

Terms of Reference: Global study on extractive contracts and annexes

The Extractive Industries Transparency Initiative (EITI), with support from USAID, is seeking a Consultant to produce a study that aims to build the capacity of governments and citizens in identifying relevant annexes that they should disclose to ensure comprehensiveness of disclosure of extractive contracts. The EITI International Secretariat has agreed to engage the services of a consultant to undertake the tasks assigned in this 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 Standard are required to disclose any contracts and licenses that are granted, entered into or amended after 1 January 2021 (Requirement 2.4.a). This includes the full text of any annex, addendum or rider which establishes details relevant to the exploitation rights or the execution thereof. In June 2020, the EITI Board clarified the scope of annexes contemplated by the requirement and recommended an approach for MSGs in identifying relevant annexes for disclosure. The Board decision states that “where there are clear rules on what should be considered as an annex, addendum or rider as specified either by law or by a specific contract, the country should ensure that such annexes, addenda or riders are disclosed. In practice, this means that in cases where there is lack of clarity on documents to be disclosed, the MSG would need to consider checking whether there are applicable rules or stipulations in the contract itself that specify what annexes should be considered as integral parts of a contract. Where there are rules, the MSG should automatically disclose these documents. In addition, and also in cases where there are no such rules, the MSG would need to examine further what annexes are needed to fully explain the terms attached to the rights granted to the company, i.e., whether these contracts and annexes provide information related to EITI Requirements or supplement information that are disclosed through EITI reporting. In doing so, they could be guided by the EITI Requirements such as fiscal terms (Requirement 2.1), state participation (Requirement 2.6), exploration (Requirement 3.1), production (Requirement 3.2), infrastructure and barter agreements (Requirement 4.3), transportation revenues (Requirement 4.4), transactions related to SOEs (Requirement 4.5), subnational payments (Requirement 4.6), social and environmental expenditures (Requirement 6.1), as well as encouraged provisions of the EITI Standard relating to the term of the sale of the state’s share of production (Requirement 4.2.b) and environmental impact (Requirement 6.4.b). If the MSG concludes that the annexes, addendum or rider as defined by laws or regulations are not sufficient, the MSG would need to consider what other documents within the meaning of Requirement 2.4 d.ii and 2.4.e.ii should be disclosed. These discussions should be documented by the MSG, including references to specific rules on what constitutes an annex, addendum or rider to ensure consistency with applicable law. The list of active contracts referred to under Requirement 2.4.c.ii should include the corresponding annexes that the MSG has agreed to include.” This recommended approach has been reflected in the EITI’s [Guidance Note on contract transparency](#).

Multi-stakeholder groups have expressed the need for further guidance in identifying the types of annexes they should consider for publication and have sought further technical guidance on this matter.

2. Objectives of the assignment

A consultant will be engaged to write a study identifying the usual types of annexes, riders, addendum, and other documents that MSGs should consider for disclosure to fully adhere with Requirement 2.4 of the EITI Standard. The aim is to use the output of the study to develop materials to build the capacity of MSGs in deciding which annexes to disclose in their own context to ensure full understanding of extractive contracts in their countries. The output of the study will be used to inform MSGs which documents typically embody certain types of information or stipulations when they are not included in main contracts, such as subsidies, incentives, social commitments, barter arrangements, loans, etc.

3. Scope of assignment

The consultant will be expected to deliver the following:

1. List and explanation of contractual stipulations typically embodied in main extractive contracts;
2. Scoping and explanation of various types of annexes, addendum, or rider of extractive contracts, with country examples
3. List and explanation of stipulations and agreements that are relevant for understanding the exploitation rights granted to a company that are typically not included in the main contract, and types of documents where these stipulations are embodied
4. Presentations to key stakeholders to be agreed with the EITI Secretariat
5. Step by step guide for MSGs on how to identify relevant annexes for disclosure, building on the recommended approach of the EITI Board and the EITI Guidance Note on Requirement 2.4.
6. At least four country studies across various regions (LAC, Africa, Asia, Europe)
7. Recommendations on how to improve Requirement 2.4 in relation to disclosure of annexes

The International Secretariat intends to use the output of the study to develop communications product(s), for example explainers or a module to existing guidance, to ensure that the material is communicated in a way that is accessible to key audiences and aligned with existing communications products (e.g. guidance notes).

4. Deliverables and timetable

The assignment is expected to take 15 consultancy days between 1 March to 30 May 2022. The proposed schedule is set out below and should be agreed in consultation with the EITI International Secretariat.

Agreement on outline for the study and country cases	1 -15 March 2022
First draft and review by EITI	11 April 2022
EITI to consider how to develop informational materials (e.g. explainer or module for guidance note) to ensure that the output of the study is accessible for MSGs and other audiences	April/May 2022
Final draft and approval by EITI	15 May 2022
Presentations to key stakeholders	15-30 May 2022

5. Consultant's qualifications

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

The consultant must demonstrate:

- Expertise in extractive contracts as shown by actual experience dealing with such contracts in various jurisdictions and contract regimes
- Excellent written and verbal communication skills
- Adequate familiarity with EITI's requirement on contract disclosure and global discourse on contract transparency in the extractives
- Proof of authorship of similar or related studies

Written materials should comply with the [EITI Style guide](#) and with the communications design principles of the EITI International Secretariat, see below.



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:

- Providing regular oversight and input to the development of the report, through regular calls and email exchanges;
- Providing the necessary background information and input as needed;
- Any other support required for the project.