

Local Authorities' Access to Project Contracts

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Executive Summary

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) during its July 2016 visit to Badakhshan found that local government institutions face a significant problem in monitoring the implementation of the major project contracts. In discussions with provincial authorities many mentioned a large number of projects approved in Kabul are being managed without their access to a copy of the contracts. Due to lack of access to the contract details, the local administrations cannot properly conduct their monitoring activities. Many officials noted this as a significant corruption risk, because powerful corrupt contractors could ignore local concerns, knowing that they would be protected in Kabul. The availability of contracts while implementing the project in the area could prevent some of these potential problems in the projects' implementation and improve local ownership.

Considering these claims, MEC initiated an examination of this issue across five provinces.

The results were quite different from one province to another, as shown in the table below

Province	Percentage of contracts that lack copy in the Province (10 projects in each province)
Balkh	20%
Kandahar	30%
Herat	50%
Bamyan	60%
Badakhshan	70%

There were different views on this issue from Kabul and from the provinces. The central view was because of the low capacity in the provinces and the fear of misuse by local authorities under the name of supervision. For example: "If the copies of contracts are shared with the provincial directorates, it will create proliferation of monitors and pave the way for more corruption. For example, when the Provincial Councils had oversight authority, the members of Provincial Councils were acting as they were the investigators and prosecutors and they misuse their authority".

From the Provincial side, the reasons were quite diverse:

- In Balkh, they have managed and used the local capacity and obligated the ministry and contractors to have the copy of contracts available before starting the project

work. No contractor can proceed with work on a project in the area, unless they share all the technical documents with the provincial officials. Balkh's governor has directed the subordinate directorates, particularly district governors, not to allow the contractors to proceed with work on projects without the written permission of the Governor's office.

- In Bamyan Province, the Directorate thinks they do not need the copy of contracts, stating: "this is the duty of Ministry; we have nothing to do with contracts and copy of contracts."
- Both Badakhshan and Herat experience problems because of not seeing the contracts. For example, the Director Public Works in Herat Province noted that, "beside the fact that the copies of contracts are not being shared with the Directorate of Public Works, the second problem is that the mentioned Directorate is making unauthorized interventions to oversee the projects progress."

1. Methodology of the Assessment

In response to the main question that whether or not a copy of contracts are sent to the provinces, MEC considered the following two hypotheses:

1. The technical documents of the projects are not being sent to the relevant directorates or provinces by the ministries.
2. The technical documents are being sent to the aforesaid organizations, but due to some reasons the local individuals and authorities cannot use these documents to manage and monitor the projects.

MEC carried out this assessment in five provinces. These provinces which consist of grade (A) and grade (B) provinces include Badakhshan, Balkh, Herat, Bamyán and Kandahar. In each province 10 projects were selected regardless of their sector, type, responsible organization and its donor. Two features were considered for the selection of these projects. These features include the value of project in terms of its cost and that the project work should have been started and it should have the project management recent changes. During its assessment, the team met with the key authorities such as deputy governor of the provinces, head of sectoral services, Director of department of economy and those sectoral directorates who were responsible for implementation of the contracts. Twenty-seven key provincial officials were interviewed.

2. The background of the current administrative structure

The assessment shows that there is no specific mechanism for sharing copies of contracts. However, the issue has been clearly reflected and approved in the resolutions of Council of Ministers.

The Council of Ministers' Resolution No. 43 dated 04/02/2008 states:

The President of the Islamic Republic of Afghanistan re-instructed the ministries that according to the previous decisions of the Council of Ministers, the projects being implemented in provinces should be proceeded and the bidding session should be held in the provincial capital of the relevant provinces in order to provide more employment opportunities for the local companies and organizations."

The issue has also been stipulated in Resolution No. 1 (2009) and Resolution No. 1 (2010), and the Independent Directorate of Local Governance (IDLG) has been tasked to monitor the bidding session and contracts signing process of all the local projects, except for large technical and specialized national projects.

In addition, Resolution No. 35 (2016) reads that all the ministries are obliged to submit a copy of contracts signed in the capital (Kabul) to their relevant provincial directorates.

These resolutions have been sent to the provinces. In the light of these resolutions and the decisions of administrative meetings, the local government institutions are requested to ask for the copy of documents from the relevant ministry.

However, no required changes have made in the provinces in this regard. In an official letter, the Badakhshan Department of Economy asked all the line departments for the required copies of documents, and attached all Council of Ministers resolutions and decisions of administrative meetings with the letter. However, no positive response was received from line departments in regard to the request.

3. Status of contracts implementation of projects

In terms of managing projects, Badakhshan Province has huge difficulties. The deputy governor of Badakhshan acknowledges that he does not even know the title of some projects that are currently being implemented in his province. **According to the provincial officials the main reason that no one shares information with them is that the contracting companies enjoy a close connection with the powerful officials in the province.**

In addition, according to them, some donors such as World Bank (WB) have internal regulations which prohibit the sharing of information and details of contracts. For example, the Director of Public Works says that when he asked the Kabul Ministry of Public Works for the copy of contracts, the deputy minister in response said that according to the World Bank regulations, they do not have the right to share the documents with them.

This local official provided MEC with a letter where the project management problems were clearly mentioned and the Ministry of Public Works was requested to provide the Directorate of Contracts with the copies of contracts, but until the time of MEC's interview no attention was paid to the issue.

After the assessment of problems in one province, MEC comparatively assessed the issues in other provinces. This comparative assessment shows that the situation differs in each province. In Balkh, the copies of most of the contracts are available with relevant entities. They have managed and used the local capacity and obligated the ministry and contractors to have the copy of contracts available before starting the project work. The expert in the Sectorial Directorate of Balkh indicated that no contractor can proceed with work on a project in the area, unless they share all the technical documents with the provincial officials. Balkh's governor has directed the subordinate directorates, particularly district governors, not to allow the contractors to proceed with work on projects without the written permission of the Governor's office. But getting the written permission requires the contractors to submit a copy of project contract to the Governor's office, the Provincial Directorate of Economy, and to the Directorate that will oversee the contract. This mechanism has resulted in improving contract management process in Balkh Province.

Since there is no proper mechanism for sending the copies of contracts from Kabul, ministries use their own specific approaches and mechanisms. Though, contract copies of the projects related to Ministry of Counter Narcotics are available in all the assessed provinces and even a portion of their procurement works have been done in the provinces. But the copies of most of the projects of Ministry of Public Works were not available in the provinces.

One of the reasons that the ministries do not share the copies of the contracts is the low capacity in the provinces and the fear of misuse by local authorities under the name of supervision. The Herat Director of Economy stated, “If the copies of contracts are shared with the provincial directorates, it will create proliferation of monitors and pave the way for more corruption. For example, when the Provincial Councils had oversight authority, the members of Provincial Councils were acting as they were the investigators and prosecutors and they misuse their authority”.

Negligence and evasion of responsibility in supervision process can be seen in the provinces. Some of the local authorities have not understood the importance of the copy of contracts. While monitoring Balkh, Herat and Bamiyan Provinces, MEC learned of three different problems.

1. In Bamiyan Province, the Directorate of Information and Culture thinks they do not need the copy of contracts. The cultural officer of Bamiyan Province says: “this is the duty of Ministry; we have nothing to do with contracts and copy of contracts.” This indicates that no one realizes the importance of copy of contracts in the province. Hence, it is so likely that the Provincial Directorate may have never attempted to get the copy of contract. This issue and the availability of enough copy of contracts in Balkh Province shows that the availability and non-availability of contracts copy is not the only problems of the ministries, management and capacity of local organizations have a determining role in this regard.
2. The Director Public Works in Herat Province also noted that, “beside the fact that the copies of contracts are not being shared with the Directorate of Public Works, the second problem is that the mentioned Directorate is making unauthorized interventions to oversee the projects progress.”
3. On the other hand, the assessment in Bamiyan Province shows that there is no document about the three big projects worth USD 40 million. While, other seven projects worth USD 2 million have documents in the Province. This can lead us to two conclusions. The ministries have realized that as big projects are more specialized they should be monitored and controlled by the Kabul. Meanwhile, if we analyze the issue from the perspective of anti-corruption, major corruption can occur in these large contracts, the terms “big” and “specialized” can be used as misleading tool by the responsible authorities.
4. Meanwhile, the manager of development projects of Kandahar Province Department of Economy said, “According to rules and regulations if a project failed to be finished on time, the implementer of the project shall pay a specific amount of money to the Afghan Treasury as a fine. A project of a clinic was closed out and we took over the project in Boldak District of Kandahar Province. As we didn’t have the details and copy of the project, the project was handed over to us almost one year

late. After a while, the Department of Economy was interrogated by the prosecution office for taking over the project and was blaming us for taking over such a project which was finished a year later than its due date.”

4. Outcome

MEC made several trips and conducted 27 interviews with key provincial authorities and found that out of 50 projects, there are contract documents available for only 23. This figure shows that there are only copies of contract for 23 projects in place. The reason for the lack of contracts is:

1. A lack of a defined mechanism for sharing contracts
2. Determination for not sharing information to misuse which for their own benefit
3. A lack of coordination between local administrations
4. Low capacity and negligence of local authorities
5. Illegitimate relationships between implementing companies and powerful authorities

50 projects in 5 provinces Contracts Assessed				
No	Province	Contract copy Available	Contract Copy Not Available	Percentage of contracts that lack copy of contract to the total 10 projects
1	Badakhshan	3	7	70%
2	Bamyan	4	6	60%
3	Herat	5	5	50%
4	Balkh	8	2	20%
5	Kandahar	7	3	30%
General Situation				46%

5. Recommendations

1. Chaired by Minister of Economy and participation of head of IDLG and National Procurement Organization and based on the Resolution 35 (16.10.1394) of the Council of Ministers, a mechanism to be developed to send a copy of the contract from the center to the provinces.
2. The Director General of the IDLG should require provinces to review their monitoring team to ensure the composition of teams include both procurement and construction experts.
3. IDLG to instruct provincial governors and district governors to not permit any company and local and international NGO any activities, unless they present copy of the contract to the local authorities.
4. MOE to instruct its provincial departments to raise the issue in the Provincial Development Committee (PDC), and identify project that lack documents, and take actions to improve the current situation.

ANNEXE Project Information

List of Projects – Herat Province						
NO	Project Name	Related Ministry or Department	Donor	Budeget	Date of Contract Signed	Availability of Contract
1	Premise of the Blood Central Bank	Department of public health	Turkmenistatn Govt	USD 144,730	Aug.18.2012	NO
2	Premise of 200-bed Maternity Hospital	Department of public health	Turkmenistatn Govt	USD 2,184,458	Aug-5- 2015	NO
3	Continue paving Azizabad-Shindand Road to the center of district	Department of public health		USD 1,446,503	Nov.11.2014	NO
4	Pave ring road (24 km)	Department of Public Works	Italian Govt.	US D 109,800,000	Sep.14.2015	NO
5	Rehabilitation of Guzara Canal	MEW	World Bank	AFN 62,229,368	Feb.14.2105	YES
6	Technical Square for training in Guzara District, zone 606	MOI	Sanisca	AFN 39,969,257	Nov.19. 2015	NO
7	Building Education Research Center	Department of Education	MOE	AFN 1,797,689	Nov.21.2013	YES
yes	Build premise of 30 classroom administration and management institution	Department of Education	MOE	AFN 2,623,799	Nov.28.2010	YES
9	Premise of 30 classroom and 300-room dormitory, and dining room of teacher training of Shindand District	Department of Education	MOE	AFN 55,773,644	July.7.2014	YES
10	Premise of 30 classroom and 300-room dormitory, and dining room of teacher training of Shindand District	Department of Education	MOE	AFN 55,773,644	July.14.2014	YES
11	Outcome from Herat province					10/5

List of Projects – Balkh Province						
NO	Project Name	Related Ministry or Department	Donor	Budeget	Date of Contract Signed	Availability of Contract
1	Build Slaughterhouse	Department of Agriculture	Asian Bank	USD 1,257, 543	2012	YES
2	Basic Clinic	Department of Public Health	Ministry of Counter Narcotic	USD 135254	31 Jan 2016	YES
3	Build packing center for agriculture produce	Department of Agriculture	German Govt.	USD 230172	2014	YES
4	Build 20-Bed hospital	Department of Public Health		USD 658985	2015	YES
5	Pave second part of Khulm-Kunduz Road (27 km)	MOPW	WB	AF 2100000	2012	YES
6	Build sub-station of Khulm	Ministry of Energy and Water		7752292AFG	2014	NO
7	Build school of Dasht Quduq	Department of Education		USD 98000	2013	YES
yes	Build Agriculture Technical Institute	Department of Education		USD 5075000		YES
9	Balkh province conference hall	Ministry of Counter Narcotic	Ministry of Counter Narcotic	USD1991623	2015	YES
10	Build boys dormitory	MOHE	German Govt.	USD 4000000	2015	NO
11	Outcome from Herat province					10/8

List of Projects – Bamyan Province						
NO	Project Name	Related Ministry or Department	Donor	Budeget	Date of Contract Signed	Availability of Contract
1	Build Faculty of Social Sciences	Counter Narcotic	Embassy of USA	USD 522,000	2016	YES
2	Build Faculty of Geology	Counter Narcotic	Embassy of USA	USD 590,000	2016	YES
3	Build girls dormitory	Counter Narcotic	Embassy of USA		2016	YES
4	Build premise of department of counter narcotic	Counter Narcotic	Embassy of USA	USD 178,000	2016	YES
5	Cultural Center	Information and Culture	South Korea	USD 5,400,000	2015	NO
6	Build 100-bed hospital	Public Health	Canada	USD 15,000,000	2012	NO
7	Build 200-bed hospital	Public Health	Basir Development	USD 200,000,000	2011	NO
yes	2,000-meter canal	Energy and Water	WFP	USD 241,000	2014	NO
9	Build 30-bed hospital	Public Health	Kazakhstan	USD 188,000	2011	NO
10	980-meter canal and flat retaining wall	Energy and Water	WFP	USD 144,000	2015	NO
11	Outcome from Herat province					10/4

List of Projects – Kandahar Province						
NO	Project Name	Related Ministry or Department	Donor	Budeget	Date of Contract Signed	Availability of Contract
1	Build retaining wall for Argandab Road	Department of Rural Development	WB	AFN 1,290,278,000	Oct.24.2014	YES
2	ADA green houses	MAIL	USAID	USDS 19,590,222	Apr.1.2016	NO
3	Build 350-bed hospital in Ainomina	Department of Public Health	MOF	AFN 524,783,509	2010	YES
4	Build canal in Zhelay district	Department of Irrigation	WB	USD 400,000	2015	YES
5	Build central canal of Panjwai district	River/Irrigation Zone	USAID	USD 73,715	20.10.2016	YES
6	Build 16.4 km road from junction to airport	Public Work	Public Work	AFN 2,280,617,938	2013	YES
7	Build standard cricket pitch in Ainomina			USD 839,884.51	2015	NO
yes	Build premise of Engineering Faculty	Department of University	MOHE	AFN 367,121,900	2013	YES
9	Build retaining wall for Argandab Road	Department of Rural Development	WB	AFN 1,290,278,000	Oct.24.2014	YES
10	ADA green houses	MAIL	USAID	USDS 19,590,222	Apr.1.2016	YES
11	Outcome from Herat province					10/8

List of Projects – Badakhshan Province						
NO	Project Name	Related Ministry or Department	Donor	Budeget	Date of Contract Signed	Availability of Contract
1	Build 110 m bridge	Department of Rural Rehabilitation	Rural Rehabilitation			YES
2	Build 32 m bridge	Department of Rural Rehabilitation	Rural Rehabilitation			YES
3	Build 51 m bridge	Department of Public Health	Rural Rehabilitation			YES
4	Pave Faizabad-Baharak Road	Public Works	WB		2012	NO
5	Gravel Kishm-Tagab Road	Public Works	WB			NO
6	Gravel Kishm-Tagab Road (phase 2)	Public Works	Public Work		2014	NO
7	Gravel Kishm-Tagab road (9.5 km)	Public Works	Public Work		2013	NO
yes	Build 76-bed Badakhshan Hospital	Public Health				NO
9	Build Jurm Hospital/ Health Center	Public Health				NO
10	Build Khulm District Hospital	Public Health				NO
11	Outcome from Herat province					10/3