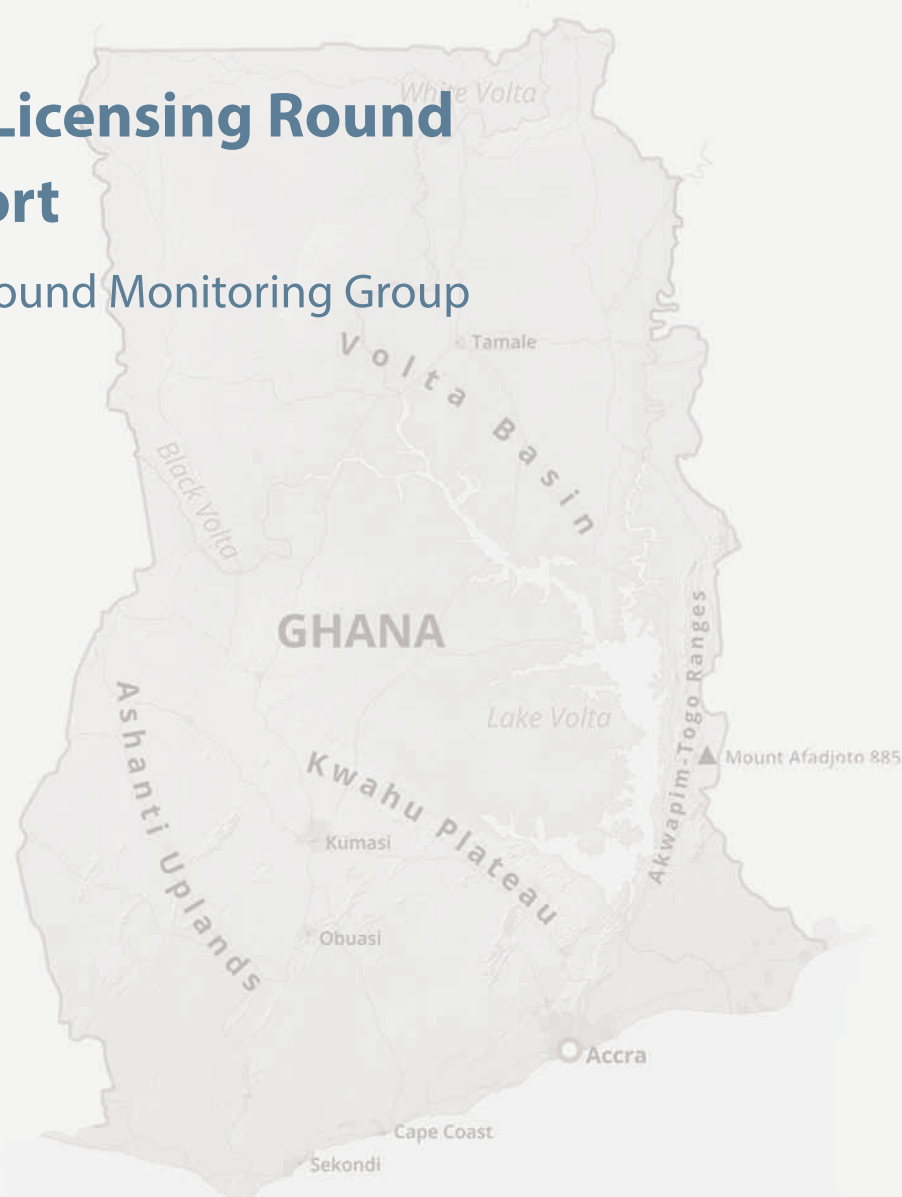




Ghana's First Oil Licensing Round Monitoring Report

Civil Society Licensing Round Monitoring Group



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Acknowledgements

The BLR Group would like to express sincere gratitude to the Natural Resource Governance Institute (NRGI), Ghana Oil and Gas for Inclusive Growth (GOGIG), Open Contracting Partnership (OCP) and the UK Department for International Development (DFID) for funding this report, and the work of the BLR Group.

It is our hope that this report lends insights to a transparent and successful bid round in Ghana and serves as a reference document for future bid rounds.

Bid and Licensing Round Monitoring Group organisations

Natural Resource Governance Institute (NRGI)

Ghana Oil and Gas for Inclusive Growth (GOGIG)

Africa Energy Consortium Limited

Centre for Extractives and Development Africa (CEDA)

Africa Centre for Energy Policy (ACEP)

Civil Society Platform for Oil and Gas

Graphic Communications Group

Multi Media Group Limited

Public Interest and Accountability Committee (PIAC)

Penplusbytes

IMANI Centre for Policy and Education

The Integrated Social Development Centre

With funding and technical support from:



List of abbreviations

AGI	Association of Ghana Industries
BLR	Bid and Licensing Round
BO	Beneficial Ownership
CNH	Comisión Nacional de Hidrocarburos
CSO	Civil society organisation
E&P	Exploration and Production
EITI	Extractive Industries Transparency Initiative
EOI	Expression of interest
EPA	Environmental Protection Agency
GNPC	Ghana National Petroleum Corporation
GOGIG	Ghana Oil and Gas for Inclusive Growth
GRA	Ghana Revenue Authority
IGC	Indigenous Ghanaian companies
IOC	International oil company
LBRN	Licensing Bid Rounds and Negotiation
LI	Legislative Instrument
MPA	Model Petroleum Agreement
NRGI	Natural Resource Governance Institute
OCP	Open Contracting Partnership
OGP	Open Government Partnership
PA	Petroleum Agreement
PEP	Politically Exposed Person
PNDC	Provisional National Defence Council
RGI	Resource Governance Index
UN	United Nations

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Key messages

- Bid and licensing rounds are now a global norm for resource-rich countries in selecting investors for upstream petroleum activities. Ghana's first oil bid and licensing round, launched in October 2018 was conducted in accordance with applicable laws and international standard practices.
- Six blocks were made available for the licensing round; three blocks to be awarded through an open and competitive bidding process, two through direct negotiations and one to be solely operated by Ghana National Petroleum Corporation (GNPC), the national oil company.
- The significant compliance with the legal provisions of the licensing round provide opportunities for sustained investor confidence in future licensing rounds.
- Quality of data and fiscal terms count in sustaining investor interest beyond the initial expression of interest. In the case of Ghana, out of 60 applications received from 16 companies, only three companies progressed to submit bids after prequalification.
- While the licensing process was ongoing (competitive tendering and direct negotiation), the Ministry opened an escape window for companies to negotiate outside the licensing round process. This has the effect of undermining the competitiveness of the process.
- Although the selection process met the timelines set by the Ministry, the actual negotiations of petroleum agreements are yet to be concluded 5 months after the deadline. This portends corruption risks and could negatively impact on future investor interest.
- Civil society monitoring to some extent played a watchdog role over the process.

Executive Summary

Ghana launched her first oil and gas licensing round in October 2018. This was in line with the country's new Petroleum (Exploration and Production) Act (Act 919). The objective of Ghana's first oil and gas licensing round was to:

"ensure transparency and fairness in the prudent and efficient management of petroleum resources and to enable the Government of Ghana to accelerate upstream activities so as to increase reserves and production of petroleum resources...for the Government of Ghana to achieve significant participation interest as defined in the evaluation criteria."

Six blocks were identified to be awarded. Three of the blocks were to be awarded through an open and competitive bidding process ¹, two through direct negotiations ² and one to be solely operated by Ghana National Petroleum Corporation (GNPC).

Natural Resource Governance Institute (NRGI), in collaboration with Ghana Oil and Gas for Inclusive Growth (GOGIG), supported the formation of the Bid and Licensing Round (BLR) Working Group, composed of civil society organisations and media in December 2018. The main purpose of the working group is to serve as a strong external oversight and social accountability body that monitors the bid and licensing process. The purpose of this report is to evaluate the licensing round; which is based mainly on the theme of transparency. Transparency has the potential to reduce corruption and ensure that the country optimises the benefits from the extraction of the resources. It also provides a fair playing field for companies.

The report employed both quantitative and qualitative tools in assessing the first oil and gas licensing round. The process involved indicator identification, key informant surveys, analysis of legal context to the licensing round and a score card analysis of the performance of government based on the identified indicators. The analysis was done based on three main thematic areas:

1. Transparency in the compliance with law
 - a. Adherence to procedural requirements under competitive bidding
 - b. Direct negotiations
2. Compliance with calendar of events under licensing round
3. Public engagements.

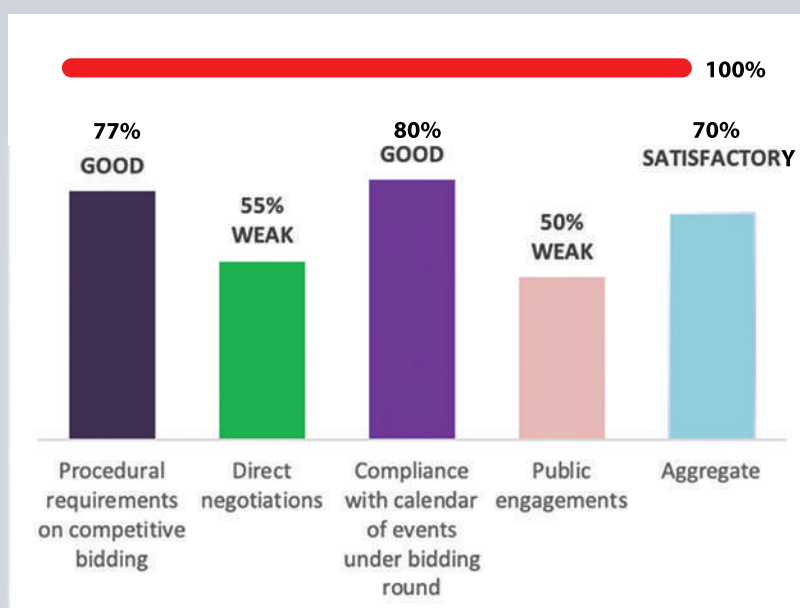
¹ Oil blocks are awarded on the basis of competitive bids based on a number of pre-determined criteria known to all companies that applied. The rights go to the highest bidder. See Nahkle, 2015 (http://www.lcps-lebanon.org/publications/1436792630-edt_lcps_carol_n_policy_paper_2015_high_res.pdf).

² Exploration and production rights are allocated as a result of negotiations between the government and interested investors through a solicited or unsolicited expression of interest. Act 919 makes provision for direct negotiation as an exception to the default rule of competitive bidding.

The scoring was done by adopting the grading scale in Natural Resource Governance Institute's (NRGI's) Resource Governance Index (RGI), as represented in the table below;

Range	Interpretation
75 – 100	Good
60 – 74	Satisfactory
45 – 59	Weak
30 – 44	Poor
0 – 29	Fail

The entire process cumulatively scored 70 percent which is interpreted as Satisfactory on the adopted grading scheme. Thematic areas that were rated as good were adherence to procedural requirements under competitive bidding and the compliance with the calendar of events under the licensing round.



The analysis shows that compliance with the competitive tendering requirements of the licensing round was significantly better than that of the direct negotiations. The results show little effort by the Ministry of Energy to engage the public beyond the mechanical application of the law. Good practices in other countries serve as examples for Ghana to improve public engagement on subsequent licensing rounds.

Beyond the approach to score the process, the report discusses other observations which include the decline in the level of interest shown by investors during the early periods of the bid process. While government cites inadequate data and size of the blocks as reasons companies lost interest, engagements with some industry watchers and companies reveal that fiscal terms stipulated in the invitation to tender did not compensate for risk. Secondly, while the licensing process was ongoing (competitive tendering and direct negotiation), the Ministry opened an escape window for companies to negotiate outside the licensing round process.

The report recommends areas of focus for government beyond the application of the law in subsequent bidding rounds to ensure greater success. The report makes the following recommendations:

1. Government must start issuing reconnaissance licences to gather quality data to aid future bidding rounds. The cost for such an activity will be recovered from data fees during competitive tendering. Liberia used this approach to acquire data which enabled them to carry out competitive tendering.
2. Government must publish disaggregated information on bidders and their respective blocks they are prequalified for.
3. Disclosures on beneficial ownership must be made publicly available during the prequalification stage. This allows for citizens to monitor the bidding process and to identify politically exposed persons in the contract process.
4. Government must ensure that direct negotiations are done only where peculiarities that point to a specific company to optimise the resources are established.
5. Government must make deliberate efforts to engage the public beyond the requirement of the law. It is recommended that such engagements must have feedback systems to encourage citizens to share information that might be relevant for the licensing round and by extension, the national interest.

Background

1

The interest in Ghana's oil fields increased significantly after commercial discovery of oil in 2007 and subsequent production in 2010. 14 oil blocks were then allocated to 14 oil companies between 2010 and 2014 for exploration. The allocation process however employed direct negotiations, which was no different from what existed before oil discovery under PNDC Law 84. That, non competitive process accorded wide discretion to officials, and the 14 companies licensed under this regime failed to deliver on their work obligations for lack of financial and technical competencies.³

To change this trend, public advocacy on the need for transparency and internalisation of international open contracting principles were championed by local Civil Society Organisations (CSOs) and international organisations such as Extractive Industries Transparency Initiative (EITI), Natural Resource Governance Institute (NRGI) and Open Contracting Partnership (OCP) for the award of petroleum blocks. This culminated in the passage of the Petroleum (Exploration and Production) Act, 2016 and the Petroleum (Exploration and Production) (General) Regulations, 2018 (LI 2359). The Act recognises open contracting as a mechanism for the award of petroleum blocks either through competitive tendering as the default⁴, with options for direct negotiation with published reasons⁵ and allocation to the National Oil Company.

In July 2018, after Ghana declared the intention to launch her first bid round under the new E&P Act, NRGI in collaboration with Open Contracting Partnership organized a bid preparation workshop for Ministry of Energy and Licensing and Bid Round Committee (LBRN)⁶ to ensure transparency in the process. The workshop leveraged relationships developed with Mexico's National Hydrocarbons Commission (CNH) and Lebanon Petroleum Administration (LPA). Representatives from CNH and LPA were invited to share lessons from their experience in executing their first bid rounds. NRGI and OCP also shared a range of examples of international best practices drawn from their research: "Open Contracting for Oil, Gas and Mineral Rights: Shining a Light on Good Practice."⁷

Ghana's first licensing round was officially launched in October 2018 to give effect to the open contracting provisions of Act 919. For the 2018 / 2019 licensing round, six oil blocks were planned to be awarded; three were allotted for competitive tendering, two for direct negotiation and one for the national oil company as shown in Table 1 below. All the blocks are located in the Western Basin of the country as also shown in Figure 1.

³ <https://s3.amazonaws.com/new-acep-static1/reports/Petroleum+Contract+Monitor+2019.pdf>

⁴ This is in line with Section 10(3) of Act 919

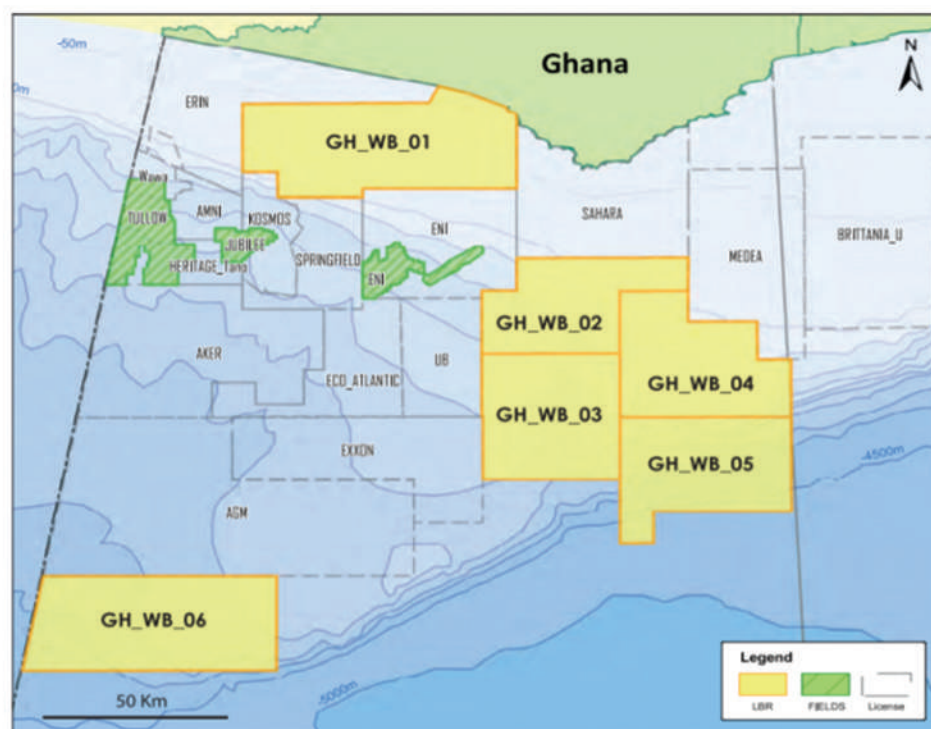
⁵ This is in line with Section 10(9) of Act 919

⁶ The LBRN is a committee established by government to oversee the licensing round process

⁷ <https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>

Table 1: Oil blocks allocation for Ghana's first licensing round

Name of block	Competitive tendering	Direct negotiation	Reserved for GNPC
Block GH_WB_01			☑
Block GH_WB_02	☑		
Block GH_WB_03	☑		
Block GH_WB_04	☑		
Block GH_WB_05		☑	
Block GH_WB_06		☑	

Figure 1: Block locations

Source: <https://www.ghanalr2018.com/>

The Licensing Round Process

2

2.1 Licensing Round Objectives and Awards

The objective of Ghana's first oil and gas licensing and bidding round was to *"ensure transparency and fairness in the prudent and efficient management of petroleum resources and to enable the Government of Ghana to accelerate upstream activities so as to increase reserves and production of petroleum resources ... for the Government of Ghana to achieve significant participation interest as defined in the evaluation criteria ⁸."*

2.2 Licensing Bid Rounds and Negotiation (LBRN) Committee and calendar of event

Pursuant to the objectives of the licensing round, the LBRN Committee was established in May 2018 to facilitate the successful conduct of the licensing round and was expected to complete the award of blocks to successful companies by the end of August 2019 (see Table 2).⁹

Members of the committee are institutionally appointed with representation from:

- Ministry of Energy
- Ghana National Petroleum Corporation (GNPC)
- Attorney General's Department
- Ministry of Finance
- Petroleum Commission
- Environmental Protection Agency (EPA)
- Ghana Revenue Authority (GRA)

The committee developed the schedule on Table 2 below to guide the licensing round.

Table 2: Ghana's licensing round calendar of event

Milestone	Proposed timeline	Status
Data view/data Licensing	29/10/2018 to 30/05/2019	Achieved
Publication of Invitation for expression of interest and pre-qualification	29/10/2018	Achieved
Deadline for submission of expression of interest and pre-qualification application	20/12/2018 at 5 pm (local time)	Achieved
Evaluation of prequalification applications	20/12/2018 to 21/01/2019	Achieved

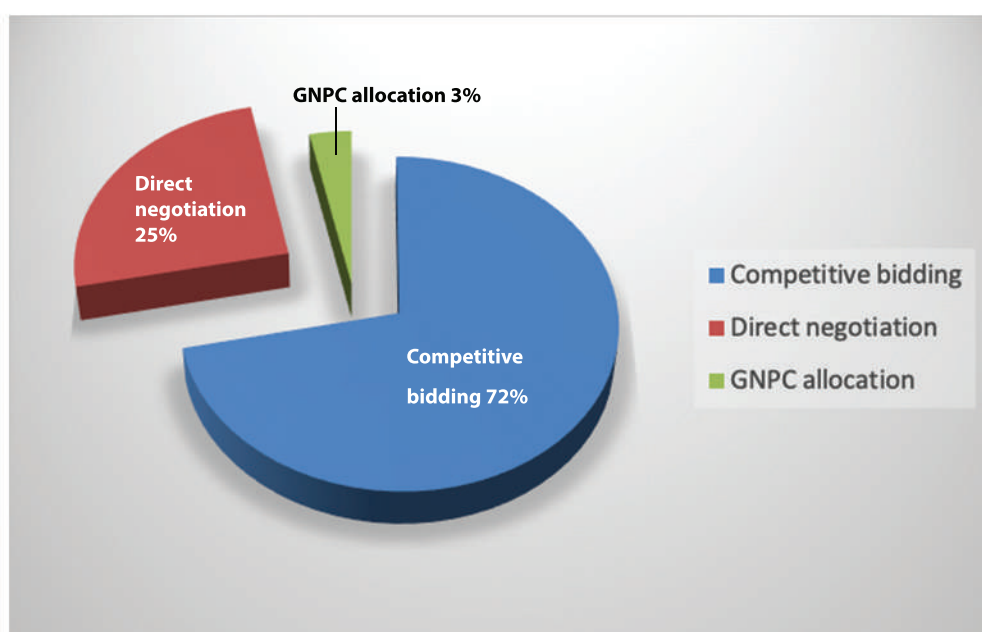
⁸ This was taken from the invitation to tender document

⁹ See <https://www.ghanaweb.com/GhanaHomePage/business/Energy-Minister-inaugurates-licensing-rounds-bid-evaluation-and-negotiation-committee-652467>

Milestone	Proposed timeline	Status
Announcement of prequalification results and publication of Invitation of successful applicants to tender	21/01/2019	Achieved
Bid submission deadline	21/05/2019 (12 noon, local time)	Achieved
Public opening of bids by the Hon. Minister for Energy	21/05/2019 (12:01 pm local time)	Achieved
Publication of list of participating bidders	22/05/2019	Achieved
Bid evaluation	22/05/2019 to 28/06/2019	Achieved
Announcement of successful bidders	02/07/2019	Achieved
Commencement of negotiation and award of block	02/07/2019 to 30/08/2019	Delayed

Sixteen (16) companies expressed interest and submitted 60 applications for the blocks on offer, of which 43 applications were for competitive bidding (Blocks 2, 3 and 4) and 15 were also for direct negotiations (Blocks 5 and 6). Two out of the 16 companies were disqualified after the prequalification evaluation. One applicant was disqualified for submitting an application for Block 1 which was reserved for the national oil company and was not part of the blocks published for tender or direct negotiation. Another company was disqualified for not meeting the prequalification requirements. Figure 2 below shows the graphical representation of percentage allocation of blocks for competitive tendering, direct negotiation and allocation to the national oil company.

Figure 2: Percentage of applications for bidding rounds



The 14 prequalified companies were invited to make formal bid submissions to the government through the LBRN Committee. However, out of the 14 companies, only three companies submitted bids for two of the blocks available for competitive bidding: Tullow Ghana and Eni Ghana Exploration and Production Limited submitted bids for Block 3, whereas First Exploration and Petroleum Development Company submitted bids for Block 2.

The bids were publicly opened on 21st May 2019 while an announcement of the successful bidders was made on the 2nd of July 2019. First Exploration and Petroleum Development Company in partnership with Elandel Energy Limited as its local partner, won the bid for Block 2. Eni Ghana Exploration and Production Limited, and Vitol Upstream Tano Limited in partnership with their local partner, Woodfield Upstream Limited, were selected as the winners for Block 3.

Negotiations with winning companies began on 3rd July 2019. These were expected to be completed on 30th August 2019 as per the government's official timeline. However, the conclusion of negotiations has been delayed, and no official reason has been provided.

2.2.1 Reasons for the low interest in the licensing round

The reasons for the low interest in the bid submission process can be attributed to official sources and industry watchers. The Ministry of Energy has cited two main reasons:

- 1. Small size of blocks:** According to the ministry, the exploration strategy of some of the companies required that they operate in larger acreages. Ghana's block sizes were comparatively smaller than what is offered in other countries. This was observed by the monitoring group to be a weak reason because the size of the blocks was known before all the companies applied for prequalification for the licensing round. Thus, the size did not stop them from showing interest in the blocks.
- 2. Lack of comprehensive data on oil blocks:** This has been confirmed by some of the companies who participated in the licensing round. The checks carried out by the monitoring group indicate that about nine companies applied to review the data but only three progressed to submit applications. However, the monitoring group confirms that all the blocks on offer had either 2D or 3D seismic data.

Industry watchers also cited other reasons that could have accounted for the low interest in the blocks. First, the fiscal demands in the form of royalty rates were deemed high for the blocks. Also, while the bidding round was ongoing, the Ministry opened a window for negotiations with other companies outside the licensing round process. This channel of negotiation became more attractive to the investors than engaging in the bidding round.

2.3 Expectation of the process

Natural Resource Governance Institute (NRGI) in collaboration with Ghana Oil and Gas for Inclusive Growth (GOGIG), supported the formation of the Bid and Licensing Round (BLR) Working Group (hereafter known as "working group"), composed of civil society organisations and media in December 2018. The main purpose of the working group is to serve as a strong external oversight and social accountability body that monitors the bid and licensing process. The group's expectation which is expressed both in respect of the law and international best practices is to ensure that the bidding process is transparent.

Transparency involves the public disclosure and availability of relevant information on the process of competitive tendering, direct negotiation and allocation to the national oil company. The information disclosure is expected to be in a format that makes the process understood by the public.

2.3.1 Reasons for the focus on transparency

Resource contracts, and the process by which they are allocated have generally been shrouded in secrecy for many years. The benefits to the state and the company become the preserve of the company and politicians. This limits access to relevant information by the citizens who are the primary owners of the resources. According to NRGI, *“secrecy hides incompetence, mismanagement and corruption – but only from the public, not from the industry that typically comes to know the terms of a deal or even the text of the putatively secret agreement.”*¹⁰ In addition, EITI notes that contract transparency help guard against misinformation on the terms of the contract, and also provides avenues to improve domestic resource mobilisation.¹¹ The state is also denied of some capacities that may be available to the public in the national interest.

As a result, there has been increased effort from the international community and local actors in many countries to improve transparency around resource contracts. Transparency has the potential to reduce corruption and ensures that the country secures the maximum benefits from the extraction of the resource. It also provides a fair playing field for companies to play and ensures that ethical companies are not disadvantaged.

Ghana has responded to the call by passing the laws to internalise transparency principles. The country currently is one of the best performers in Africa on transparency in the extractive sector as far as developing legislations is concerned.¹² The working group's expectation is to ensure that the laws are implemented to practicalise its intention.

¹⁰ NRGI's report on contract transparency, 2010. (available at <https://resourcegovernance.org/analysis-tools/publications/contract-transparency>)

¹¹ EITI Contract Transparency Brief: https://eiti.org/sites/default/files/documents/2018_eiti_contract_transparency_brief.pdf

¹² Ghana's profile on NRGI's resource governance index (available at <https://resourcegovernanceindex.org/country-profiles/GHA/oil-gas>)

Methodology

3.1 Data sourcing and identification of indicators

The report employed both quantitative and qualitative tools in assessing the first oil and gas licensing round. The process involved identification of key indicators, key informant surveys, analysis of legal context to the licensing round and a score card analysis of the performance of government based on identified indicators.

There is a legal context to Ghana's open contracting framework which guides licensing rounds. Act 919 which is the Exploration and Production (E&P) law was passed by government in 2016 to ensure competitiveness and transparency in the award of petroleum blocks in the country. The methodology used is a blend of testing compliance with the legal requirements and how it meets the stated objectives in the regulations to the Act 919, as well as compliance with the established processes for the bidding round and transparency beyond the legal requirements that satisfies international best practices. Therefore, the fundamental guide to assessing the performance of government on the licensing round is the requirement of the law which is given higher weight. Beyond the law are also two important parameters which are recognized as international best practices that can enhance competitiveness and/or attractiveness of the bid process; commitment to the established timelines and processes, and broad public engagements on the process. Thus, the bid round is evaluated using three main thematic areas namely; compliance with the law, compliance with the calendar of events, and public engagements.

1. Compliance with the law

It is required that all processes must be in adherence to the provisions of the law. The licensing process is backed by the Act 919 and LI 2359. Under the compliance with the law, the evaluation of the licensing round covers adherence to the procedural requirements on competitive bidding and the adherence to the processes of direct negotiations as established in the law.

a. Adherence to procedural requirements on competitive bidding

Section 9 of LI 2359 presents the general requirements for the tender process which include an expression of interest, an invitation to tender, the submission of bids, the evaluation of bids, the decision on the bids and entry into a petroleum agreement. The assessment was done based on the adherence to the various procedures as enshrined in the regulations. The following indicators are therefore generated from the regulations to guide assessment of the licensing round:

- i. **Publication of invitation and result on prequalification:** The Minister is required to publish the invitation to prequalify in the Gazette, at least two state owned daily newspapers and on the website of the Ministry (Regulation 10(3)). The assessment was based on the Ministry's adherence to the regulations on publication. Again, the Minister is required to make a decision with respect to the qualification for each expression of interest that is submitted. Assessment was based on whether the decision to prequalify or not was in compliance with the criteria set out in the invitation to pre-qualify, and whether the reasons for qualification or disqualification was published.

- ii. **Beneficial Ownership (BO) information:** One of the strong commitments of government during the public engagements on the petroleum regulations was the requirement for beneficial ownership disclosure. This indicator tests how the regulation is implemented by requiring the publication of BO in the invitation to prequalify.
- iii. **Invitation to tender:** The regulation on invitation to tender lists the schedule for the tender process and the various criteria for evaluating the bids. Assessment of the invitation to tender document is done based on section 10(6) of Act 919 and regulations 12,13 and 14 of LI 2359. The law and regulations specify the requirements on the content of the invitation, tender document and publication of the invitation.
- iv. **Opening of bids:** The Minister is required to open the submitted bids in public and to publish the list of bidders in the Gazette, at least two state owned daily newspapers, on the website of the Ministry and any other medium of public communication (Regulation 17). This indicator assesses the transparency of the process. Assessment of this is based on the Ministry's adherence to the legal requirement.
- v. **Decision on Bids:** The Ministry is to notify both unsuccessful and preferred bidders in writing after the evaluation of the bids have been done. This minister must publish the announcement of the winning bidder in the Gazette, at least two state-owned daily newspapers and on the Ministry's website (R. 18). Assessment is based on the Ministry's adherence to the publication of information on the decisions made on the bids.

b. Direct negotiations

Section 10 (5) of Act 919 states that *"Where all or part of the area offered for tender in a public tender process has not become the subject of a petroleum agreement, but the Minister determines that it is in the public interest for that area to be subjected to a petroleum agreement, the Minister may initiate direct negotiations with a qualified body corporate for a petroleum agreement."* The minister is however required to provide reasons for the decision to carry out direct negotiations instead of competitive tendering process. This assessment is therefore based on:

- i. the publication of the reasons for direct negotiation. This is to enhance the transparency of the process.
- ii. testing the justification of the decision to carry out direct negotiations.

2. Compliance with the calendar of events under the licensing round

The licensing round was to follow a schedule of activities with their respective timelines as presented in Table 2 above. Adherence to the deadlines provides a check on the smoothness of the process and the level of bureaucracy that exists in the bid rounds. Timeliness eliminates suspicions of foul play by the parties. It provides an indication of the seriousness and capability of government to effectively and efficiently engage in business with investors and companies willing to explore the country's oil reserves.¹³ The assessment is based on whether the steps in the bid rounds were in compliance with the deadlines given in the time table:

¹³ The quality of administration of regulatory processes is a factor considered by investors in assessing attractiveness of a location for investment. Investor surveys such as the Fraser Institute's Global Petroleum Survey include factors such as investors' perceptions of "regulatory enforcement—uncertainty regarding the administration, interpretation, stability or enforcement of existing regulations" in ranking attractiveness for investment.

- i. Compliance with deadline for prequalification
- ii. Compliance with deadline for bid submission
- iii. Compliance with deadline for opening of bids
- iv. Compliance with deadline for announcements of the winning bids
- v. Compliance with deadline for award of contract

3. Public engagements

Deliberate engagements with the public and other relevant stakeholders help to improve transparency of bidding processes. The engagements keep citizens, on whose behalf the resources are being offered on tender abreast with evolving events within the licensing rounds and help them track the process. They also improve public confidence and carry citizens along to monitor the process. Again, Ghana subscribes to global governance initiatives such as Extractive Industries Transparency Initiative (EITI), the Open Government Partnership (OGP), and the United Nations (UN) Conventions on Anti-Corruption which recognise the importance of public participation in contracting for effective governance. Engagements with civil society organisations also allow them to provide opportunities for suggestions and concerns to help improve the process. The assessment on the basis of public engagement is centred on three key parameters:

- i. Invitation to observe the process
- ii. Availability of the Ministry to engage stakeholders
- iii. Provision of information beyond the requirement of the law yet consistent with international best practice and Ghana's subscription to international conventions and initiatives

3.2 Scoring processes

The above description of the criteria is summarised into a total of 16 indicators on which the scoring is based. Scoring is carried out on the three broad parameters identified. Based on information obtained from various industry watchers, available public information put out by the ministry and monitoring done by members of the working group, each indicator was scored based on a determined weight. The construct on the compliance with the law was given a weight of 80 percent (60 percent for adherence to procedural requirements on competitive bidding and 20 percent for direct negotiations) whereas the constructs that relate to compliance with calendar of events and public engagements were given weights of 10 percent respectively. These sum up to a score of 100 percent. Table 3 presents a summary of the scoring methodology for the licensing round.

Table 3: Scoring indicators for licensing round process

Indicator ID	Criteria / Sub criteria / Indicators	Score
Compliance with the law		
<i>Adherence to procedural requirements on competitive bidding</i>		
A	Publication of invitation on prequalification	10
B	Beneficial Ownership Disclosure	10
C	Decision on prequalification and adequacy of the information provided	10
D	Invitation to tender	10
E	Public opening of submitted bids	10
F	Decision on bids	10
<i>Direct negotiations</i>		
G	Publication of reasons for direct negotiation	10
H	Justification of the decision to carry out direct negotiation	10
	<i>Sub total</i>	80
<i>Compliance with calendar of events under bidding round</i>		
I	Compliance with deadline for prequalification	2
J	Compliance with deadline for bid submission	2
K	Compliance with deadline for opening of bids	2
L	Compliance with deadline for announcements	2
M	Compliance with deadline for petroleum agreement	2
	<i>Sub total</i>	10
<i>Public engagements</i>		
N	Invitation to observe the process	4
O	Availability of the Ministry to engage stakeholders	3
P	Provision of information beyond what is legal requirements	3
	<i>Sub total</i>	10
	<i>Grand total</i>	100

3.3 Grading Scheme

The grading scheme for the evaluation of Ghana's licensing round is adapted from the Resource Governance Index (RGI) by NRGI and is provided in Table 4.

Table 4: Grading scheme for scoring process

Range	Interpretation
75 – 100	Good
60 – 74	Satisfactory
45 – 59	Weak
30 – 44	Poor
0 – 29	Fail

3.4 Justification of weights

Compliance with the law: Ghana's E&P law is fairly robust and checks most of the requirements on open contracting. As a result of active participation of civil society and interest groups during its formative periods, the legal framework was greatly improved to incorporate many of the international open contracting principles such as competitive bidding, publication of information on the contracting process, the publication of the contract documents and the justification for direct negotiations. A weight of 80 percent is therefore assigned to compliance with the law as it commits the process to adhere to most of the international principles.

Compliance with calendar of events under bidding round: The calendar of events is essential for ensuring fairness of the process and eliminating unnecessary delays; hence strengthening transparency and accountability. Also, compliance with the calendar indicates level of efficiency of government in enforcing its regulations which is key for attracting high quality investors and fulfilling Ghana's objectives: *"prudent and efficient management of petroleum resources and to enable the Government of Ghana to accelerate upstream activities so as to increase reserves and production of petroleum resources"*

However, given that it is an administrative process, it is therefore given a lower score of 10 percent.

Public engagements: Even though the law provides for transparency within the process, there are still other requirements that deepen transparency. There are existing examples from countries such as Mexico and Lebanon on bidding rounds that encourage greater transparency beyond what the law provides. This is to ensure public understanding of the process and enhance trust. These also ensure that government does not just tick the boxes on compliance with the law but actually carry the public along the process. This thematic area is also assigned a weight of 10 percent.

3.4.1 Analysis of Red flags

Despite the thematic areas that are being used for the evaluation, there is enough evidence to show that licensing processes could exhibit certain inherent corruption risks that undermine the transparency of such processes. These inherent corruption risks have been captured in a research undertaken by NRGi on extractive sector licensing and contracts ¹⁴.

For the purpose of scoring, the emergence of each red flag attracts a 2 percent deduction from the total score. The assumption is that, the absence of the red flag is about 25 percent of the total score.



Box 1: National Resource Governance Institute's twelve red flags

1. The government allows a seemingly unqualified company to compete for, or win, an award.
2. A company or individual with a history of controversy or criminal behaviour competes for or wins, an award.
3. A competing or winning company has a shareholder or other business relationship with a politically exposed person (PEP), or a company in which a PEP has an interest.
4. A competing or winning company shows signs of having a PEP as a hidden beneficial owner.
5. An official intervenes in the award process, resulting in benefit to a particular company.
6. A company provides payments, gifts or favours to a PEP with influence over the selection process.
7. An official with influence over the selection process has a conflict of interest.
8. Competition is deliberately constrained in the award process.
9. A company uses a third-party intermediary to gain an advantage in the award.
10. A payment made by the winning company is diverted from the appropriate government account.
11. The agreed terms of the award deviate significantly from industry or market norms.
12. The winning company, or its owners, sell-out for a large profit without having done substantial work.

¹⁴ Twelve Red Flags: Corruption Risks in the Award of Extractive Sector Licenses and Contracts (Available at <https://resourcegovernance.org/analysis-tools/publications/twelve-red-flags-corruption-risks-award-extractive-sector-licenses-and>)

Analysis and Scoring

4

4.1 Analysis and scoring of indicators

The analysis is presented in Table 5 below. The table presents the ideal case and the actual situation of the licensing round based on the indicators identified in the methodology. The examination of the ideal case and the actual situation give the justification of the score for each indicator.

Table 5: Analysis of indicators and justification for scoring

Indicator ID	Ideal case	Actual case	Score
Compliance with the law			
A (Publication of invitation on prequalification)	The minister is required to issue a public invitation on prequalification based on the criteria as stated in regulation 10 (2) of LI 2359 (see Appendix I for list of criteria). The publication of the invitation is required to be published in the Gazette, at least two state-owned newspapers and on the website of the Ministry. The Minister is given the discretion to also publish in any other medium of public information.	The invitation provided the policy objectives, application fees, major requirements for pre-qualification and the address of the Ministry based on the criteria in the LI. An invitation to apply for pre-qualification was published in the Gazette (No. 142, 2018), two national newspapers and the website of the Ministry of Energy as required by law. Additionally, it was published on the websites of the Petroleum Commission and a dedicated licensing round website.	10
B (Beneficial Ownership Disclosure)	Regulation 11(1)(iv) of the regulations (L.I. 2359) requires that a company submits information on the ownership structure and beneficial ownership (BO) to the Minister of Energy as part of its prequalification application. This indicator tests whether the ministry requested for the BO in the invitation to prequalify.	The invitation to prequalify did not indicate to the companies that they are required to submit beneficial ownership information. However, the Ministry indicates that they requested for the information through guidelines that were submitted to the companies. For the benefit of doubt , half of the full marks is awarded since there is no public evidence to support the claim of the Ministry.	5
C (Decision on prequalification and adequacy of the information provided on the process)	The Minister is required to make a decision on the pre-qualification in respect of each person in line with the evaluation criteria spelt out in the invitation to prequalify. This indicator tests the transparency around the decision in a manner that builds confidence in the activity and the process by extension.	The decision was communicated to affected companies in a timely manner. The Ministry of Energy made the announcement through several media channels. One company was disqualified for applying for a block that was reserved for GNPC, the national oil company. Another company was also disqualified for failing to meet the set criteria for pre-qualification. 14 companies were prequalified to enter into the bid round.	

Indicator ID	Ideal case	Actual case	Score
		However, the information provided fell short of indicating the specific block the companies were prequalified for. This did not allow for independent assessments of the companies who showed interest in the blocks to determine those who later opted to engage in direct negotiation.	8
D (Invitation to tender)	<p>The regulation has a requirement for invitation to tender. The Regulations provide a list of eight items that must be contained in the invitation to tender document as stated in Regulation 12 (2) of LI 2359 (see Appendix II for the list of items required for an invitation to tender). The ideal situation is that the Ministry fairly invites all prequalified companies to bid. Compliance with the requirements is awarded half of the full marks.</p> <p>Secondly, there is a requirement for the publication of the invitation to tender (Act 10(6)) in the Gazette and two national newspapers. Compliance with this requirement is awarded half of the full marks.</p>	<p>The Minister had indicated that all prequalified companies had been written to. In addition, interviews with industry watchers and sampled companies confirmed that all prequalified companies were presented with the invitation to submit tenders. The invitation to tender contained all the required items such as the address of the Ministry, the evaluation criteria, the required fees for the bid, deadlines for bids, schedules for the tender process among others.</p> <p>The invitation to tender was however not published as was required in section 10(6) of the Act.</p>	5
E (Public opening of submitted bids)	<p>The regulation requires that submitted bids be opened in public. There is however no clarity in the law on what the term “public” means. This report therefore applies the legal definition of the term as “... <i>the whole body politic, or the aggregate of the citizens of a state, nation, or municipality. The community at large, without reference to the geographical limits of any corporation like a city, town, or county; the people</i>”¹⁵ (Legal Dictionary).</p> <p>Also, the regulation requires that the list of the participating bidders must be published in the Gazette, at least two state-owned newspapers and on the website of the ministry. The minister is also given the discretion to also publish on any other medium of public information.</p>	<p>The bids were opened in public; albeit, by invitation. Also, the list of participating bidders was published in the Gazette and two state-owned daily newspapers, as well as on the website of the Ministry of Energy and the licensing round website.</p> <p>However, the process would have improved through open invitation to all interested parties.</p>	8

¹⁵ The Legal Dictionary (Available at <https://legal-dictionary.thefreedictionary.com/Public>)

Indicator ID	Ideal case	Actual case	Score
F (Decision on bids)	<p>The regulations require the Minister to make a decision on the bids and issue a written notice to the unsuccessful and the preferred bidders after the evaluation of bids and the decision to enter into one or more petroleum agreements.</p> <p>The Minister is also required to invite the preferred bidders to negotiate the detailed terms of the petroleum agreement.</p>	<p>Letters were formally written to all successful and unsuccessful bidding companies. Invitation to negotiate was sent to successful bidders for Blocks 2 and 3. An updated Model Petroleum Agreement (MPA) containing key provisions such as fiscal package, exploration and work programme obligations, local content and domestic market obligations was sent to all companies as part of the document pack. The MPA was also made publicly available on the licensing round website</p>	10
G (Publication of reasons for direct negotiation)	<p>The regulations require the minister to publish reasons for taking a decision to enter into a petroleum agreement on the basis of direct negotiations.</p>	<p>The minister published reasons for taking the decision to negotiate directly in compliance with the regulation.¹⁶</p>	10
H (Justification of the decision to carry out direct negotiation)	<p>The Minister is required to provide justification for the decision of direct negotiation. The ideal cases assess whether the justification is shared by industry watchers and civil society groups who monitor the process. Industry watchers were of the opinion that some of the instances when direct negotiation becomes necessary include the situation where a particular company has a unique technology essential for the area marked for direct negotiation. In addition, an international oil company (IOC) may find it necessary to develop areas that are in close proximity to its existing area of operation to utilise existing infrastructure.</p>	<p>Respondents were of the opinion that justification for direct negotiation was not tenable. Reasons for direct negotiations provided by the Minister included water depth which requires research and development, high drilling costs which require an understanding of the geological setting, and the retention of IOCs with the required technical and financial capacities.</p> <p>Respondents noted that these do not provide enough justification for direct negotiation as these are fundamental requirements for prequalification and invitation to tender. Additionally, many companies in the oil industry meet the requirement which is a necessary ingredient for competition. The justification is therefore seen as an excuse to engage in direct negotiation. Also, the evidence that more than one company showed interest in each of the blocks indicates that the ideal approach should have been competitive bidding.</p>	1

¹⁶ <https://www.petrocom.gov.gh/licensing-round-ghanas-energy-ministry-explains-why-most-oil-companies-pulled-out/>

Indicator ID	Ideal case	Actual case	Score
Compliance with calendar of events under bidding round			
I Compliance with deadlines for prequalification)	The invitation to tender indicated that announcement of prequalification results would be done on 21st January 2019	The announcement was made on the proposed date (21st January 2019)	2
J (Compliance with deadlines for bid submission)	Submission of bids were to be done by 12 noon on 21st May 2019	Bids submissions were closed by the said time.	2
K (Compliance with deadlines for opening of bids)	Public opening of bids was to be made just after the deadline for submission of bids, on 21st May 2019.	Public opening of bids was done at the said date.	2
L (Compliance with deadlines for announcements)	Announcement of successful bids was to be made by 2nd July 2019	Announcement of successful bids was made on 2nd July 2019.	2
M (Compliance with deadlines for petroleum agreement)	The commencement of negotiation and the award of contracts was to be done by 30th August 2019 after the announcement of successful bids.	This process has delayed for over five months.	0
Compliance with calendar of events under bidding round			
N (Invitation of the public to observe the process)	It is observed that the public is a necessary ingredient to transparency. Noting that it is difficult to invite all segments of society to be in the room where bids are opened, CSOs and identified groups such as trade unions and industrial associations should be invited to witness the process. This could also have been televised and/or streamed	It was observed that Association of Ghana Industries (AGI), two international organisations and selected media were present to participate in the opening of the bids. Local CSOs were not invited to the public opening of bids. This score is thus given to account for lack of participation by many stakeholders in the key milestone of the process- Opening of expression of interest and the bids.	2
O (Availability of the Ministry to engage stakeholders)	This measures the demand side engagement with the Ministry on the licensing round. Given the limited supply side engagement, the ideal case is that the Ministry is responsive to the demand side queries and request for information from the public.	Through a workshop organised by the NRGi in July 2018, the Ministry of Energy and the Licensing Bid Rounds and Negotiation (LBRN) Committee members briefed civil society and received their feedback. In addition, CSOs were invited to participate in the Indigenous Ghanaian Companies conference held in September 2018.	

Indicator ID	Ideal case	Actual case	Score
		<p>Further, some relevant officials of the Ministry have had some informal interactions with the conveners of the CSO group.</p> <p>However, it was not always easy to access the relevant officials for information due to lack of designated feedback system between the committee and the public.</p>	2
P (Provision of information beyond what is legally required)	<p>The ideal case is to see a deliberate engagement of the process for the public to understand and appreciate how the process evolved beyond the mechanical application of the law. Good practice calls for the publication of an explanation of how bids were evaluated, and the winner was chosen in a simplified manner.¹⁷</p> <p>In this indicator, we measure extra measures taken by the Ministry to simplify and provide information to the public beyond compliance with the law. The regulation provides the discretion for the Minister to use other medium of communication beyond prescribed channels.</p>	<p>The Ministry of Energy set up a dedicated website to publish information on the licencing round. This goes beyond the prescribed publication in the <i>Gazette</i>, the Ministry's Website and newspapers. However, there are examples of countries who made extra efforts to break down information, use technology to reach the general public during key milestones such as opening of bids.</p> <p>For example, Mexico's regulator, the National Hydrocarbons Commission (Comisión Nacional de Hidrocarburos, CNH), webcasts decisions around recent bid rounds. This enabled viewers to follow live presentations, papers and the discussion material. In addition, two-minute videos, generally available the following day, explaining the decisions, rationale and the key commitments expected from operators.¹⁸</p> <p>Lebanon published a presentation that outlined the evaluation process of the commercial and technical offers as per the Tender Protocol.¹⁹ The presentation described the results of the technical negotiations and assessed the two offers based on the licensing round's strategic objectives that were defined.</p>	1

4.1.1 Assessment of the Red Flags

The red flags were assessed based on available information. Some of the red flags were not identified. However, few could not be assessed because of inadequate information and the non-disclosure of beneficial ownership. Assessment of the red flags are presented in Table 6 below.

¹⁷ For examples of international good practice in this regard, including EITI requirements, see Open Contracting report, pp 39-43 at <https://resourcegovernance.org/sites/default/files/documents/open-contracting-for-oil-and-gas-mineral-rights.pdf>

¹⁸ For example, see video summarizing a commissioner's meeting held in October 2016 at www.gob.mx/cnh/videos/resumen-53-sesion-extraordinaria-2016?idiom=es.

¹⁹ See <https://www.lpa.gov.lb/first%20licensing%20round%20results.php>

Table 6: Analysis of red flags

Red flag	Occurrence	Remark
The government allows a seemingly unqualified company to compete for, or win, an award.	No	Assessment shows that the companies that bided were qualified. The companies who were not qualified were eliminated at the pre-qualification stage of the process.
A company or individual with a history of controversy or criminal behaviour competes for or wins, an award.	Pending	There is not enough information to provide an assessment of the presence this red flag.
A competing or winning company has a shareholder or other business relationship with a politically exposed person (PEP), or a company in which a PEP has an interest.	Pending	A declaration of Beneficial Ownership has not been sighted. Hence, this could not be assessed.
A competing or winning company shows signs of having a PEP as a hidden beneficial owner.	Pending	A declaration of Beneficial Ownership has not been sighted. Hence, this could not be assessed.
An official intervenes in the award process, resulting in benefit to a particular company.	No	Assessment does not discover any news on an intervention by a politically exposed person in the award process.
A company provides payments, gifts or favours to a PEP with influence over the selection process.	No	Assessment does not discover any news on such payments by companies.
An official with influence over the selection process has a conflict of interest	No	No evidence of such occurrence was encountered.
Competition is deliberately constrained in the award process.	No	Competition was not deliberately constrained. However, the decision to do a parallel application during direct negotiation, which industry watchers' thought was unjustified may have affected the success of the bid rounds.
A company uses a third-party intermediary to gain an advantage in the award.	No	No evidence of such occurrence was encountered.
A payment made by the winning company is diverted from the appropriate government account.	Pending	There is no evidence of such occurrence. Also, the final award is still pending, providing limited information for assessment.
The agreed terms of the award deviate significantly from industry or market norms	Pending	The final award is still pending and has not been made public yet.
The winning company, or its owners, sell-out for a large profit without having done substantial work.	No	No evidence of such occurrence was encountered.

As indicated in the methodology, the occurrence of any of the red flags attracts a deduction of two points from the aggregate points made in the assessment of the 16 indicators. Based on the available information and assessment of the process, none of the red flags was present. It must also be pointed out that five of the Red Flags could not be assessed fully because of inadequate information. Those indicators are described as pending. As information becomes available, those parameters will be redefined. This renders the overall score preliminary for monitoring how the pending parameters evolve. The summary of scores are presented in Table 7 below.

Table 7: Summary of scores

Criteria / Sub criteria / Indicators	Weight	Actual Score
Compliance with law		
Adherence to procedural requirements under competitive bidding	60	46
Direct negotiations	20	11
Compliance with calendar of events under bidding round	10	8
Public engagements	10	5
Analysis of red flags	0	0
Aggregate score	100	70

Based on the grading scheme, the aggregate score of 70 is interpreted as **Satisfactory**. Analysis of the individual themes indicate that compliance with calendar of events had higher score of 80 percent. This was followed by adherence to procedural requirements under competitive bidding, which scored 77 percent, out of their respective maximum weights. These themes were thus rated as **Good** based on the grading scheme.

Compliance with regulations on direct negotiations recorded a cumulative score of 11 out of a total score of 20; representing 55 percent. This renders its performance as **Weak** based on the grading scheme. The theme on Public engagements is rated **Weak**, having scored 5 out of 10 points representing 50 percent (See Figure 3).

Figure 3: Grading of thematic areas



Observations and Recommendations

Ghana conducted its first licencing round in compliance with the country's new petroleum laws. The governance of the petroleum sector has been improving since the discovery of petroleum in commercial quantities in 2007. The passage of the E&P Act and subsequent regulations sought to improve on the contracting regime, recognising the inadequacies in the old regime. The repealed Petroleum (Exploration and Production) law (PNDC law 84), eight years after realising that it was not fit for purpose²⁰ demonstrated weak commitment on the part of government to optimise the exploitation of the country's petroleum resources.

The assessment of the licencing round however shows significant efforts by government to comply with the new E&P law, the regulations and procedural schedule for the process. The analysis shows that compliance with competitive tendering requirement of the licensing round was significantly better than that of the direct negotiation.

The following summary observations are also made:

1. Expressions of Interest submitted during prequalification show an initial investor confidence in Ghana's oil industry, but this could not be sustained through the entire bidding process. The invitation for prequalification received 60 applications from 16 companies. Most of them are industry leaders such as, ExxonMobil, Total, BP, CNOOC, Eni, and emerging players such as Aker Energy, Tullow, Kosmos etc. However, the response to the bid was less encouraging, which is blamed on poor data quality and the size of the blocks according to government communication. These reasons were confirmed by the monitoring group with additional thoughts from some of the companies.

a. The fiscal terms did not compensate for the risk: Some of the companies were of the view that the demand for 12.5 percent royalty was high for blocks with poor data and deep-water depth. Additional frontloaded payments such as training fees, data fees and signature bonus etc, further increased the risk burden on the investor. The investors suspect the positive response to the prequalification unreasonably increased the appetite of government to make demands that killed interest in the process.

b. Parallel Direct Negotiation encouraged others to focus on engaging government rather than the competitive process: While government was pursuing competitive bidding and the transparent application of direct negotiation, some of the companies ignored the process because government was negotiating with them outside the transparent process. This defect affected open submissions for blocks GH_WB_05 and GH_WB_06 and competitive bidding on blocks GH_WB_02, GH_WB_03, and GH_WB_04. The Ministry confirmed in interactions with the media that 10 companies that intended to compete in the bidding round later changed their minds to engage in direct negotiation.²¹

²⁰ Ghana's first Oil for Development Conference held at Ghana Institute of Management and Public Administration (GIMPA) in February 2008.

²¹ <http://www.reportingoilandgas.org/10-iocs-opt-for-direct-negotiations-of-blocks-56/>

This represents a substantial setback to the process than the excuse on the size of the blocks. The size of the blocks was stated in the prequalification invitation and the companies knew the size of the blocks they were applying for before they expressed interest.

2. There was no deliberate supply side mechanism to engage the public and civil society on the process: Though the ministry intermittently relayed information to the media, there was insufficient opportunity to critique and help improve the process. Many Civil Society Organisations complained of the apparent lack of effort by the Ministry to engage them. This rendered the Ministry's public engagement simply mechanical to meet the requirement of the law rather than the commitment to carry the public along the processes and explain the technicalities and rationales behind key decisions being taken along the process.

3. There was limited information on the prequalified and disqualified companies on the bid: The Ministry gave the list of companies who qualified to enter the bid process but did not provide the specific blocks for which each of the companies were prequalified for. Again, the list of all the companies who applied for the block was not provided to the public. The lack of adequate transparency around the prequalification is dangerous for the bidding process since that could become a tool for the Minister to disqualify companies which are not preferred by him or her.

In light of the above observations, the working group makes the following recommendations:

1. Government must start issuing reconnaissance licences to gather quality data to aid future bidding rounds. The cost for such an activity will be recovered from data fees during competitive tendering. Liberia used this approach to acquire data which enabled them to carry out competitive tendering.
2. Government must deepen transparency in the prequalification process and more specifically, publish the companies that were disqualified in addition to those prequalified and the blocks they apply for.
3. Disclosures on beneficial ownership for both companies that apply for and those that eventually receive a contract must be made publicly available. This allows for citizens to monitor the bidding process and to identify politically exposed persons in the award of contracts
4. Government must ensure that direct negotiations are done only where peculiarities that point to a specific company to optimise the resources are established.
5. Government must make deliberate efforts to engage the public beyond the requirement of the law. It is recommended that such engagements must have feedback systems to encourage citizens to share information that might be relevant for the licensing round and by extension, the national interest.

Appendix I: Criteria for Prequalification (Regulation 10, LI 2359)

10. (1) Where the Minister pursuant to sub regulation (2) of regulation 10 has determined that a tender process shall be preceded by pre-qualification, the pre-qualification procedure shall be initiated by an invitation to prospective bidders to submit applications for pre- qualification.

(2) The invitation under sub regulation (1) shall state

- a) the blocks or part of the blocks on tender;
- b) the proposed petroleum activities;
- c) the qualification requirements for the relevant tender process;
- d) the information required from prospective bidders;
- e) the schedule for the tender process including times and venues;
- f) instructions to prepare and submit an application for pre- qualification including information and documentation requirements;
- g) the manner and place for submission of applications and the deadline for submission;
- h) any requirements for security or payment of fees;
- i) the address of the Ministry; and
- j) any other information considered relevant by the Minister.

Appendix II: Criteria for Invitation to Tender (Regulation 12, LI 2359)

12. (1) An invitation to tender for a petroleum agreement shall include

- a) the address of the Ministry;
- b) the schedule for the tender process including the times and places;
- c) a deadline for the prospective bidder to confirm acceptance of the invitation to tender;
- d) the means and place of obtaining the tender documents;
- e) the evaluation criteria and weighting of each evaluation criteria;
- f) the fee for the bid;
- g) the requirement and process to access any data or data room as the case may be; and
- h) any other information considered relevant by the Minister.

