

Terms of reference

Mapping of transparency frameworks and gaps relating to state-owned enterprises (SOEs)

The Extractive Industries Transparency Initiative (EITI) is seeking a consultant to undertake a mapping of transparency frameworks and gaps relating to SOEs and how the EITI can complement the existing frameworks and address any gaps.

1. Background

The EITI is a global standard that promotes transparency and accountability in the oil, gas and mining sectors. Additional information is available from <http://www.eiti.org>.

It is widely known that the majority of the world's petroleum resources are controlled by SOEs. Many SOEs own and operate petroleum projects. State equity is often used to secure additional government take (beyond tax revenue) from extractive projects. This is sometimes motivated by non-fiscal objectives such as a desire for direct government ownership of natural resources, a "seat at the table," or to facilitate the transfer of knowledge. Although many SOEs have made significant contributions to development and revenue generation, some have struggled with poor governance and corruption.

The 2013 EITI Standard introduced new reporting requirements for SOEs, including reporting on financial transfers between SOEs and other government entities, revenues collected on behalf of the government, and expenditures on social services, public infrastructure or fuel subsidies. However, lessons learnt from implementation of these requirements show that although financial transactions related to state-owned companies have become more transparent, there is still a considerable way to go in bringing openness to how SOEs operate, their ownership arrangements, and address other corruption risks associated with SOEs. The financial reporting by SOEs varies considerably. Some SOEs publicly disclose details about their financial accounts and operations and can share good disclosure practices. Other SOEs are less transparent and less openly governed than e.g. publicly listed companies.

The EITI Board decided at its meeting in Manila in October 2017 to strengthen the EITI's engagement with state-owned enterprises (SOEs) by creating a network of SOEs. Further to this, key stakeholders were invited to participate in the network and a first meeting was held in January 2018. The aim of the network is to incentivise SOEs to become more open and transparent through regular reporting of data related to their governance, revenues and other issues, and to contribute to the harmonization of SOE disclosure requirements. Members of the network, which include SOEs and other experts,¹ have agreed the following objectives in the Terms of Reference for the network:

¹ SOE participants include Ecopetrol, GNPC, NNPC, PEMEX, Pertamina, Petrobras, Statoil and YPF, and other experts are represented from Chatham House, NRGi, OECD, Transparency International and World Bank.

- i) identify the major corruption risks, governance challenges and transparency gaps related to SOE activities, drawing on available research;
- ii) identify and share existing standards and reporting tools for increasing transparency in SOE activities and identify gaps in current reporting;
- iii) present recommendations to the EITI for addressing these gaps (possibly including considering amendments to the EITI Standard, amendments to other standards/reporting tools, or development of a new reporting scheme for SOE); and
- iv) be a forum for sharing experience and best practice among SOEs engaged in the extractives sector.

2. Objectives of the assignment

To help inform the EITI and the SOE network on how the EITI can help support existing transparency frameworks and address any current gaps, the EITI is seeking a consultant to:

1. Research, compile and review existing literature and guidance on corruption risks and governance challenges typical to SOEs with extractive activities. Based on initial discussions within the EITI SOE network, it appears that considerable mapping of these risks and challenges have already been completed but that there is a demand for bringing this together and summarise the key issues.
2. Compile and analyse existing reporting tools and guidelines for oil, gas and mining SOEs, and identify potential transparency gaps.

Highlight good disclosure practices among SOEs engaged in the extractive sector that may be important for advancing accountability and be useful from a business perspective. This would also aim at showing how SOE reporting can be harmonised with EITI disclosure requirements and other international standards. The mapping should primarily look at corruption risks and reporting frameworks related to SOE governance structures and policies; regulatory functions; operations, including sub-contracting; fiscal rules and transfers; financial reporting and spending. See annex A for the issues that the mapping could cover.

The consultant is expected to consult members on the network with support from the EITI International Secretariat on the relevant literature and reporting tools that should form part of the review. The network will also be invited to comment on and shape the draft and final report. The timeframe for this work would be March–May 2018.

Subsequent to the preparation of the report, the EITI will seek the network's guidance on the implications of the findings for the EITI, including any advice on what role the EITI might play in addressing transparency gaps identified. This work might result in advice to the EITI Board in the form of recommendations. This may include development of further guidance, reporting templates, revisions to the EITI Requirements, development of a dedicated EITI standard for SOEs etc. The recommendations could also include suggestions on the future role of the network.

3. Scope of work

The consultant will be expected to undertake the following tasks:

1. **Desk review.** The consultant should undertake a desk review of information relevant to transparency and accountability frameworks relevant for SOEs in the extractive sector, drawing from relevant literature by other organisations and experts in the area such as Chatham House, IMF, OECD and NRG. Through this desk review, the consultant should develop an understanding of:
 - (i) The key corruption risks and common governance challenges related to SOEs in the extractive sector;

- (ii) Existing global and sector specific reporting frameworks and guidance on corruption risks and governance challenges typical to SOEs with extractive activities;
- (iii) Emerging disclosure practices by SOEs in the extractive sector.

2. Consultations. The consultant should:

- (i) Undertake consultations with key stakeholders, in particular the main experts and SOEs engaged in the network, to take ongoing developments related to the existing frameworks into account;
- (ii) If feasible, seek feedback on how network representatives consult the existing guidance, how stakeholders seek to comply with mandatory or voluntary disclosure requirements and other international standards and whether there are concrete examples of how disclosure has been useful for SOEs from a business perspective. The consultant should document challenges and best practices based on the consultations.

3. EITI SOE Mapping Report. Based on the desk review and consultations, the consultant should prepare and present a draft report on the SOE transparency and governance frameworks and opportunities for EITI to address any potential gaps. The report should:

- (i) Summarise key corruption and governance risks and challenges related to SOEs in the extractive sector that have already been mapped out by global experts and organisations;
- (ii) Compile and analyse existing reporting tools and guidelines for oil, gas and mining SOEs, and identify potential transparency gaps;
- (iii) Highlight good disclosure practices among SOEs engaged in extractives with a focus on EITI countries, with the view of informing how SOE reporting can be harmonised with EITI disclosure requirements and other international standards. In light of the corruption and governance risks identified, the report should highlight disclosure practices that appear to be significant for advancing accountability and avoiding corruption.
- (iv) Based on the disclosure practices and input from stakeholders, the report could also present the business case for improved SOE disclosures.
- (v) Present recommendations for how the EITI can potentially address any gaps or issues identified. This could include consider amendments to the EITI Standard, amendments to other standards/reporting tools, or development of a new reporting scheme for SOE.

The draft report should be shared with the EITI network of SOEs for input before being finalised.

The estimated input of consultant time is up to 25 days. See the timeline for further detail.

4. Deliverables and timetable

The assignment is expected to commence in May 2018 culminating in the finalization of the assignment by June/July 2018. The assignment is expected to require a total of 25 days. The proposed schedule is set out below:

Singing of contract	By 1 May 2018
Desk review	1-2 weeks

Consultation with stakeholders	1-2 week
Submission of the draft mapping report for comment by the International Secretariat and SOE network	4 weeks from the contract signing (with 2 weeks for comment)
Presentation of final mapping report	6 weeks from the contract signing

5. Consultant qualifications:

The consultant must be a reputable firm/individuals that is/are perceived by the EITI International Secretariat and network of SOEs to be credible, trustworthy and technically competent.

The consultant will need to demonstrate:

- Expertise in corporate governance and transparency of SOEs and the extractive sector.
- Experience with corporate compliance and financial analysis.
- A track record in similar work. Previous experience with EITI is not required, but would be advantageous.

In order to ensure the quality and independence of the exercise, consultant is required, in their technical and financial proposals, to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided.

6. Procurement procedure

A consultant will be selected following a quality- and cost-based selection procedure.

Consultants should submit:

- A **Technical proposal**, outlining: (a) the experience of the firm / consultants, (b) the proposed methodology and work plan in response to the Terms of Reference (TORs) and (c) the key experts' qualifications and competence. The Technical Proposal should **not** include any financial information. Technical proposals containing material financial information shall be declared non-responsive.
- A **Financial Proposal**, clearly indicating a lump sum financial proposal, **inclusive** of all applicable taxes. The financial proposal should clearly differentiate fees from any other reimbursable expenses. The daily rate for the consultant fees should be clearly indicated. The Financial Proposal should be sent as a password protected PDF file. The passwords should not be sent. The passwords will be requested following the assessment of the technical proposals.

Proposals must be delivered by email to skasimova@eiti.org by **20 April 2018**.

The criteria for assessing the technical proposals is as follows:

Criteria	Weighting
Experience of the Consultant (as a firm) relevant to the Assignment	10%
Adequacy and quality of the proposed methodology, and work plan	50%

in responding to the Terms of Reference (TORs) ²	
Key Experts' qualifications and competence based on the Qualification requirements (see section 5 above)	40%

The weights given to the Technical (T) and Financial (P) Proposals are:

T = 70%

P = 30%

Proposals will be ranked according to their combined technical (St) and financial (Sf) scores using the weights (T = the weight given to the Technical Proposal; P = the weight given to the Financial Proposal; T + P = 1) as following: $S = St \times T\% + Sf \times P\%$.

Contract negotiations will be held with the highest ranked firm. A template contract is attached below. If contract negotiations are unsuccessful, negotiations will be held with the next highest ranked firm.

7. Payment schedule

	Deliverable	Payment
1 st Payment	Contract signature	10%
2 nd Payment	Submission of the draft Report.	40%
3 rd Payment	EITI acceptance of the final report.	50%

8. Administrative support

The EITI International Secretariat would provide the following support to the project:

- Providing the necessary background information and input as needed;
- Contacting and scheduling meetings with relevant stakeholders if needed;
- Coordinating input by the EITI SOE network on the draft report;
- Any other support required for the project.

9. Relevant reading

EITI specific reading:

EITI webpage on SOEs: <https://eiti.org/role-of-stateowned-enterprises>

² The Client will assess whether the proposed methodology is clear, responds to the TORs, work plan is realistic and implementable; overall team composition is balanced and has an appropriate skills mix; and the work plan has right input of Experts

EITI Guidance note 18 on state-owned companies: <https://eiti.org/GN18>

EITI webpage on commodity trading (for background information on this separate but related work stream): <https://eiti.org/commodity-trading>

Other relevant links:

OECD's 'Typology of risks' Corruption in the Extractive Value Chain is available from

<http://www.oecd.org/dev/Corruption-in-the-extractive-value-chain.pdf>

OECD *Guidelines for Corporate Governance of SOEs*: <http://www.oecd.org/corporate/guidelines-corporate-governance-SOEs.htm> Transparency International's *10 Anti-Corruption Principles for State-Owned Enterprises*: <https://www.transparency.org/view/publication/8077>

NRGI Initial Evidence of Corruption Risks in Government Oil and Gas Sales is available from

<https://resourcegovernance.org/analysis-tools/publications/initial-evidence-corruption-risks-government-oil-and-gas-sales>

NRGI *State Participation and State-Owned Enterprises Roles, Benefits and Challenges*:

https://resourcegovernance.org/sites/default/files/nrgi_State-Participation-and-SOEs.pdf

NRGI *Reforming National Oil Companies: Nine Recommendations*: <https://resourcegovernance.org/analysis-tools/publications/reforming-national-oil-companies-nine-recommendations>

NRGI *Guidance on Mainstreaming Disclosures of State-Owned Enterprises in the Extractive Sector*:

<https://resourcegovernance.org/analysis-tools/publications/guide-to-extractive-sector-state-owned-enterprise-disclosures>

NRGI *Natural Resource Charter Benchmarking Framework Precept 6: State-owned enterprises*:

<https://resourcegovernance.org/analysis-tools/tools/natural-resource-charter-benchmarking-framework>

Annex A

The mapping of corruption risks, governance challenges and reporting frameworks could cover the following topics:

- a) Governance structures and policies. This could include risks, challenges and public disclosures related to:
 - The laws or statutes governing SOEs.
 - The mandate and role of SOEs.
 - Ownership and voting structure of SOEs.
 - Board member qualifications, procedure for appointing the members of the Board, Board member affiliations to government or other companies in the sector.
 - Board member remuneration, termination and retirement provisions, and other benefits.
 - SOE policies such as Code of Conduct, anti-corruption compliance programmes or code of corporate governance adhered to by the SOE.
 - Number of staff overall, and per subsidiary/unit.

- b) Regulatory functions, where applicable. This could include risks, challenges and public disclosures related to the regulatory mandate of SOEs, notably:
 - Licensing and contracting
 - Oversight of contractor' performance and compliance with the applicable laws, regulations and contract, summary information about the performance including e.g. statistical information on number of contractual breaches, etc.
 - Downstream regulatory functions related to e.g. transportation, refining, distribution etc.

- c) SOE assets. This could include risks, challenges and public disclosures related to:
 - The SOE's extractive assets
 - Assets held by SOEs in subsidiaries, including the level of ownership of subsidiaries, revenues earned and retained by subsidiaries, intra-company loans and any transfers between the SOE and its subsidiaries.
 - In the case of sales of SOE assets, information about the evaluation methods used to assess and value the assets, the key terms of the transactions and information about the buying entity.
 - Off-balance-sheet assets and liabilities
 - Reserves

- d) Operations. This could include risks, challenges and public disclosures related to the various activities that SOEs are involved in (upstream, midstream, downstream).
 - Exploration and production
 - Trade
 - Transportation arrangements managed by the SOE
 - Refining
 - Procurement plans and tender results
 - Information about activities of sub-contractors, including beneficial ownership of sub-contractors.

e) Fiscal rules and transfers. This could include risks, challenges and public disclosures related to:

- Rules governing financial transfers between the government and SOEs.
- State financial assistance, grant or subsidies to SOEs
- Guarantees granted by the state to the SOE for its operations, or any commitment that the state undertakes on behalf of an SOE.
- Information about any public-private partnerships involving SOEs.
- Actual financial transactions between SOEs and related entities, including equity investment of one SOE in another.
- Payments by SOEs to government entities /government accounts
- Where the SOE acts as a fiscal agent, SOE receipts of revenue and transfers from the SOE to other government agencies.
- Any loans and loan guarantees provided to the SOE or by the SOE.

f) Financial reporting. This could include risks, challenges and public disclosures related to:

- Financial indicators or key performance indicators such as turnover, profit, cash flow from operating, investing and financing activities; gross investment, return on equity, equity/asset ratio, debt, and dividends paid/received.
- Auditing and accounting requirements pertaining to SOEs, including any financial reporting standards adhered to and oversight mechanisms (who signs off on the accounts, review by legislature etc
- State-audits and controls carried out, as well as independent external audits and resulting annual reports.
- Information on rotation and tendering of the external audit assignment.

g) Spending. This could include risks, challenges and public disclosures related to:

- Company budget and revenue retention rules.
- Capital and operational expenditures, by upstream and downstream sectors.
- Prevailing policies and rules on quasi-fiscal expenditures.
- Disclosure of quasi-fiscal spending on issues such as employment, social services, subsidies, national debt servicing etc., including amount and a description of the purpose of the spending.
- Voluntary corporate social responsibility spending, including sponsorship of political parties or political campaigns.

Annex B – Template Contract

CONTRACT

between

The Extractive Industries Transparency Initiative – EITI

Skippergata 22,

0152 Oslo

Norway

And

[Name]

[Address]

[City]

[Country]

1. ASSIGNMENT

1.1 Contents

This contract provides for [NAME OF THE ASSIGNMENT] between [NAME OF CONSULTANT] (“the consultant”) and the EITI Secretariat (“The Client”). The terms of reference for tasks to be carried out under this contract will be agreed in writing prior to the initiation of each task in accordance with the template outlined in Annex A. In the event of any discrepancy between this Contract and the ToR for Individual assignments, the provisions of this Contract shall prevail.

1.2 Duration

The assignment will take effect as of [DATE], and shall be completed by [DATE].

Additional pieces of work with given working days shall be agreed between both parties and will be seen as binding limitations on the scope and duration of work falling under this contract.

1.3 Administration

The consultant will report to the [POSITION AND NAME AT THE SECRETARIAT] and other staff at the EITI Secretariat as directed.

2 FEES AND PAYMENT

2.1 Fees

The consultant will be paid a total fixed fee of [CURRENCY AND AMOUNT] (AMOUNT IN LETTERS only) for completing the ToRs (Annex A) inclusive of all taxes and mandatory payments.

2.2 Reimbursables

Not applicable.

2.3 Payment

Invoices with timesheets attached should be submitted to the EITI International Secretariat, following the Secretariat's approval of agreed deliverables. The Consultant will be paid in full within two weeks of receipt of Invoice.

3 CONFIDENTIALITY, CONFLICT OF INTEREST AND PROPERTY RIGHTS

The consultant shall not disclose to any third party any information relating to the services under this contract, which could be considered confidential (other than in the proper performance of this contract or as may be required by law). The consultant shall immediately notify the EITI of any circumstances which may place the consultant in a real or apparent conflict of interest in relation to the services under this contract or the interests of the EITI generally.

4 FORCE MAJEURE

If a situation arises that under the normal rules of contract law must be considered to be an event of force majeure, this contract shall not be considered breached while the force majeure situation continues. If the force-majeure situation continues, or can be expected to continue, for more than 60 days, either party can terminate the contract by giving 30 days' notice.

5 RESPONSIBILITY OF THE PARTIES

5.1 The consultant's responsibility

- a. The consultant is responsible for ensuring that the assignment is carried out in accordance with the contract and that the quality of the assignment result satisfies the requirements that could reasonably be specified on the basis of the assumed professional competence of the consultant.
- b. The consultant is responsible for breaches of time limits and the financial budget that result from the negligence or intentional acts of him/her.
- c. The consultant undertakes to keep the EITI Secretariat informed of progress and promptly to inform the

EITI Secretariat of circumstances that may cause delays, prevent completion of the assignment, or in any other way affect completion.

d. The Consultant's area of responsibility as set out in a., b. and c. also includes quality deficits and delays in completion of the Assignment, caused by any contractors engaged by the consultant or by the Secretariat.

5.2 The Client's responsibility

a. The EITI Secretariat will issue clear terms of reference for each assignment, maintain close communication with the consultant, and expeditiously provide feedback on draft deliverables.

b. The Secretariat will make available to the consultant the necessary data and information necessary to carry out the prescribed tasks, and will work to ensure good access to relevant stakeholders and contacts within EITI implementing countries and supporting organizations as needed.

6 BREACH - SANCTIONS

a. In the case of breaches as set out in paragraphs 5.1 that are not due to the EITI's conduct or circumstances as set out in paragraph 5.2, the Secretariat can require the consultant to remedy the breach(es) at his own expense, as long as this does not occasion unreasonable costs or inconvenience.

b. If the breaches are not remedied in accordance with the quality requirements set out in paragraphs 5.1, or this does not occur within a reasonable period after the Secretariat has complained about the breaches, the Secretariat can claim a price reduction corresponding to the cost of carrying out the assignment.

c. A party may terminate the contract when the breach of the other party is substantial.

d. A party may claim compensation for the loss he/she suffers as a result of the breach of the other party, in accordance with the general rules on compensation in contractual relationships. The party shall be put in the same financial position he/she would have been in had the contract been properly fulfilled.

e. A party loses his/her right to enforce a sanction against the other party if he/she does not give notice of the claim to the other party within a reasonable period of becoming aware of the circumstances that constitute the basis for the sanction.

7 DURATION - TERMINATION

The contract remains in force until the assignment is completed and all payments, pursuant to invoices, have been made, but it can be terminated by the Secretariat on 14 days' written notice without giving reasons. In the case of such termination, the Secretariat shall pay the consultant's fee for work carried out and Travel Costs and shall pay financial compensation for expenses the consultant has incurred in connection with the early termination of the assignment.

The consultant may, if the Secretariat makes significant changes to the content or extent of the assignment, terminate the contract by giving 14 days' written notice. The Consultant is obliged to complete and deliver work already started.

8 CHOICE OF LAW - DISPUTES

The parties' rights and obligations under this contract are governed in their entirety by Norwegian law. Disputes that arise under this contract shall, if they cannot be resolved by negotiation between the parties,

be heard by the district court of Oslo.

9 ENQUIRIES

All enquiries concerning this contract should be directed to:

EITI

Jonas Moberg

Executive Director

jmoberg@eiti.org

Consultant:

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

XXXXXXXXXXXXXXXXXX

This contract is signed in **2 (two) copies**, of which each party keeps 1 (one) copy.

For the EITI:

Date: [DATE]

The Consultant:

Date: [DATE]

Annex A: Terms of Reference for [NAME OF THE ASSIGNMENT]

[...]