

## Part 5 Competitive tendering

### 21 Application for approval of tender process as a competitive tender process

- (1) A person (the **proponent**) may apply to the AER for approval of a proposed tender process as a competitive tender process if:
  - (a) the tender is for the provision of pipeline services to or from a particular locality; and
  - (b) the tender envisages the construction and operation of a new pipeline by the person who submits the successful tender.
- (2) An application for the AER's approval under this rule must:
  - (a) set out the proponent's name and *contact details*; and
  - (b) contain a description of the pipeline services sought through the tender process; and
  - (c) describe the proposed tender process including:
    - (i) the rules and procedures to be followed; and
    - (ii) the minimum requirements with which a tender will be required to comply; and
    - (iii) the proposed date for calling tenders and the proposed closing date for submission of tenders; and
  - (d) set out the criteria to be applied in selecting the successful tender.
- (3) A proponent may, by notice to the AER, withdraw its application at any time before the AER decides the application.

### 22 Approval of process as competitive tender process

- (1) The AER must, within 2 months after it receives an application under this Part, approve or refuse to approve the tender process as a competitive tender process.
- (2) The time limit fixed in subrule (1) cannot be extended by more than a further month.
- (3) The AER must approve a proposed tender process as a competitive tender process if the AER is satisfied that the tender process complies with the following requirements:
  - (a) the tender process must be for the provision of pipeline services of the kind described in the application for the *tender approval decision*; and
  - (b) the tender process must be an appropriate mechanism for determining terms and conditions of access having regard to:
    - (i) the national gas objective; and
    - (ii) the requirements of procedural fairness, probity and fair dealing; and

- (c) the specifications contained in the request for tender:
    - (i) must not limit the kind of pipeline services to which access may be sought; and
    - (ii) must not impose conditions or requirements that the AER considers would, or would be likely to, prevent or discourage the submission of any tender that is consistent with the selection criteria; and
  - (d) the selection criteria must require the exclusion of a tender from consideration if it does not contain any of the essential elements for inclusion in a tender specified in subrule (4).
- (4) The essential elements for inclusion in a tender are:
- (a) a description of the proposed pipeline; and
  - (b) a description of the services to be offered; and
  - (c) the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff; and
  - (d) if the proposed pipeline is a transmission pipeline – the proposed queuing requirements; and
  - (e) the proposed extension and expansion requirements; and
  - (f) the proposed *expiry date* of the *CTP access arrangement* (which must fall no more than 15 years from the commissioning of the pipeline).

## 23 Time limit for completion of tender process

- (1) If the AER approves the proposed tender process as a competitive tender process, it may, in the *tender approval decision*, fix a time limit for completion of the tender process.
- (2) The AER may, however, extend the time limit from time to time.

## 24 Report on the conduct of the tender process

- (1) When the successful tender is selected, the proponent must give the AER a written report (the **compliance report**) on the conduct of the tender process.
- (2) The compliance report must include the following information:
  - (a) the reasons for the selection of the successful tender; and
  - (b) information showing that the tender was conducted in accordance with the approved process and, in particular, that the successful tender was selected in accordance with the approved selection criteria; and
  - (c) the terms and conditions proposed in the successful tender including:
    - (i) a description of the proposed pipeline; and
    - (ii) a description of the pipeline services to be offered; and

- (iii) the proposed reference services and, for each reference service, the terms and conditions of access, including the proposed reference tariff; and
  - (iv) the proposed queuing requirements; and
  - (v) the proposed extension and expansion requirements; and
  - (vi) the proposed *expiry date* of the *CTP access arrangement* (which must fall no more than 15 years from the commissioning of the pipeline); and
- (d) information showing that the terms and conditions are consistent with the national gas objective.

## 25 Lapse or revocation of tender approval decision

- (1) A *tender approval decision* lapses if:
  - (a) the time limit for completion of the tender process expires before the proponent submits a compliance report in accordance with this Part; or
  - (b) the proponent fails to submit a compliance report in accordance with this Part within 2 months after the selection of the successful tender.
- (2) The AER may revoke its *tender approval decision* if, after consideration of the compliance report, it is not satisfied that all aspects of the tender process were in accordance with the approved process.
- (3) If the AER proposes to revoke its *tender approval decision* under subrule (2), the AER must, within 20 business days after receiving the compliance report, give the proponent a written notice:
  - (a) stating that the AER is proposing to revoke the *tender approval decision* and the reasons for the proposed revocation; and
  - (b) inviting the proponent to make submissions to the AER on the proposed revocation; and
  - (c) stating that submissions must be made within 20 business days after the date of the notice.
- (4) The AER may, after considering any submissions made in accordance with a notice under subrule (3), revoke its *tender approval decision*.
- (5) Unless a *tender approval decision* lapses or is revoked within 3 months after the proponent gives the AER its compliance report, the *decision* becomes irrevocable at the end of that period.

## 26 Classification of tender approval pipeline

- (1) When the *tender approval decision* becomes irrevocable:
  - (a) the proposed pipeline described in the successful tender selected in accordance with the approved process becomes a *CTP pipeline*; and

- (b) the AER must ask the NCC to classify the pipeline in accordance with the pipeline classification criterion.
- (2) The AER must provide the NCC with information the NCC reasonably requires to classify the pipeline.
- (3) The NCC must make an initial classification *decision*:
  - (a) classifying the pipeline as a transmission pipeline or a distribution pipeline; and
  - (b) if the pipeline is classified as a transmission pipeline – determining whether the pipeline is also a cross-boundary transmission pipeline; and
  - (c) if the pipeline is classified as a distribution pipeline – determining whether the pipeline is also a cross-boundary distribution pipeline; and
  - (d) if the pipeline is a cross-boundary distribution pipeline – determining, with regard to the jurisdictional determination criteria, the participating jurisdiction with which the pipeline is most closely connected.
- (4) The NCC must notify the AEMC and the AER of an initial classification *decision* under this rule.

## 27 CTP access arrangement

- (1) The service provider must, at least 6 months before a *CTP pipeline* is commissioned, submit to the AER for approval an *access arrangement proposal* proposing an access arrangement for the pipeline (a **CTP access arrangement proposal**).
- (2) The terms and conditions for an access arrangement as proposed in the successful tender (the **proposed terms and conditions**) may be amended, with the AER's approval, by agreement between the proponent and the service provider before the submission of the *CTP access arrangement proposal*.
- (3) If the AER is satisfied that the proposed *CTP access arrangement* reasonably reflects the proposed terms and conditions (including any amendment approved under this rule), the AER must approve the *CTP access arrangement*.
- (4) The approved *CTP access arrangement* must be published on the service provider's website.

### **Note:**

This subrule is classified as a civil penalty provision under the National Gas (South Australian) Regulations. See clause 6 and Schedule 3 of the National Gas (South Australian) Regulations.

- (5) An approved *CTP access arrangement* may be amended, with the AER's approval, by the service provider.

## 28 Notification of AEMC

- (1) The AER must notify the AEMC of:
  - (a) every *tender approval decision* under this Part; and

- (b) every *decision* to revoke a *tender approval decision* under this Part.
- (2) When a *tender approval decision* becomes irrevocable under this Part, the AER must notify the AEMC of that fact.

## **29 Non-application of Parts 8, 9 and 10**

Parts 8, 9 and 10 do not apply to a *CTP access arrangement* or a *CTP access arrangement* proposal.