



Request for Proposal (RFP) for Beneficial Ownership and Contract Transparency Legal Review

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NOTICE DATE: October 28, 2020 (Wednesday)

QUESTIONS DUE DATE: November 6, 2020 (Friday)

OFFER DUE DATE: November 19, 2020 (Thursday)

Nathan Associates Inc. (Nathan), through the USAID-funded Transparency and Inclusive Growth Activity, Task Order Contract No. 720-OAA-18D-00014, invites eligible firms to submit proposals for Beneficial Ownership and Contract Transparency Legal Review. Working through the Myanmar Extractives Industries and Transparency Initiative's National Coordination Secretariat (MEITI-NCS), Nathan seeks proposal from qualified firms to produce a legal review study for Beneficial Ownership and Contract Transparency and draft legislation for embedding Extractive Industries Transparency Initiative (EITI) disclosures in Myanmar's government and corporate systems.

This Request for Proposal provides the details on what is required to submit a concise and comprehensive Proposal in accordance with the requirements outlined herein for how the respective organizations will evaluate the proposed solution, and any specifications and qualifications for the provision of the services.

This is a competitive process open to qualified and eligible companies. Eligibility requirements are found in detail in the RFP. Potential bidders are requested to read these requirements carefully.

The proposals must be received by Nathan no later than 17:00 Myanmar local time on the due date stated above. Proposals received after the deadline or found to be incomplete will not be accepted or considered.

Nathan intends to award a fixed price contract for this activity with an estimated start date of December 20, 2020. The cost proposals must be submitted in USD.

Proposals must be submitted via e-mail to: tigaops@nathanin.com.

This solicitation in no way obligates Nathan to award a contract, nor does it commit the Nathan to pay any cost incurred in the preparation and submission of a proposal in response hereto. Furthermore, Nathan reserves the right to reject any and all offers, if such action is considered to be in the best interest of the U.S. Government.

It is the responsibility of the recipient of this solicitation document to ensure that it has been received in its entirety, including subsequent solicitation amendments, if any, and Nathan bears no responsibility for data errors resulting from transmission or conversion processes.

Any questions related to the RFP should be directed to tigaops@nathaninc.com no later than November 6, 2020 at 17:00 Myanmar local time.

The oral instructions, answers or guidance prior to the award of the contract shall not be binding.

BACKGROUND

The Extractive Industries Transparency Initiative (EITI) is a global standard that promotes transparency and accountability in the extractive sector; such as oil, gas, pearl, mineral, forestry, gems, jade and hydropower industries. It has a robust yet flexible methodology for disclosing company payments and government revenues from oil, gas and mining as well as other information about the extractive sector such as information about the legal framework and fiscal regime, licensing practices, state-owned companies, production, exports, etc. The requirements for implementing countries are set out in the EITI Standard¹. For further information, please see <https://eiti.org/>.

The Myanmar Extractive Industries Transparency Initiative (MEITI) was established by Presidential Decree 99/2012 in December 2012. The Myanmar Multi-Stakeholder Group (MSG) was established in January 2014, consisting of 21 members and Myanmar was granted “EITI Candidate” country status by the EITI Board in July 2014, followed by its first MEITI reconciliation report submission for oil, gas and mining in January, 2016.

Following elections in November 2015, the National League for Democracy (NLD) government took office in Myanmar April 1, 2016 resulting in changes in the management and functioning of the process. On 19 December, 2016, a new MEITI leading committee was formed and the Deputy Minister of Planning, Finance and Industry was appointed as the Chair while Renaissance Institute (RI) was designated as the MEITI National Coordinator. A new MEITI MSG was established on March 23, 2017, comprising of seven Government representatives, seven from private sector and nine from civil society organizations.

Due to election of Myanmar, the EITI implementation was delayed so that the request for extension to produce and first validation process was submitted to the EITI board from Myanmar. The request was granted and the second and third report were submitted in March 2018. Then, the fourth and fifth MEITI main report were timely submitted as schedule in March 31, 2019 and 2020. At the same time, Myanmar has been produced the four forestry reports which cover the period of starting from 2014-15 until 2017-18 successfully. Moreover, the first Beneficial Ownership analysis report was produced together with the online disclosure website for the information in 2020 January. Currently, commodity trading report was upcoming as the first country to produce.

Myanmar was recognized by the EITI Board as a country with the result of the meaningful progress in the first validation under implementation of 2016 standard with the twelve corrective actions; nine meaningful and three inadequate status. To fulfil the validation committee’s recommendation, Myanmar has to implement it before the second validation process which is the deadline on 16 April 2021.

Beneficial Ownership and Contract Transparency Requirement in Myanmar

The requirement 2.4 of the new 2019 EITI standard was requested to disclose the Beneficial Ownership of extractive industry’s corporate entity. The second and third Myanmar EITI main report recommended to identify the meaning of Beneficial ownership and Political Exposed Person and it was implemented in the fourth MEITI Reconciliation report. Again, the recommendation of the fourth report was to review BO of companies, including determination of whether BO rests with offshore entities or individuals and a determination of whether such ownership is legal. There are two recommendations; 1). Availability of B.O

¹ <https://eiti.org/document/eiti-standard-2019>

information and 2). To include mandatory BO disclosure in the process of warding, and transferring extractive license in Myanmar.

The Myanmar EITI MSG submitted a BO roadmap according to the deadline and conduct a pilot project of gathering BO data on oil, gas and mining in Myanmar. Enshrining the feedback from Myanmar's private sector, as well as international experience, suggests that the most sustainable way of implementing requirement 2.5 is by enshrining it in the national legal framework. A presidential decree outlining the EITI requirement and sanctions and incentives for companies, would likely be sufficient to encourage higher response rates among the private sector and produce evidence of significant progress during the first phase. For the long term, Myanmar needs to adopt an approach to introducing BO as a legal requirement, which both technically sound and politically feasible.

On June 20 2018, the BO Task Force was formed by Decree no. Order (60/2018) from the MOPFI with the 13 members in total. On October 2 2019, Presidential Notification confirmed the mandate of the BO Task Force to make decisions regarding ownership disclosure and empowers the DICS as an implementation agency. The Notification also paves the way for several companies and SOEs operating in Myanmar's Mineral, Pearl, Jade, gemstone, Oil, gas production and transportation to disclose their BO data by January 1, 2020.

On 28 February, 2019, the international board agreed in principle to propose changes in the EITI requirement, including contract transparency and disclosure which disclosure of new contracts between the state and the companies, with mandatory disclosure of contracts signed or amended after 1 January, 2021 and strengthen disclosure requirement regarding state participation.

To document the government's policy on disclosure of contracts and licenses that govern the exploration and exploitation of extractive industry is one of the requirements including a description of whether legislation or government policy addresses the issue of disclosing contracts and licenses. Moreover, it needs to make sure whether it requires or prohibits disclosure of contract and license. If there is no existing legislation, an explanation of where the government policy is embodied should be included, and the MSG should document its discussion on what constitutes government policy on contract disclosure and any reform agenda which is under plan or underway as well. Moreover, overview of which contracts and license need to be publicly accessible has to be discussed and documents together with a list of active ones which are already publicly available and not yet.

To implement the requirement, the Contract Transparency workshop was held on December 16, 2019 with over 60 numbers of the participation from government, civil society and private sector. MSG already approved the workplan for implementation of contract disclosure and president decree was request for enabling contract disclosure process, particularly to overcome legal barriers, such as confidentiality clauses containing in a contract barricading the fully disclosure of contracts.

OBJECTIVES

The overall objective of the assignment is to promote Beneficial Ownership and Contract Transparency through reviewing the current legislative framework that link to disclosure of BO and Contract information of extractive companies in Myanmar and drafting the legal framework for BO disclosure. The specific objectives are as follows;

- To provide recommended ways to enshrine in law BO requirements only for the extractive sector, as a potentially necessary intermediary step and specific changes (e.g changes in legislation, changes in government systems and data-bases etc.) to ensure the long-term sustainability and consistent implementation of BO disclosure reporting.

- To draft the legal framework for Beneficial Ownership to access data, PEP reporting of asset disclosure and company’s reporting obligation.
- To review on restriction for contract disclosure that was described in the existing legislative framework in Myanmar and to strengthen the legal and policy environment to reduce the restriction for contract transparency.

ELEGIBILITY

Organizations registered or authorized to conduct business in Myanmar are eligible to apply subject to the following requirements:

- **Individuals are not eligible to apply;**
- Organizations must meet the following:
 - **Be registered to do work in the United States, Myanmar, and developing countries** other than advanced developing countries, but excluding any country that is a prohibited source. For the list of eligible developing countries please refer to [ADS 310](#). The following countries are considered advanced developing countries and organizations from these countries are not eligible to apply:

Albania	Libya
Algeria	Lithuania
American Samoa Antigua and Barbuda	Macedonia, FYR
Argentina	Malaysia
Azerbaijan	Maldives
Belarus	Mauritius
Bosnia and Herzegovina Botswana	Mayotte
Brazil	Mexico Montenegro
Bulgaria	Namibia
Chile	Palau
China	Panama
Colombia	Peru
Costa Rica	Romania
Cuba	Russian Federation Serbia
Dominica	Seychelles
Dominican Republic	South Africa
Ecuador	St. Kitts and Nevis
Gabon	St. Lucia
Grenada	St. Vincent and the Grenadines Suriname
Iran, Islamic Rep.	Thailand
Jamaica	Tunisia
Jordan Kazakhstan Latvia	Turkey
Lebanon	Uruguay
	Venezuela, RB

- Registration documents are required as part of the proposal submission.
- Organizations must be able to pass a due diligence vetting which includes, but is not limited to, verification that the organization and its board and employees are not on the U.S. Government’s and international sanctions list, not on the U.S. Government’s debarment list, etc.

PERSONNEL

It is anticipated that the personnel needed to complete this work will have specialized experience in drafting legislations. Proposed staff should have the following qualifications:

- A master's degree in law, natural resource, or other relevant fields and at least 5 years' experience in the legal field.
- Relevant experience and technical knowledge in conducting legislative reviews, and drafting legislation, preferably, proven experience related to the EITI.
- Experience and knowledge of the extractive industries and/or natural resources sectors, preferably in Myanmar.
- Experience and knowledge of tax and financial legislation, particularly in Beneficial Ownership and Contract Transparency.
- A demonstrable track record in similar work.
- Knowledge of policy, rules and regulations, legislation.
- Knowledge of transparency of data and statistics with electronic system in governmental agencies
- Preferably having experience working with a wide range of stakeholders, government departments, private sectors and civil society
- Excellent communication and writing skills in Myanmar and English and familiarity with the Myanmar legislative framework.
- Knowledge of Extractive Industry Transparency Initiatives (EITI), Myanmar EITI, Beneficial Ownership, Contracts and experience conducting legal consultations would be an advantage.
- Ability to work effectively in a virtual setting during the Covid-19 crisis and capacity to overcome challenges with risk analysis plan

SCOPE OF WORK

Under the guidance of the MSG, BO Taskforce and with support from the National Coordination Secretariat, the consultant shall

1). Conduct desk research to review:

- a) All existing legislation and legal documents (including laws and regulations, Standard PSCs and JV contracts) related to Beneficial Ownership and Contract Transparency in Myanmar (President Decrees, Directives, Notifications, laws and policies are listed (not limited to) in Annex 1) document and analyze all relevant legal clauses that refer to Beneficial Ownership and Contract Transparency covered within the scope of MEITI (oil and gas, jade and gems, mining, pearl, forestry, and hydropower) and identify:
 - *Inconsistencies between the laws and implementation of BO under the EITI Standard, including legal barriers to BO disclosures*
 - *Gaps and de facto practices that could be addressed in the legislation and other policy instruments to facilitate BO and contract disclosure implementation*
 - *Any inconsistencies between the laws themselves*
 - *Recommendations for addressing identified gaps and inconsistencies*
- b) How other countries have enacted legal requirements to support the successful implementation of Beneficial Ownership and contract disclosure in particular; (guidance note² on legal approaches to BO in EITI countries) and the applicability of these practices to Myanmar:
- c) Legislative processes in Myanmar since 2010 to understand the feasibility challenges and opportunities, of enacting BO legislation in Myanmar

² https://eiti.org/files/documents/legal_approaches_to_beneficial_ownership_transparency_in_eiti_countries.pdf

- d) To see if it could/should include how BO laws/regulations could be properly enforced (e.g. what are the proper sanctions for non-compliance?); recommendations on rules for updating information, and rules for ensuring public access.

2) Review all the following documents (not limited to);

- previously published analyses of the register and current issues with the legal framework for BO in Myanmar and
- material published by international groups on emerging standards for BO publication e.g. FATF guidance and Open Ownership initiative

3) Conduct consultations with MEITI stakeholders (MSG members, BO taskforce members, government, parliamentarians, CSOs, private sector development partners, and the EITI international Secretariat) on how to best address the long-term legal institutionalization of BO in Myanmar.

4) Based on the desk research and consultations, weigh the options and develop recommendations on the most effective way to address the short/immediate action, the mid-term and long term and sustainable legal institutionalization of BO in Myanmar which:

- Identifies the most effective instrument(s) and provide short-term solutions to enshrine BO requirements in the extractive sector in law and long-term sustainability (BO Law, amendments to Anti-money laundering law or Anti-corruption Law etc.).
- Permanently establishes the institutions required for BO implementation.
- Includes draft text for new laws or legal amendments.
- Takes into consideration the long-term goal of mainstreaming BO reporting within government systems (systematic disclosure).
- Assessment of how BO laws/regulations could be properly enforced, e.g what are the proper sanctions for non-compliance?
- Recommendations on rules for updating information, and rules for ensuring public access.
- Draft legal provisions for BO disclosure which could be a stand- alone law or could be added as amendments to existing sectoral laws

5) Provide recommendations for how the MSG's agreements on BO definition, level of detail, threshold, reporting obligations for PEP could be embodied in the regulations.

6) Review and provide opinion on all relevant laws, policies, regulations, and licenses related to the development of the terminal in the proposed site. Highlight restrictions / limitations under any laws, regulations or policies to disclose contracts from extractive sectors.

7) Consult with MEITI stakeholders (MSG members, government, Bill committee from parliament, Natural resource and environmental conservation committee from parliament, CSOs, private sector, development partners and EITI International Secretariat) on how to reduce or overcome the restrictions and limitations under law, regulations and policies in order not to cause any delay of the contract transparency process.

DELIVERABLES

The following deliverables must be submitted by the selected firm:

- 1) Inception report detailing the findings of the desk research described above
- 2) Report on findings of consultations
- 3) Workshop for MSG and Task Force members
- 4) Final report on recommendations for legislative reform, including draft text for recommended legal instrument(s)

Administrative Arrangements

- The National Coordination Secretariat (NCS)/ Myanmar EITI Office of Budget Department (MOBD_ will serve as a coordination role to arrange the necessary meeting with the MSGs and other relevant stakeholders;
- The selected bidder should make a request to the NCS/MOBD at least one week in advance to arrange meetings with the Myanmar Extractive Industry Transparency Initiatives (MEITI) Multi-Stakeholder Group (MSG) and other relevant stakeholders;
- The selected bidder shall make a list of official documents such as laws, regulations, rules and guidelines that need to be reviewed. The NCS/MOBD will make formal requests to the relevant government departments for the official documents that are not publicly available.

LANGUAGE OF PROPOSAL/REPORTS/DELIVERABLES

All proposals, reports and/or deliverables must be submitted in English.

PERIOD OF PERFORMANCE

The duration of this assignment should be 3 months from the start of the contract (expected to be in second week of December, 2020).

EVALUATION CRITERIA

The proposal should be delivered electronically and include at least three examples of legal reviews supported by the proposer. **Bidders must submit separate technical and cost proposals.**

The proposal should include the following components:

1. Technical Proposal. The technical proposal should be no more than 10 pages, single spaced, 12-point Times New Roman type with 1-inch margins on A4 paper. It should include a description of the bidder's proposed solutions as well as the names and qualifications of the key staff who will be conducting the legal review. The technical proposal should include:
 - a. Details of the technical proposal (limited to 10 pages)
 - b. CVs of all staff expected to work on the proposal (submitted as annexes to the technical proposal which do not count against the 10 pages limit)
 - c. Examples of Past Performance (submitted as annexes to the technical proposal which do not count against the 10 pages limit)
2. Cost proposal. The resulting contract will be a fixed price purchase order. Bidders must include all costs required to submit the deliverables. The cost proposal shall also include a budget narrative that explains the basis for the estimate of every cost element or line item. Cost proposals shall be broken out into the following areas:
 - Labor costs related to completing the Beneficial Ownership and Contract Transparency Legal Review study. Bidders should break out the labor costs to provide details on the level of effort needed to complete the work and the proposed rates of staff;
 - Travel costs (if appropriate);

- Other costs as required by the bidder's proposal.

3. Administrative documents. (These will be used to determine eligibility of the company).
 - a. Company registration
 - b. Three professional references
 - c. List of company owners/beneficiaries

The committee will review each proposal to determine compliance with the requirements described in the RFP. The committee retains the right to determine whether any deviation from the requirements of this RFP is substantial in nature and may reject in whole or in part and all proposals, waive minor irregularities and conduct discussions with all responsible bidders.

Proposals will be scored based on a 100-point scale. Each evaluation standard is assigned a maximum score. The Proposal with the highest score over 70 points will be awarded the contract.

Proposals will be evaluated based on the criteria presented below:

Evaluation Criteria for Beneficial Ownership and Contract Transparency Legal Review	Maximum Score
<p>Technical Evaluation</p> <p>Understanding of the overall requirements of the legal review and drafting legislations. Evaluation of the responses to specific points identified in Scope of work. Methodology proposed, assets committed to complete tasks, personnel assigned to project, and ability to produce the required legal review study.</p>	30 Points
<p>Experiences in Extractive Industry and Myanmar</p> <p>Experiences in working in mining, oil, gas, timber and pearl sector and experiences working in the Myanmar context. Understanding MEITI and knowledge of EITI.</p>	20 Points
<p>Contractor Capabilities and Experience</p> <p>To include:</p> <ul style="list-style-type: none"> - qualifications of the bidding organization and proposed staff (resumes required); - time in business; - financial stability; - ability to pass a due diligence vetting; and, - experience in doing similar work, includes client references. 	30 Points
<p>Cost Proposal: The cost proposal will be reviewed based on the reasonableness of costs.</p>	20 Points

AWARDS AND PAYMENTS

Awards will be paid through a Fixed Price Purchase Order. Payments will be made upon submission and approval of agreed upon deliverables. The resulting purchase order will be denominated in MMK. The resulting Purchase Order is subject to the rules and regulations set out by Nathan Associates Inc. and the

U.S. Government as set out in the Federal Acquisitions Regulations (FAR), Code of Federal Regulations (CFR), and the USAID Acquisitions Regulations (AIDAR). Oral instructions, answers or guidance prior to the award of the contract shall not be binding.

TERMS AND CONDITIONS

In addition to rights described elsewhere in this document or by law or regulation the solicitation is subject to the following terms and conditions:

- It is understood and agreed that the prospective offeror claims no proprietary rights to the ideas and written materials contained in or attached to the proposal submitted;
- This solicitation in no way obligates Nathan to award a contract, nor does it commit Nathan to pay any cost incurred in the preparation and submission of a proposal in response hereto. Furthermore, Nathan reserves the right to reject any and all offers, if such action is considered to be in the best interest of the U.S. Government;
- Nathan reserves the right to make awards without discussions, or to conduct discussions and/or negotiations, whichever is determined to be in the U.S. Government's best interest;
- Nathan reserves the right to request any additional, necessary documentation upon initial review. Such additional information may include, but is not limited to, a further detailed proposal, budget, and representations and certifications.
- Nathan reserves the right to remove applicants from award consideration should the parties fail to reach agreement on award terms, conditions, and cost/price within a reasonable time, the applicant fails to timely provide requested additional information, or if the Nathan determines it is in the U.S. Government's best interest.

Attachment A: List of Documents related to Extractive Industries and Beneficial Ownership (not limited to Directives, Notifications, President Degrees, Policy and Legislation)

Tax, Anti-corruption and Financial Legislation

1. The Income Tax Law, 1974 and amendments
2. The Law Amending the Income Tax Law, 2011, 2014 and 2016(delete)
3. The Anti-Corruption Law, 2013 and amendments
4. The Anti-Money Laundry Law, 2014
5. Myanmar Companies Act and Subsidiary Legislation, 1914
6. Myanmar Companies Rules, 1940
7. Myanmar Companies 18 Detailed Report Regulations, 1957
8. The Myanmar Companies Law, 2017
9. Special Companies Act, 1950
10. The Commercial Tax Law, 1990 and 2015 and amendments
11. The Foreign Exchange Management Law, 2012 and amendments
12. The Myanmar Central Bank Law, 2013 and amendments
13. The State-Owned Enterprise Law, 1989 and amendments
14. The Myanmar Investment Law, 2016 and amendments
15. Myanmar Official Secret Act, 1923 and amendments
16. The Contract Act, 1872 and amendments
17. Union Taxation Law (and annual tax laws)
18. Myanmar Stamp Act, 2016 and 2017 and amendments
19. The Special Goods Tax Law, 2016 and amendments
20. Union Auditor General Law 2018 and amendments
21. Immigration Law
22. Anti-Corruption Code of Ethics for Companies and Body Corporates (by DICA)

Extractive Industries Policy and Legislation

1. The Myanmar Mines Law, 1994 and amendments
2. The Myanmar Mining Rules, 2018
3. The Myanmar Gemstone Law, 2019
4. The Myanmar Pearl Law, 1995 and amendments
5. The Myanmar Pearl Rules, 2000 and amendments
6. Myanmar Forest Policy, 1995
7. The Forest Law, 2018
8. The Forest Rules, 1995
9. Oil Field Act, 1918 and amendments
10. Oil Field Rules, 1918
11. Petroleum Rules, 1934
12. The Hand-Dug Well Law, 2017
13. Petroleum and Petroleum Products Law, 2018
14. The Labour Law, 1951 [Oil Field (Welfare of Laborers) Act, 1951]
15. Labour Organization Law, 2011
16. Settlement of Labour Dispute Law, 2012
17. Development of employment and Skill Law, 2013
18. 2013, Minimum Wages Law
19. 2016, Payment of Wages Law
20. Workmen Compensation Act, 1923
21. Environmental Conservation Law, 2012 (Rules,2014 and EIA Procedures,2015)
22. Electricity Law, 2014
23. Financial Institution Law, 2016
24. Conservation of River, Creek and Water Resources Law, 2006
25. Statistic Law, 2016
26. Forestry Laws, rules, Regulations

Directives and Notifications (not limited to)

- a) Directive 17/2019
- b) Presidential Notification 104/2019

Other Laws and References (not limited to)

- 1. Any ASEAN related laws?
- 2. International Treaties?
- 3. Production Sharing Contracts?
- 4. Existing Decrees and Practices on transparency and disclosure if there is any

Attachment B: List of Relevant Stakeholders (not limited to)

No	Title	Stakeholders	Remark
1	Public Financial Management	Myanmar Economic Bank Ministry of Planning, Finance and Industry Auditor General JPAC	
2	President Office		
3	Union Attorney General Office		
4	Ministry of Natural Resource and Environmental Conservation (MONREC)		
5	Central Bank		
6	Ministry of Electricity and Energy (MOEE)		
7	Anti-Corruption Commission		
8	Anti-money laundering taskforce		
9	Private sector	MFMA MGJEA Myanmar Oil & Gas Service Association (MOGSA) Myanmar Forest Products Merchants Federation (MFPMF)	
10	MIC	DICA	
11	Myanmar Development Institute		
12	Myanmar stock exchange		
13	Commission on Special Affairs and Legislative Review Committee (U Shwe Mann's Committee)		
14	National Economic Coordination Committee (NECC)		
15	MEITI-MSG members	Representatives from Private Sector Representatives from Government Sector Civil Societies	
16	Beneficial Ownership Task Force members	Representatives from Private Sector Representatives from Government Sector Civil Societies	
17	Financial Investigation Unit (FIU)		
18	Development Partners		