

## Terms of Reference

### Contract transparency in Indonesia - assessment of benefits, opportunities, challenges and risks

#### **Background:**

Contracts, licenses and associated agreements are important elements of a country's legal framework. They explain the rights and obligations of all parties involved in the exploration and production of oil, gas and minerals. By shedding light on the rules and terms that govern extractives projects, contract transparency can empower government entities, communities citizens to understand and monitor how much revenue to expect from companies. In recognition of the significance of contract disclosure, the EITI Standard ([Requirement 2.4](#)) requires all implementing countries to disclose any contracts and licenses that are granted, entered into or amended from 1 January 2021, including the full texts of contracts, annexes, addendums or riders. Over 30 EITI countries have thus far disclosed some or all mining, oil or gas contracts

In Indonesia, progress towards contract disclosure has been limited. Existing legal framework do not fully clarify the government's policy on public disclosure of contracts. The Law No. 14/2008 on Public Information Transparency generally regulates the obligations of the public agency to provide information to the public, unless such information is an excluded information. So far, this Law has not been applied to support disclosure of extractive contracts in Indonesia. While previous decisions allowed some contracts to be disclosed, oil and gas production sharing contracts (PSCs) and mineral and coal contracts are generally not publicly disclosed.

Since joining the EITI, Indonesia's EITI multi-stakeholder group have undertaken efforts geared towards ensuring comprehensive disclosure of contracts but more targeted support is required to address concerns on confidentiality and commercial sensitivity.

#### **Objectives:**

To support the MSG in implementing Requirement 2.4 of the EITI Standard on contract disclosure, a consultant will be engaged by the EITI Secretariat with support from USAID to produce a study describing the existing legal framework for contract disclosure in Indonesia, and evaluating risks and challenges as well as the opportunities and benefits associated with disclosing extractive contracts in Indonesia. The outcome of the study is expected to enhance stakeholders understanding any potential risks and offer practical solutions on how to address such risks and reap the benefits of public disclosure.

#### **Scope of work:**

The study will include the following:

1. Discussion of contracts regime for the oil and gas and mining and coal sectors in Indonesia
2. Discussion of existing legal framework for contract disclosure in Indonesia, specific to the extractive sector and more broadly
3. Discussion of actual disclosure practices, including a list of extractive contracts that have been disclosed, and whether there are deviations from policy

4. Identification of legal, political and practical barriers and other challenges to contract disclosure in Indonesia
5. Recommendations to address barriers, including practical guidance for addressing legal barriers
6. Risk assessment and recommendations to mitigate risks
7. Discussion of benefits of contract disclosure in the Indonesian context and links to issues in natural resource governance in the country
8. Opportunities for implementing contract disclosure, including alignment with other national reforms
9. Draft roadmap for contract disclosure in Indonesia with suggestions on objectives, specific activities, training needs, and stakeholder mapping

*The consultant will be expected to:*

1. Conduct consultations with key stakeholders
2. Liaise with the MSG/national secretariat and International Secretariat regarding the progress of the study
3. Conduct workshops when necessary for drafting sections of the study
4. Present the findings of the study to the MSG
5. Produce a list of all active contracts and licenses, indicating which are publicly available and which are not.
6. Produce a risk assessment and opportunities paper
7. Publish a summary of key findings and recommendations that could serve as speaking points for stakeholder engagement

Total number of days: 20 days

Timeline:

Activity	Date
Consultations, workshops with stakeholders	July 2021
First draft	26 July
Presentation to MSG	Week of 25 July
Final draft	15 August

Qualifications:

**The consultant must demonstrate:**

1. Expertise in Indonesia's legal framework and contracts regime, specifically in the extractive sector. An Indonesian law degree or background is an advantage.
2. Expertise in natural resource governance in Indonesia, as demonstrated by at least seven years of relevant work experience.
3. Familiarity with the EITI Standard's requirements on contract disclosure.
4. Adequate experience in producing similar technical studies and research
5. Sufficient familiarity with Indonesian government systems, laws and policies. The consultant must demonstrate ability to access information from government through well established networks within the Indonesian bureaucracy
6. Adequate experience in conducting consultations with various types of stakeholders from government, companies and civil society
7. Fluency in Bahasa and advanced written and communication skills in English