Terms of Reference :

The Extractive Industries Transparency Initiative (EITI) is seeking a consultant to produce a study for the EITI MSG of Mongolia that aims to support the government and the multi-stakeholder working group (MSWG) to implement contract transparency and improve disclosure of state-owned enterpises in the extractive sector in accordance with the EITI Standard, and to increase stakeholder capacities on data use and corruption prevention in the extractive industries. The EITI International Secretariat has agreed to engage the services of the consultant to undertake the tasks assigned in these 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. Additional information is available from http://www.eiti.org.

Mongolia's EITI implementation and current status of work on contract transparency, SOE transparency, data use and corruption prevention in the extractives industries

Mongolia has implemented the EITI since 2007 and was last Validated under the 2019 EITI Standard in 2022. Mongolia has used its EITI implementation to pursue reforms and achieve progress in contract disclosure and SOE governance. data use from EITI disclosures, and corruption prevention in the extractive industries.

On contract transparency, Mongolia has adopted a pro-disclosure policy and established an open contracts portal in a process driven by the civil society constituency in the multi-stakeholder working group (MSWG). It has published a large number of contracts, ranging from contracts governing exploration and exploitation of extractive resources to local development agreements between companies and local government and communities. However, there has been no systematic review of all active contracts to publicly clarify any contracts that may not have been published to date, including all associated contractual documents such as annexes, amendments, and riders. Further, its efforts on contract disclosure have not yet been replicated for minerals and mining licenses.

On SOE governance, Mongolia has legally required government entities and some SOEs (those wholly owned by the Government of Mongolia) to publicly disclose information on all material financial transactions (above MNT 5M or USD 1,435.), including revenues, procurement and payments to government, and audited financial statements, which is published on the Government's Glass Account portal. However, published assessments of SOEs' disclosures and Mongolia's EITI report highlighted several gaps in these disclosures, such as lack of audited financial statements from partly state-owned entities or joint-stock companies (JSCs) and from privately incorporated limited liability companies (LLCs).

On data use, Mongolia has demonstrated how data from EITI disclosures have been used by national and international stakeholders, such as from media, academe, research and advocacy groups. Media have extensively used different EITI datasets to cover, among others, mining companies' donations, local development funds and beneficial ownership. Reports drawing on

EITI International Secretariat
Phone: +47 222 00 800 • E-mail: secretariat@eiti.org • Twitter: @EITIorg
Address: Rådhusgata 26, 0151 Oslo, Norway • www.eiti.org

1

EITI data have been published to assess the impact of mining on household incomes and the effective royalty rates paid by coal mining companies. EITI data have also been used to cross-reference different government databases on investigations related to the mining sector. Despite growth of Mongolian EITI data use, its use for informing public debate and policy making is still limited.

On corruption prevention, Mongolia EITI has partnered with the Natural Resource Governance Institute (NRGI) in producing a diagnostic of corruption risks in mining operations, with recommendations that have been incorporated as part of Mongolia EITI workplans. Validation notes that Mongolia has yet to use its anti-corruption work to drive more impactful EITI implementation, for instance by considering how EITI data could inform anti-corruption policies and practices at the national and subnational levels.

Mongolia EITI's 2023 work plan identified several activities aimed at strengthening systematic disclosures by Government and SOEs, including upgrades to the contract transparency portal, uploading contracts concluded from 2020 to 2022 as well as SOEs' sales contracts, and building capacity of national and subnational stakeholders to ensure contract transparency. The work plan also seeks to implement recommendations from the 2022 Validation relating to SOE transparency, particularly on disclosure of rules pertaining to government and SOE financial relations, including annual disclosures on reinvestment and third party financing, information on the marketing and sale of the state's share of oil production, and information on SOE-related transactions such as company payments to SOEs and transfers between government agencies and SOEs. The work plan further aims to develop activities that will increase the level of awareness and use of EITI data among its citizens and to build the capacity of subnational councils (aimags, soums).

The EITI Secretariat, with support from EBRD, will commission a study in four parts with the objective of scoping the current status of progress on contract transpoarency (Part 1) and SOE transparency (Part 2), and to provide recommendations to advance work on these topics. In addition, it will commission the design and conduct of capacity development activities on data use from EITI disclosures for different stakeholder groups (Part 3) and training/awareness-raising activities on preventing corruption in the extractive industries for local communities and other stakeoholders at the national and subnational levels (Part 4).

2. Objectives and scope of assignment

Part 1: Contract transparency (Activity No. 7.8)

The consultant will be expected to support the Government of Mongolia and the MSWG in enabling contract disclosure in the country in accordance with Requirement 2.4 of the EITI Standard. The consultant will undertake the following activities:

1. Conduct all necessary stakeholder consultations.
2. Map key actors, including champions, saboteurs and approving authorities to enable contract disclosure. Identify opportunities for engaging with these actor.
3. Perform a scoping of all active mining, oil and gas production and exploration contracts with their respective annexes and amendments, with indication of contracts executed after 1 January 2021
4. Produce a list of all these contracts and annexes in a publishable format.
5. Provide technical support for publishing the list of contracts and for publishing the actual contracts

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Address: Rådhusgata 26, 0151 Oslo, Norway

2

6. Evaluate Mongolia's existing contracts portal and recommend áreas for improvement drawing from global best practices, including on how to update disclsoures when amendments, riders are agreed happen or new annexes are executed.
7. Produce a study identifying legal and practical barriers to full contract disclosure as required by the EITI Standard, and documenting areas of deviation between disclosure policy and actual practice as well as recommendations to improve legal and policy framework.
8. In consultation with stakeholders, develop a roadmap that provides a step-by-step guide for the MSWG and the Government on how to address the corrective action on contract transparency from Mongolia's recent Validation.
9. Support the International Secretariat in delivering one workshop for the MSWG members and present the results of the Contracts Disclosure Study and the final roadmap.

For all these deliverables, the consultant is expected to work with the International Secretariat in ensuring that the requirements of the EITI Standard on contract disclosure are considered and adhered to.

Part 2: SOE Transparency (Activity No. 7.8)

The consultant will undertake the following activities to support the Government of Mongolia and the MSWG in enabling SOE transparency in accordance with Requirements 2.6, 4.2, 4.5 and 6.2 of the EITI Standard:

1. Conduct all necessary consultations.
2. Undertake a scoping study of the role of SOEs in the extractive industry, their governance, financial management, transactions and quasi-fiscal expenditures. The study will scope the prevailing rules and practices regarding the financial relationship dbetween the government and SOEs, including their reinvestments and third-party financing, as well as those related to SOE joint ventures and subsidiaries. It will cover a discussion of their levels of ownership in mining, oil and gas companies within Mongolia's extractives sector, including information regarding the terms attached to their equity stake, levels of responsibility for covering expenses at various phases of the project cycle, and any loans or loan guaranties provided. It will also include a description of the rules and practices related to SOEs' operating and capital expenditures, procurement, subcontracting and corporate governance.
3. Map key stakeholders that would be instrumental in ensuring SOE transparency in accordance with the EITI Standard and identify opportunities for engaging with these stakeholders.
4. In consultation with stakeholders, develop a roadmap for the Government and MSG to ensure full SOE disclosures in accordance with the EITI Standard. The roadmap should include actionable recommendations for systematic/online dislsoures of SOE data in government portals.
5. Recommend improvements for the glass account, drawing from global best practice on SOE transparency.
6. Drawing from the scoping study, prepare a stand-alone report on SOE disclosures that would support the MSWG in addressing the gaps identified in the 2022 Validation, particularly those arising from the glass account, SOE financial relationship with the

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Address: Rådhusgata 26, 0151 Oslo, Norway

3

government and quasi-fiscal expenditures, legislative amendments or capacity building.

7. Support the International Secretariat in delivering one workshop with the MSG members to present the scoping study and facilitate discussions with the objective of producing a roadmap for full SOE disclosure in Mongolia in accordance with the EITI Standard and a report with disclosures for fiscal year 2024 that could be validated in the next Validation.

For all these deliverables, the consultant is expected to work with the International Secretariat in ensuring that the requirements of the EITI Standard on contract disclosure are considered and adhered to.

Part 3: Data use from EITI disclosures (Activity No. 7.9)

The consultant will undertake the following activities to facilitate consultations and generate public awareness and debate on the use of EITI data and development of national and local policies:

1. Identify EITI data users and conduct all necessary consultations
2. Conduct a perception survey among target stakeholders to identify EITI data that are most useful to their áreas of work. The findings should indicate which data from Mongolia EITI Reports are most relevant to national issues and the extent to which these data are being actually used by various stakeholders
3. Deliver and provide technical inputs for at least three capacity-building workshops and peer learning activities on data use from EITI disclosures (extractives data, contracts data, beneficial ownership data, SOE data)
4. As workshop ouput, produce a list of recommendations/identifying concrete action steps on how the participants will use EITI data to inform public debate and policy making.

Part 4: Anti-corruption in the extractives (Activity No. 7.10)

The consultant will undertake the following activities to support Mongolia EITI's anti-corruption work and to increase stakeholder capacity in identifying corruption risks associated with extractive operations and comprehensiveness of disclosures on monetary and non-monetary support given to local communities by extractive companies:

1. Work with the International Secretariat and Mongolia EITI MSG in formulating objectives and priorities for anti-corruption actions based on national priorities.
2. Work with the International Secretariat in designing and implementing three training courses and awareness-raising activities on preventing corruption in the extractive industries for local communities and other stakeholders at the national and subnational levels.
3. Develop a post-training anti-corruption monitoring framework for local communities and other stakeholders focusing on one stage of the EI value chain (e..g licensing, revenue collection, SOE Governance)

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Address: Rådhusgata 26, 0151 Oslo, Norway

4

3. Deliverables and timetable

The assignment is expected to take up to 90 consultancy days between 1 June 2023 to 31 March 2024. The proposed schedule, which will be confirmed ahead of launching the project, is set out below:

Task/Deliverable	Timeline
Initial meeting with EITI International Secretariat and the Mongolia EITI Secretariat	July 2023
Desk review of relevant documents and reports, including meetings with relevant stakeholders	July – August 2023
Deliverables on contract transparency (study on barriers,stakeholder mapping, scoping and list of all active contracts, review of contracts portal, roadmap, workshop)	Study on barriers, scoping and list of contracts, stakeholder mapping: - First draft: 30 September - Final draft 15 November Review of contracts portal: - First draft: 15 August - Final draft: 15 September Roadmap First draft: 15 October Final draft: 30 October Workshop: between 16-30 November
Scoping study on SOE role in the extractive industry, governance, financial management, transactions and QFEs, including delivery of a workshop	First draft: 15 September Second draft: 15 October

	Final draft: 15 November
Road map for Government and MSWG on ensuring full SOE disclosures (including stand-alone report on SOE disclosures)	First draft: 30 September Final draft: 30 November
Design and delivery of three capacity-building workshops and peer learning activities on data use from EITI disclosures	Perception survey: - First draft: 15 August - Final draft : 30 August - Processed survey result: 15 September Concept note for workshop: - First draft: 15 August - Final concept note:30 August - 15 September Workshops: October – December
Design and delivery of three training courses and awareness-raising activities on preventing corruption in the extractives sector	Inputs to Mongolia EITI work plan objectives and activities on anti-corruption: 15 October Inputs to training course outline: January 2024 Support on mini-courses on anti-corruption: February - March 2024

	Anti-corruption monitoring framework: - First draft: 15 February - Final output: 15 March

4. 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.

- Understanding of the governance and transparency space in Mongolia, data transparency, anti-corruption and resource governance issues, preferably with practical knowledge of the extractive industries, including of state-owned enterprises (SOEs) (essential)
- Familiarity with laws and policy relevant to extractive contracts, contracts disclosure, and beneficial ownership (BO) (preferred)
- Familiarity with laws, rules and regulations governing all categories of SOEs that operate within the extractives domain (essential)
- Skills and experience in research and technical writing (essential)
- Experience in the design and delivery of capacity-building, peer learning and training activities for varied stakeholders (essential)
- Experience in and knowledge of the implementation of the EITI Requirements on contract disclosure, BO transparency and SOE governance (preferred)

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.

5. 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.