

1. TRANSPARENCY IN LICENSING ACTIVITIES

1.1. List of existing licenses and pending applications granted under normal procedures (first-come-first-served, direct negotiation)

a) What to disclose:

In order to guarantee the transparency in the licensing activities, it is essential to assure access to information regarding the occupied areas (by other granted rights or pending applications), as well as restricted zones for new applications, due to the existence of reserved areas or no go zones.

The more transparent way for granting mineral rights is to have clear and well defined rules. This means standard conditions clearly stated in the legal framework (duration, granting and removal requirements, rental fees, environmental obligations, fiscal regime, etc.), developed and detailed by the corresponding licensing regulations and cadastral procedures.

If the granted rights are standard, the conditions of such licenses are defined in the legal framework and known in advance. In these cases, the minimum information to be published would be:

- Applicant Name and key shareholders
- Date of application
- Coordinates of the permit
- Type of applied mineral right
- Date of granting or refusal
- If refused, reasons for refusal
- If granted, date of expiration or first renewal deadline

If conditions are not standard and may be negotiated on a case by case basis, transparency will require the publication of the granted conditions.

b) Where to disclose:

Many countries are publishing today in the internet the cartographic information corresponding to the occupied or restricted areas. This is the best option, but if not available, cadastral information should be periodically published in newspapers of wide circulation (at least once per year, the more frequently the better).

A basic requirement is the free public access to the registry book in the Mineral Rights Cadastre. Ideally, in addition to the country's capital, free access to updated cadastral maps should also be made available in other parts of the country.

1.2. Collection and use of surface rental fees

Many countries require the payment of an "annual rental fee" for maintaining the rights over a mineral license. This payment should be not considered as a tax and is normally not part of the fiscal regime. The control of this payment is normally done by the same administrative unit responsible for licensing, which sometimes send the collected money for redistribution

(according to the provisions of the legal framework) or in other few cases is responsible by itself for distribution. Payments of surface rental fees should be disclosed in EITI reports.

In addition, international experience demonstrates that are frequent irregularities in the use and distribution of these resources, mainly due to the “legal gaps” in the regulations. However, the amount of money collected as rental fees can be substantial (for any country having a significant extractive industries activity), requiring a detailed and intensive control (and transparency) about the use and distribution of these resources.

1.3. Signature and other bonus

EITI reports should clearly indicate all bonus payments received during the period in review from the award, confirmation, extension or any other activity relating to mineral licenses.

1.4. Efficiency of licensing

The measurement of the efficiency licensing procedures is independent from the transparency. In theory, a licensing methodology could be absolutely transparent but inefficient and vice-versa. However, international experience demonstrates that in practical terms they are closely correlated and inefficient methodologies are frequently have also low transparency. For this reason, some basic criteria for measuring the efficiency in licensing procedures could also be included in EITI reports.

a) Duration of the procedure

The duration of licensing procedure cannot be open ended. It is generally considered as a positive sign for quality management to have a fixed deadline for licensing procedure, from the application until granting. Quite often, deadlines are fixed in the legal framework. But unfortunately, also quite often such deadlines are not respected and the real time period to obtain a final license is much longer than the officially prescribed.

The indicator for a good management quality should be the “real” average period for granting, that according the international standards should be about three months.

b) Percentage of rejected applications

When the licensing methodology is well organized, based on transparent principles and following clear rules, the number of rejected applications should be minimal. If all applicants know in advance the pre-requisites to be granted, the eligibility conditions are clearly precised in the legal framework and the information about vacant areas are freely accessible, there is no **reason** for rejecting a high number of applications.

According to the international standards, it should be considered as a negative indicator about the efficiency of cadastral activities any percentage of rejected applications over 15%.

c) Percentage of conflicts

In the same way, if the licensing methodology is well organized, based on transparent principles and following clear rules, the number of conflicts and reclamations should be very low, because the rejection of applications would be based on clear and objective reasons.

According to the international standards, it should be considered as a negative indicator about the efficiency of cadastral activities any percentage of conflicts over 1% of applications.

d) Percentage of land occupied by mineral titles as a percentage of the total land area of the country open for extractive industries activities.

e) Number of granted permits as a percentage of total applications.

This parameter would be measuring the same facts (in opposite way) that b), no?

1.5. Independent audit of the cadastral activity by a third party

2. TRANSPARENCY IN TENDER BIDS AND AUCTIONS

2.1. List of areas proposed to the public and awarded through bidding processes

In order to guarantee the transparency in the bidding process, it is essential to assure access to information regarding the areas that have been auctioned, key information about the applicants, key features of the winning bid, conformity of the winning bid with the award criteria, and eventual conflicts arising from the process.

The more transparent way for granting mineral rights through bidding processes is to have clear and well defined rules. This means standard conditions clearly stated in the legal framework (qualification of bidders, technical and financial requirements, fiscal regime, bonus and other payments, environmental obligations, etc.), developed and detailed by the corresponding bidding regulations and procedures.

If the award conditions are standard, the bidding procedures of such licenses are defined in the legal framework and known in advance. In these cases, the minimum information to be published would be:

- Name of Applicants and selected winner with identification of key shareholders
- Bid amount, terms and conditions
- Compliance with technical and financial criteria
- Any deviations from the applicable legal and regulatory framework

If conditions are not standard and may be negotiated on a case by case basis, transparency will require the full publication of the granted conditions.

Although the evaluation parameters and conditions may change from one license to other, depending on the corresponding terms of reference for bidding, the tendering process should not affect the basic characteristic of the granted right, that should be standard and homogeneous compared to other titles granted through standard procedures. Bidding procedures should be properly regulated in the legal framework, and the evaluation criteria (including scores) should be known in advance before the tender is launched.

Transparency also requires the publication (as in previous cases, ideally in the internet) of the short list of selected applicants, the selected winners, the evaluation results and the retained offer.

2.2. Efficiency of licensing through tender bids

a) Percentage of empty tenders or annulled auctions

Practical experience shows that auctions procedures are attractive for investors only if there is available sufficient information about geological characteristics and potential in auctioned areas. To generate adequate information periodically over a high number of zones to be auctioned is

not an easy task, and it is possible that the operational capacity of the sector institutions could be overpassed. One of the direct consequences of this incapacity is unattractive biddings where nobody is interested, no offers are submitted and no granting is made.

According to the international practice, it could be considered as a negative indicator about the efficiency of cadastral activities any percentage of empty or annulled auctions over 10%.

b) Percentage of available vacant areas frozen by auctioning

Other potential direct consequence of inefficient tender bids procedures is the blocking of large areas, which are not being auctioned and simultaneously cannot be granted by other methods, decreasing the mineral exploration rate of the country and also decreasing the possibilities for new discoveries and sector development.

Some countries corrected partially this problem restricting the maximum number of zones or the maximum surface devoted to auctioning, and also the maximum duration of the areas reserved for tender bids. Furthermore, some countries established that if after one or several auctions over the same area nobody has been interested in such zone, it should be declared vacant and ready to be granted through the standard methods.

However, other countries did not implement such restrictions and the number of blocked areas may grow without space or time limits, blocking significantly the mineral exploration. It could be considered as a negative indicator about the efficiency of auctioning activities if the percentage of areas reserved for tender bids is over the 10 % of the total area of the country available for granting (excluding restricted, protected and reserved areas).

c) Percentage of conflicts

If the auctioning methodology is well organized, transparently executed and following clear rules, the number of reclamations after selection of the winner should be very low, because the evaluation of the offers would be based on clear and objective criteria. Consequently, it could be considered as a negative indicator about the efficiency of auctioning activities any percentage of conflicts over 1% of tender bids procedures.