

Terms of Reference for consultant supporting Liberia EITI on Beneficial Ownership Transparency

The EITI International Secretariat is seeking to strengthen its support to Liberia on beneficial ownership transparency. To enhance its current support, the Secretariat is seeking a consultant to enhance EITI's implementation support to Liberia on beneficial ownership. This will entail supporting the EITI multi-stakeholder group in Liberia, key government agencies, and Liberia Business Registry¹ in facilitating policy discussions and improving disclosures of beneficial ownership information. The objective is to improve government and company disclosures, move towards systematic disclosure of data on beneficial ownership and build capacity among LEITI stakeholders in collecting, disclosing, and analysing the BO information.

1. Background

The Republic of Liberia announced its first commitment to the Extractive Industries Transparency Initiative (EITI) in May 2007. Implementing the EITI was key to fulfilling aspects of the 2003-2006 transitional government's Governance and Economic Management Assistance Program (GEMAP) aimed at improving the transparency of revenues and expenditures. Liberia was accepted as an EITI Candidate in September 2007. A Multi-Stakeholder Steering Group (MSSG), chaired by the Minister of Finance, and comprising representatives of government, civil society, multilateral agencies, and companies operating in the Oil, Mining and Forestry sectors was established with the signing of an MoU on 4 April 2008.

The Beneficial Ownership Disclosure is an effort by the Multi-stakeholders Group (MSG) of the Liberian Extractive Industries Transparency Initiative (LEITI) and the Government of Liberia to ensure transparency in ownership rights within the extractive sector.

Requirement 2.5 of the 2019 EITI Standard² requires that implementing countries maintain a publicly available registry of the beneficial owners of the corporate entity (es) that apply for or hold a participating interest in an exploration or production oil, gas or mining license or contract, including the identity (es) of their beneficial owner(s), the level of ownership and details about how ownership or control is exerted. Also, as of January 1, 2020, all implementing countries are required to develop and publish a comprehensive BO Registry.

The Liberian Freedom of Information Act 2010³ and Associations Law⁴ of 1976 (revised in 2002) underscored the fundamental need for access to information to ensure public trust. Section 2.2 (a) of the Freedom of Information Act gives "the right of members of the public to access information held by public authorities and private bodies performing public functions is a fundamental human right guaranteed under international human rights law, including human

¹ <http://lbr.gov.lr/>

² <https://eiti.org/document/eiti-standard-2019>

³ <https://www.cartercenter.org/resources/pdfs/peace/ati/liberia/citizens-guide-to-foi-final.pdf>

⁴ <https://liberiancorporations.com/resources/liberian-law/#:~:text=Liberian%20corporate%20law%20is%20generally,and%20the%20Private%20Foundation%20Law.>

rights instruments to which Liberia voluntarily acceded.” Further, Section 2.2 (d) says “it is in the national security interest of the Republic of Liberia to legally guarantee the right of its citizens to public records, as this will enhance democratic participation by the citizens and good governance”.

The consultancy will focus on beneficial ownership disclosure of natural persons with shareholdings on the operations of the extractive company with five percent (5%) or more shares in each company covered under the scope of LEITI’s four sectors – agriculture, mining (only for those with Mineral Development Agreements (MDAs) and oil & gas due to these sectors’ aggregate dollar value, and ten (10%), for the forestry sector and other rights in the mining sector without MDAs. Disclosure should include persons of control with xx% voting rights and disclosure of stakes held by the government through the State-owned Enterprises (SOEs). Information about the identity of the beneficial owner shall include the name of the beneficial owner, the nationality, and the country of residence, as well as the identity of any politically exposed persons. For publicly listed companies, including wholly owned subsidiaries, disclosure shall include the name of the stock exchange and a link to the stock exchange filings where they are listed.

2. Objectives of the assignment

Liberia EITI is seeking a consultant to support their work with Liberia Business Registry (LBR) and stakeholders on the implementation of Beneficial Ownership Transparency by developing Beneficial Ownership Registry for the Mining, Forestry, Agriculture, and Oil & Gas sectors in line with EITI Requirement 2.5:

1. Mapping of the existing Liberia Business Registry processes, the current BO data with the licensing authorities and the review of the Business Corporation Act to establish if the provisions on BO in the law is adequate.
2. Stakeholder mapping and engagement to align stakeholder’s data fields in their registries with the Liberia Business Registry registry and identify legal and institutional obstacles BO implementation.
3. Review of the Business corporation Act to to determine if the provisions on BO in the law is adequate for BO implementation in Liberia.
4. Review and update of template that will be used in designing the portal for the collection of Beneficial Ownership (BO) information.

The LEITI MSG owns the TORs and report of this assignment, while the International Secretariat will undertake the administrative part of the procurement including the signing of the contract. The timeframe for this work would be 30 working days, from October to November 2020.

3. Scope of assignment

The consultant will be expected to undertake the following tasks:

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- (i) **Mapping of existing LBR processes:** The consultant shall map the existing business processes (administrative processes) within the Liberia Business Registry, which will include methods for the collection, processing and publication of current company data. The consultant shall also map relevant LBR internal stakeholders including departments, team(s) and/or individual(s) who are responsible translating legal or policy requirements into a business process; responsible for technical specifications; responsible for user engagement, responsible for testing; responsible for system development; and responsible for maintenance. The consultant shall further map the current collection of BO data with the licensing authorities. The outcome shall feed into the consultant's shall work with the Liberia Business Registry to determine how the BO data could be collected and reviewed and how the process would fit into the LBR development of the beneficial ownership portal in phase two.
- (ii) **Stakeholder Mapping and Engagement:** The Consultant shall map and engage the relevant stakeholders (i.e. Liberia Business Registry, Ministry of Mines and Energy, Ministry of Agriculture, Forestry Development Authority, National Oil Company of Liberia, Liberia Petroleum Regulatory Authority, National Investment Commission, National Bureau of Concessions, Liberia Revenue Authority, Financial Intelligence Unit and Ministry of Finance and Development Planning) to (i) consult and align the data fields in their registries with the Liberia Business Registry Beneficial Ownership registry and to (ii) identify any legal and institutional obstacles in aligning the processes and outlining practical solutions to overcoming these barriers. In undertaking this work, the consultant should:
- a. Map stakeholders to ensure the list provided above is all encompassing
 - b. Hold bilateral meetings with each of the agencies to review their processes/data they may have in place to understand if it aligns with the Liberia Business Registry process or there may be a need to align the data.
 - c. Hold a workshop for all the government agencies on BO implementation in Liberia.
 - d. Compile existing data and processes to determine the level of data collection required and identify any institutional barriers to collecting the data which the law or regulation could address.
- (iii) **Support the review of the Business Corporation Act.** The consultant shall in collaboration with LEITI, Liberia Business Registry, and CSO partners review the Business Corporation Act to determine if the provisions on BO in the law is adequate and for BO implementation in Liberia such as collecting, storing, and publishing high-quality beneficial ownership data, consistent with international best practice. Where gaps exist in the law, the consultant shall recommend the amendment of and or the development of a BO regulation to close the gaps.
- (iv) **Review and update of template for the collection of Beneficial Ownership (BO) information:** The consultant shall review the BO declaration form shared by LEITI secretariat to ensure it captures comprehensively the identity(ies) of all declarable beneficial owner(s), all relevant methods of control and any information required of declaring or declarable legal entities or arrangements, in line with but not limited to the EITI requirement 2.5. In undertaking this work, the consultant should:
- a. take into account existing information and templates being submitted by companies when they register and/or apply for a license.
 - b. Ensure that the MSG approves the reporting template
 - c. Ensure the template includes a provision for attestation by a senior person(s) of the declaring company,

- d. Ensure that the template allows records in the beneficial ownership portal to be created and updated using a method identified by the Consultant

The consultant shall work with LEITI to undertake an initial paper-based BO disclosure based on reviewed BO declaration forms for January 2021 validation.

- (v) **Report and Roadmap for phase two.** The consultant shall provide a report with clear recommendations in the form of a roadmap that will help in guiding the scope of work in phase two.

4. Deliverables and timetable

The assignment is expected to take 6 weeks and commence in late October 2020 and be completed by early December 2020. Within eight (4) weeks of the commencement date, the Consultant shall provide report to LEITI for the review and comment by the MSG and Liberia Business Registry. The Consultant will be given one (1) week to review the comments, make the required amendments, and handover the final report to LEITI and Liberia Business Registry.

5. Procurement procedure

A consultant 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 costs associated with required travel and 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 skasimova@eiti.org by 27 October 2020.

The criteria for assessing the technical proposals is as follows:

Criteria	Weighting
Experience of the Consultant (as a firm) relevant to the Assignment	10%
Adequacy and quality of the proposed methodology, and work plan in responding to the Terms of Reference (TORs)	50%
Key Experts' qualifications and competence based on the Qualification requirements (see section 5 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. If contract negotiations are unsuccessful, negotiations will be held with the next highest ranked firm.