

Independent review of EITI Reports

12 April 2018

Summary

Proposals are sought from qualified consultants to undertake an independent review of EITI Reports. The objective of the review is twofold. First, building on the [findings from the 2016 and 2017 Validations](#), the consultant should assess the extent to which EITI Reports prepared in accordance with the [standard terms of reference for Independent Administrators](#) ensure that stakeholders have access to comprehensive and reliable data. Second, noting the trend toward [encouraging systematic disclosure](#), the consultant should make recommendations on how the EITI can be used to strengthen company and government audit and assurance procedures to order to ensure that stakeholders have access to comprehensive and reliable data.

The estimated input of consultant time is 25 days, with the work to be undertaken in May and June 2018. Technical and Financial proposals must be delivered by **17:00 CEST Friday 27 April 2018** to Sam Bartlett (sbartlett@eiti.org).

1. Background

The EITI¹ is a global coalition of governments, companies and civil society working together to improve the openness and accountable management of oil, gas and minerals for the benefit of the citizens living in countries with significant resource endowments. The EITI Standard² is implemented in 51 countries. Implementation is overseen by a national multi-stakeholder group (MSG) comprising of representatives from government, companies and civil society. Through EITI implementation, governments commit to transparently disclose information about the country's extractive sector, including the legal framework, production and exports statistics, licenses, state participation in the sector, the amount of revenue collected, the beneficial owners of companies and how these revenues are allocated. The publication and public debate of this information enables citizens to hold their government to account for how the sector is managed, and thus contribute to reducing mismanagement, corruption and conflict.

A key feature of contemporary EITI implementation is EITI Reporting. The EITI requires a comprehensive reconciliation of company payments and government revenues from the extractive industries. The EITI Requirements related to revenue collection include: comprehensive disclosure of taxes and revenues (Requirement 4.1); the sale of the state's share of production or other revenues collected in kind (Requirement 4.1); infrastructure provisions and barter arrangements (Requirement 4.3); transportation revenues (Requirement 4.4); SOE transactions (Requirement 4.5) and subnational payments (Requirement 4.6).

Implementing countries are required to produce their first EITI Report within 18 months of being admitted as an EITI candidate. Thereafter, implementing countries are expected to produce EITI

¹ www.eiti.org

² See: https://eiti.org/files/English_EITI_STANDARD.pdf

Reports on an annual basis. Implementing countries must disclose data no older than the second to last complete accounting period, e.g. an EITI Report published in calendar/financial year 2018 must be based on data no later than calendar/financial year 2016.

It is a requirement that payments and revenues are reconciled by a credible, Independent Administrator, applying international auditing standards, and with publication of the administrator's opinion regarding that reconciliation including discrepancies, should any be identified. The reconciliation of company payments and government revenues must be undertaken by an Independent Administrator applying international professional standards. The multi-stakeholder group and the Independent Administrator are required to agree a Terms of Reference for the EITI Report based on the standard Terms of Reference and the 'agreed upon procedure for EITI Reports' endorsed by the EITI Board. The agreed upon procedure for EITI Reports is outlined in the [standard terms of reference for Independent Administrators](#).

The first objective of this assignment is to independently review and assess the effectiveness of this work. Building on the [findings from the 2016 and 2017 Validations](#), the consultant should assess the extent to which EITI Reports prepared in accordance with the [standard terms of reference for Independent Administrators](#) ensures comprehensive and reliable data.

At the EITI Board meeting in February 2018, the EITI Board agreed to set of recommendations regarding [encouraging systematic disclosure](#). The 2016 EITI Standard enables implementing countries to disclose the information required by the EITI Standard through routine government and corporate reporting, and consultation systems such as websites, annual reports etc. The Board EITI reaffirmed that "implementing countries are expected to take steps to integrate EITI implementation in company and government systems. This should include an explanation of the underlying audit and assurance procedures that the data has been subject to, with public access to the supporting documentation". Systematic disclosure has thus been established as the default expectation, with EITI Reports to be used to address any gaps and concerns about data quality.

The second objective of this assignment is to identify opportunities to promote the disclosure of comprehensive and reliable data through systematic disclosure. In doing so, the consultant should evaluate the EITI's current focus on comprehensive reconciliation and the clarification of discrepancies. The EITI Board Paper on [encouraging systematic disclosure](#) notes that there are divergent views on the value of reconciliation as part of EITI implementation:

Reconciliation is often complex, involving dozens of revenue streams, low materiality thresholds and a large number of reporting entities. The data collection process is often time consuming. The Validations that have been completed to date have shown that most of the discrepancies identified during the reconciliation process arise from reporting errors created by the complexity EITI reporting procedures themselves, not by missing payments or intentional gaps in company or government disclosure. In addition, the overall assessments from IAs are either absent or have so many caveats that they add very little in terms of assuring the quality of the data.

Nevertheless, stakeholders often consider reconciliation as a valuable exercise in verifying that government and company disclosures are complete. However, reconciliation is not the only or best way to safeguard reliable data. In many EITI Reports, the disclosures are not

audited, and are only assured in the narrowest sense through attestations from senior representatives of the entities submitting the data.

One of the most important outcomes of EITI implementation is that it requires disclosures from reporting entities on their routine audit and assurance practices, and whether these are up-to-date, and whether national standards are in line with international best practice. Where these systems are weak, reconciliation is valued because it provides some additional assurances that the disclosures are complete. However, this is not a sustainable solution. The goal should be to strengthen routine audit and assurance procedure so that additional assurances are unnecessary.

The results from the 2016 and 2017 Validations also show that reconciliation has sometimes become an end in itself, without sufficient attention to the underlying audit and assurance procedures that ought to be the primary guarantor of data quality. Where these audit and assurance systems are strong, MSGs are increasingly arguing that reconciliation is unnecessary. As the EITI national secretariat in Germany have commented:

In some countries, the reconciliation process is not at the heart of challenges that might arise in the national resource sector. As reconciliation is very costly, the Board should consider possibilities to let go of reconciliation, if certain criteria are fulfilled. A possible criterion could be that there are no material discrepancies in reconciliation two years in a row. The reconciliation process could then be paused for two/three years. In the following year reconciliation takes place again, when there are no material discrepancies, reconciliation will be paused again for two/three years. When there are material discrepancies the country has to undergo reconciliation in the next year.

There are variations to this proposal by D-EITI. One alternative could be to let go of reconciliation, but to give stakeholders the right to ensure that an independent review of company and government data is carried out if the annual disclosures show material discrepancies that cannot be explained to the satisfaction of stakeholders. Another alternative could be to let go of reconciliation in principle, but to undertake annual spot checks of certain transactions.

The EITI Board has agreed that, subject to the findings of this review, the EITI Board will consider possible modifications to the standard terms of reference for Independent Administrators, reframing the procedure as a “standard terms of reference for EITI disclosures”, putting a greater emphasis on mainstreamed, integrated and systematic disclosure and public consultation. The consultant should make recommendations on how to progress this work.

2. Scope of services, tasks and expected deliverables

The consultant will be expected to undertake the following tasks:

- 1. Desk review and stakeholder consultations.** The consultant should undertake a desk review of the findings from the 2016 and 2017 Validations³ and a sample of EITI Reports⁴. This work should include consultations with key stakeholders, in particular with the independent administrators engaged in preparing EITI Reports and the key users of EITI Reports. The desk review and stakeholder consultations should:
- a. Review and assess Independent Administrators' adherence to the standardised procedure, including their work on: (i) establishing the scope of EITI reporting⁵, (ii) reviewing the audit and assurance practices in companies and government entities⁶; (iii) agreeing the assurance procedures to be used in EITI reporting⁷; and (iv) reporting on adherence with these procedures⁸.
 - b. Review the procedures used for identifying and clarifying discrepancies⁹. The consultant should comment on the most common causes of discrepancies, and the efficacy of this work in making an assessment of the comprehensiveness and reliability of the (financial) data.
 - c. Make an assessment of the extent to which Independent Administrators provide an assessment "on the comprehensiveness and reliability of the (financial) data presented, including an informative summary of the work performed by the Independent Administrator and the limitations of the assessment provided"¹⁰. The consultant should document how Independent Administrators have responded to this mandate, and the extent to which adherence to these procedures ensures comprehensive and reliable data.
 - d. Noting the trend toward [encouraging systematic disclosure](#), examine how the EITI could put a greater emphasis on strengthening company and government audit and assurance procedures to order to ensure that stakeholders have access to comprehensive and reliable data. This should include reviewing similar work being undertaken, e.g., by the INTOSAI Working Group on the Audit of Extractive Industries¹¹ and PEFA¹².
- 2. Report on the independent review of EITI Reports.** Based on the desk review and consultations the consultant should prepare a report for consideration by the EITI Board. The report should present the findings from the desk review (above). The consultant

³ The International Secretariat will provide a summary of the findings from the 2016 and 2017 Validations addressing of each of the issues highlighted below.

⁴ An appropriately representative sample (different countries, independent administrators, etc) to be agreed with the International Secretariat.

⁵ Standard terms of reference section 1.2.1.

⁶ Standard terms of reference section 1.2.2.

⁷ Standard terms of reference section 1.2.3.

⁸ Including producing inception reports as per sections 1.3.1 - 1.3.3 and draft and final reports (phase 4 and 5).

⁹ See Standard terms of reference phase 3 and 4.

¹⁰ Standard terms of reference section 4.2.c.

¹¹ <http://www.wgei.org/>

¹² <https://pefa.org/>. It is suggested that the sample (above) includes some cases where the findings from the EITI Report and the PEFA assessment can be compared.

should make recommendations on how the EITI can be used to strengthen company and government audit and assurance procedures to order to ensure that stakeholders have access to comprehensive and reliable data.

The estimated input of consultant time is 25 days.

3. Schedule

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 & consultation with stakeholders	1-3 weeks
Submission of the draft report	6 weeks from the contract singing (with 3 weeks for comment)
Submission of the final report	9 weeks from the contract signing

4. Qualification requirements

The consultant must be a reputable firm / individual, perceived by EITI stakeholders to be credible, trustworthy and technically competent.

The consultant will need to demonstrate:

- Experience and expertise in the oil, gas and mining sectors
- Technical and financial skills, including knowledge of public financial management and international auditing and assurance standards
- A track record in similar work. Previous experience with EITI is not required, but would be advantageous.
- Credibility and independence: the validator needs to be credible in the eyes of the host governments, the private sector and civil society.

In order to ensure the quality and independence of the exercise, consultant is required, in their technical proposal, to disclose any actual or potential conflicts of interest, together with commentary on how any such conflict can be avoided. Firms that have acted as an Independent Administrator are ineligible.

5. Procurement procedure

A consultant / firm 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 sbartlett@eiti.org by **17:00 CEST Friday 27 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 in responding to the Terms of Reference (TORs) ¹³	50%
Key Experts' qualifications and competence based on the Qualification requirements (see section 4 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)¹⁴ and financial (Sf)¹⁵ 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.

6. Payment schedule

	Deliverable	Payment
1 st Payment	Following contract signature	10%
2 nd Payment	Following submission of draft Report.	40%
3 rd Payment	EITI acceptance of the final Report.	50%

¹³ 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

¹⁴ The minimum technical score (St) required is 70/100.

¹⁵ The lowest evaluated Finance Proposal (Fm) is given the maximum financial score (Sf) of 100. The formula for determining the financial scores (Sf) of all other Proposals is: $Sf = 100 \times Fm / F$, in which "Sf" is the financial score, "Fm" is the lowest price, and "F" the price of the proposal under consideration.

7. Data and facilities to be provided by the Client

The EITI International Secretariat will provide all the necessary documentation needed to undertake reviews, and will facilitate contact with national EITI Secretariats, independent administrators, and other stakeholders.

The EITI Secretariat contact point for the assignment is:

Dr. Samuel Bartlett
Technical Director
EITI International Secretariat
Oslo, Norway
sbartlett@eiti.org
+47 9026 7530

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:

The Consultant:

Date: [DATE]

Date: [DATE]

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

[...]