Terms of Reference

Validator for the 2018 EITI Validations

Issued Friday 23 March 2018. Updated 6 April 2018.

Summary

Proposals are sought from qualified consultants to act as the independent Validator for 15 first Validations to be conducted by the Extractive Industries Transparency Initiative (EITI) in 2018. These terms of reference are based on the EITI’s Validation Procedures. Proposals must be delivered by email to sbartlett@eiti.org by 17:00 CEST on Friday 20 April.

1. Background

The EITI\textsuperscript{1} is a global coalition of governments, companies and civil society working together to improve the openness and accountable management of oil, gas and minerals for the benefit of the citizens living in countries with significant resource endowments. The EITI Standard\textsuperscript{2} is implemented in 51 countries. Implementation is overseen by a national multi-stakeholder group (MSG) comprising representatives from government, companies and civil society. Through EITI implementation, governments commit to transparently disclose information about the country’s extractive sector, including the legal framework, production and exports statistics, licenses, state participation in the sector, the amount of revenue collected, the beneficial owners of companies and how these revenues are allocated. The publication and public debate of this information enables citizens to hold their government to account for how the sector is managed, and thus contribute to reducing mismanagement, corruption and conflict.

Validation is an essential feature of the EITI process. It serves to assess performance and promote dialogue and learning at the country level. It also safeguards the integrity of the EITI by holding all EITI implementing countries to the same global standard. It is intended to provide all stakeholders with an impartial assessment of whether EITI implementation in a country is consistent with the provisions of the EITI Standard. The Validation report will, in addition, address the impact of the EITI in the country being validated, the implementation of activities encouraged by the EITI Standard, lessons learnt in EITI implementation, as well as any concerns stakeholders have expressed and recommendations for future implementation of the EITI.

Validation assesses compliance with the EITI Requirements set out in chapter 2. The methodology is set out in the Validation Guide, with guidance on assessing each provision. In some cases, the Validation Guide specifies the evidence that the validator must use to ensure that a provision has been satisfied. In other cases, there are different approaches that a country might take to address an EITI provision, and the Validation Guide provides examples of the types of evidence that the validator might consider.

Given the multi-stakeholder nature of the EITI and the importance of dialogue, the Validation procedure emphasises stakeholder consultation. Validation is carried out in four stages.

\textsuperscript{1} \url{www.eiti.org}
\textsuperscript{2} See: \url{https://eiti.org/files/English_EITI_STANDARD.pdf}
1. **Preparation for Validation.** Prior to the commencement of Validation, the multi-stakeholder group (MSG) is encouraged to undertake a self-assessment of adherence to the EITI Standard. The Validation Guide includes a provision that: “where the MSG wishes that Validation pays particular attention to assessing certain objectives or activities in accordance with the MSG work plan, these should be outlined upon the request of the MSG”. The national secretariat is requested to collate the documentation and other sources that demonstrate compliance, including MSG minutes. Stakeholders are also invited to prepare any other documentation they consider relevant. A guidance note on preparing for Validation is available[^3].

2. **Initial data collection and stakeholder consultation undertaken by the EITI International Secretariat.** The International Secretariat reviews the relevant documentation, visits the country and consults stakeholders. This will include meetings with the MSG, the Independent Administrator and other key stakeholders, including stakeholders that are represented on, but not directly participating in, the MSG. The Board maintains a standardised procedure for data collection, addressing stakeholder consultation and deadlines for the completion of the initial assessment.

Based on these consultations, the International Secretariat will prepare a report making an initial assessment of progress against requirements in accordance with the Validation Guide. The initial assessment will not include an overall assessment of compliance.

The report is submitted to the Validator. The National Coordinator (NC) receives a copy. Comments on the facts are welcome but NC and the MSG are encouraged to defer any major commentary until they receive the Validator’s report.

3. **Independent Validation.** The EITI Board will appoint an Independent Validator through an open, competitive tendering process. The Validator will report to the Board via the Validation Committee.

The Validator assesses whether the Secretariat’s initial assessment been carried out in accordance with the Validation Guide. This will include: a detailed desk review of the relevant documentation for each requirement and the Secretariat’s initial assessment of each requirement, a risk-based approach for spot checks, and further consultations with stakeholders. The Board may request that the Validator undertake spot checks on specific requirements.

The Validator comments on the Secretariat’s initial assessment and prepares a Draft Validation Report. The MSG is invited to comment on the Draft Validation Report. Having considered the MSG’s comments, the Validator compiles a Final Validation Report. The Validator writes to the MSG to explain how it has considered their comments. The MSG receives a copy of the Final Validation Report.

The Final Validation Report will include the Validator’s assessment of compliance with each provision, but not an overall assessment of compliance. The Validator will

be invited to present their findings to the Validation Committee.

4. **Board Review.** The Validation Committee will review the Final Validation Report and the supporting documentation (including the MSG’s comments). The Validation Committee will make a recommendation to the EITI Board on the country’s compliance with the EITI Requirements and, where applicable, any corrective actions required.

The EITI Board will make the final determination of whether the requirements are met or unmet, and on the country’s overall compliance in accordance with provision 8.3.a.ii of the EITI Standard.

The initial assessment, Validation Report and associated MSG comments are considered confidential until the Board has reached a decision.

These terms of reference relate to the work to be undertaken by the Validator (step 3, above).

2. **Scope of services, tasks and expected deliverables**

The Validator, reporting to the EITI Board via the Validation Committee, will review Validations in 15 countries (see table below) in accordance with the Validation procedures and Validation Guide. The Validator assesses whether the Secretariat's initial assessment has been carried out in accordance with the Validation Guide. Applying appropriate professional standards, this is expected to include:

1. A detailed review of the International Secretariat’s report assessing progress against requirements in accordance with the Validation Guide, and the relevant source documentations, including but not limited to:
   a) The EITI work plan and other planning documents such as budgets and communication plans;
   b) The multi-stakeholder group’s Terms of Reference, and minutes from multi-stakeholder group meetings;
   c) EITI Reports, and supplementary information such as summary reports and scoping studies;
   d) Communication materials;
   e) Annual activity reports; and
   f) Any other information of relevance to Validation, including any documentation relating to EITI implementation from EITI stakeholders.

2. A risk-based approach for spot checks, including reviewing additional source documentation and direct consultations with stakeholders, which may include group consultations and/or individual consultations, with appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentially are respected.
If prospective Validators consider that additional procedures are necessary, they are invited to include details in their proposal.

In most cases the Validator's work will not require field visits. In exceptional circumstances, for example where the validation is particularly complex or contentious, the Board may request that the validator undertakes a field visit. In such cases, a budget and contract for this work will be agreed separately. Provision for this work should not be included in the technical and financial proposals.

For each of the 15 countries, the Validator should:

1. Assess whether the Secretariat's initial assessment has been carried out in accordance with the Validation Guide, including consultation with the team that undertook the initial assessment.
2. Prepare a draft Validation Report summarising the Validator's findings for consideration by the MSG.
3. Consider the feedback from the MSG and any additional comments from the team that undertook the initial assessment.
4. Prepare a written response to the MSG, detailing how their comments on the initial assessment and draft Validation Report have been taken into account.
5. Prepare a Final Validation Report for submission to the Board.

The estimated input of consultant time is circa 4 days per country (3 person-months in total).

Following the EITI Board’s decision, the documentation is made publicly available (here). Consultants are encouraged to review examples from 2017, e.g., the 2017 Validation of Albania, the 2017 Validation of Kazakhstan, and the 2017 Validation of Iraq.

In some cases, the Validator may be requested to present the findings to the Validation Committee (via teleconference).

At the conclusion of the assignment, the Validator should also prepare a short note (no more than 10 pages), summarising their observations and assessments across the 15 countries. The Validator is also invited to make recommendations for improving the quality assurance procedure in the future for consideration by the EITI Board.

3. Schedule

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4 As the Secretariat completes its initial assessments, it will forward the file to the Validator. The team will: (1) highlight any challenging aspects of the initial assessment, (2) provide links to the relevant supporting documentation and (3) provide contact details for key stakeholders.

5 For each country, the International Secretariat and Validator will meet via teleconference to discuss the draft Validation Report and the comments received from the multi-stakeholder group prior to the finalisation of the Validation Report. This provides an opportunity to clarify any information gaps and to discuss any issues relating to the interpretation of the EITI Standard (including relevant precedents from previous Board decisions).
The Validation schedule for all 51 implementing countries is available online\(^6\). The current assignment focuses on the 15 validations scheduled to be conducted in 2018. The schedule for undertaking this work is as follows\(^7\):

<table>
<thead>
<tr>
<th>#</th>
<th>Country</th>
<th>Commencement of Validation</th>
<th>Secretariat's Initial Assessment</th>
<th>Validator Review and draft Validation Report</th>
<th>MSG comment period</th>
<th>Validator Review (Response to MSG and Final Validation Report)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Afghanistan</td>
<td>01-Nov-17</td>
<td>01-Apr-18</td>
<td>22-May-18</td>
<td>12-Jun-18</td>
<td>03-Jul-18</td>
</tr>
<tr>
<td>2</td>
<td>Colombia</td>
<td>01-Jan-18</td>
<td>01-Apr-18</td>
<td>22-May-18</td>
<td>12-Jun-18</td>
<td>03-Jul-18</td>
</tr>
<tr>
<td>3</td>
<td>Seychelles</td>
<td>01-Jan-18</td>
<td>09-Apr-18</td>
<td>22-May-18</td>
<td>12-Jun-18</td>
<td>03-Jul-18</td>
</tr>
<tr>
<td>4</td>
<td>Ethiopia</td>
<td>01-Apr-18</td>
<td>08-Jul-18</td>
<td>29-Jul-18</td>
<td>19-Aug-18</td>
<td>09-Sep-18</td>
</tr>
<tr>
<td>5</td>
<td>Guatemala</td>
<td>01-Apr-18</td>
<td>08-Jul-18</td>
<td>29-Jul-18</td>
<td>19-Aug-18</td>
<td>09-Sep-18</td>
</tr>
<tr>
<td>6</td>
<td>Papua New Guinea</td>
<td>01-Apr-18</td>
<td>08-Jul-18</td>
<td>29-Jul-18</td>
<td>19-Aug-18</td>
<td>09-Sep-18</td>
</tr>
<tr>
<td>10</td>
<td>Sierra Leone</td>
<td>01-Jul-18</td>
<td>07-Oct-18</td>
<td>28-Oct-18</td>
<td>18-Nov-18</td>
<td>09-Dec-18</td>
</tr>
<tr>
<td>12</td>
<td>Chad</td>
<td>01-Sep-18</td>
<td>08-Dec-18</td>
<td>29-Dec-18</td>
<td>19-Jan-19</td>
<td>09-Feb-19</td>
</tr>
<tr>
<td>13</td>
<td>Indonesia</td>
<td>01-Sep-18</td>
<td>08-Dec-18</td>
<td>29-Dec-18</td>
<td>19-Jan-19</td>
<td>09-Feb-19</td>
</tr>
<tr>
<td>14</td>
<td>Trinidad and Tobago</td>
<td>01-Sep-18</td>
<td>08-Dec-18</td>
<td>29-Dec-18</td>
<td>19-Jan-19</td>
<td>09-Feb-19</td>
</tr>
<tr>
<td>15</td>
<td>Malawi</td>
<td>01-Sep-18</td>
<td>08-Dec-18</td>
<td>29-Dec-18</td>
<td>19-Jan-19</td>
<td>09-Feb-19</td>
</tr>
</tbody>
</table>

4. Qualification requirements

It is expected that the independent Validation assignment will be carried out by a small team of experts with the requisite skills and competencies. The following qualifications are required:

1. Knowledge and experience with EITI implementation.
2. Expertise in the governance issues relating to the oil, gas and mining sectors.

\(^6\) https://eiti.org/document/validation-schedule-decisions
\(^7\) Assumes contract signature on 1 May 2018. The schedule will be adjusted during contract negotiations as needed.
3. Experience working with government, industry and civil society including understanding of the appropriate protocols to ensure that stakeholders are able to freely express their views and that requests for confidentially are respected.

4. Technical and financial skills, including knowledge of public financial management and international auditing and assurance standards, with at least one member of the Validation team with internationally recognised qualifications in auditing and/or third-party assurance.

5. Regional and country knowledge: a demonstrable track record in similar work in regions and countries where the EITI is implemented, including fragile states.

6. Demonstrable ability to conduct literature reviews and interviews in the applicable local languages.

7. Credibility and independence: the validator needs to be credible in the eyes of the host government, the private sector and civil society. Firms that have acted as an Independent Administrator in any of the countries to be Validated are ineligible to act as Validator. In addition, firms shall not be eligible to act as Validators for consecutive terms.

The team should include a designated project leader responsible for overall project management, quality assurance, and liaison with the EITI International Secretariat and Validation Committee.

5. Procurement procedure

A firm will be selected following a quality- and cost-based selection procedure.

Consultants should submit:

- A **Technical proposal**, outlining: (a) the experience of the firm / consultants, (b) the proposed methodology and work plan in response to the Terms of Reference (TORs) and (c) the key experts’ qualifications and competence. The Technical Proposal should not include any financial information. Technical proposals containing material financial information shall be declared non-responsive.

- A **Financial Proposal**, clearly indicating a lump sum financial proposal, inclusive of all applicable taxes. The financial proposal should clearly differentiate fees from any other reimbursable expenses. The daily rate for the consultant fees should be clearly indicated. The Financial Proposal should be sent as a password protected PDF file. The passwords should not be sent. The passwords will be requested following the assessment of the technical proposals.

Proposals must be delivered by email to sbartlett@eiti.org by 17:00 CEST on Friday 20 April.

The criteria for assessing the technical proposals is as follows:

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Weighting</th>
</tr>
</thead>
<tbody>
<tr>
<td>Experience of the Consultant (as a firm) relevant to the Assignment</td>
<td>10%</td>
</tr>
</tbody>
</table>
Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs)⁸

| Key Experts’ qualifications and competence based on the Qualification requirements (see section 4 above) | 40% |

The weights given to the Technical (T) and Financial (P) Proposals are:

\[
T = 70% \\
P = 30%
\]

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: \( S = St \times T\% + Sf \times P\% \).

Contract negotiations will be held with the highest ranked firm. A template contract is attached below. If contract negotiations are unsuccessful, negotiations will be held with the next highest ranked firm.

6. Payment schedule

<table>
<thead>
<tr>
<th>Deliverable</th>
<th>Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>1(^{st}) Payment</td>
<td>Following contract signature</td>
</tr>
<tr>
<td>2(^{nd}) Payment</td>
<td>Following submission of the 7(^{th}) Final Validation Report.</td>
</tr>
<tr>
<td>3(^{rd}) Payment</td>
<td>Following submission of the summarising their observations and assessments across the 15 countries</td>
</tr>
</tbody>
</table>

7. Data and facilities to be provided by the Client

The EITI International Secretariat will provide all the necessary documentation needed to undertake the reviews, and will facilitate contact with national EITI Secretariats, MSG members, stakeholders represented on the MSG and the EITI Board via the Validation Committee. The Validator can also have direct contact with the Board, via the Validation Committee. The EITI Secretariat contact point for the assignment is:

Dr. Samuel Bartlett  
Technical Director  
EITI International Secretariat  
Oslo, Norway  
sbartlett@eiti.org  
+47 9026 7530

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⁸ The Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts
CONTRACT

between

The Extractive Industries Transparency Initiative – EITI
Skippergata 22,
0152 Oslo
Norway

And

[Name]
[Address]
[City]
[Country]

1. ASSIGNMENT

1.1 Contents

This contract provides for [NAME OF THE ASSIGNMENT] between [NAME OF CONSULTANT] (“the consultant”) and the EITI Secretariat (“The Client”). The terms of reference for tasks to be carried out under this contract will be agreed in writing prior to the initiation of each task in accordance with the template outlined in Annex A. In the event of any discrepancy between this Contract and the ToR for Individual assignments, the provisions of this Contract shall prevail.

1.2 Duration

The assignment will take effect as of [DATE], and shall be completed by [DATE].

Additional pieces of work with given working days shall be agreed between both parties and will be seen as binding limitations on the scope and duration of work falling under this contract.

1.3 Administration

The consultant will report to the [POSITION AND NAME AT THE SECRETARIAT] and other staff at the EITI Secretariat as directed.

2 FEES AND PAYMENT

2.1 Fees

The consultant will be paid a total fixed fee of [CURRENCY AND AMOUNT] (AMOUNT IN LETTERS only) for completing the ToRs (Annex A) inclusive of all taxes and mandatory payments.
2.2 Reimbursables

Not applicable.

2.3 Payment

Invoices with timesheets attached should be submitted to the EITI International Secretariat, following the Secretariats approval of agreed deliverables. The Consultant will be paid in full within two weeks of receipt of Invoice.

3 CONFIDENTIALITY, CONFLICT OF INTEREST AND PROPERTY RIGHTS

The consultant shall not disclose to any third party any information relating to the services under this contract, which could be considered confidential (other than in the proper performance of this contract or as may be required by law). The consultant shall immediately notify the EITI of any circumstances which may place the consultant in a real or apparent conflict of interest in relation to the services under this contract or the interests of the EITI generally.

4 FORCE MAJEURE

If a situation arises that under the normal rules of contract law must be considered to be an event of force majeure, this contract shall not be considered breached while the force majeure situation continues. If the force-majeure situation continues, or can be expected to continue, for more than 60 days, either party can terminate the contract by giving 30 days’ notice.

5 RESPONSIBILITY OF THE PARTIES

5.1 The consultant’s responsibility

a. The consultant is responsible for ensuring that the assignment is carried out in accordance with the contract and that the quality of the assignment result satisfies the requirements that could reasonably be specified on the basis of the assumed professional competence of the consultant.

b. The consultant is responsible for breaches of time limits and the financial budget that result from the negligence or intentional acts of him/her.

c. The consultant undertakes to keep the EITI Secretariat informed of progress and promptly to inform the EITI Secretariat of circumstances that may cause delays, prevent completion of the assignment, or in any other way affect completion.

d. The Consultant’s area of responsibility as set out in a., b. and c. also includes quality deficits and delays in completion of the Assignment, caused by any contractors engaged by the consultant or by the Secretariat.

5.2 The Client’s responsibility
a. The EITI Secretariat will issue clear terms of reference for each assignment, maintain close communication with the consultant, and expeditiously provide feedback on draft deliverables.

b. The Secretariat will make available to the consultant the necessary data and information necessary to carry out the prescribed tasks, and will work to ensure good access to relevant stakeholders and contacts within EITI implementing countries and supporting organizations as needed.

6 BREACH - SANCTIONS

a. In the case of breaches as set out in paragraphs 5.1 that are not due to the EITI’s conduct or circumstances as set out in paragraph 5.2, the Secretariat can require the consultant to remedy the breach(es) at his own expense, as long as this does not occasion unreasonable costs or inconvenience.

b. If the breaches are not remedied in accordance with the quality requirements set out in paragraphs 5.1, or this does not occur within a reasonable period after the Secretariat has complained about the breaches, the Secretariat can claim a price reduction corresponding to the cost of carrying out the assignment.

c. A party may terminate the contract when the breach of the other party is substantial.

d. A party may claim compensation for the loss he/she suffers as a result of the breach of the other party, in accordance with the general rules on compensation in contractual relationships. The party shall be put in the same financial position he/she would have been in had the contract been properly fulfilled.

e. A party loses his/her right to enforce a sanction against the other party if he/she does not give notice of the claim to the other party within a reasonable period of becoming aware of the circumstances that constitute the basis for the sanction.

7 DURATION - TERMINATION

The contract remains in force until the assignment is completed and all payments, pursuant to invoices, have been made, but it can be terminated by the Secretariat on 14 days’ written notice without giving reasons. In the case of such termination, the Secretariat shall pay the consultant’s fee for work carried out and Travel Costs and shall pay financial compensation for expenses the consultant has incurred in connection with the early termination of the assignment.

The consultant may, if the Secretariat makes significant changes to the content or extent of the assignment, terminate the contract by giving 14 days’ written notice. The Consultant is obliged to complete and deliver work already started.

8 CHOICE OF LAW - DISPUTES
The parties’ rights and obligations under this contract are governed in their entirety by Norwegian law. Disputes that arise under this contract shall, if they cannot be resolved by negotiation between the parties, be heard by the district court of Oslo.

9 ENQUIRIES

All enquiries concerning this contract should be directed to:

EITI
Jonas Moberg
Executive Director
jmoberg@eiti.org

Consultant:
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX
XXXXXXXXXXXXXX

This contract is signed in 2 (two) copies, of which each party keeps 1 (one) copy.

For the EITI: The Consultant:

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Date: [DATE]                          Date: [DATE]

Annex A: Terms of Reference for [NAME OF THE ASSIGNMENT]