

Terms of Reference

Contract transparency in Indonesia - Assessment of benefits, challenges, risks and opportunities

1. Background:

Contracts, licenses and associated agreements are important elements of a country's legal framework. They explain the rights and obligations of all parties involved in the exploration and production of oil, gas and minerals. By shedding light on the rules and terms that govern extractives projects, contract transparency can help curb corruption and empower citizens to assess whether they are getting a good deal for their resources. In recognition of the significance of contract disclosure, the EITI Standard ([Requirement 2.4](#))¹ requires all implementing countries to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021, including the full texts of Contracts, annexes, addendums or riders. Over 30 EITI countries have thus far disclosed some or all mining, oil or gas contracts.

In Indonesia, progress towards contract disclosure has been limited. Existing legal framework do not fully clarify the government's policy on public disclosure of contracts. The Law No. 14/2008 on Public Information Transparency generally regulates the obligations of the public agency to provide information to the public, unless such information is an excluded information. So far, this Law has not been applied to support disclosure of extractive contracts in Indonesia. While previous decisions allowed some contracts to be disclosed, oil and gas production sharing contracts (PSCs) and mineral and coal contracts are generally not publicly disclosed.

Since joining the EITI, Indonesia's EITI multi-stakeholder group have undertaken efforts geared towards ensuring comprehensive disclosure of contracts, but more targeted support is required to address concerns on confidentiality and commercial sensitivity.

2. Objectives:

To support the Indonesia MSG in implementing Requirement 2.4 of the EITI Standard on contract disclosure, a consultant will be engaged by the EITI International Secretariat with support from

¹ The term contract in Requirement 2.4(a) means:

- i. The full text of any contract, concession, production-sharing agreement or other agreement granted by, or entered into by, the government which provides the terms attached to the exploitation of oil gas and mineral resources.
- ii. The full text of any annex, addendum or rider which establishes details relevant to the exploitation rights described in 2.4(d)(i) or the execution thereof.
- iii. The full text of any alteration or amendment to the documents described in 2.4(d)(i) and 2.4(d)(ii).

The term license in Requirement 2.4(a) means:

- i. The full text of any license, lease, title or permit by which a government confers on a company(ies) or individual(s) rights to exploit oil, gas and/or mineral resources.
- ii. The full text of any annex, addendum or rider that establishes details relevant to the exploitation rights described in 2.4(e)(i) or the execution thereof.
- ii. The full text of any alteration or amendment to the documents described in 2.4(e)(i) and 2.4(e)(ii).

USAID to produce a study describing the existing legal framework for contract disclosure in Indonesia and evaluating risks and challenges as well as the opportunities and benefits associated with disclosing extractive contracts in Indonesia. The outcome of the study is expected to enhance stakeholders understanding of any potential risks and offer practical solutions on how to address such risks and reap the benefits of public disclosure. The Indonesia EITI MSG will be consulted in the drafting of the study.

3. Scope of work:

The study will include the following:

1. Discussion of contracts regime for the oil and gas and mining and coal sectors in Indonesia
2. Discussion of existing legal framework for contract disclosure in Indonesia, specific to the extractive sector and more broadly
3. Discussion of actual disclosure practices, including a list of extractive contracts that have been disclosed, and whether there are deviations from policy
4. A list of relevant contracts that should be disclosed to meet Requirement 2.4
5. Identification of legal, political and practical barriers and other challenges to contract disclosure in Indonesia
6. Recommendations to address barriers, including practical guidance for addressing legal barriers
7. Risk assessment and recommendations to mitigate risks
8. Discussion of benefits of contract disclosure in the Indonesian context and links to issues in natural resource governance in the country
9. Opportunities for implementing contract disclosure, including alignment with other national reforms
10. Draft roadmap for contract disclosure in Indonesia with suggestions on objectives, specific activities, training needs, and stakeholder mapping

The consultant will be expected to:

1. Conduct consultations with key stakeholders
2. Liaise with the MSG/national secretariat and International Secretariat regarding the progress of the study
3. Conduct workshops when necessary for drafting sections of the study
4. Present the findings of the study to the MSG
5. Produce a list of all active contracts and licenses, indicating which are publicly available and which are not.
6. Produce a list of relevant contracts that should be disclosed to meet Requirement 2.4
7. Produce a risk assessment and opportunities paper
8. Publish a summary of key findings and recommendations that could serve as speaking points for stakeholder engagement

4. Deliverables and timeline

The assignment is expected to take 20 consultancy days in July and August and should be completed by end of August 2021.

Timeline:

Activity	Date
Consultations, workshops with stakeholders	July 2021
First draft	16 August 2021
Presentation to MSG	Week of 16 August 2021
Final draft	31 August 2021

5. Consultant's qualifications

The consultant should be a prominent firm or individual(s) that the Indonesia MSG considers to be credible, trustworthy and technically competent.

The consultant must demonstrate:

1. Expertise in Indonesia's legal framework and contracts regime, specifically in the extractive sector. An Indonesian law degree or relevant background in the context of Indonesia is an advantage.
2. Expertise in natural resource governance in Indonesia, as demonstrated by at least seven years of relevant work experience.
3. Familiarity with the EITI Standard's requirements on contract disclosure.
4. Adequate experience in producing similar technical studies and research
5. Sufficient familiarity with Indonesian government systems, laws and policies. The consultant must demonstrate ability to access information from government through well-established networks within the Indonesian bureaucracy
6. Adequate experience in conducting consultations with various types of stakeholders from government, companies and civil society
7. Fluency in Bahasa and advanced written and communication skills in English

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 Secretariat would provide the following support to the project:

- Regular oversight through calls and email exchanges.
- Technical assistance in undertaking, reviewing and completing the study, including clarifying relevant requirements of the EITI Standard
- The necessary background information and input as needed
- Any relevant support required for the completing of the project