



PNG EXTRACTIVE INDUSTRIES
TRANSPARENCY INITIATIVE



**TERMS OF REFERENCE
FOR DEVELOPMENT OF A NATIONAL EITI POLICY AND LEGISLATION FOR
PAPUA NEW GUINEA**

Prepared by PNGETI National Secretariat

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**TERMS OF REFERENCE (TOR)
CONSULTANCY SERVICES
FOR
DEVELOPMENT OF EXTRACTIVE INDUSTRIES TRANSPARENCY INITIATIVE (EITI) NATIONAL POLICY AND
LEGISLATION FOR PAPUA NEW GUINEA (PNG)**

1. BACKGROUND

Extractive Industries Transparency Initiative (EITI) is a global standard that seeks to promote open and accountable management of revenues generated from extractive sector activities. It also seeks to strengthen government and company systems and processes, inform public debate and enhance trust among different stakeholders. The EITI has made significant contributions to improved governance of the extractive industries in numerous countries around the world.

EITI implementation has two core components:

- **Transparency:** oil, gas and mining companies disclose information about their operations, including payments to the government, and the government discloses its receipts and other relevant information on the industry. The figures are reconciled by an Independent Administrator (IA), and published annually alongside other contextual information about the extractive industries in accordance with the EITI Standard.
- **Accountability:** a multi-stakeholder group (MSG) with representatives from government, companies and civil society oversee the process and communicate the findings of the EITI reporting, and promote the integration of EITI into broader transparency efforts in that country.

The EITI Standard encourages MSGs to explore innovative approaches to extending EITI implementation to increase the comprehensiveness of EITI reporting. Most importantly it also encourages high standards of transparency and accountability in public life, government operations and in business. The requirements for EITI implementing countries are set out in the EITI Standard. Additional information is available via www.eiti.org. The EITI Standard is being implemented in fifty two (52) countries around the world including Papua New Guinea.

2. EITI IMPLEMENTATION IN PAPUA NEW GUINEA

PNG is endowed with vast reserves of oil, gas, gold, copper and other minerals. A significant proportion of export receipts to PNG's economy is derived from these mineral wealth. In an effort to promote and improve transparency and accountability to achieve good governance within the oil, gas and mining sectors, the Government has committed to support this global initiative and in ensuring that the extraction of PNG's mineral wealth remains commercially sound. In March 2014, the EITI Board approved Papua New Guinea's application for EITI candidate status.

EITI implementation in PNG is based on the National Executive Council (NEC) Decision that gave effect to the PNG EITI Multi-Stakeholder Group (MSG) to implement the EITI.

The objective of implementing EITI in PNG is to:

- Ensure a well-established and fully functional National Secretariat Office and the Multi-Stakeholder group (MSG);

- Show extractive industries' contribution (both directly and indirectly) to the PNG economy;
- Improve public understanding of the governance of the extractive industries, including details of mining and petroleum licensing and approval process and any other prevailing licenses, reference to environmental and other regulatory processes and approvals;
- Strengthen revenue generation and collection, ensure consistency, transparency, accountability and accuracy of recorded payments or transfers by extractive industries to the government with receipts recorded by government (including sub-national government entities), and accountability by government in utilization of these funds, including transfers to the subnational tiers of government and landowners;
- Engage stakeholders to effectively address issues affecting PNG's extractive industries; and
- Monitor and evaluate the EITI implementation in the country.

Ultimately, PNGEITI provides the citizens of Papua New Guinea with better access to the data and information necessary to improve public discourse around extractive sector revenues. It also ensures that revenues from the resource sector are received in full and accounted for, potentially facilitating in turn better utilization of these funds for the provision of public goods and services. The objective is also to enable strong sector governance and thereby, encourage a transparent and conducive investment environment.

The MSG ensures that the PNGEITI framework is tailored to PNG laws and regulations and that it is implementable by government and industry. It also identifies where there are weaknesses or deficiencies in the current regulatory environment which may require actions by government. Additional information about PNGEITI is available on its website at www.pngeiti.org.pg

The MSG resolved in its Meeting No.5/2016, in Kokopo, East New Britain Province that EITI needed a legal basis to exist in PNG. It was pointed out during this meeting that, there are existing laws such as the Oil & Gas Act and the Mining Act which the MSG could consider for PNGEITI or alternatively, for PNGEITI to have its own Act. This meeting considered the importance of developing the EITI policy and a legislative framework for sustainability of EITI into the future.

Consistent with the Government's 2018 National Budget Economic and Development Policies Statement (Vol 1, p.115) presented to Parliament in November 2017, the PNGEITI MSG will continue with its work to develop the PNGEITI National Policy Framework and subsequently, the National EITI Law to provide the avenue for PNG EITI's transformation into an independent entity.

The PNGEITI MSG, under the Treasurer as the Chair had tasked a Technical Working Group (TWG) to review the existing laws and legislative arrangements for the possibility of legislating EITI's existence. The TWG had extended this function to a sub-group comprising of legal and policy officers from relevant MSG constituents to undertake this work. The sub-group has conducted various meetings and identified possible options for the scoping, formulation and development of the EITI Policy and Legislation. Through its ongoing work, the sub-group has been able to draft a framework for formulation of the policy, setting the basis for the corresponding legal framework.

This sub-group resolved to engage a consultant a policy and legal expert to take carriage of the formulation of a draft national policy and legislation for EITI as well as reviewing any accompanying policy and legislation frameworks. This resolution was presented as a recommendation to the MSG in its meeting

dated Friday 29th September, 2017 and the MSG resolved to engage an individual specialist consultant or a consulting firm to undertake this project.

3. OBJECTIVES OF THE ASSIGNMENT

The main objective of the assignment is to develop a PNGEITI Policy and Legislation. The expected outcome is to ensure that EITI implementation is effectively guided and that there is a policy and legal basis for sustainability of EITI activities in the country for the benefit of PNG.

The specific objectives of this assignment are:

3.1 Development of National EITI Policy for PNG

Prepare a Policy Submission in consultation with PNGEITI TWG, the National Secretariat and the MSG for approval by the National Executive Council. This Policy Submission will form the basis from which the proposed EITI Policy will be developed. The principal documents that this assignment requires are:

- The PNG EITI National Policy 2018 Working Draft;
- The Strategic Roadmap for National EITI Policy Formulation; and
- Other documents that may be deemed necessary by the PNG EITI MSG.

3.2 Development of a PNG EITI Law

Develop the National EITI legislation that will guide implementation of EITI activities in the country. The principal documents that this assignment requires are:

- The PNG EITI Law 2018 Working Draft;
- The Strategic Roadmap for development of a PNG EITI legislation; and
- Other documents that may be deemed necessary by the PNGEITI MSG.

4. SCOPE OF WORK

The following describe the specific activities which are expected to be undertaken by the Consultant to achieve the above objectives. Development of National EITI Policy will involve the following:

- Undertaking a desktop review of existing papers, reports, other national development policies, plans and strategies (taking into account PNG Extractive Industries framework; Extractive Industries legislation and policy frameworks in other jurisdictions around the world);
- Preparing a scoping report and draft policy document which takes account of the desktop review of international best practice;
- Participate in a detailed consultation process on the draft EITI Policy In liaison with the PNG EITI National Secretariat. This will include consultation with the relevant PNG Government, extractive sector companies and the civil society organisations to ensure that the resulting policy has taken account of the broader context of EITI principles and objectives;
- Preparing a detailed report reflecting feedbacks from stakeholders, including any recommendations to amend the draft policy document; and
- Drafting the final PNG EITI Policy and a submission to the National Executive Council to consider and endorse the proposed PNG EITI Policy (including a separate report and brief to the PNG EITI National Secretariat and the MSG).

Development of National EITI Law will involve the following:

- Drafting a EITI Legislation which takes into account the desktop review of international best practice;
- Participate in a detailed consultation process on the draft EITI Legislation in consultation with PNGEITI National Secretariat and the MSG. This will include consultations with relevant PNG Government departments and agencies, extractive sector companies and the civil society organisations to ensure that the resulting legislation has taken into account the broader context of the EITI principles and objectives, and the management of the extractive sector;
- Preparing a detailed report reflecting the feedback provided by stakeholders including any recommendations to amend the draft legislation; and
- Drafting the final EITI Legislation in consultation with the EITI TWG, the National Secretariat and the MSG.

4.1 Duration and Level of Effort by the Consultant

The level of effort anticipated from the consultant from this assignment is one hundred and ninety (190) days or thirty eight (38) weeks over a duration of eight (8) months.

4.1.1 Description of the Expected Deliverables

Deliverables (Level of Effort)	Anticipated Completion Dates (Duration)
Prepare a detailed Work Plan Anticipated Effort – Two (2) person weeks	Two (2) weeks following signing of contract
Undertake a desktop review as detailed in the scoping report Anticipated Effort – Six (6) weeks	Within four (4) weeks following completion and approval of the Work Plan
Prepare report and revised policy and legislation discussion papers that take into account the desktop review of international best practice in the area of EITI Anticipated Effort – Ten (10) weeks	Within ten (10) weeks following completion of the desktop review

<p>Prepare a revised policy document and legislation based on the above discussion papers on the possible policy and legislative frameworks suitable for PNG and gauge views/consult appropriate government agencies.</p>	<p>Within four (4) weeks following completion of the report and draft policy discussion paper.</p>
<p>In consultation with PNG EITI National Secretariat and the MSG participate in a detailed consultation process associated with the draft EITI Policy.</p> <p>This will include consultation with a wider stakeholder group to ensure that the resulting policy takes account of the broader context. Prepare a detailed report on the feedback provided by stakeholders including any recommendations to amend the draft documents.</p> <p>Anticipated Effort – Four (4) weeks</p>	<p>Within four (4) weeks following completion of the final revised draft policy and legislation</p>
<p>Finalise and seek Cabinet’s endorsement of the EITI Policy</p> <p>Anticipated Effort – Four (4) weeks</p>	<p>Four (4) weeks following completion of the consultation process. The process of formulating a Cabinet Submission for endorsement will be undertaken by the National Secretariat and the MSG through the Treasurer as Chair. Upon completion of consultation and the drafting of the policy paper, the consultant must then submit finalized Policy and legislation Papers to the TWG, the National Secretariat and the MSG for formulation of the NEC Submission on the proposed Policy and legislation for Cabinet to consider and approve.</p>
<p>Prepare draft EITI legislation which takes account of the desktop review of international best practice and the draft EITI Policy;</p> <p>Anticipated Effort – Four (4) weeks</p>	<p>Within four (4) to six (6) weeks following finalization and endorsement of the EITI policy.</p>
<p>Prepare and submit a project completion report</p> <p>Anticipated Effort – Four (4) weeks</p>	<p>Within four (4) weeks following completion and delivery of the PNG EITI Policy and Legislation.</p>

5. QUALIFICATION REQUIREMENTS AND EXPERINCES FOR THE CONSULTANT(S)

The proposed PNGEITI National Policy and Law must be undertaken by a policy or legal expert or a consultant or consulting firm that is perceived by the MSG to be credible, trustworthy and technically competent. The Consultant(s) is expected to demonstrate proven experience in policy formulation and law. The Consultant(s) should be capable of drafting policy documents and legislation as required by the scope of work outlined in this Terms of Reference.

The Consultant(s) must have advanced level of academic degree (at least a Masters' Degree) in Mining and Petroleum Engineering, Economics, Public Policy or similar discipline. He or she should have a minimum of 5 years' experience in a similar role. The Consultant(s) is expected to be familiar with the policies and laws governing PNG's mining and petroleum sector including, quarrying legislations, social and landownership issues and environmental laws. The Consultant(s) must have good project coordination and communication skills and should be able to deal with complex legal processes and understand public policy making process specific to PNG.

Consultant(s) must follow (and show how they will apply) the appropriate professional standards for drafting the policy framework and legislation as agreed by the MSG and the procedures and process involved in getting these piece of legislation and policy adopted by the Government. The Consultant (s) must be able to meet all relevant criteria and due diligence requirements and must have some experience working on similar work. The Consultant(s) will need to demonstrate some experience in the oil, gas and mining sectors, preferably in Papua New Guinea and must demonstrate adequate local knowledge. Preference may be given to firms or individual consultant(s) or specialists that have had prior experience in undertaking EITI projects or activities of similar nature.

The consultant(s) will also need to demonstrate experience in:

- Working with multi-stakeholder or multi-sector bodies or committees with diverse interests who will be integral to conducting this assignment;
- Documenting government policy and legislation specific to oil, gas and minerals, or similar experience documenting the laws, regulations and policies that govern government operations in PNG and internationally;
- Analyzing and interpreting mineral, oil and gas leasing, royalty contracts, oil, gas and mining project agreements and the legal and regulatory interpretations of those agreements;
- Managing and interpreting policies with respect to leasing, production and revenue sharing and reporting for use of the natural resource attributes of the national government's assets, as well as taxation of the extractive industries; and
- Documenting Government's policy and legislation on contracts and licenses that govern the exploration and exploitation of oil, gas and minerals. This will include identifying relevant laws, regulations, and financial systems that govern the extractive sector and access to lease terms for past lease sales.

Relevant disciplines and areas of expertise:

- PNG governance of natural resources and transparency issues;
- Regional development, domestic natural resource markets and energy production and use;
- Planning and public administration specializing in taxes, revenue and natural resource policy;
- Policy and legal expertise in natural resource management and governance;
- Sustainable development, democratic natural resource governance and public involvement;
- Public and private organizations specializing in oil, mining, gas, renewable resources, etc; and
- Professional certifications in enterprise database design, implementation and maintenance

In order to ensure the quality and independence of the exercise, the consultant(s) is required, in its proposal to disclose any actual or potential conflicts of interest, together with a commentary on how any such conflicts could be avoided.

5.1 Policy and Legal Expert, EITI Policy and Legislation

Consultant(s) must have an advance academic degrees in Law or Public Policy with specialisation in policy and legislative drafting and a minimum of 5 years' relevant work experience in this field.

Consultant(s) should have a proven track record of defining extractive industries policies and legislation. He or she should have some relevant experience in drafting laws for the extractive industries, including mining, oil, gas and environmental laws.

Project experience in developing countries would be an advantage. The Consultant(s) must have good project coordination and communication skills and will be able to deal with complex legal and policy making processes relating to different stakeholders.

The proposed consultancies are intended to provide guide only. The Consultant should be able to propose other experts (sub-contracts) that he or she deems necessary to execute the assignment.

6. TRAINING AND TRANSFER OF KNOWLEDGE

Training and transfer of knowledge is an integral part of the project to ensure sustainability of the measures implemented in the course of the project.

The Consultant(s) will have to provide a description of the training he or she intends to provide. It is expected (as a minimum) that the Consultant(s) dedicates time for involvement of the TWG in the development of the legal texts and the policy papers.

7. REPORTING REQUIREMENTS AND TIME SCHEDULE FOR DELIVERABLES

7.1 Reporting Protocol

The following are the reporting protocol that the consultant(s) will be expected to follow:

- Consultant(s) is to engage regularly with the TWG and the PNGEITI National Secretariat;
- All relevant reporting is to be done through the TWG, onward to the PNGEITI National Secretariat and the MSG and eventually to the Chair/Treasurer;

- Consultant’s engagement with the MSG is to be facilitated through the TWG and the PNGEITI National Secretariat; and
- The Consultant(s) must engage regularly with the TWG and the National Secretariat for all logistical and administrative support where required.

Program Management Plan:

At least seven (7) business days prior to the post award conference, the Consultant(s) shall provide to the PNG EITI National Secretariat and the MSG an overall program management plan for completing the requirements of the Terms of Reference.

Post Award Conference:

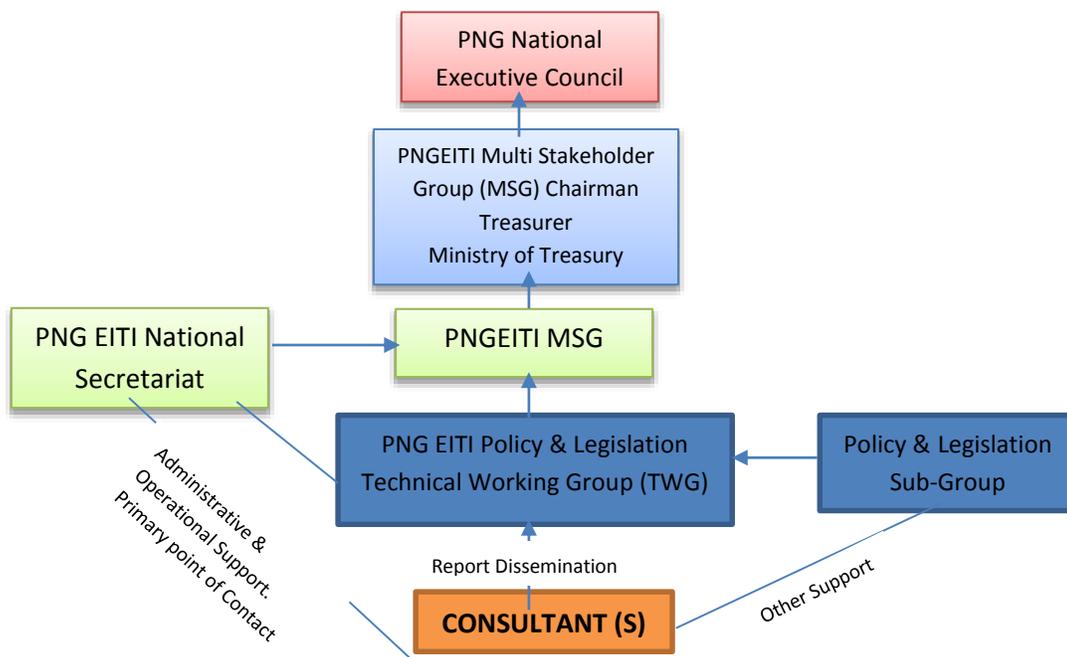
The post award conference will be held in-person with the contract managing partner, lead consultant or relevant staff, and the PNGEITI National Secretariat staff and the relevant MSG technical working group members. This conference will be held at the PNG EITI National Secretariat office in Port Moresby within fifteen (15) business days of a fully executed contract.

Monthly Status Reports:

The monthly Status Reports must document the efforts made in the completion of each phase of the project. The Consultants will draft the initial monthly status report template to be agreed upon at the post award conference. The report shall include but is not limited to the following requirements:

- Project status, to include objectives met, work completed and work outstanding
- Notable achievements/non-achievements
- Issues or obstacles impeding progress and recommended solutions
- Description of work completed and plans for the following month
- Summarize the efforts of each phase in the Terms of Reference
- Update on project personnel/staffing with contact information

Reporting Structure:



7.2 TIME SCHEDULE FOR DELIVERABLES

The PNGEITI National Secretariat anticipates awarding of a fixed price (FFP) contract. The consultant shall complete the work associated with each task in accordance with the proposed schedule below:

Type of activity	Deliverable dates
Signing of contract	05 March 2018
Submit Work Plan	19 March, 2018
Initial drafting/Scoping report	28 March 2018
Submission of draft Policy and Legislation	15 June 2018
MSG Reviews and provides feedback	29 June 2018
Submission of Revised draft Policy and EITI Law Bill	13 July 2018
Preliminary analysis	14 – 31 July 2018
Submission of Final proposed EITI Policy and Legislation	01 August 2018
MSG Reviews and comments	15 August 2018
Final EITI Policy and Law endorsed and approved by MSG	31 August 2018
Public and stakeholder Consultations	01- 28 September 2018
Feedback from public consultations reflected in the proposed Policy and Legislation	01-05 October 2018
Second round of consultations between relevant State entities coordinated by Department of Treasury	08-15 October, 2018
Submission of draft policy and law to the NEC through the policy submission Process	16 October 2018
NEC considers the submissions and endorses the submissions	17 – 31 October 2018
Submission of EITI Policy and Draft Legislation Bill to Parliament	01-06 November 2018

EITI National Policy and Law passed by Parliament	06 November 2018
PNGEITI National Policy and Law come into effect	01 January 2019

Schedule of payments shall be as follows:

- 10%** following contract signing
- 20%** following delivery of the scoping reports on Policy and Legislation
- 40%** following delivery of the draft EITI National Policy and Legislation
- 30%** following MSG approval and adoption of the final PNGEITI National Policy and Law for submission to Parliament as draft Bills.

8. OWNERSHIP OF MATERIALS AND CONFIDENTIALITY

All draft reports, photographs, tables, reports, computer print-outs and other information prepared or caused to be prepared by the Consultant(s) in connection with the services shall remain the exclusive property of the agency (PNGEITI National Secretariat). These include the originals or reproducible copies, if utilized during the execution of the work, copies of computer-readable forms of the draft reports, tables and final reports shall be delivered to the agency forthwith on completion or prior to termination of the services. The agency may use all drafts, photographs, tables, reports, computer print-outs and other information in future developments.

The Consultant(s) is required to keep confidential materials sensitive in nature similar to what is referred to above, furnished to him/her for the purpose of this project. All information and materials are confidential and shall not be divulged for public consumption or interested third parties without prior written consent from the Head of PNG EITI National Secretariat.

9. CLIENT’S INPUT AND COUNTERPART PERSONNEL

The PNGEITI National Secretariat and the Technical Working Group (TWG) on Policy and Legislation will support the work of the Consultant(s) by providing counterpart staff, facilitate meetings, trainings and workshops for consultations with stakeholders and other tasks as and when required. The TWG and the National Secretariat will work closely with the consultants on behalf of the MSG, and the MSG will provide oversight and involve directly where required in this assignment.

10. ANNEXES

10.1 Procurement Process and Timeline

PNGEITI, National Secretariat Conducts Market Research (call for EoI)	15–30 January 2018
PNGEITI, National Secretariat Receives Technical and Commercial Responses from Vendors	05-12 February 2018
PNGEITI National Secretariat forwards responses to MSG Technical Working Group for review and comments	13 February 2018
MSG Technical Working Group provides feedback on market research documentation to the National Secretariat	14 February 2018
PNGEITI National Secretariat and Technical Working Group submit summary assessment to the MSG for inputs and feedback	21 February 2018
PNGEITI National Secretariat finalizes inputs and comments from the MSG.	23 February 2018
PNGEITI National Secretariat with MSG technical support conduct analysis using agreed criteria to determine the successful vendor	26 February 2018
PNGEITI National Secretariat submits final assessment and recommendation to MSG for approval	27 February 2018
PNGEITI National Secretariat informs the successful bidder	28 February 2018
Contract Awarded	05 March 2018

10.2 Evaluation Criteria

1. **Technical Approach** –Consultant (s) must demonstrate a thorough understanding of the tasks and scope of work required to draft the PNGEITI National Policy and Legislation. Consultant(s) should address their unique approach to accomplishing the work set forth in this TOR and include innovative approaches to complete this assignment. Consultant(s) shall provide a detailed management plan explaining schedules, project-management, quality assurance procedures, and assurances for on time completion within the allotted budget. A quality control plan should also be included.
2. **Qualifications/Experience** – Consultants should address the qualifications of the consultant (s) of consulting firm. In addition, vendors should provide one-page resumes displaying the qualifications, experience, operational knowledge, and skills of key personnel who will work on the project.
3. **Past Performance** –Consultant(s) shall provide past performance information for similar work including a list of clients with contact information for current projects and projects completed within the past two years. Include any special awards for similar work.

4. **Price** – Consultant(s) shall provide a complete, detailed breakdown of all labour hours and travel expense estimates within the price proposal.