Terms of Reference: Global study on contract transparency and energy transition

The Extractive Industries Transparency Initiative (EITI) is seeking a Consultant to produce a study that aims to build the capacity of governments and citizens in aligning contractual stipulations with planned or ongoing reforms on energy transition in their country. The EITI International Secretariat has agreed to engage the services of the consultant to undertake the tasks assigned in the Terms of Reference.

1. Background

The EITI is a global standard that promotes transparency and accountability in the oil, gas and mining sectors. Countries implementing the EITI draw on revenues from oil, gas and minerals to meet the energy and development needs of their citizens.

The shift to a low-carbon economy will reshape the governance of the extractive industries especially in the oil and gas sector. There will be profound implications for the kinds of data, disclosures and dialogue that are needed, both to ensure accountability through the transition and to optimise the management of finite resources. According to a report by Chatham House on the role of the EITI in the energy transition, there exists an opportunity for implementing countries to utilise existing requirements on contract disclosure and analysis to provide data on project costs, timeframe for production, determine ‘risky’ clauses, review existing legal frameworks and fiscal regimes in order to identify potential loopholes that could exacerbate transition risks.

Recommendations from this analysis could help governments assess how to mitigate these risks as they pursue reforms on energy transition. Increased contract disclosure following these recommendations could help civil society actors to monitor government investments and progress towards energy transition.

Initial analysis by the Natural Resource Governance Institute\(^\text{1}\) notes that radical policy change is required to support countries in their quest to de-carbonise. Oil and gas sector contracts tend to contain restrictive clauses that inhibit a country’s ability to re-negotiate once executed. The EITI Secretariat, with support from USAID, will commission a report that aims to build the capacity of governments and citizens in aligning contractual stipulations with planned or ongoing reforms on energy transition in their country.

2. Objectives

The study is expected to:

1. Increase stakeholder understanding of the complementarities between contract transparency and energy transition;

2. Increase government, civil society and industry capacity to analyse and understand contractual stipulations and their impact on energy transition policies;

3. Increase capacity of civil society actors to monitor whether contractual stipulations of new contracts align with energy transition policies.

3. **Scope of assignment**

The study will include the following:

a. An executive summary formulated in clear and concise language, identifying the key findings and recommendations of the research.

b. An introduction on the definition of the energy transition, with reference to the EITI's approach, role and mandate in respect of the transition and its links to the Paris Agreement. The introduction should include an overview of the targets set at COP26 with emphasis on the extractive industry targets.

c. Identification and discussion of contractual stipulations that are relevant for energy transition policies, e.g., incentives, subsidies, domestic obligations, environmental provisions, decommissioning, renewable contribution parameters, etc.

d. Explanation of how information on contractual stipulations is useful in stimulating public debate and policy decisions on energy transition policies and why contract transparency is therefore critical to countries setting energy transition pathways that reach the ambition of the Paris Agreement.

e. Discussion of transition risks and loopholes in contracts and legal frameworks that could restrict the ability of countries to revisit contracts that negatively impact their ability to meet their climate change mitigation and adaptation goals.

f. Examples and analysis of contractual stipulations that are not aligned with energy transition policies.

g. Examples and analysis of contractual stipulations that are aligned with energy transition policies.

h. Recommendations to improve drafting of contracts to incorporate to new energy transition policies. Recommendations should be targeted to stakeholder groups, be actionable and expressed in clear and concise language that can be integrated into multi-stakeholder group priorities. This should include potential next steps to be developed and tested with implementing countries, including technical recommendations for how contracts can be drafted and/or amended to reduce risks and enhance country resilience through transition, and policy/practical recommendations for how MSGs and civil society can monitor contracts and amendments for transition risk, and how they can then engage government and industry on them.

i. High-level assessment of the contracts that were published under the 2021 requirement for the typical stipulations they contain (or a typology of them) and whether these stipulations are ‘climate relevant’ or not (i.e. does the impact of the stipulation change under a rapid transition scenario, and what sort of risks or opportunities are contained)?

j. Country level analysis of the potential impacts of different clauses, in terms of their economic impacts for the country, their impacts on domestic energy and climate policy,
Terms of Reference
Global study on contract transparency and energy transition

and any legal risks they present in the case of sudden stranding of assets/bankruptcy of projects and fundings that will build the ‘applied’ case for why contract transparency matters in the context of transition.

The report will be a public-facing document, to be published through EITI International Secretariat channels including its website. The report is therefore expected to conform to the communications design principles of the International Secretariat, see below.

Communications design principles

The final report draft to be produced by the consultant will be laid out in a plain word template. Once edited by the EITI International Secretariat communications team, typesetting, design and translation will be commissioned and will most likely to be undertaken by an external service provider. The final designed report will be produced on an EITI-branded template. In the first and final draft, the consultant should make suggestions for visual components (e.g. infographics and diagrams) which can be used in design of the final document. The report should be written in a clear and engaging manner and in line with the style guide of the International Secretariat.

Acknowledgements: The final document will acknowledge the consultant as author but will be a communications product of the International Secretariat. The report is funded by USAID and the final document will acknowledge this support. The International Secretariat will take responsibility for meeting the branding requirements of USAID in respect of the final report.

4. Deliverables and timetable

The assignment is expected to take up to 30 consultancy days between February – May 2022. The proposed schedule is set out below:

| Conduct research and analysis as set out in the scope of assignment section. | March 2022 |
Conduct consultations with relevant stakeholders. | March- April 2022
---|---
Deliver report outline, setting out key points from research, analysis and consultations and identifying how this data will be used in the final report structure. | April 2022
Deliver first draft of the report. | May 2022
Deliver final draft of report and all data gathered from research and interviews | June 2022
Integrate edits from the International Secretariat, review typeset versions for accuracy. | June 2022
Deliver presentations as may be agreed with the EITI Secretariat | July- September 2022

5. Consultant’s qualifications

The consultant should be a prominent firm, organisation or individual(s) that the EITI International Secretariat considers to be credible, trustworthy and technically competent.

The consultant must demonstrate:

- Experience and knowledge of energy policies;
- Understanding of the constraints and policy options countries face in implementation of the Paris Agreement;
- Expertise in extractive contracts and renewable energy contracts;
- Familiarity with the EITI Requirements and ability to use EITI disclosures to deliver insight and policy recommendations;
- Excellent written and oral communication skills, including ability to present findings of the study to various types of stakeholders. Proficiency in French, Russian or Spanish is an advantage;
- Prior experience of EITI and knowledge of the extractive sector.
To ensure quality and independence in the undertaking, the consultant must, in their technical and financial proposals, disclose any potential or actual conflicts of interest, together with a comment about how they may be avoided.

6. **Administrative support**

The International Secretariat will provide the following support to the project:

- Regular oversight and input to the development of the report, through regular calls and email exchanges;
- Necessary background information and input as needed;
- Document editing, typeset, design and translation as required;
- Any other support required for the project.