the assessment.

Proponents are also required to include a completed schedule to the relevant Project Documents for social licence commitments made in the MC 6 Community Engagement Plan and MC 7 Industry and Aboriginal Participation Plan submitted in the Project Bid Stage. Any departures from the commitments made in the Project Bid Stage may result in a lower score or may restrict the Financial Value Bid from being considered any further in the assessment.

Alternative Bids

Where an Alternative Financial Value Bid is submitted, this will be assessed in parallel to the Default Financial Value Bid. When developing the Financial Value Shortlist in accordance with the objectives and requirements of the EII Act and EII Regulation, the preferred Bid between those two Bids will be considered.

Assess Non-REZ Project Financial Value Bids against Outstanding Merit

Non-REZ Projects need to show [Outstanding Merit](#). Financial Value Bids for Generation LTESAs that do not meet this definition will not progress beyond this stage.

See Section 6.5 of these Guidelines for the elements and scope of [Outstanding Merit](#).

Total Merit Criteria Score and Financial Value Shortlist

A Total Merit Score will be determined for each Bid based on the total weighted score of all Merit Criteria.

A Financial Value Shortlist will be developed and ranked in accordance with the ranking of Bids based on the Total Merit Score and the objectives and requirements of the EII Act and EII Regulation.

The Consumer Trustee will also consider a range of strategic considerations in developing the Financial Value Shortlist. These will include, but are not limited to:

- The IIO Report, including size guidance.
- For LDS LTESA, the Reliability Standard and the impact of the Project on unserved energy events.¹³
- Requirements of the Risk Management Framework.

¹³ Projects are expected to positively impact system reliability, potentially reducing the likelihood and impact of unserved energy events. LDS Projects' capacity, duration and location will be considered in their capability to reduce unserved energy. Qualitative and quantitative analysis will be used to assess an LDS Projects' benefit for system reliability.

3.1.9 Portfolio Assessment and due diligence

At the Portfolio Assessment stage, the Consumer Trustee will assess the cumulative impacts that may arise in consideration of the Financial Value Shortlist.

Due diligence may be undertaken on selected Bids. Due diligence is expected to be confirmatory, with Proponents expected to provide the information needed to support all representations they make about their Project in order for their Bid to be compliant.

Tender step	Additional information to provide
Portfolio Assessment and due diligence	The Consumer Trustee may request additional information as part of its due diligence.

For transparency, Table 6 outlines the portfolio level adverse outcomes and how they may be considered in the Portfolio Assessment.

Table 6: How issues identified at Portfolio Assessment may be considered

Issue	Where this may impact a Financial Value Shortlisted Project	How this may be considered (at the Consumer Trustee's discretion)
Adverse network effects	Where multiple shortlisted Projects are in a similar geographic location.	One or more Projects may be excluded from further consideration to avoid adverse network impacts where multiple shortlisted Projects are in a similar geographic location. These limits will be developed and applied at Portfolio Assessment, based on the Portfolio Shortlist. ¹⁴
Adverse community effects	Where multiple shortlisted Projects without planning approval are in a similar geographic location.	One or more Projects may be excluded from further consideration to avoid cumulative impacts from multiple Projects which have the potential to significantly affect community support.
Supplier concentration risk	Where multiple shortlisted Projects are proposing to use the same contractors or original equipment manufacturers.	This is a risk assessment to determine whether a supplier can meet its commitments to multiple successful Projects. The Consumer Trustee may seek more information to address any aggregate supplier capacity effects and it may not recommend one or more Bids to avoid supplier concentration risk.
Counterparty concentration risk	Where several shortlisted Projects are proposed by the same Proponent, creating a material counterparty risk as determined by the Consumer Trustee with input from the SFV.	The Consumer Trustee may limit the number of Bids a Proponent can put forward in each Tender Round. In addition, the Portfolio Assessment may consider aggregated risks associated with multiple contracts with a single counterparty, including related entities. It is a risk assessment to determine whether a single Proponent can deliver multiple successful Projects.
Other adverse effects	Where a shortlisted Project has a material detrimental effect to any other shortlisted Projects, as determined by the Consumer Trustee.	The Consumer Trustee will retain discretion to rule out Projects with material adverse impacts on other shortlisted Projects.

¹⁴ For example: if significant amounts of coincident generation were shortlisted for a given area in a Tender Round, the Consumer Trustee may establish a geographical limit based on technical advice. This constraint would then limit the amount of new generation capacity awarded an LTESA in the area.

3.2 Consumer Trustee recommendation

The Consumer Trustee¹⁵ determines which Bids are recommended to the SFV (Recommended Bids).

The decision to recommend a Bid is at the discretion of the Consumer Trustee. The Consumer Trustee will only recommend a Bid where it considers that the recommendation would be in the long-term financial interests of NSW electricity customers (having regard to the assessment as a whole), and the recommendation satisfies or is consistent with all relevant statutory requirements and duties.¹⁶

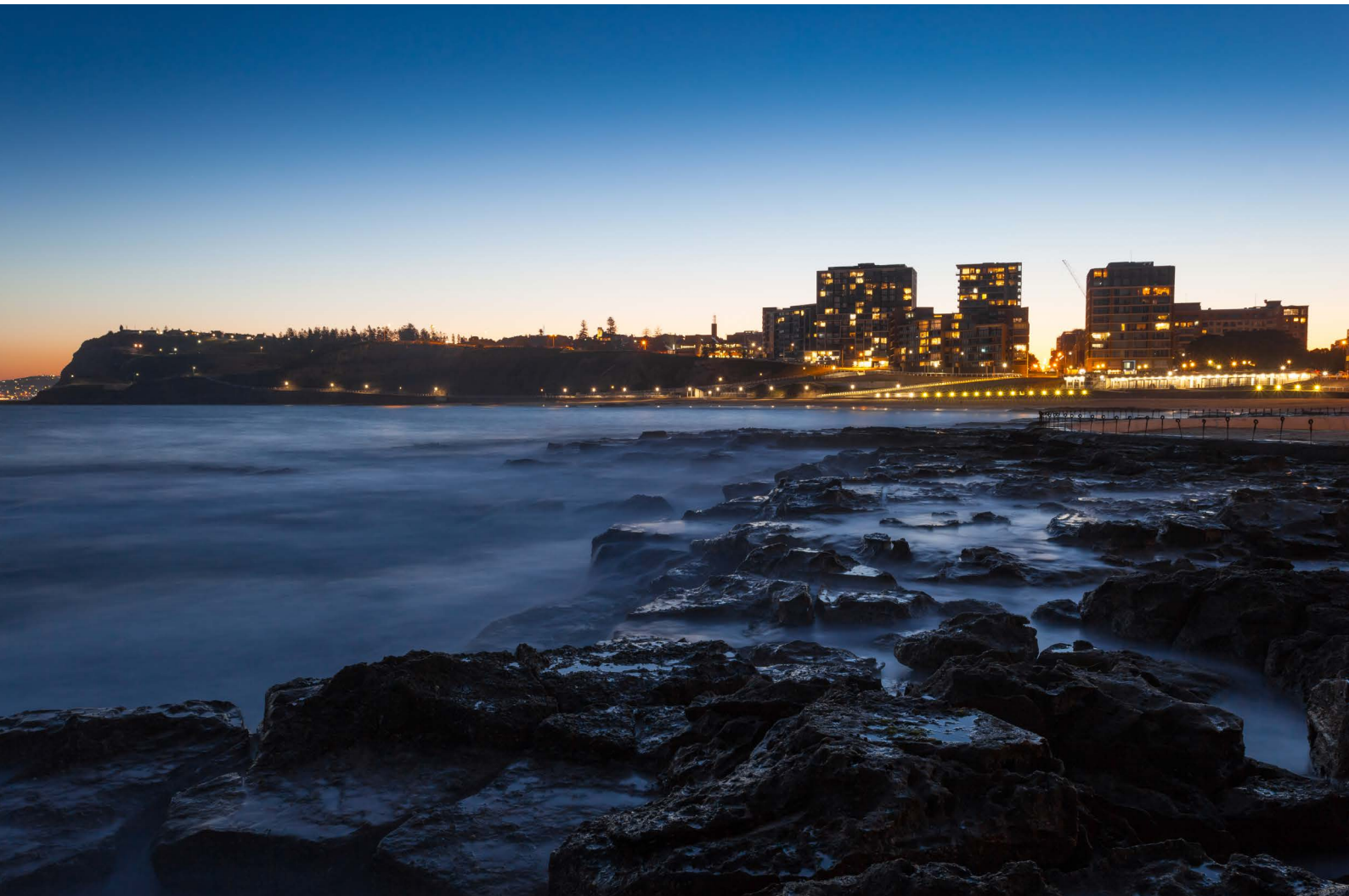
In making recommendations to the SFV, the Consumer Trustee board may be advised by and consider input from specialists and advisers (including both internal and external to the Consumer Trustee).

3.3 Award and contracting

The Consumer Trustee will provide Recommended Bids to the SFV.

Selected Proponents will execute the relevant Project Documents with the SFV.

All unsuccessful Proponents will be notified and, at the Consumer Trustee's discretion, given an opportunity for feedback within probity considerations, in accordance with [Section 5.37](#) of these Guidelines.



¹⁵ Being the board of AEMO Services Limited, as the appointed Consumer Trustee, subject to any delegation made by the board with respect to the Recommended Bids.

¹⁶ For example, under section 48(2) of the EII Act, the financial value of LTESAs is to be the primary consideration for the Consumer Trustee when making a recommendation. Additionally, the Consumer Trustee must take into account the non-financial value criteria when making a recommendation in respect of an LTESA (see regulation 30(3) of the EII Regulation).



4 Assessment Criteria and Bid documentation

This section outlines the information and supporting documentation requirements for each Eligibility and Merit Criteria.

The assessment criteria comprise the Eligibility Criteria and the Merit Criteria.

The assessment criteria have been designed to enable the Consumer Trustee to assess and recommend Projects consistent with the EII Act and the EII Regulation.



Proponents should ensure that all the requested supporting documentation is provided in their response to each Merit Criteria. The Consumer Trustee will only assess the information submitted as part of their Bid. Returnable Schedules will be provided to Proponents for populating where specified.

4.1 Eligibility Criteria (EC)

4.1.1 Proponent Eligibility Criteria

The requirements for the Proponent Eligibility Criteria are listed in Table 7. Proponents must propose one Bid Entity (EC16). 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).¹⁷

Proponents that do not meet all Proponent Eligibility Criteria (including their Bid Entity, if applicable), may cease to be further considered by the Consumer Trustee. 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 to be considered further.

Table 7: Proponent Eligibility Criteria

Item	Criteria
EC14	The Proponent, and the Bid Entity (if different to the Proponent), must hold an Australian Business Number (ABN) and must be: 1. an Australian entity duly incorporated under the Corporations Act 2001 (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. <i>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.</i>
EC15	The Proponent must not be named as an organisation on the list of persons and entities on the Australian Department of Foreign Affairs and Trade Consolidated List.
EC16	The Proponent must propose one Bid Entity.
EC17	The 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	The 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.
EC19	The Proponent must not have been named as an organisation that has not complied with the <i>Workplace Gender Equality Act 2012</i> (Cth).
EC20	The Proponent must comply with: • 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	The Proponent must hold all insurances required by law.
EC22	The Proponent has not, within the previous 10 years, been subject to an inquiry by the NSW Independent Commission Against Corruption (or an equivalent body in a jurisdiction in Australia) where a finding has been made against the Proponent (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.

¹⁷ Where the Bid Entity is not the Proponent, and will be a newly-incorporated Australian wholly-owned special purpose vehicle, it is expected that the Proponent will satisfy the Proponent Eligibility Criteria for that entity by providing information in relation to ECs 15, 17, 19 and 22 only.

4.1.2 Project Eligibility Criteria

Requirements for Projects to meet the Project Eligibility Criteria are listed in Table 8. Where a Product (shown in the relevant column) contains a tick against a Project Eligibility Criteria (shown in EC labelled rows), Proponents must provide information on their Project Bid to demonstrate that their Project meets the listed criteria.

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. Where the Consumer Trustee considers it is infeasible or impractical to apply any of the Project Eligibility Criteria to a particular Product or type of technology in a specific Tender Round, the Tender Guidelines may modify or disapply the application of the relevant criteria.

Note: Project Eligibility Criteria EC13 has been disapplied for this Tender Round, in accordance with Section 3.1.1 of the Tender Rules.

Table 8: Project Eligibility Criteria

Item	Criteria	Generation LTESA	LDS LTESA
EC1	Project must involve generation from a renewable energy source.	✓	-
EC2	Project must have a generation capacity of not less than 30 MW.	✓	-
EC3	Project has not previously been awarded an LTESA, or Access Right. ¹⁸	✓	✓
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 for the central dispatch process under the National Electricity Rules (NER) in relation to 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	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. ¹⁹	✓	✓
EC8	Projects must be in receipt of a connection agreement or a network service provider response to a connection enquiry. ²⁰	✓	✓
EC9	Project must submit a Community Engagement Plan, that will become contractually binding upon award.	✓	✓

Continued on next page

¹⁸ 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: regulations 28(1)(b), (2) and (3) of the EII Regulation (for LTESAs).

¹⁹ The Consumer Trustee understands that Projects that have significant development planning approvals may have formal documentation from relevant planning authorities that supersede the SEARS document. Evidence of these documents may be sufficient to satisfy EC7.

²⁰ The Consumer Trustee understands that Projects seeking to amend an existing connection agreement do not require a CER and thus will not be able to provide a CER. In order to satisfy EC8, the Consumer Trustee expects that Proponents who may seek to rely on a modification to an existing connection agreement should produce evidence that the Consumer Trustee could consider equivalent to a CER.

Table 8: Project Eligibility Criteria

Item	Criteria	Generation LTESA	LDS LTESA
EC10	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. For this Tender Round, Government Support does not include: • Non-concessional funding provided by the Clean Energy Finance Corporation (CEFC); • Certificates accruing to the Project that is also available to projects beyond the specific Project in question (e.g. LGCs/STCs/ESCs, PRCs, ACCUs); • Funding that was provided solely to progress the feasibility of a Project during its development phase (e.g., certain ARENA funding, pumped hydro recoverable grants); • Payments for services awarded or appointed by EnergyCo in relation to REZ's, network infrastructure projects, or priority transmission infrastructure projects. • Any new policy announced by the NSW Government to support the development of renewable energy projects (i.e. funding from the proposed NSW Energy Security Corporation).	✓	✓
EC11	Project must not be impacted by an order served on a relevant operator prohibiting connection to the relevant network infrastructure, under section 29 of the EII Act.	✓	✓
EC12	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.²¹	✓	-

²¹ Regulations 28(2A) and (2B) of the EII Regulation. See also regulation 29(4) of the EII Regulation.

Proponents will be assessed against each of the following Merit Criteria (MC), in accordance with the [Tender Rules](#).

4.2 Merit Criteria (MC)

Proponents will be assessed against the Merit Criteria in [Sections 4.2.1](#) and [4.2.2](#).

4.2.1 Project Merit Criteria

The Project Merit Criteria and a description of how Proponents can demonstrate the merit of their Project, are listed below.



Select the relevant Merit Criteria to learn more



MC3 – Impact on the electricity system



MC4 – Pathway to commercial operation



MC5 – Organisational capacity to deliver Project



MC6 – Community engagement, shared benefits and land use considerations



MC7 – Regional economic development



MC3 – Impact on the electricity system

Scope: assess the impact that each Project may have on the NSW electricity system. This is intended to:

- assess Projects' impact on the NSW electricity system, including congestion;
- assess Projects' ability to provide essential system services and/or contribute to system strength.

What is assessed	What is required ²²	What we are looking for
Impact on the electricity system	• Overview of the Project's impact on the electricity system substantiated by recent grid connection studies and/or formal documents with AEMO and/or NSPs. • Features or characteristics of the Project (e.g. grid forming inverters, black-start capabilities) or associated planned works that could provide essential system services and/or contribute to system strength.	• Evidence of the Project having minimal negative congestion impact on the NSW electricity network. • Demonstration of the Project's ability to provide essential system services and/or contribute to system strength.

²² Including Proponents for Projects that have reached Financial Close or COD.



MC4 – Pathway to commercial operation

Scope: assesses feasibility of the Proponents:

- pathway and progress towards reaching Financial Close (FC) and Commercial Operations Date (COD), including risks to timely Project completion;
- progress towards securing all required approvals, land and obtaining a network connection agreement.

Selected Proponents will have the target Financial Close, COD, and other key dates scheduled as milestone in the relevant Project Document(s).

Note: Proponents' target (or actual, if applicable) Financial Close and COD should be consistent in their Project Bid and Financial Value Bid.

What is assessed	What is required	What we are looking for
Pathway to financing and construction Proponents are required to demonstrate their progress towards reaching Financial Close and COD, and their financial capacity to support the development, construction and operation of the Project. Alignment between the target date for achieving Financial Close and the plan to achieve the target COD will also be assessed.	• A Project development plan and schedule, a financing strategy or plan, a revenue contracting strategy or plan, and a Project risk register. • Evidence of financing progress (e.g. letters of support, term sheets and/or correspondence from debt or equity financiers to the Proponent) and demonstrated track record of the Proponent raising capital and/or engagement of external advisor with demonstrated track record to raise capital. Proponents intending to utilise equity financing or corporate level debt facilities are to provide details on the current availability of such facilities and the level of organisational endorsement and/or approvals for using such facilities concerning the Project. • Evidence of progress towards finalising construction and equipment supplier contracts, such as: – EPC and O&M contractor engagement (e.g. correspondence, term sheet, early works contracts); – Technical design summaries; and/or – Activities relating to procurement and construction of the Project.	• Demonstrate a clear pathway to raising finance and achieving Financial Close in the near-term and a clear pathway to achieve COD. Risks to timely Project completion are appropriately managed with clear and articulate mitigations. • Evidence of progress towards finalising capital raising activities, substantiated through financial support documents. • Demonstrates a clear understanding of Project risks associated with reaching COD and identifies appropriate mitigants to resolve or reduce the associated risks. • Demonstrate significant progress in securing relevant Project agreements (construction contracts).

Continued on next page

What is assessed	What is required	What we are looking for
Pathway to securing approvals, network connection, and land Proponents are required to demonstrate their: - Progress to securing land tenure and obtaining planning approvals relating to the NSW planning assessment process and Commonwealth environmental assessment approvals, if required. - If applicable, progress towards approvals required under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth). - Progress made toward obtaining a network connection agreement from the relevant NSP in line with the target COD.	- Site map of the Project, including Project site and all relevant easements, with cadastral ID, and Proponent land tenure rights, infrastructure and/or construction needs. - Planning approval documentation (e.g. Environmental Impact Assessment, Development Application lodgement, notification, Development Consent decision notice). - For pumped hydro energy storage projects, progress made towards acquiring water licence. - Foreign Investment Review Board (FIRB) approval progress, requirements and/or any foreign ownership interests, including: - Information about Proponent's corporate structure and foreign ownership (if relevant). - Evidence of connection approval progress, such as: - Connection Enquiry Response; - Evidence of progress of the Generator Performance Standards (GPS) package with AEMO; - Section 5.3.4 letter(s) (pursuant to section 5.3.4 of the NER) - Evidence of progress of AEMO registration process; - Network (Grid) Connection Agreement (or any related documentation). - An outline of the key risks and relevant mitigants to your Project securing grid connection.	- Land tenure rights secured for all of the Project site including the connection route (where the connection is the responsibility of the Project). - Evidence of progress towards securing all relevant planning and regulatory approvals and a pathway for securing any outstanding approvals required. - Confirmation from the Proponent as to whether FIRB approval for the Bid or the Project is required with supporting information including the Proponent's corporate structure particularly in relation to any foreign ownership interests. - Significantly advanced progress with the relevant NSP and AEMO in relation to the Project.

Foreign Investment Review Board

The Australian Commonwealth Government requires investment approval over certain types of acquisitions by 'foreign persons' of equity interests in Australian companies and unit trusts, other interests in Australian businesses and Australian real property assets under the FIRB Regime. As it relates to this Tender Round, approvals under the FIRB Regime might be relevant in terms of the tenure that Proponents are acquiring for their Project and the extent to which that tenure constitutes 'interest in Australian land' and/or 'interests acquired by entering agreements or acquiring options'.

The Proponent must provide the Consumer Trustee with confirmation and relevant information regarding any approvals under the FIRB Regime which may be required for a Proponent's Project.

The Consumer Trustee recommends Proponents seek legal advice with respect to any such approvals.



MC5 – Organisational capacity to deliver Project

Scope: the capacity, capability and track record of the Proponent, its management, and other relevant entities involved in the Project to deliver the Project.

What is assessed	What is required	What we are looking for
Organisational capacity to deliver the Project	• Credentials and capabilities of the Proponent and the Project partners, including a list of the Proponent's relevant projects delivered and/or operated in the last five years. • Procurement strategy, approach, and status for key resources, delivery partners, and advisors required to deliver the Project. • Project-delivery contracting structure and/or commercial delivery model in diagrammatic representation and purpose of the structure.	• Proponent demonstrates a detailed and thorough understanding of procurement, including key resources and delivery partners/ advisors required to deliver the project, and detail into the availability of these resources and a strategy for procuring these, if not already procured. • Proponent and delivery partners demonstrate a track record in delivering comparable energy generation and/or storage Projects (e.g. case studies of comparable projects, list/summary of previous projects delivered).



MC6 – Community engagement, shared benefits and land use considerations

Proponents should refer also to 'Treatment of future commitments related to social licence'.

Scope: evidence to demonstrate a clear understanding of any impacts of the Project on the community plus a tailored approach to minimise and offset any impacts of the relevant electricity infrastructure on affected communities, through:

- engagement with local communities and stakeholders that is generally consistent with applicable NSW Government guidelines to foster local community support;
- financial benefits sharing during construction and operation with local communities and stakeholders;
- improvement in land use, considering any environmental constraints and opportunities in the site selection process, that is generally consistent with applicable NSW Government guidelines;
- adopting best practices in community and First Nations engagement strategies appropriate to the scope of the Project. This should consider region-specific First Nations Guidelines and relevant industry documents such as the 'Clean Energy Council: A guide to benefit sharing options for renewable energy projects'.

Region-specific First Nations Guidelines are developed by a working group of local representatives and include:

- Goals and aspirations of a region.
- Outline of particular approaches to engagement.
- Any priority areas of employment and income opportunities for local communities. For example, the [CWO First Nations Guidelines](#) set out local priorities and key information that can be used by Proponents with Projects in CWO REZ.



For guidance, Proponents can refer to the [Market Briefing](#) and [guidance on completing social licence schedules](#).

What is assessed	What is required	What we are looking for
Consistent with EC9, all Bids must submit the completed MC6 Returnable Schedule – Community Engagement Plan (CEP) detailing commitments to share benefits with local communities and identify and implement land use benefits where appropriate. The schedule includes confirmation of commitments the Proponent makes as part of the local council and/or State Voluntary Planning Agreement (VPA)²³ and commitments above and beyond planning requirements.	• Understanding and evidence of: – the impact the Project will have on communities and land use; and – how the Project will commit to minimise and offset that impact. • Description of outcomes of local community engagement and stakeholder mapping completed. • Description of proposed local community engagement activities that reflect the potential future impacts on the community. • Clearly articulated approach to First Nations Engagement. • Description of community acceptance for site selection and project layout, including consideration of community consultation and interests. • Description of the Project’s communication protocols. • Shared benefits initiative for the Project in the completed MC6 Returnable Schedule.	• Clear identification of impacted communities and stakeholders and demonstration of understanding of the views and any issues or impacts raised, supported by evidence of appropriate local community engagement to date. • Clearly articulated local community engagement strategy tailored to the requirements of the Project and its impacts on stakeholders and communities. This should be mapped against Project timeframes and include robust governance arrangements and best practice engagement tools to facilitate community-led or community involved decision-making. • Evidence of First Nations best practice engagement and place-based design, where appropriate to the site, including demonstration of culturally aware engagement that has led to or is intended to establish meaningful relationships with relevant representative bodies. • Demonstrate consideration of early and collaborative community stakeholder engagement to inform site selection, including assessment of social and local considerations to understand community values and adapt the Project site to local site features where appropriate. • Integration with land use practices adopted by local landowners, e.g. agricultural practices and/or Traditional Owners. Evidence of how site selection and/or layout has considered constraints, addressed community and stakeholder concerns, and an approach to avoid or mitigate impacts. • Demonstration of genuine and ongoing commitments to shared benefits exceeding local council and/or VPA commitments.

²³ The Voluntary Planning Agreement is a legal agreement between planning authorities and developers which outlines contributions to the authority, under the *Environmental Planning and Assessment Act 1979* (NSW).



MC7 – Regional economic development

Proponents should refer also to 'Treatment of future commitments related to social licence'.

Scope: demonstration and/or commitments to improve regional economic development, including local supply chain, workforce and First Nations participation.

The Consumer Trustee takes into account the [First Nation Guidelines](#) regarding consultation and negotiation with local Aboriginal communities and the [NSW Renewable Energy Sector Board Plan \(Sector Board Plan\)](#). The Industry and Aboriginal Participation Plan (IAPP) is an essential attachment that will become contractually binding on award. It is unlikely that any Bid will be successful if this is not provided.



For guidance, Proponents can refer to the [Market Briefing](#) and [guidance on completing social licence schedules](#).

Commitments towards achieving baseline requirements and/or stretch goals will be assessed against Table 9, based on considerations in the NSW Renewable Energy Sector Board Plan. Proponents should note that:

- Baseline requirements and/or stretch goals do not apply to technologies not listed in Table 9.
- Where a Project is not able to commit to any particular baseline requirement, the Proponent should:
 1. Stipulate the lower level of commitment that it can commit to for the relevant baseline requirements; and
 2. Provide a detailed justification as to the constraint that prohibits the requirements from being achieved. The robustness of the evidence and rationale provided will form part of the assessment.
- Project Bids that do not provide commitments will be assessed based on a nil response and may be assessed as Non-Compliant where insufficient justification is provided to support their response.
- Projects demonstrating voluntary efforts to procure locally will be considered favourably under the relevant items. Any voluntary efforts are expected to contribute to build and improve the local supply chain for newer technologies.

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

Note that the following definitions apply to the commitments outlined in Table 9.

- **Total Project Contract Value (TPCV):** 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 MC 7 IAPP Returnable Schedule. As the IAPP will become contractually binding on award, TPCV will be a defined term that is contractually enforceable in the relevant Project Documents.
- **Total Project Workforce (TPW):** 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 IAPP will become contractually binding on award, TPW will be a defined term that is contractually enforceable in the relevant Project Documents.

Table 9: Baseline requirements and stretch goals related to MC7²⁴

Supply chain inputs criteria <i>% for supply chain inputs refers to goods and services procured from, or value added in Australia & New Zealand as a percentage of Total Project Contract Value</i>	Baseline requirements			
	Wind	Solar	Pumped hydro	Battery storage
Before COD – 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) ²⁵	10%	95%	30%	95%
Supply chain inputs criteria	Stretch goals			
	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) ²⁶	95%			
Investment and innovation in the supply chain	Baseline 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 3, Proponents to make a voluntary but contractually binding commitment to investment and innovation.			
Employment, skills and knowledge transfer criteria	Baseline requirement		Stretch goal	
Learning workers ²⁷ (% of total Project workforce)	20%		40%	
Apprentices (% of all trades positions on a Project)	20%		30%	
First Nations participation criteria	Baseline requirement		Stretch goal	
First Nations participation (% of TPCV)	1.5%		10%, or the goal in the region-specific protocol under the First Nations Guidelines.	
Fair and ethical practice criteria	Baseline requirement		Stretch goal	
Employment of underrepresented groups ²⁸ (% of total Project workforce)	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:				
- Alignment with NSW Net Zero Plan. - Alignment with NSW Circular Economy Policy Statement. - Sourcing materials according to EN15804, Green Building Council's or other appropriate sustainability framework.				

²⁴ This section is based on the considerations in the NSW Renewable Energy Sector Board Plan.

²⁵ This component will be contracted in the Project Documents as % of TPCV.

²⁶ The basis for the baseline requirements and stretch goals for locally milled steel are determined in accordance with Table 8 of the NSW Renewable Energy Sector Board Plan (page 32), which outline “the minimum requirement for steel products and components is determined by reference to steel that the SMEs and First Nations businesses in the local industry have the capacity to produce”. This component will be contracted in the Project Documents as % of TPCV.

²⁷ 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.

²⁸ 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.

What is assessed	What is required ²⁹	What we are looking for
Local supply chain development (including investment, innovation and environmentally sustainable procurement)	- Completed MC7 Returnable Schedule with local supply chain commitments. Additional supporting information that may include: - Strategies and activities to demonstrate how targets will be achieved. - Strategies and/or initiatives to address barriers to entry for small and medium-sized enterprises (SME's), including but not limited to, Aboriginal-owned businesses. - Description and evidence of paying small business subcontractors (e.g. favourable contract payment terms, internal process document and/or declaration of timely payment).	- Demonstration of Project commitment to meet or exceed relevant technology baseline requirements at Table 9. If the proposed Project uses a combination of technologies, the Proponents are expected to use a 'weighted average' method to measure the contribution as a percentage of Total Project Contract Value. - Evidence of clear strategies, actions, policies, and practices to support the achievement of commitments, including demonstrated understanding of specific local context and/or Project-specific considerations. - Commitments to investment and innovation in the local supply chain in the NSW renewable energy sector, including but not limited to R&D related to the technology used and support for start-ups and social enterprises related to renewable energy and First Nations communities. - Evidence of the strategies, actions, policies, and practices that will support environmentally sustainable procurement throughout the supply chain on the specific Project. - Consideration may include, but is not limited to, environmentally sustainable procurement in its operations (e.g. construction site waste, net zero plan, reducing water usage) and promoting sustainable practices throughout the supply chain (e.g. participating in or committing to battery recycling programs or research). - This may include alignment with NSW Net Zero Plan and/or NSW Circular Economy Policy Statement and/or sourcing materials according to EN15804, Green Building Councils or other appropriate sustainability frameworks. - Evidence of policies to support and meet obligations to SME subcontractors, e.g. track record of SME procurement on projects, timely payment and/or favourable payment terms. - Demonstration of successfully meeting similar local content procurement on previous projects.

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²⁹ Including Proponents for Projects that have reached Financial Close or COD.

What is assessed	What is required	What we are looking for
Employment and workforce development	- Completed MC7 Returnable Schedule with workforce commitments. Additional supporting information that may include: - Description of activities to upskill and develop local workforce as part of the Project delivery. - Description and commitments of education, training and/or capacity building for First Nations Businesses.	- Demonstration of Project commitments to meet or exceed baseline requirements at Table 9. - Outstanding strategies, supported by evidence, to support local workforce development (e.g. pre-employment training, scholarships, cross-skilling to renewables and supporting apprentices). This may include employment initiatives or programs undertaken by the Proponent to upskill and develop local workforces (e.g. programs for hard-to-reach, underrepresented groups such as women, long-term unemployed and Aboriginal people from the local region).

4.2.2 Financial Value Merit Criteria

This section outlines the information required to assess the Merit Criteria for the Financial Value Assessment of shortlisted Proponents. Proponents will be required to complete a Financial Value Returnable Schedule.



MC1 – Financial value

Scope: the financial value of the Project, including the effect of the Project on:

- wholesale electricity costs;
- the costs of network infrastructure, including REZ 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 relevant³⁰

Merit Criteria 1 also requests the Bid Variables for both the [Default and Alternative Financial Value Bids](#). This information, and some Project information submitted in the Project Bid, will be used to assess financial value (see [Table 11](#)).

Note: Hybrid projects will be assessed under MC1 by assuming the financial value of the battery is optimised, charging at lowest priced times and discharging at the highest price. The renewable energy trace will be overlayed with the battery optimisation. In the event the sum of discharged energy is above the connection export limit, the generation will be curtailed to meet this limit.

³⁰ For LTESAs, EII Regulation, reg 26(4).

Table 10: Aspects considered under Merit Criteria 1

How we will assess it	What we are looking for
Wholesale electricity costs and market benefits	
Generation LTESAs - A Project is expected to result in a reduction of the average NSW wholesale market price. This has a net positive impact on wholesale electricity costs from the perspective of NSW electricity customers. - Forecast reductions in wholesale spot prices will be assessed under a range of future scenarios by evaluating the relationship between forecast prices, electricity demand, and expected generation.	- Projects that are expected to consistently and significantly reduce NSW wholesale market prices across a range of scenarios. - Projects that are expected to lower wholesale cost to NSW customers by suppressing prices at times of tight supply demand balance.
LDS LTESAs - A Project is expected to charge when NSW wholesale price is low and later dispatch its charge when prices are high. This has the potential to reduce the daily spread in wholesale prices and can put downward pressure on high price periods where it provides additional supply. - Projects will be assessed on their ability to reduce economic curtailment of variable renewables. - Projects' duration and load capability will be considered in their expected impact on wholesale prices under a range of future scenarios.	Projects that are expected to operate in response to price signals. This can include time-shifting supply and demand in the wholesale energy market and reducing economic curtailment of variable renewables.

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How we will assess it	What we are looking for
Net LTESA Cost	
Generation LTESAs - Cashflow analysis of the LTESA's impact on the SFV based on the structure of the LTESA. - Assessed against a range of scenarios encompassing different market price outcomes and LTESA operator's exercise behaviour.	- Projects that exhibit a low likelihood of exercising the LTESA options and only using the product as price guarantee or 'insurance' when wholesale prices are low. All else being equal, a lower Fixed Price will show a lower likelihood of being exercised. - A low-cost impact to the SFV as a result of the options under the LTESA being exercised. All else being equal, this can be shown via: - Lower Fixed Price and Repayment Threshold Price. - Lower Contracted Percentage. - Shorter Contract Term. - Excluded Swap Periods.
LDS LTESAs Projects' Annuity Cap and Net Revenue Threshold are assessed alongside a duration and load-capability benchmark to estimate expected costs incurred by the SFV across multiple future scenarios.	- A low Annuity Cap Bid. - A low Net Revenue Threshold Bid. - A high potential for market revenues which decrease expected annuity payments.
Uncertainty of the value of generation³¹ (Generation LTESA only)	
- The relationship between expected output and uncertainty of price will be estimated and included in the overall assessment of financial value. - Some Projects' generation output is highly variable reducing the certainty of wholesale market benefits and net LTESA cost estimates. - A Project that has expected output at times of high variability of price may lead to a wider range of expected costs and benefits.	High certainty of output at times of high prices, via a comparison of generation profile distribution with price distribution at different times of day.

³¹ EII Regulation, reg 26(4)(a), (d) and (e).

Table 11: Project information sought for Merit Criteria 1 assessment

Information source	Description	Where it will be assessed
Generation shape (as required)	Proponents are to provide their generation traces for the Project in MWh per interval specified. This should represent the AC output measured at the connection point after accounting for auxiliary losses and inverter ratings, but excluding losses due to system degradation. Proponents should provide the most accurate generation traces they have available through either measured or modelled data. This is to be provided for three specified historical weather years (dates aligned with financial years).	• Wholesale market benefits • Net LTESA cost • Uncertainty of the value of generation
Dispatchable shape (as required)	If a Project involves generation technologies that are not weather- dependent, they will be asked to provide a separate generation trace indicating the output trace of the dispatchable technology component and text description of how this component is expected to operate.	• Wholesale market benefits • Net LTESA cost • Uncertainty of the value of generation
Degradation	Proponents are to provide: • A degradation profile for the Project, indicating annual degradation in aggregate for all Project components. • Evidence to demonstrate why the selected degradation profile is reasonable for the Project. Should the Consumer Trustee not determine the evidence provided as reasonable, a standardised degradation profile may be used for the technology employed by the Project.	• Wholesale market benefits • Net LTESA cost
Expected operational guarantee life	Generation LTESAs A standardised expected operational guarantee life is assumed for assessment, based on market data: • 25 years is assumed for wind projects. • 30 years assumed for solar projects. Proponents may provide a different expected operational guarantee life with justification and evidence. These may be accepted at the Consumer Trustee's discretion. LDS LTESAs Proponents are to provide: • An expected operational guarantee life for the Project. • Evidence to demonstrate why the expected operational guarantee life is reasonable for the Project. Should the Consumer Trustee not determine the evidence provided as reasonable, a standard operational life guarantee may be used for the technology employed by the Project.	• Wholesale market benefits

The Project information listed below will also be requested through the online application form and/or Returnable Schedules to support Merit Criteria 1 assessment:

- Fuel source, Maximum Capacity and storage capacity (if applicable), operational life and the target COD.
- Location of the Project and network connection point.
- Anticipated first year of exercise.
- A schedule of years that the right to exercise the LTESA is forfeited. For example, this could be years that a Project will have a separate offtake agreement active.



MC2 – Commercial departures

Scope: the nature and extent of the commercial departures and the resulting risk-transfer from the proforma Project Documents.

What is assessed	What is required	What we are looking for
Commercial departures	• Completed departure table (Returnable Schedule), including the reason for requesting each departure. • Marked-up version or compare version of the relevant Project Documents with their proposed changes in a form ready for acceptance. • Clean versions of the Project Documents in a form that they are ready for execution by the Proponent (i.e. requiring no further changes, including parties' details and execution clause) and will be considered capable of acceptance.	Departures should be limited to those critical to the Proponent's commercial or technical requirements. All cases should consider the impacts of changing the proposed risk position in the proforma Project Documents. Bids will be scored against the following principles: • Lower scores will be allocated to Bids where the departure(s): – Changes a term that is necessary for the LTESA to qualify under the EII Act or is required for the SFV to administer the LTESA as contemplated by the EII Act, the EII Regulation, and supporting regulations. – Alters consistency with other LTESAs or would bring additional administrative burden and cost to the SFV. • Higher scores will be allocated to Bids with no proposed departures.



5 Tender Conditions

5.1 Application and agreement to comply with these Tender Conditions

Participation in the Tender Round is subject to compliance with the Tender Conditions.

All persons (whether or not they submit a Bid) who obtain these Guidelines may only use this document and the information contained in it, in compliance with the Tender Conditions.

By participating in the Tender Round, each Proponent (and each Consortium Member):

- a. is deemed to accept, acknowledge and agree:
 - i. to comply with the Tender Conditions and all applicable Laws; and
 - ii. that information provided to the Consumer Trustee during the Tender Round is for the benefit of the Consumer Trustee, the Infrastructure Planner and the SFV; and
- b. must ensure compliance by its Associates with the Tender Conditions.

The Tender Conditions apply to:

- a. these Guidelines and any other information given, received, or made available in connection with these Guidelines, including any revisions or Addenda;
- b. the Tender Round and each Proponent's participation in the Tender Round; and
- c. any communications, including any presentations, meetings or negotiations (whether before or after the release of these Guidelines), relating to these Guidelines or the Tender Round.

The Tender Conditions apply for the benefit of the Consumer Trustee and each Associate of the Consumer Trustee.

In addition to any other remedies available to the Consumer Trustee under Law or contract (including under the Tender Process Deed), any failure to comply with the Tender Conditions will, in the absolute discretion of the Consumer Trustee, entitle it to terminate a Proponent's or a Consortium Member's participation (or further participation) in the Tender Round.

5.2 Interpretation

Except to the extent the context requires otherwise, in these Guidelines:

- a. 'includes' in any form is not a word of limitation.
- b. the meaning of 'or' will be that of the inclusive 'or', meaning one, some or all of a number of possibilities.
- c. headings are for convenience only and do not affect interpretation.
- d. the singular includes the plural, and the plural includes the singular.
- e. if a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- f. a reference to a person includes a natural person, a firm, a company, a corporation, a body corporate, a trust, a partnership, an unincorporated association or a government agency and any successor entity to those persons.
- g. a reference to a time is to Australian Eastern Standard (AEST) time.
- h. a reference to a party in the Tender Conditions or another agreement or document includes that party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal or personal representatives).
- i. a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and all legislation, regulations, rules or statutory instruments under it.

5.3 Not an offer

These Guidelines are not an offer. It is an invitation for persons to submit a Bid only. These Guidelines must not be construed, interpreted or relied upon, whether expressly or impliedly, as an offer capable of acceptance by any person.

Neither these Guidelines, nor a Bid submitted by a Proponent, has any contractual effect in relation to proceeding with the Project and does not create any contractual, promissory, restitutionary or other rights in that respect.

The Consumer Trustee is under no obligation to complete the process outlined in these Guidelines or to recommend a Bid or a Project. The Consumer Trustee may change the process, or the description of the requirements outlined in these Guidelines by issuing an Addendum.

The Consumer Trustee's statutory functions do not include entering into or signing the Project Documents.

The Consumer Trustee and its Associates will not be liable for any costs incurred by any person (including Proponents, Consortium Members or their respective Associates) in connection with or relating to considering this opportunity, submitting a Bid or otherwise participating in the Tender Round.

5.4 Liability

Except as otherwise expressly provided in the Tender Conditions or Tender Process Deed, the Proponent (and each Consortium Member) and their respective Associates are not entitled to make any Claim against the Consumer Trustee or its Associates for any Liability incurred by them arising out of, or in connection with, the Tender Conditions or Tender Process Deed (including, without limitation, the exercise or non-exercise of the Consumer Trustee's discretion), the Tender Round (including, without limitation, arising from any loss of data), the submission of (or failure to submit or decision not to submit) a Bid, the Disclosed Information, a failure to disclose information, or (where applicable) any inspections of any site related to the Project or the granting (or not granting) of any Approvals required or desired in relation to the Project (including in connection with any delay in progressing or securing any such Approval) or the making (or not making) of any recommendation in respect of any Proponent, its Consortium Members or their respective Associates.

The Proponent (and each Consortium Member) must indemnify, and must keep indemnified on demand, the Consumer Trustee and each of its Associates from and against any Claim or Liability (including any Claim made by, or Liability to, a third party) suffered or incurred by the Consumer Trustee or any of its Associates (as the case may be) arising out of, or in connection with:

- a. any breach by the Proponent or a Consortium Member of the Tender Conditions or Tender Process Deed, including a failure to comply with the Tender Conditions or Tender Process Deed;
- b. any action or Claim brought by the Proponent, a Consortium Member or any of their respective Associates against the Consumer Trustee or any of its Associates with respect to any of the matters or events identified in this Section 5.4;
- c. (where applicable) any site inspection to the extent caused by the act or omission, including any negligence of, the Proponent, a Consortium Member or any of their respective Associates; or
- d. the Consumer Trustee exercising or failing to exercise, in whole or in part, its rights under Tender Process Deed.

Without limiting the foregoing, Proponents, Consortium Members and their respective Associates represent and warrant that they will have no Claim, and will not bring any Claim, against the Consumer Trustee or any of its Associates arising from or in connection with the exercise or the failure to exercise the rights or discretions of the Consumer Trustee in accordance with the rights and discretions set out in the Tender Documentation.

The Proponent, Consortium Members and their respective Associates each acknowledge and agree that the Consumer Trustee has relied on the representation and warranty set out above in deciding to consider a Bid.

Except to the extent the context requires otherwise:

- a. where the Proponent comprises more than one person or is a consortium, the obligations and liabilities of the Proponent, under the Tender Conditions or Tender Process Deed apply to the Proponent, and each Consortium Member jointly and severally;
- b. no rule of interpretation applies to the disadvantage of the Consumer Trustee on the basis that the Consumer Trustee put forward the Tender Conditions or Tender Process Deed; and
- c. if any of the Tender Conditions or Tender Process Deed purport to exclude Liability for a particular matter, such exclusion only operates to the extent permitted by Law.

5.5 No warranty

Except to the extent otherwise required by Law, neither the Consumer Trustee nor its Associates:

- a. make any warranties or representations (express or implied), or assume any duty of care, or accept any Liability with respect to the completeness, accuracy, adequacy or correctness of the Tender Documentation, the Disclosed Information;
- b. make any warranty about whether (or in what form) any Ministerial directions, order(s) or regulatory or similar instruments will be made under the EII Act; and
- c. accepts responsibility or is liable in any way for any loss or damage of whatever kind (whether foreseeable or not) however arising (including, without limitation, by reason of negligence or default), incurred by any person in connection with the Tender Documentation or any Disclosed Information, the Project, in preparing any Bid, or in the outcome of the Tender Round.

5.6 No representations

No representation made by or on behalf of the Consumer Trustee or any of its Associates in relation to the Tender Round or its subject matter will be binding on the Consumer Trustee or any of its Associates unless that representation is expressly incorporated into any Final Project Documents entered into in respect of the Project.

5.7 Compliance with protocols

Each Proponent and Consortium Member must, and agrees to procure that each of its Associates will, comply with any and all protocols and procedures in relation to any data room, meetings, presentations, workshops, question and answer processes, or any other aspect of the Tender Round as set out in these Guidelines or otherwise provided for by the Consumer Trustee in accordance with these Guidelines.

5.8 Bonding requirements

To ensure the integrity of the tender process, Proponents are required to make contractual commitments to participate in the Tender Round. These commitments will be collateralised by financial bonding in the form of a letter of credit or guarantee. Security for Process Bond (during Tender Round) and construction bond (Initial Security) details are provided in the Tender Process Deed and PDA, respectively.

5.9 Confidentiality

Unless publicly disclosed on the Consumer Trustee's website dedicated to the Tender Round, all Disclosed Information is confidential information about the Consumer Trustee, its Associates, the Infrastructure Planner or Network Operator and its activities. This Disclosed Information is provided solely to enable Proponents, Consortium Members and their respective Associates to consider the opportunity and to prepare and submit Bids.

The Proponent and Consortium Members must:

- a. ensure, at all times, that it and its Associates to whom the Proponent or Consortium Member has disclosed Disclosed Information in accordance with (a)(ii) below:
 - i. not use Disclosed Information except to consider the opportunity in the Tender Round and to prepare and submit Bids;
 - ii. only disclose Disclosed Information to any Associate who has a need to know (and only to the extent that each has a need to know) Disclosed Information to consider the opportunity in the Tender Round and to prepare and submit Bids; and
 - iii. keep strictly confidential all Disclosed Information;
- b. notify the Consumer Trustee immediately if it becomes aware of any unauthorised disclosure or use of the Disclosed Information; and
- c. immediately take all reasonable steps to prevent or stop any such unauthorised disclosure or use.

A Proponent, Consortium Member and each of their respective Associates must not disclose Disclosed Information to any person who is involved with a Competing Proponent.

Proponents will be responsible for their own compliance with this Section 5.9 and any obligations of confidentiality contained in the Tender Process Deed, as well as the compliance of their Associates, Consortium Members and the Consortium Members' Associates.

At any time, the Consumer Trustee may request from the Proponent, the Consortium Members or any of their respective Associates a confidentiality agreement in respect of any specific Disclosed Information, including in accordance with the Tender Process Deed.

All persons are also bound by the non-disclosure obligations imposed by section 75 of the EII Act. Under that provision a person must not disclose information obtained in connection with the administration or execution of the EII Act, subject to certain specified exemptions. That section also sets out the consequences of non-compliance, which include penalties applicable to individuals and corporations.

5.10 Consumer Trustee intellectual property

Unless otherwise indicated in these Guidelines, the Consumer Trustee, its Associates, the Infrastructure Planner or Network Operator (as applicable) own such Intellectual Property Rights as may exist in the Tender Documentation and the Disclosed Information.

Proponents, Consortium Members and their respective Associates are permitted to use and copy these Guidelines and the Disclosed Information for the sole purpose of considering the opportunity set out in this Tender Round and preparing and submitting a Bid.

5.11 Others to be bound

A Proponent and each Consortium Member must ensure that each respective Associate to whom they supply these Guidelines and any Disclosed Information agrees to be bound by the Tender Conditions and complies with the Tender Conditions and any requirements under the Tender Process Deed (as applicable).

5.12 Continuing obligations

The obligations of a Proponent and each Consortium Member and their respective Associates) under these Tender Conditions survive the termination or expiration of the Tender Round and the Project.

5.13 Requirements of the Tender Round

Without limitation, each Proponent (and each Consortium Member) agrees to be bound by the requirements set out in the Tender Documentation in respect of participating in the Tender Round.

5.14 Requests for clarification and further information

If a person finds any discrepancy, error, or has any doubt as to the meaning or completeness of these Guidelines or the Tender Round, or requires clarification on any aspect of these Guidelines or the Tender Round, they may notify the Consumer Trustee in writing through the Q&A Process operated by the Consumer Trustee in accordance with Section 3.1.1 of these Guidelines, not less than 7 Business Days prior to the Project Bid Closing Date and Time (during the Project Bid preparation stage) or Financial Value Bid Closing Date and Time (during the Financial Value Bid preparation stage). The Consumer Trustee may at its discretion make deidentified questions and clarifications available to all Proponents. The Consumer Trustee may also publish an Addendum to all Proponents clarifying the discrepancy, error, doubt, or query (as the case may be) and may extend the relevant Closing Date and Time if the Consumer Trustee considers it appropriate in all the circumstances.

The Consumer Trustee reserves the right not to respond to any question or request, irrespective of when it is received.

No representation or explanation to Proponents as to the meaning by the Consumer Trustee or its Associates of these Guidelines, or as to anything to be done or not to be done by the Proponent, will be taken to be included in these Guidelines, unless it is contained in an Addendum.

Meetings with the Consumer Trustee

Notwithstanding the above, the Consumer Trustee may invite a Proponent, Consortium Member or any of their respective Associates to attend meetings with the Consumer Trustee, its Associates or an Authority during the Tender Round to discuss issues arising in relation to the preparation of a Bid, the Project or the Tender Round.

If the Consumer Trustee requests a meeting (whether the meeting is with the Consumer Trustee, its Associates or an Authority):

- a. the Consumer Trustee may prepare an agenda of items to be discussed;
- b. the meetings will be conducted in accordance with all probity and other procedures and protocols advised by the Consumer Trustee from time to time;
- c. the Consumer Trustee may decline to discuss any or all issues raised by the Proponent, Consortium Members or any of their respective Associates; and
- d. questions and responses at any meeting may be recorded in writing or by any other means on behalf of the Consumer Trustee, copies of which may only be provided to the Proponent at the Consumer Trustee's discretion.

Except to the extent that these Guidelines specify to the contrary, information provided at any time by the Consumer Trustee to the Proponent, Consortium Members or any of their respective Associates may also be provided by or on behalf of the Consumer Trustee to a Competing Proponent.

Nothing which occurs at a meeting may be relied on by the Proponent, Consortium Members and their respective Associates unless subsequently confirmed in writing by the Consumer Trustee.

5.15 Improper assistance

Proponents, Consortium Members and each of their respective Associates must not:

- a. seek or obtain the assistance of the Consumer Trustee or its Associates in the preparation of a Bid;
- b. lobby or otherwise take actions to influence the outcome of this Tender Round other than as permitted by these Guidelines.

In addition to any other remedies available to it under Law or contract (including under the Tender Process Deed), the Consumer Trustee may, in its absolute discretion, immediately disqualify a Proponent, Consortium Member or an Associate of either of them, that it believes has sought or obtained such assistance.

5.16 Conflict of interest

Primary obligation in relation to conflicts of interest and notification requirements

A Proponent and each Consortium Member must not, and must ensure that their respective Associates do not, place themselves in a position that may or does give rise to an actual, potential or perceived conflict of interest between the Consumer Trustee and the Proponent's or Consortium Member's interests during the Tender Round.

Subject to and in accordance with Section 5.41 of these Guidelines, all notifications required to be made by Proponents and Consortium Members to the Consumer Trustee under this Section 5.16 or otherwise in relation to a conflict of interest, must be made using, and in accordance with, the Conflict of Interest/Adverse Circumstances Notification Form available to registered Proponents on the Online Portal.

If any:

- a. actual, potential or perceived conflict of interest; or
- b. fact, matter or thing which may have an adverse effect on the Tender Round, probity or perception of probity,

arises in respect of the Tender Round or in respect of the Project, then the Proponent or Consortium Member, as relevant, must:

- c. promptly notify the Consumer Trustee of the actual, potential or perceived conflict of interest or adverse effect;
- d. provide sufficient detail to the Consumer Trustee as to the nature and extent of the conflict of interest or adverse effect, including any information reasonably requested by the Consumer Trustee in relation to the conflict of interest; and
- e. take any steps that the Consumer Trustee reasonably requires to address the conflict of interest or adverse effect.

Conflicts of interest between Competing Proponents

Each Proponent (and each Consortium Member) acknowledges and agrees:

- a. that except as may be consented to by the Consumer Trustee in writing, (in its absolute discretion), the Proponent or Consortium Member (as applicable) is not and must not become a member of, or otherwise be involved with, a Competing Proponent; and
- b. to immediately notify the Consumer Trustee if it receives confidential information of a Competing Proponent, (such notice to include the nature and extent of the confidential information); and
- c. that the Consumer Trustee has the right to exclude the Proponent and/or individual Consortium Members from the Tender Round for breach of this Section 5.16.

Conflicts of interest regarding Associates

In addition to the primary obligation on Proponents and Consortium Members above in this Section 5.16, the Consumer Trustee may at any time during a Proponent or Consortium Member's participation in the Tender Round request a list of any or all of a Proponent or Consortium Member's current:

- a. Debt or Equity Providers;
- b. third party suppliers;
- c. third party subcontractors; and or
- d. Associates

and the Proponent must provide the list or lists requested within 2 Business Days of any such request by the Consumer Trustee.

Each Proponent (and each Consortium Member) acknowledges and agrees no Associate may be an Associate in respect of both the Proponent and any Competing Proponent, or both the Proponent and any of the Consumer Trustee or its Associates unless:

- a. the Proponent has first notified the Consumer Trustee of that fact;
- b. the Proponent has received written consent from the Consumer Trustee to the relevant person being an Associate for both the Proponent and the Competing Proponent or Consumer Trustee;
- c. the Proponent has provided written confirmation to the Consumer Trustee that all necessary protocols are in place in relation to information and personnel separation and ringfencing (for example, information barriers) that would reasonably be expected for persons participating in a competitive tender process of this nature (**Conflict Protocols**); and

- d. the Consumer Trustee has confirmed that such Conflict Protocols have been implemented by the relevant parties to the Consumer Trustee's satisfaction.

If at any time the Consumer Trustee rejects the Conflict Protocols, or the affected Proponent and/or Associate fails to observe such agreed arrangements, then the Consumer Trustee reserves the right (without limitation to any other discretion or action, including pursuant to the Tender Process Deed) to terminate the Proponent's or any Consortium Member's further participation in the Tender Round.

Conflicts of interest between the Consumer Trustee and a Proponent

In addition to the primary obligation on Proponents and Consortium Members above in this Section 5.16, a Proponent or Consortium Member must promptly notify the Consumer Trustee of any relationship it or its Associate (including any Consortium Member) may have with any entity involved or connected with the Project or the administration of the Tender Round, any experts, consultants or advisers appointed by the Consumer Trustee for the purposes of evaluation during the Tender Round, and any entity involved in the NSW Electricity Infrastructure Roadmap.

The Consumer Trustee may, in its absolute discretion, decide not to evaluate (or not continue to evaluate) a Bid if the Consumer Trustee believes that the Bid was prepared (in whole or in part) by an Associate of a Proponent where that Associate:

- a. is or was an Associate of, or otherwise engaged by, the Consumer Trustee at any time during the 12 months immediately preceding the Tender Commencement Date; or
- b. involved in the management of the Tender Round, or the preparation of any of the Tender Documentation or Project Documents, at any time.

Before the Project Bid Closing Date and Time, a Proponent or Consortium Member may request permission from the Consumer Trustee to have an Associate described above contribute to or participate in the Tender Round and/or preparation of a Bid. Where a Proponent or Consortium Member makes such a request, the Consumer Trustee may, in its absolute discretion, at any time:

- a. grant permission, whether with or without such conditions as the Consumer Trustee thinks fit; or
- b. refuse permission.

5.17 No anti-competitive conduct

Proponents, Consortium Members and their respective Associates must not engage in any collusion, anti-competitive conduct or any other similar conduct with any other person in relation to:

- a. any aspect of the Project;
- b. the preparation or submission of a Bid or the Bid of a Competing Proponent;
- c. the evaluation and clarification of a Bid or the Bid of a Competing Proponent; and
- d. the conduct of negotiations between the Consumer Trustee and the Proponent or a Competing Proponent, in respect of the Tender Round.

For the purposes of this Section 5.17 collusion, anti-competitive conduct or any other similar conduct may include access (or seeking access) to, disclosure, exchange and clarification of information whether or not such information is confidential to the Consumer Trustee, any Competing Proponent or any person or organisation.

Without limiting the foregoing, each Proponent and its Consortium Members each acknowledge and agree it must not attempt to obtain any advantage for itself by seeking information other than through the means set out in the Tender Documentation, or by attempting to influence any Associate of the Consumer Trustee in relation to the Tender Round through any means apart from communications in accordance with the Tender Documentation.

In addition to any other remedies available to it under Law or contract (including under the Tender Process Deed), the Consumer Trustee may, in its absolute discretion, immediately disqualify a Proponent, a Consortium Member or any of their respective Associates if that Proponent, Consortium Member or Associate (as applicable) has engaged in any collusion, anti-competitive conduct or any other similar conduct in respect of the Tender Round.

5.18 Submitting a Bid

A Bid must meet the requirements for submission set out in these Guidelines.

5.19 Proponent structure, Consortium Members and Associates

Persons are permitted to form a consortium to participate as a Proponent and deliver the Project to the Consumer Trustee.

The Proponent and each Consortium Member warrants that its Bid accurately identifies the Proponent (including its corporate structure and structure and membership of the Proponent), any Consortium Members, and their respective Associates.

Proponents are also required to nominate a Bid Entity in accordance with the Proponent Eligibility Criteria (see Section 4.1.1 of these Guidelines). This section outlines the requirements for a Proponent depending on its structure.

Where Bid Entity is known and available to register to participate in Tender Round

Following announcement of the Tender Round, where the Bid Entity is available for registration at the commencement of participation in the Tender Round (regardless of whether it is owned by a consortium or a single entity) then that Bid Entity is the Proponent for the purposes of these Guidelines and for entering into the Tender Process Deed.

Where Bid Entity is not available to register to participate in Tender Round

Following announcement of the Tender Round, if a Bid Entity is not available for registration at the commencement of participation in the Tender Round (e.g., a special purpose vehicle is intended to be incorporated later in the Tender Round process), then:

- a. where no consortium ownership structure is proposed, the legal entity who registers in accordance with Section 3.1.1 of these Guidelines will be (unless otherwise agreed with the Consumer Trustee) the Proponent for the purposes of the Tender Round and accordingly will enter into the Tender Process Deed; and
- b. where a consortium ownership structure is proposed, those Consortium Members (as the Proponent) will enter into the Consortium Process Deed.

The Consortium Process Deed includes an election of one Proponent Consortium Member to provide the Security for Process Bond for and on behalf of the Proponent acting as a consortium.

5.20 Change to Proponent structure, Consortium Members and Associates

The Proponent must notify the Consumer Trustee promptly in writing of any change in:

- a. the structure of a Proponent including any Consortium Member or Bid Entity;
- b. the appointment, termination or replacement of an Associate of the Proponent (and the notice must include details of the nature of the appointment); or
- c. the scope or terms of the appointment of an Associate of the Proponent.

All notifications required to be made by Proponents to the Consumer Trustee under this Section 5.20 or otherwise in relation to a change in Proponent structure, must be made using, and in accordance with, the General Notification Form available to registered Proponents on the Online Portal.

Upon receipt of any notice pursuant to this Section 5.20, the Consumer Trustee reserves the right (without limitation to any other discretion or action, including pursuant to the Tender Process Deed) to:

- a. require the relevant parties to enter into a Consortium Process Deed or accession deed (as applicable) or to take any further action required by the Consumer Trustee (including providing any written acknowledgements as to the Proponent's structure or membership);
- b. assess the relevant change in circumstances and elect to terminate the Proponent's or any Consortium Member's further participation in the Tender Round; and/or
- c. invite the Proponent to amend its Bid accordingly.

Without limiting the above, following entry into the Tender Process Deed, changes to the Proponent's structure and/or to 'Proponent Consortium Member' (as that term is defined in the Tender Process Deed) must not be made without the Consumer Trustee's consent, and compliance (if applicable) with any requirement to enter into an accession deed or Consortium Deed Poll (as applicable).

5.21 Material disclosures

The Consumer Trustee has received (and will continue to receive) advice and/or assistance in relation to these Guidelines, the Tender Round and the Project from Assisting Entities.

The Assisting Entities are likely to be involved in assisting the Consumer Trustee to assess Bids.

Each Proponent (and each Consortium Member) acknowledges and agrees that it has been made aware of the matters outlined in this Section 5.21.

5.22 Proponents to perform own due diligence

The Proponent, Consortium Members and their respective Associates must carry out all relevant investigations, make their own review and evaluation, and examine and acquaint themselves in respect of:

- a. all aspects of the Project and the requirements of the Tender Round;
- b. the contents, completeness, accuracy, adequacy and correctness of the Disclosed Information; and
- c. all information which is relevant to the risks, contingencies, costs, procedures and other circumstances related to the Project which could affect their decision to submit a Bid or the nature or terms of a Bid,

without reliance on the Consumer Trustee or any of its Associates.

Each Proponent (and each Consortium Member) acknowledges and agrees that, except where expressly stated otherwise, the Consumer Trustee and its Associates have not verified the information contained in these Guidelines and the Disclosed Information, and such information should not be regarded as a substitute for the exercise of their own judgement by each Proponent, Consortium Member and their respective Associates.

The Proponent, Consortium Members and their respective Associates may not in any way rely upon a failure by the Consumer Trustee or any of its Associates to provide any information. By participating in the Tender Round, including by submitting any Bid, the Proponent, Consortium Members and their respective Associates acknowledge and agree that they have not in any way relied upon information provided by the Consumer Trustee or by the Consumer Trustee's Associates or upon a failure by the Consumer Trustee or any of its Associates to provide information.

By submitting a Bid, a Proponent (and each Consortium Member) is taken to have:

- a. read and understood the requirements of the Tender Documentation;
- b. made all reasonable enquiries, investigations and assessment of available information relevant to the risks, contingencies, costs, procedures and other circumstances relating to the Tender Round and Project; and
- c. satisfied itself as to the correctness and sufficiency of its Bid.

These Guidelines do not constitute legal or business advice and should not be relied on as a substitute for obtaining detailed advice about the opportunity, the Tender Round, the NEM, the NER, the EII Act, the EII Regulation or any other applicable Laws, procedures or policies.

5.23 Bids commercial-in-confidence

The Consumer Trustee will retain all Bids and may copy and distribute at any time Bids for the purposes of conducting the Tender Round, including negotiation and evaluation of Bids, to support its due diligence and strategic risk-assessment and to publish the terms of the Project Documents on a de-identified basis.

Bids will otherwise be treated as confidential and will not be disclosed outside the Consumer Trustee unless it is:

- a. required or permitted by Law, or in the course of legal proceedings;
- b. requested by any Authority; or
- c. to the Assisting Entities, or the Consumer Trustee's insurers for any purpose described in Sections 5.23 and 5.24 of these Guidelines.

5.24 Use of Bids

The Proponent (and each Consortium Member) grants the Consumer Trustee and its Assisting Entities an irrevocable, perpetual, non-exclusive, transferable, free-of-charge licence to use, reproduce, develop, communicate, modify or sub-license the whole or any part of any Bid for the purposes of:

- a. assessing and negotiating Bids, supporting the Consumer Trustee's due diligence and strategic risk-assessment for the Tender Round, and otherwise facilitating the competitive tender pursuant to the Tender Round or the Consumer Trustee's rights and obligations under the EII Act, EII Regulation, and Tender Rules; and
- b. providing generalised learnings and improvements to any future Tender Rounds, including any Guidelines and other tender documentation, on a de-identified basis.

The Proponent (and each Consortium Member) warrants that it has the authority to grant the licence contemplated in this Section 5.24 and the exercise by the Consumer Trustee or any person authorised by it in accordance with, or as contemplated by, the Tender Conditions will not infringe the Intellectual Property Rights or rights of any person. The Proponent (and each Consortium Member) must indemnify the Consumer Trustee against any Liability or Claim arising from any breach of the warranty in this Section 5.24.

5.25 No amendment

A Proponent (or any Consortium Member) may not amend its Bid after it has been submitted, unless invited or requested to do so by the Consumer Trustee and subject to the Tender Process Deed in respect of a Financial Value Bid.

5.26 Withdrawal of Bid

A Proponent (or any Consortium Member) who wishes to withdraw or revoke a Bid must immediately notify the Consumer Trustee of that fact. Upon receipt of such notification, the Consumer Trustee will cease to consider that Bid. In the case of a Financial Value Bid, see also Section 3.1.1 of these Guidelines and the Tender Process Deed.

5.27 No requirement to return

Each Proponent (and each Consortium Member) acknowledges and agrees that the Consumer Trustee will not be required to return the Bid, or any documents, materials, articles and information submitted by the Proponent as part of, or in support of, its Bid.

5.28 No reimbursement of costs

Neither the Consumer Trustee nor any of its Associates will be responsible for, and no Proponent or a Consortium Member (including their respective Associates) is entitled to be reimbursed for, any expense, liability, cost or loss incurred in connection with or related to considering the opportunity, the preparation and submission of a Bid, or participation in the final contract award stage, including (without limitation) any costs incurred in attending meetings with the Consumer Trustee or providing any further clarification requested by the Consumer Trustee.

5.29 No publicity

Except to the extent required by Law, or the binding requirement of a recognised stock exchange, a Proponent and its Consortium Members must not, and must procure that their Associates do not, make any public or media announcement or participate in or be party to any media reports in respect of these Guidelines, the Tender Round, the Project or a Bid, including their involvement in the Tender Round, or the outcome of this Tender Round, without the Consumer Trustee's prior written consent in its absolute discretion.

5.30 Discretion of the Consumer Trustee

Unless expressly provided to the contrary in the Tender Conditions, the Consumer Trustee may give, modify, withhold, withdraw, make or exercise any action, approval, consent, decision or discretion or other function under the Tender Conditions at the Consumer Trustee's absolute discretion, whether subject to conditions and at any time.

Each Proponent, Consortium Member and their respective Associates acknowledges and agrees to the Consumer Trustee's right, at the Consumer Trustee's absolute discretion, to:

- a. reject, refuse or cease to consider, or accept, any Bid that does not comply with the requirements of these Guidelines or the Tender Conditions or which is otherwise incomplete;
- b. suspend or terminate the Tender Round;
- c. elect not to further evaluate any Bid that fails to satisfy the Eligibility Criteria or the Merit Criteria;
- d. reject or accept any Bid notwithstanding whether such Bid is the lower priced, higher-ranked, or otherwise;
- e. make a recommendation (or not make a recommendation) in respect of any Bid at any stage of the Tender Round, including making a recommendation including making a recommendation (or not making a recommendation) to award an to a Proponent which had (or did not have) the highest ranked Bid as against the Eligibility Criteria or the Merit Criteria;
- f. accept or reject the whole or part of any Bid to the extent, in the case of part-acceptance, that part of the Bid is capable of such partial acceptance;
- g. suspend or terminate a person's participation in the Tender Round if the Consumer Trustee forms the view that the person (or their Associate) has breached or not complied with the Tender Documentation. For the avoidance of doubt, the Consumer Trustee is not obliged to exclude a Proponent or any other person from continued participation in the Tender Round in the event that a Proponent or any other person fails in whole or part to comply with the Tender Documentation;

- h. require, request, receive or accept (whether requested or not) additional information, material, clarification or explanation from any Proponent or Consortium Member at any time and the Consumer Trustee may, at its sole discretion, take such information, material, clarification or explanation into consideration in its evaluation of a Bid;
- i. if additional information is required by the Consumer Trustee pursuant to sub-paragraph (h) and not provided within the timeframe nominated by the Consumer Trustee (if any), continue to evaluate the Bid on the basis of the information available;
- j. waive any or all (in whole or in part) of the obligations of a Proponent, Consortium Members or their respective Associates (or a Competing Proponent or its Associates) under the relevant Tender Process Deed or the requirements under these Guidelines;
- k. consider and accept a Bid regardless of whether any Proponent, Consortium Member or any of their respective Associates has breached or not complied with any Tender Conditions and despite the existence of departures from the Guidelines or technical specifications for the Project or Tender Conditions;
- l. vary or supplement any of the Tender Conditions or other aspects of these Guidelines;
- m. without limiting sub-paragraph (l), cancel, supplement, vary or amend the terms of any information, requirements, procedures, selection criteria and protocols relevant to the Tender Round having regard to probity requirements and advice;
- n. change the timing, order or application of any phase or process in the Tender Round; or
- o. supplement, remove, add to or vary any part of the Tender Round;
- p. accept or reject a Bid which is submitted at any time after the relevant Closing Date and Time or which is submitted otherwise than in accordance with these Guidelines;
- q. accept or reject any clarification question which is lodged by a person in respect of the Tender Round after the time and date specified, or otherwise in the manner specified, in these Guidelines as the Closing Date and Time for such questions or requests;
- r. extend any time or date specified in these Guidelines;
- s. call for new Bids;
- t. negotiate with any Proponent on any matter the Consumer Trustee may determine, including allowing some Proponents to clarify, alter, amend, add to or change its Bid after the relevant Closing Date and Time without offering the same opportunity to all Proponents;
- u. in evaluating any Bid or selecting a Selected Proponent, have regard to:
 - i. past performance and corporate history of any Proponent, Consortium Member or any of their respective Associates;
 - ii. information concerning a Proponent, Consortium Member or their respective Associates which is in the public domain, or which is obtained by the Consumer Trustee or its Associates through its or their own investigations;
 - iii. information provided by a Proponent in response to a particular evaluation criterion for the purpose of evaluating other criteria;
 - iv. any other matters arising from investigations (including probity investigation) by the Consumer Trustee or its Associates, interviews with Proponents or Consortium Members, or responses to clarifications by Proponents or Consortium Members;
 and without notifying the Proponent or a Consortium Member (if applicable) of that information;
- v. appoint or decline to appoint any number of Proponents, Selected Proponents or change Proponents or Selected Proponents at any time;
- w. require one or more of the Proponents to make a 'best and final offer';
- x. withdraw, cancel or modify (substantially or otherwise) the Project or any part of the Project;
- y. change the procurement method of the Project or any part of the Project in any way it sees fit and commence a new procurement process in relation to the Project on a similar or different basis to that outlined in these Guidelines, having regard to probity matters, if any;
- z. require the Proponent and any Consortium Member to enter into a Tender Process Deed;
- aa. require the Proponent or any Consortium Member to provide a performance security or guarantee at the time the Proponent submits a Financial Value Bid;
- bb. otherwise take any such other action as it considers appropriate in relation to the Tender Round; and
- cc. not attribute any reasons for any actions or decisions taken, including in respect of the exercise of any or all of the abovementioned rights and discretions.

5.31 Financial Value Bids binding

The Proponent (and each Consortium Member) acknowledges and agrees that:

- a. the Financial Value Bid:
 - i. will constitute an offer from the time the Financial Value Bid is submitted up to and including the last date of the Validity Period; and
 - ii. shall remain open for acceptance for the duration of the period referred to in 5.31(a) (i) notwithstanding that a Proponent is not appointed as the Selected Proponent;
- b. the Bid Entity is prepared to enter into the Final Project Documents to which it is proposed to be a party in the form of the documentation included in the Proponent's Financial Value Bid;
- c. it has had full access to and fully considered, and satisfied itself of, all relevant legal, technical, accounting, commercial, financial and insurance advice and matters relevant to its decision to enter into such documentation; and
- d. it has complied with the EII Act and the Tender Documentation.

5.32 Consumer Trustee right to impose additional requirements

Without limiting Section 5.30 of these Guidelines, the Proponent, Consortium Members and their respective Associates acknowledge and agree that the Consumer Trustee may impose additional obligations, including by:

- a. issuing Addenda to these Tender Conditions;
- b. requiring the execution of confidentiality and process arrangements; or
- c. issuing further procedures and timetables to the Proponent or any Competing Proponent and requiring the Proponent or any Competing Proponent to comply with the further procedures and timetables provided.

5.33 Bid evaluation

These Guidelines may set out some but not all of the matters which, at the date of these Guidelines, the Consumer Trustee considers as or anticipates as being relevant in assisting the Consumer Trustee in its selection of a Selected Proponent. Depending on the market response to the Tender Round and information in Bids, additional matters may become relevant and require investigation by the Consumer Trustee. If necessary, the Consumer Trustee may seek further information from Proponents.

5.34 Recommended Bids and Selected Proponents

Prior to the recommendation of Recommended Bids to the SFV, the Consumer Trustee will finalise the necessary details of the Project Documents based on the Recommended Bids in preparation for the final contract award stage. To facilitate this, the Consumer Trustee may require additional information from one or more Proponents or their Associates and their participation in meetings relating to the Tender Round. This stage of the process could include finalising documentation with either the Consumer Trustee or the SFV (as applicable). Where applicable, the Proponent and their Associates must use reasonable endeavours and provide all reasonable assistance to finalise the Project Documents.

The selection of a Recommended Bid does not constitute an acceptance of the Bid submitted by the Selected Proponent and is without prejudice to the Consumer Trustee's right to finalise the Project Documents or the SFV's right to enter into the Project Documents with any other Proponent or any other person.

5.35 Material change in circumstances

The Proponent must notify the Consumer Trustee promptly in writing:

- a. of any event which may affect or have an impact on the financial position or capacity of the Proponent or any Consortium Member or the ability of the Proponent or Consortium Member to continue to participate in the Tender Round or comply with the Tender Conditions;
- b. of any circumstances which may affect the completeness, accuracy, adequacy or correctness of any of the information provided in, or in connection with, the Bid or the Proponent's (or any Consortium Member's) participation in the Tender Round; or
- c. if, after lodgement of its Bid, there is a change in control (as that term is defined in section 9 of the *Corporations Act 2001* (Cth)) of the Proponent or any Consortium Member.

Upon receipt of any notice pursuant to this Section 5.35, the Consumer Trustee reserves the right (without limitation to any other discretion or action) to:

- a. assess the change and terminate the Proponent's or any Consortium Member's further participation in the Tender Round; or
- b. invite the Proponent to amend its Bid accordingly.

5.36 No obligation to enter into contract

The SFV, which is the responsible entity for entering into any Project Document, is under no obligation to enter into any Project Documents with any Proponent or any other person. Irrespective of whether the Consumer Trustee selects a Selected Proponent for recommendation, if the SFV decides not to enter into a contract in relation to the Project, the Consumer Trustee may proceed with any alternative tender process. A Proponent (including a Selected Proponent) may not rely on any purported acceptance by the SFV of any offer or any representation to that effect unless and until SFV has formally entered into the Project Documents.

5.37 Debriefing and disclosure

The Consumer Trustee, at its discretion, may (but is under no obligation to) debrief any unsuccessful Proponent (and any Consortium Member) as to the Consumer Trustee's evaluation of that Proponent's Bid. Any such debriefing will focus solely on the Proponent's Bid and will not reveal any information that could compromise the Tender Round or any future Tender Round (including any participants therein). The Consumer Trustee is under no obligation to give any reason for the non-acceptance of that Proponent's Bid.

The Consumer Trustee is under no obligation to disclose to any Proponent (or any Consortium Member) or any of their respective Associates, any discussions or negotiations the Consumer Trustee has had with any other Proponent or any amendments, additions or other changes the Consumer Trustee has allowed any other Proponent to make to its Bid, and is not obliged to enter into similar discussions or negotiations with the Proponent or allow or require amendments, additions or changes to be made to its Bid.

5.38 Addenda

Each Proponent (and each Consortium Member) agrees that:

- a. at any time during the Tender Round, the Consumer Trustee may, at its discretion, amend these Guidelines (including the Tender Conditions), by issuing an Addendum.
- b. neither the Consumer Trustee nor its Associates will have any liability to the Proponent or any Consortium Member) as a consequence of any such Addendum.
- c. the Proponent must prepare its Bid to take into account and reflect the content of any such Addendum.

5.39 Price basis, English language and metric units

All costs and prices stated in a Bid must be in Australian dollars and exclude GST (where applicable). The Consumer Trustee will not accept Bids that contain costs and prices that are subject to variation because of fluctuations in currency exchange rates. Proponents are required to accept the risk of fluctuations in currency exchange rates.

Bids and all communications with the Consumer Trustee must be in English. All dimensions and units on plans and drawings and all references to measurements must be in metric units.

5.40 Severability

If any provision of the Tender Conditions is held to be invalid, unenforceable or illegal for any reason, the Tender Conditions shall remain otherwise in full force and effect apart from such provision which shall be deemed deleted only to the extent required to remedy such invalidity, unenforceability or illegality.

5.41 Communications

Communications from the Proponent (and/or any Consortium Member) to the Consumer Trustee will be managed (as applicable) through the Online Portal and subject to these Guidelines and probity requirements. Communications or notifications to the Consumer Trustee must be made (as applicable) through the Q&A Process, General Notification Form or Conflict of Interest/Adverse Circumstances Form, or other means as notified by the Consumer Trustee from time to time during a Tender Round, which will be made available to registered Proponents only through the Online Portal (unless otherwise notified by the Consumer Trustee during a Tender Round). For the avoidance of doubt, the submission of a Bid in accordance with Section 3.1.1 of these Guidelines does not constitute a communication to the Consumer Trustee for the purposes of this Section 5.41.

The Proponent and any Consortium Member acknowledges and agrees that it will not, and that it will ensure that its Associates do not, make contact with the Consumer Trustee or any of its Associates to make enquiries of, discuss or make any disclosures in respect of any aspect of the Project or the Tender Round, otherwise than in accordance with these Guidelines.

5.42 Probity and confidentiality obligations

It is a condition of any Proponent's participation (and each Consortium Member's participation) in the Tender Round that the Proponent (and each Consortium Member) makes the commitments in relation to probity and confidentiality as set out in the Tender Process Deed and that they comply with those commitments in their conduct pursuant to and for the duration of the Tender Round (except for any confidentiality obligations, which are ongoing and will extend beyond this Tender Round).

5.43 Governing Law

These Guidelines and the Tender Round are governed by the laws applying in the State of New South Wales. Each Proponent (and each Consortium Member) must comply with all relevant Laws and Approvals in preparing and submitting its Bid and in taking part in the Tender Round.



6 Regulatory context

The regulatory context for the tender process is complex and the Consumer Trustee is required to incorporate elements from several regulatory sources when conducting a Tender Round.

The regulatory context for the tender process is complex and the Consumer Trustee is required to incorporate elements from several regulatory sources when conducting a Tender Round.

This complexity is recognised and this section seeks to reduce this by summarising how regulatory instruments are relevant for this Tender Round.

The table below outlines key regulatory considerations which provide context for the Tender Round.

Regulatory consideration	Relevance to Tender Rounds
NSW Electricity Infrastructure Roadmap	The NSW Government's plan to transform the NSW electricity sector by supporting private investment in renewable energy projects by 2030.
Key entities under the NSW Electricity Infrastructure Roadmap	Different entities perform different functions under the NSW Electricity Infrastructure Roadmap. The roles of different entities have been set out in these Guidelines.
EII Act	<i>The Electricity Infrastructure Investment Act 2020 (NSW)</i> , which enables the NSW Electricity Infrastructure Roadmap and underpins the competitive tender process and key regulatory entities. Where relevant the EII Act has been referred to in these guidelines.
EII Regulation	Regulations made by the NSW Government create an additional set of requirements on how the Consumer Trustee conducts Tender Rounds. Where relevant these regulations have been referred to in these Guidelines.
IIO Report	Provides a range of highly relevant information, including the schedule and size of LTESA tenders. The IIO Report identifies what is expected to be required to best meet the long-term financial interests of NSW electricity customers.
Tender Rules	A gazetted document that sets out how the Consumer Trustee will conduct Tender Rounds in respect of the award of LTESAs and allocation of Access Rights.
NSW Renewable Energy Sector Board Plan	Describes a vision, developed by an independent board for the development of the NSW renewable energy sector. These Guidelines summarise the core requirements of the NSW Renewable Energy Sector Board Plan relevant for the Tender Round, - Proponents are encouraged to familiarise themselves with the broader objectives of the NSW Renewable Energy Sector Board .
Risk Management Framework	A risk governance document created by the Consumer Trustee, approved by the AER and required under section 51 of the EII Act. The Risk Management Framework supports management of risks relevant to NSW electricity customers arising from LTESAs. Aspects of the Risk Management Framework relevant to the Tender Round have been summarised in these Guidelines.
First Nations Guidelines	As per the EII Act, the Consumer Trustee is to take the First Nations Guidelines into account when exercising the Consumer Trustee's functions under Part 6, Divisions 3 and 4.

The remainder of this section provides further detail of these regulatory considerations, and outlines their relevance to the Tender Round.



6.1 NSW Electricity Infrastructure Roadmap

The Roadmap³² is the NSW Government's plan to transform the NSW electricity sector into one that is clean, affordable and reliable.

It sets out a coordinated way forward to support private investment in renewable energy projects that generate at least the same amount of electricity in a year as 12 gigawatts of renewable energy capacity, and two gigawatts of long duration storage, by 2030.

To achieve this, the Roadmap is expected to unlock significant timely and coordinated private sector investment in large-scale generation, long duration storage and transmission infrastructure. LTESAs will provide the financial support required to facilitate the private sector investment in generation and storage.

The Roadmap sets out a pathway for bringing at least five REZs online in time to deliver energy to NSW homes and businesses as coal-fired power stations retire. REZs are modern-day power stations that combine renewable energy generation such as wind and solar, storage such as batteries, and network infrastructure such as high-voltage poles and wires, to deliver energy to the homes, businesses and industries that need it.

³² [NSW Electricity Infrastructure Roadmap Virtual Engagement Room](#)

6.2 Entities under the Roadmap

Specially-established and existing entities work in an interdependent manner to implement the Roadmap, including the roles of the:

- Consumer Trustee (AEMO Services).
- Financial Trustee.
- Scheme Financial Vehicle.
- Infrastructure Planner (EnergyCo).
- Regulator.

6.2.1 Consumer Trustee

The Consumer Trustee (AEMO Services) acts in the long-term financial interests of NSW electricity customers and the independent decision-maker in the design and implementation of LTESAs. It has two key functions under the EII Act in relation to Tender Rounds:

- Develop and release the IIO Report every two years (and as soon as practicable after being directed by the Minister to conduct a competitive tender for LTESAs for firming infrastructure), mapped to a Development Pathway (over a 20-year horizon) for electricity infrastructure and a 10-Year Plan for LTESA Tenders Rounds.³³
- Undertake tenders for LTESAs in accordance with regulation and the gazetted Tender Rules.³⁴



EnergyCo is the NSW Government controlled statutory authority that leads the delivery of the five NSW REZs.

6.2.2 Infrastructure Planner

[EnergyCo](#) is the NSW Government controlled statutory authority that leads the delivery of the five NSW REZs. It coordinates REZ transmission, generation, firming and storage infrastructure projects to deliver efficient, timely and coordinated investment.

As the Infrastructure Planner, EnergyCo is responsible for ensuring that new network infrastructure is developed to connect the CWO REZ to the existing grid. To achieve this, it will lead the delivery of the CWO Transmission Project that includes running a competitive tender process to appoint a Network Operator to design, build, finance, operate and maintain the REZ network infrastructure.

EnergyCo continues to work with TransGrid (as the NSW jurisdictional transmission planner) and coordinate the delivery of complementary upgrades to TransGrid's existing infrastructure network.

EnergyCo will also oversee the implementation and acts as the REZ Scheme Administrator of the CWO REZ Access Scheme, which will enable the allocation of Access Rights.

6.2.3 Scheme Financial Vehicle (SFV)

The SFV is the counterparty to any LTESAs.³⁵

The SFV is an entity established to intermediate cash flows between LTESA Projects and Distribution Network Service Providers (DNSPs) and will have a statutory right to receive contributions from DNSPs (who can pass these contributions on to NSW electricity customers). It will establish and maintain the Electricity Infrastructure Fund set out in Part 7 of the EII Act to manage the cash inflows and outflows.

The legislated structure is intended to fund long-term energy policy, independent of government and with a statutory right to recover its costs from the beneficiaries of the policies.

6.2.4 Financial Trustee

The Financial Trustee is appointed to establish and administer the SFV. It will hold all the shares issued in the SFV 'on trust' for the purposes of the EII Act as a statutory trustee.

³³ Section 45 of the EII Act

³⁴ Section 47 of the EII Act.

³⁵ Section 46 of the EII Act.

6.2.5 Regulator

Australian Energy Regulator (AER) and Independent Pricing and Regulatory Tribunal (IPART) are the regulators under the Roadmap. IPART has been appointed by the Minister as the relevant regulator under section 64(1) of the EII Act.

The key functions of the AER under the EII Act include:

- Making five-year revenue determinations for network infrastructure projects authorised by the Consumer Trustee, including the calculation of the prudent, efficient and reasonable capital costs of these projects.
- Making annual contribution determinations regarding the Electricity Infrastructure Fund.
- Approving a risk management framework developed by the Consumer Trustee.
- Reviewing the Consumer Trustee's Tender Rules applicable to competitive tenders under the EII Act

The key functions of the IPART under the EII Act include:

- Certain functions related to the NSW renewable energy sector plan (section 8 of the EII Act).
- Any other regulatory functions in the EII Act not otherwise conferred on another person/entity from time to time.

6.2.6 NSW Renewable Energy Sector Board

The [NSW Renewable Energy Sector Board](#) (Sector Board) was appointed by the Minister for Energy and one of its functions is to prepare a plan for the NSW renewable energy sector (Sector Board Plan).³⁶

The Sector Board Plan sets out how to cost effectively maximise the use of local goods and services and the employment of suitably qualified local workers in the construction and operation of infrastructure under the Roadmap. It also considers how to foster opportunities for apprentices and trainees.



³⁶ Section 7(4) of the EII Act.

6.3 Electricity Infrastructure Investment Act 2020 (NSW)

The delivery of the Roadmap is enabled by the *Electricity Infrastructure Investment Act 2020 (NSW)* (EII Act).

Its primary objectives include:

- Improving affordability, reliability, security and sustainability of electricity supply in NSW.
- Co-ordinating investment in new generation, storage and network infrastructure in NSW, and to encourage such investment by reducing risk for investors.
- Supporting economic development, including by creating employment, investing in education and promoting local industry.³⁷

Through the EII Act (and the Roadmap), the NSW Government has committed to:

- Declaring five REZs in the Central-West Orana, Illawarra, New England, South West and Hunter-Central Coast regions, with an intended network capacity of 12 gigawatts.
- Establishing an Electricity Infrastructure Investment Safeguard to deliver new generation, LDS and firming capacity, including through publication of the IIO Report and implementation of Tender Rounds by the Consumer Trustee.
- Establishing the Electricity Infrastructure Jobs Advocate and the Sector Board to ensure the use of locally manufactured and supplied goods and services, and maximise the engagement of suitably qualified local workers.
- Establishing a Transmission Development Scheme that will de-risk REZ investment.³⁸

Relevance to Tender Rounds

The EII Act imposes several requirements for the conduct of the Tender Round for LTESAs, including in relation to:

- Content of the Tender Rules.³⁹
- When and how the Consumer Trustee can make recommendations to the SFV about LTESAs.⁴⁰
- Development of a risk management framework to protect the long-term financial interests of NSW electricity customers in connection with the risks associated with LTESAs.⁴¹

In relation to Access Rights, it establishes how the Consumer Trustee is to determine the fees payable to the SFV for participation in an Access Scheme.⁴² Specifically, the Consumer Trustee must consider the following principles:

- Maximising financial value for NSW electricity customers.
- Recovering the cost of the operation of the Access Scheme.
- Optimal use of the existing and planned infrastructure in the REZ.
- Other principles prescribed by the regulations.

³⁷ Section 3(1) of the EII Act.

³⁸ Page 30 of NSW Electricity Infrastructure Roadmap Overview.

³⁹ Section 47(5) of the EII Act.

⁴⁰ Section 48 of the EII Act.

⁴¹ Section 51 of the EII Act.

⁴² Section 26 of the EII Act.

6.4 Electricity Infrastructure Investment Regulation 2021 (NSW)

Outline

The *Electricity Infrastructure Investment Regulation 2021 (NSW)* (EII Regulation) deals with matters under the EII Act, including the:

- Functions of the NSW Renewable Energy Sector Board and the objectives of the Sector Board Plan.
- Calculation of energy security targets.
- Electricity Infrastructure Fund.
- Electricity Infrastructure Investment Safeguard.

Relevance to Tender Rounds

A Tender Round is to be administered in accordance with any requirements prescribed by the EII Regulation. The regulations impose additional requirements on the Consumer Trustee in conducting the Tender Round, including the:

- Manner in which the Tender Round must be conducted.
- Matters to be considered when conducting the Tender Round.
- Matters to be considered when assessing Outstanding Merit.
- Matters to be considered when assessing the Financial Value.
- Matters to be considered when making a recommendation to the SFV.
- Functions of the Consumer Trustee and the Infrastructure Planner in relation to a competitive tender for Access Rights.

6.5 Outstanding Merit

The Consumer Trustee must not recommend a Generation LTESA for a Project that is not, or will not be, part of a REZ geographical area⁴³ unless the Consumer Trustee is satisfied that the Generation LTESA for the Project shows outstanding merit, in accordance with section 48(3) of the EII Act (**Outstanding Merit**).

The EII Regulation further provides that a circumstance in which an LTESA for a Project may show Outstanding Merit includes the Consumer Trustee being satisfied that the LTESA shows more merit than other LTESAs for generation infrastructure recommended by the Consumer Trustee.⁴⁴

When making a recommendation for an LTESA for a Project that is not, or will not, be part of the REZ geographical area, 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.
- The impact of any generation infrastructure under an LTESA on congestion in the NSW region.⁴⁵

⁴³ The geographical area of a REZ is specified in the relevant REZ Declaration published in the [NSW Government Gazette](#).

⁴⁴ Section 48(4)(a) of the EII Act, regulation 26A(1) of the EII Regulation.

⁴⁵ Section 48(4)(b) of the EII Act, regulation 26A(2) of the EII Regulation.

6.6 IIO Reports

The EII Act requires that the Consumer Trustee prepare a report every two years (and more frequently in certain circumstances) about the Infrastructure Investment Objectives.

These are objectives set under the EII Act for the construction of generation, long duration storage and firming infrastructure. They are:

- Minimum objectives for the construction of infrastructure by the end of 2029 including:
 - At least the same amount of generation as 12 gigawatts of renewable energy.
 - At least 2 gigawatts of long duration storage.
- Overall objectives to construct:
 - Generation infrastructure to minimise electricity costs for NSW electricity customers.
 - Long duration storage infrastructure to meet the Reliability Standard.
 - Firming infrastructure to meet the energy security target and Reliability Standard.

Each IIO report must contain a:

- Development pathway for the construction of the infrastructure to meet the Infrastructure Investment Objectives over the following 20 years.
- Ten (10) year plan for competitive tenders for LTESAs that the Consumer Trustee will conduct to give effect to the development pathway.

Regulations made under the EII Act set out additional items that the report must contain or matters that the Consumer Trustee must have regard to in preparing the IIO report.

In respect of the Tender Round, under section 45(6) of the EII Act, the Consumer Trustee must exercise its functions on the basis of these IIO Reports. Each IIO Report will be a key input to the decision making for the Consumer Trustee with respect to indicative timing, scale and scope of competitive tenders for LTESA, as well as a critical signal to the market on these matters.

The inaugural IIO Report was released on 7 December 2021 and set out a development pathway and ten-year plans for generation and long-duration storage infrastructure.

6.7 Tender Rules

Under section 47(3) of the EII Act and regulation 42A of the EII Regulation, a Tender Round must be carried out in accordance with the Tender Rules. The intent of the Tender Rules is to provide the framework and rules for engagement by Proponents on the structure and design of Tender Rounds, specifically in respect of the matters outlined below.

Relevance to Tender Rounds

The Consumer Trustee is required to make a set of Tender Rules.⁴⁶ For Tender Rounds involving LTESAs, the Tender Rules must be and deal with the:

- Eligibility criteria for making a Bid.
- Notification of the opening of the Tender Round.
- Procedure for making a Bid, including the information required to be included in a Bid.
- Fee payable for making a Bid and requirements for bonds or other security.
- Assessment of a Bid by the Consumer Trustee.
- Other matters the Consumer Trustee considers necessary.
- Matters prescribed by the regulations.⁴⁷

6.8 The NSW Renewable Energy Sector Board Plan

Outline

Under the EII Act, one of the Sector Board's key functions is to prepare and provide to the Minister a plan for the NSW renewable energy sector, in particular in relation to the operation of the sector and the manufacture and construction of infrastructure in the sector.⁴⁸ Once approved by the Minister upon recommendation by the IPART, the Sector Board Plan must be published on the OECC website and takes effect on the day it is published.⁴⁹

The Sector Board Plan must set out how to, in a cost-effective way, achieve the following in the construction of generation, storage and network infrastructure carried out under the EII Act:

- Maximising use of locally produced and supplied goods and services.
- Maximising employment of suitable qualified workers.
- Fostering opportunities for apprentices and trainees.⁵⁰

It also specifies that the Sector Board Plan must protect the financial interests of NSW electricity customers and be consistent with Australia's international trade obligations.⁵¹

Relevance to Tender Rounds

The Consumer Trustee must consider the Sector Board Plan when exercising its functions, including conducting the Tender Round, assessing and making recommendations on selected Projects.⁵²

⁴⁶ Section 47(5) of the EII Act and regulation 42A(2)(a) of the EII Regulation.

⁴⁷ Sections 47(5) and 47(7) of the EII Act.

⁴⁸ Section 7(4)(a) of the EII Act.

⁴⁹ Section 8(5) of the EII Act.

⁵⁰ Section 8(1) of the EII Act.

⁵¹ Regulation 5 of the EII Regulation.

⁵² Section 9(1) of the EII Act.

6.9 First Nations Guidelines

Under section 4 of the EII Act, the Minister is to issue guidelines about consultation and negotiation with the local Aboriginal community in relation to relevant projects for the purposes of increasing employment and income opportunities for the local Aboriginal community.

Relevance to Tender Round

The Consumer Trustee must consider the First Nations Guidelines when exercising its functions, including conducting the Tender Round, assessing and making recommendations on selected Projects.⁵³

6.10 Risk Management Framework

Outline

The purpose of the Risk Management Framework is to protect the financial interests of NSW electricity customers in connection with the risks associated with LTESAs. To achieve this objective, the Risk Management Framework describes, coordinates, and governs risk management of:

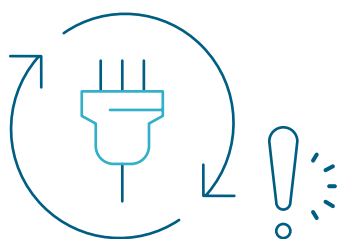
- The five specific risks related to LTESAs that are covered by the Risk Management Framework.
- Specific risks to be considered by the Consumer Trustee as may be set out in the EII Regulations from time to time.
- The requirements in the EII Act for the Consumer Trustee to act in the long-term financial interests of NSW electricity customers.

The Risk Management Framework:

- Is prepared by the Consumer Trustee in accordance with section 51(1) of the EII Act.
- Is approved by AER as the regulator in accordance with section 51(3) of the EII Act.
- Provides for the roles and responsibilities of the Consumer Trustee, Financial Trustee and SFV under the Risk Management Framework.

Relevance to Tender Rounds

The Consumer Trustee must act in accordance with the Risk Management Framework, including with respect to the recommendation of LTESAs.



The purpose of the Risk Management Framework is to protect the financial interests of NSW electricity customers in connection with the risks associated with LTESAs.

⁵³ Section 4(4) of the EII Act. Please see [MCZ](#) for further details on how this will be assessed in the IAPP.

6.11 REZ and Access Scheme Declarations – for Access Rights only

6.11.1 REZ Declarations

Under the EII Act, the Minister may declare a REZ comprising (REZ Declaration):⁵⁴

- A specified geographical area of NSW.
- Specified generation, storage or network infrastructure, including planned or existing infrastructure.

The Minister may amend a REZ Declaration from time to time to expand the specified geographical area of the REZ, increase the intended network capacity, specify additional generation, storage and network infrastructure, provide further details and specifications or correct a minor error.⁵⁵

6.11.2 Access Scheme Declaration

The Minister may declare the Access Scheme that is to apply in a REZ or part of a REZ (Access Scheme Declaration).⁵⁶ An Access Scheme Declaration must be consistent with the objectives of the EII Act, and may also specify the following:

- The person or body who is to administer the Access Scheme.
- How Access Rights are to be conferred on participants.
- The terms and conditions of Access Rights.
- The functions of the AER in relation to the Access Scheme.
- The rights and liabilities of the SFV in relation to the Access Scheme.
- Other matters prescribed by the regulations.⁵⁷

The Access Scheme Declaration entitled “Central-West Orana Renewable Energy Zone (CWO REZ) Access Scheme” was declared by the Minister under the EII Act, section 24(1), on 19 December 2022 and published in the NSW Government Gazette on 23 December 2022. This declaration sets out how generation and storage projects can be granted Access Rights to new network infrastructure within the CWO REZ.

⁵⁴ Section 19(1) of the EII Act.

⁵⁵ Section 22(1) of the EII Act.

⁵⁶ Section 24(1) of the EII Act.

⁵⁷ Sections 24(3) and (5) of the EII Act.

Project Documents



The proforma
Project Documents
can be found here.



Project Documents

The proforma [Project Documents can be found here](#).

Glossary



Definitions

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

Term	Definition
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	As defined in Section 6.10.2.
Access Right	Access Rights allocated under a declared Access Scheme that authorises access to, and use of, the Access Rights Network.
Access Rights Network	The electricity transmission network specified in the Access Scheme Declaration.
Addendum	Any document issued by the Consumer Trustee after the date of these Guidelines and labelled as an "Addendum" to these Guidelines; collectively known as " Addenda ".
AEMO	Australian Energy Market Operator Limited (ABN 94 072 010 327).
AEMO Services	AEMO Services Limited (ABN 59 651 198 364).
AER	Australian Energy Regulator.
Alternative Bid	An Alternative Financial Value Bid.
Alternative Product Bid	The document submitted by a Proponent following a Project Bid, forming part of a Financial Value Bid where the Product selection is changed to an Access Right only, as described in Section 3.1.5, including any Returnable Schedules, together with any additional information submitted by the Proponent.
Approval	Any approvals, authorisations, permits, consents, licences, registrations, determinations, certificates, permissions, exemptions and the like from any Authority or under any Law required to be issued, obtained or satisfied in connection with the performance by the Selected Proponent of its obligations under the Project Documents.
Annuity Cap	As defined in Section 2 of these Guidelines.
Assisting Entities	Assisting Entities means: (a) AEMO; (b) EnergyCo; (c) Transgrid (the NSW jurisdictional transmission planner); (d) the Network Operator; (e) the Scheme Financial Vehicle; (f) the Consumer Trustee's Associates, including, without limitation, King & Wood Mallesons, other consultants advised from time to time by the Consumer Trustee on its website or by direct communication to Proponents, and other legal, technical or commercial advisors from which the Consumer Trustee seeks support in relation to a Tender Round.

Term	Definition
Associate	In relation to a person, any Related Body Corporate of that person or any officer, employee, agent, contractor, consultant, nominee, licensee, or adviser of that person or that Related Body Corporate and: • in the case of a Proponent, includes: – each Consortium Member and any Related Body Corporate, adviser, officer, employee, agent, contractor, consultant, nominee, licensee or adviser of a Consortium Member; – any Debt or Equity Providers and any Related Body Corporate, adviser, officer, employee, agent, contractor, consultant, nominee, licensee or adviser of each Debt or Equity Provider; – to the extent they are not otherwise Consortium Members, the entities proposed to enter into the Project Documents and to form part of the corporate group in which those entities are included, – but excludes the Consumer Trustee and its Associates; and • in the case of the Consumer Trustee, any officer, employee, agent, contractor, consultant, nominee, licensee or adviser of it, but does not include Proponents or Consortium Members.
Authority	Any government department, local government council, government or statutory authority, body, instrumentality, minister, agency or other authority exercising administrative or regulatory functions.
Bid	Project Bid and/or Financial Value Bid submitted by Proponents in a Tender Round.
Bid Variable	Commercial terms of the LTESA that may be altered by the Proponent in either the Default Financial Value Bid or Alternative Financial Value Bid.
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.
Business Day	A day other than Saturday, Sunday and any other day not taken to be a public holiday in Sydney, Australia.
Claim	Any claim, proceeding, action, cause of action, demand or suit (including by way of contribution or indemnity) made: i. in connection with the Tender Round, Tender Rules, these Guidelines, the Project Documents or the Project; ii. at law or in equity; or iii. for specific performance, restitution, payment of money (including damages), an extension of time or any other form of relief.
Closing Date and Time	The Financial Value Bid Closing Date and Time or the Project Bid Closing Date and Time, as relevant.
Community Engagement Plan	The plan to be submitted as part of a Bid in respect of EC9 and Merit Criteria 7 that complies with the requirements set out in Returnable Schedule for Merit Criteria 7.
Commercial Operations Date (COD)	In respect of a Project, has the meaning given to that term in the relevant Project Development Agreement.
Competing Proponent	In respect of a Proponent, any person responding to these Guidelines or participating in the Tender Round other than the Proponent.

Term	Definition
Connection Enquiry Response	Network Service Provider's response in relation to a Project, required to be provided under set timeframes under the NER, to the connection enquiry made to connect to the distribution or transmission network.
Contracted Percentage	As defined in Section 2.2 of these Guidelines.
Consortium Member	Each of the following entities (which may form part of the Proponent) in their individual capacity: i. sponsor(s), including each 'Proponent Consortium Member' as that term is defined in the Consortium Process Deed; ii. any special purpose vehicle or entity that is intended to be the Bid Entity; and iii. any additional entity included in the Proponent in accordance with the process set out in the Consortium Process Deed.
Consortium Process Deed	As defined in the Tender Process Deed.
Consumer Price Index (CPI)	The Consumer Price Index as published by the Australian Bureau of Statistics.
Consumer Trustee	AEMO Services, in its capacity as the NSW Consumer Trustee appointed pursuant to section 60 of the EII Act. References to the Consumer Trustee include, where the context requires, the Consumer Trustee's Associates.
CWO	Central-West Orana.
Debt or Equity Provider	Any actual or potential provider of debt or equity funding, facilities or accommodation directly or indirectly to the Proponent in relation to the Project, including any security trustee, bond trustee, agent, underwriter, arranger, financial guarantor, bond provider or hedge counterparty however described.
Default Financial Value Bid	The document submitted by a Proponent following a Project Bid, being the mandatory part of a Financial Value Bid, as further described in Section 3.1.5 of these Guidelines including any Returnable Schedules, together with any additional information submitted by the Proponent.
Development Approval	A 'development approval' pursuant to the <i>Environmental Planning and Assessment Act 1979</i> (NSW).
Disclosed Information	The following information (of whatever nature, including written, graphical, electronic, oral or in any other form) which is disclosed to, or otherwise obtained by or on behalf of, the Proponent or Consortium Member or any respective Associate in connection with the Project or Tender Round 3: • these Guidelines and any information disclosed pursuant to these Guidelines (and other documents released as part of the Tender Round) as part of the Tender Round; • any oral or written advice, representations or information given by or on behalf of the Network Operator, Infrastructure Planner, the Consumer Trustee or any of their Associates during Tender Round 3; • all material contained in any data room used by the Infrastructure Planner or the Consumer Trustee and the Proponents; and • each Bid to the extent that it contains or would reveal any of the information referred to in the paragraphs above, any other information which the Proponent, Consortium Member or any respective Associate knows or ought reasonably to know is confidential to the Network Operator, Infrastructure Planner, Consumer Trustee or any of their Associates or should be treated as such.

Term	Definition
DWAP	Dispatch-Weighted Average Price. The average of the electricity spot price that a project is exposed to, weighted by the volume of energy it dispatches in a period.
EII Act	<i>Electricity Infrastructure Investment Act 2020 (NSW).</i>
EII Regulation	<i>Electricity Infrastructure Investment Regulation 2021 (NSW).</i>
Eligibility Criteria or EC	Proponent Eligibility Criteria and Project Eligibility Criteria.
EnergyCo	The Energy Corporation of NSW
Final Project Documents	Each final Project Document and other contract documentation entered into or to be entered into by the Selected Proponent and the relevant counterparties including the SFV among others (as applicable) in order to document the terms and conditions for undertaking the Project.
Financial Close	In respect of a Project, has the meaning given to that term in the relevant Project Development Agreement.
Financial Trustee	The 'financial trustee' appointed by the Consumer Trustee to administer the SFV pursuant to section 61 of the EII Act. The entity appointed as financial trustee is Equity Trustees Limited.
Financial Value Assessment	The assessment methodology to be used by the Consumer Trustee for assessment of Financial Value Assessments.
Financial Value Bid	The document submitted by a Proponent following a Project Bid, comprising a Default Financial Value Bid and/or an Alternative Bid as described in Section 3.1.5 of these Guidelines, including any Returnable Schedules, together with any additional information submitted by the Proponent.
Financial Value Bid Closing Date and Time	As defined under Tender Round 3 details.
Financial Value Shortlist	Selected shortlist of Financial Value Bids to be progressed to Portfolio Assessment.
First Nations Guidelines	Set of guidelines that the Minister is to issue about consultation and negotiation with the local Aboriginal community in relation to relevant projects for the purposes of increasing employment and income opportunities for the local Aboriginal community under section 4 of the EII Act.
Fixed Price	As defined in Section 2.1 of these Guidelines.
Generation LTESA	A financial derivative contract that provides an LTES Operator with a series of options to access a Fixed Price, cash settled swap under the terms of the agreement.
Hybrid Project	As defined in Section 3.1.5 of these Guidelines.
IIO Report	Infrastructure Investment Objective Report prepared by the Consumer Trustee under section 45(2) of the EII Act.
Infrastructure Investment Objectives	The 'infrastructure investment objectives' as defined in section 44 of the EII Act.
Infrastructure Planner	The 'infrastructure planner' appointed in respect of a REZ or part of a REZ (as applicable) pursuant to section 63 of the EII Act, being Energy Corporation of New South Wales (ABN 13 495 767 706).

Term	Definition
Industry and Aboriginal Participation Plan (IAPP)	The plan to be submitted as part of a Bid in respect of EC12 and Merit Criteria 7 the complies with the requirements set out in the Returnable Schedule for Merit Criteria 7.
Initial Security	In respect of a Bid, has the meaning given to that term in the Project Development Agreement.
Intellectual Property Rights	All existing and future rights in the nature of intellectual property or industrial property (within the meaning of the term 'industrial property' in Article 1 of the Paris Convention for the Protection of Industrial Property) throughout the world, including: • copyright; • trade and service marks (whether registered or unregistered); • designs (whether registered or unregistered); • patents and inventions (whether or not patented or patentable); • internet domain names; • trade, business or company names; and • confidential information and trade secrets, whether tangible or intangible, which incorporates, embodies or is based on any of the things referred to in the paragraphs above.
Late Bids	Project Bids received after the Project Bid Closing Date and Time or Financial Value Bids received after the Financial Value Bid Closing Date and Time (as applicable).
Law	Commonwealth, state, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders and all common laws and principles of equity and, for the avoidance of doubt, includes any Regulatory Instrument.
Liability	Any loss, cost, liability or expense whether: - arising from or in connection with any proceeding or Claim or not; - liquidated or not; - legal or equitable; - present, prospective or contingent; or - owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.
LDS	Long duration storage.
LDS LTESA	A financial derivative contract that provides an LTES Operator with a series of options to access a variable annuity payment. If the option is exercised, the annuity payment will be in the form of a top up to net operational revenues achieved by the Project.
LGC	Large-scale Generation Certificate.
LTESA	Long-term Energy Service Agreement.
LTES Operator	Party responsible for the operation and management of generation or long duration storage facility in connection with a LTESA.
Maximum Capacity	The generation capacity that a Project intends to be registered with AEMO to dispatch up to into the NEM.

Term	Definition
Merit Criteria (MC)	Merit Criteria as set out in Section 4.2 of these Guidelines.
Minimum Generation	As defined in Section 2.1 of these Guidelines.
Minister	NSW Minister for Energy.
NEL	The National Electricity Law, set out in the schedule to the <i>National Electricity (South Australia) Act 1996</i> (SA) as it applies in NSW.
NEM	National Electricity Market.
Net Revenue Threshold	As defined in Section 2.2 of these Guidelines.
NER	The National Electricity Rules made under the NEL, as it is applied in NSW.
Network Operator	The network operator authorised by the Consumer Trustee to carry out the development, construction and operation of the Access Rights Network under section 31(1)(b) of the EII Act.
Non-Compliant	In relation to a Bid means a response that is not substantially complete, or which does not substantially address each of the requirements set out in these Guidelines or the Tender Rules, or which addresses the requirements set out in these Guidelines or the Tender Rules but not in the manner contemplated by these Guidelines.
Non-REZ Projects	A Project that is not located within the geographical area of a declared REZ.
NSP	Network Service Provider.
NSW Regional Reference Node	The Regional Reference Node is the designated node where the regional spot price is set. For NSW, this is the Sydney West 330 kV node.
OECC	NSW Office of Energy and Climate Change.
Online Portal	The online portal made available by the Consumer Trustee to Proponents as part of participation in the Tender Round.
Outstanding Merit	As defined in Section 6.5 of these Guidelines.
Portfolio Assessment	As described in Section 3.1.9 of these Guidelines.
Portfolio Shortlist	Selected shortlist of Financial Value Bids at the conclusion of Portfolio Assessment stage.
Products	The products being procured under this Tender Round.
Project	A physical electricity generation or storage facility built in respect of which an LTESA or Access Right is being sought by the Proponent, including any proposed supporting network remediation and connection assets.
Project Assessment	The assessment methodology to be used by the Consumer Trustee to assess and shortlist Bids.
Project Bid	The document submitted by a Proponent in relation to the Project, including any Returnable Schedules, together with any additional information submitted by the Proponent.
Project Development Agreement (PDA)	A contract governing the construction and operation of a Project awarded an LTESA and/or an Access Right.

Term	Definition
Project Document	The PDA and (where applicable) LTESA, together with any other documents that are: • required or contemplated under the PDA and/or applicable LTESA; or • specified by the Consumer Trustee as required to be entered into by the Consumer Trustee, the Proponent and, if relevant, others at or around the same time as the PDA and/or the applicable LTESA. The full suite of Project Documents will be determined on a case-by-case basis for each Proponent, having regard to the relevant Bid and specific Project arrangements.
Project Eligibility Criteria	Eligibility Criteria as set out in Section 4.1.2 of these Guidelines.
Project Bid Closing Date and Time	As defined under Tender Round 3 details.
Project Shortlist	Selected shortlist to progress to the Financial Value Bid stage, based on assessment against the Project Merit Criteria.
Proponent	Any person (who alone) or persons (who together, including Consortium Members), submit, or intend to submit, a Project Bid and Financial Value Bid, including a shortlisted Proponent and a Selected Proponent.
Proponent Eligibility Criteria	Eligibility Criteria as set out in Section 4.1.1 of these Guidelines.
Q&A Process	The question and answer process in respect of the Tender Round described in Section 3.1.1 of these Guidelines.
Recommended Bid	As defined in Section 3.2 of these Guidelines.
Registration Closing Date and Time	As defined under Tender Round 3 details.
Regulator	Australian Energy Regulator (AER) and/or Independent Pricing and Regulatory Tribunal (IPART) as the context requires.
Regulatory Instrument	• the NEL and the NER; • the EII Act and EII Regulations; • any other Law that regulates the electricity industry in NSW; and • any relevant licence, Approval, code, instruction, direction, condition or orders of an Authority (whether formal or informal) that regulates a person's activities in respect of the electricity industry.
Related Body Corporate	Has the meaning given in the <i>Corporations Act 2001</i> (Cth), but on the basis that 'subsidiary' means another entity which is a subsidiary of the first entity within the meaning of the <i>Corporations Act 2001</i> (Cth), provided that a trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.
Reliability Standard	As defined in the EII Act.
Repayment Threshold Price	As defined in Section 2.1 of these Guidelines.
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 section 23 of the EII Act.

Term	Definition
REZ Declaration	As defined in Section 6.11.1 of these Guidelines.
REZ Scheme Administrator	The person or body specified in an Access Scheme Declaration as declared by the Minister pursuant to section 24(5)(a) of the EII Act to administer a REZ Access Scheme, being EnergyCo.
Risk Management Framework	The 'risk management framework' developed by the Consumer Trustee pursuant to section 51 of the EII Act.
Scheme Financial Vehicle (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, pursuant to section 62 of the EII Act.
SEARs	Secretary's Environmental Assessment Requirements
Sector Board	The NSW Renewable Energy Sector Board.
Sector Board Plan	The NSW Renewable Energy Sector Board Plan prepared by the Sector Board pursuant to section 7(4)(a) of the EII Act, as further described in Section 6.8 (published September 2022).
Security for Process Bond	In respect of a Bid, has the meaning given to that term in the Tender Process Deed.
Selected Proponent	In respect of a Proponent, any person whose Project is selected as set out in Section 3.3 of these Guidelines to be awarded the relevant Project Documents.
Tender Commencement Date	The date on which the Tender Round is opened.
Tender Conditions	The terms and conditions set out in Section 5 of these Guidelines and such further terms and conditions that are otherwise imposed by the Consumer Trustee in respect of the Tender Round.
Tender Documentation	The documentation issued by the Consumer Trustee in respect of the Tender Round, including: i. the Tender Rules; ii. these Guidelines, including any Addendum; iii. Tender Round market briefing materials; and iv. the Tender Process Deed executed by the relevant Proponent, but does not include: v. the Project Documents and any other contract documents issued in conjunction with the Tender Documentation listed above.
Tender Guidelines or Guidelines	This document, including its Tender Round details (before the table of contents), schedules, attachments and appendices, and any Addenda.
Tender Process Deed	A legally binding deed, setting out the terms under which Proponents participate in the Tender Round.
Tender Registration Date	Refer Tender Round 3 details, unless otherwise notified by Consumer Trustee.
Tender Round	The Tender Round as specified in these Guidelines, commencing date notified by the Consumer Trustee on the Consumer Trustee's website and concluding when the Consumer Trustee has notified each Proponent that the process has concluded.

Term	Definition
Tender Rules	Tender rules, made by the Consumer Trustee under section 47(5) of the EII Act, and under regulation 42A of the EII Regulation, that sets out how the Consumer Trustee will conduct Tender Rounds in respect of the award of LTESAs and allocation of Access Rights.
Total Project Contract Value	The summation of all the costs that the Proponent has to pay to deliver the Project exclusive of GST.
Validity Period	The validity period of the Financial Value Bid to be specified by the Consumer Trustee prior to Financial Value Bid Closing Date and Time.



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