



# Scoping Study

Construction Sector Transparency Initiative  
**Afghanistan**



February 2017



Civil Society



Government



Private sector



# **Scoping Study for the Construction Sector**

## Transparency Initiative in Afghanistan

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## ACRONYMS

CoST	Construction Sector Transparency initiative
MoEc	Ministry of Economy
IWA	Integrity Watch Afghanistan
MRRD	Ministry of Rural Rehabilitation and Development
MoF	Ministry of Finance
NIS	Afghanistan National Integrity System Assessment
MFR	Main Findings and Recommendations
APPRO	Afghanistan Public Policy Research Organization
BINA	Business Integrity Network Afghanistan
AICFO	Afghanistan Investment Climate Facility
ADB	Asian Development Bank
DFID	Department for International Development
COBP	Country Operations Business Plan
MEC	Monitoring and Evaluation Committee
TIA	Transparency Initiative in Afghanistan
MSWG	Multi-Stakeholder Working Group
NPA	National Procurement Authority
PFMEL	Public Financial Management and Expenditure Law
SAO	Supreme Audit Office
NUG	National Unity Government
NPC	National Procurement Commission
SMAF	Self-Reliance through Mutual Accountability Framework
PPU	Procurement Policy Units
CMO	Contract management Offices
ARDS	Afghanistan Reconstruction and Development Services
THOO	The High Office of Oversight
UNCAC	UN Anticorruption Convention
AGO	Attorney General Office
ACJC	Anti-Corruption Justice Centre
CEO	Chief Executive Officer
CLRWG	Criminal Law Reform Working Group
AITF	Afghan Infrastructure Trust Fund
PPC	Provincial procurement committee
ARTF	Afghan Reconstruction Trust Fund
IW	An Investment Window
ANDS	Afghanistan National Development Strategy
PDP	Provincial Development Program
PDC	Provincial Development Council
CDCs	Community Development Councils
MDGs	Millennium Development Goals
PIP	Prioritization and Implementation Plan

ACTED	Agency for Technical Cooperation and Development
CSO	Central Statistics Office
SIC	Creation of required Criteria for
GIAAC	General Independent Administration Against Corruption
TMAF	Tokyo Mutual Accountability Framework
IMEM	International Monitoring and Evaluation Mission
HOLD	Humanitarian Organization for Local Development
HRRAC	Human Rights Research and Advocacy Consortium
WADAN	Welfare Association for the Development of Afghanistan
ACSFo	Afghanistan Civil Society Forum
CSOC	Civil society coalition
ACTA	Afghan Coalition for Transparency and Accountability
AFCAC	Afghans Coordination Against Corruption
ANCB	Afghan NGOs Coordination Bureau
SWABAC	Southern and Western Afghanistan and Balochistan Association for Coordination
CSE	Conflict sensitive employment
MFR	Main Findings and Recommendations
NIS	Afghanistan National Integrity System Assessment
HCAC	High Council of Governance and Justice to the High Council of Governance, Justice and Anti-Corruption
PE	Procurement entities
DABS	De Afghanistan Breshna Shrekat
GIZ-OPAF	GIZ-Open Policy Advisory Fund
MoHE	Ministry of Higher Education
MoCI	Ministry of Commerce and Industries
MAIL	Ministry of Agriculture, Irrigation and Livestock
MEW	Ministry of Energy and Water
MoPW	Ministry of Public Works
UN	United Nations
PMO	Project Management Office
IW	Investment Window
CBR	Capacity Building for Results Programme
PIU	Project Implementation Unit
OECD	Organization for Economic Cooperation and Development
AIDAR	Aid Acquisition Regulations



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## FOREWORD

The significant role of the Construction Industry in the socio-economic development of Afghanistan is an evident fact. The construction industry is an essential development sector that directly contributes to the economic growth of a country together with other sectors such as the agriculture, manufacturing and services sectors. Furthermore, the construction industry provides a basis for the growth of other sectors by building physical facilities which are essential for the production and distribution of both goods and services.

A substantial amount of financial resources has been injected into the construction industry by both the Government of Islamic Republic of Afghanistan and our international partners for the uplift of the infrastructure sector. It should be mentioned, however, that the effectiveness and efficiency of such substantial expenditures has been challenged by the lack of transparency, accountability and integrity. There are projects, for instance, that have received full payments despite having not been completed; other projects have caused the loss of precious lives owing to incomplete or poor construction.

Without significant improvements in the delivery of infrastructure projects a huge amount of public funds could be wasted. In addition to existing national measures, various international practices could further improve our infrastructure delivery. The importance of the Afghanistan Construction Sector Transparency Initiative (CoST) is to shed light on those problems through the disclosure of project information. It is important for the government, civil society and the private sector, as Multi Stakeholder Group (MSG) members, to understand where precisely the weaknesses and failings are in the infrastructure sector, to identify the challenges and to propose solutions.

On behalf of the MSG, I would like to seize this opportunity to extend my gratitude to GIZ/OPAF and Integrity Watch Afghanistan for their financial and technical support, and would like to thank the research team, Dr. Juanita Olaya, Naser Timory and Sebghatullah Karimi for their commitment and dedication to this research. Meanwhile, I would also thank CoST Afghanistan and the Multi Stakeholder Group (MSG) members from government sector, specifically from the Ministry of Public Works, the Ministry of Energy and Water, the Ministry of Rural Rehabilitation and Development, from the private sector specifically from the Afghanistan Builders Association, the Afghan Chamber of Commerce and Industries, Global Trust Construction Company and RGM International Group, and from civil society, specifically Integrity Watch Afghanistan, the Afghan NGOs Coordination Bureau, the South Western Afghanistan and Baluchistan Association, and the Afghan Engineers Association, for their support and comments which led to the finalization of this report

Abdul Sattar Murad  
Minister of Economy and Chairman of MSG

## ABOUT THE RESEARCHERS

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## INTRODUCTION

Following a recommendation from the Monitoring and Evaluation Committee (MEC), the Islamic Republic of Afghanistan joined in October 2013 the CoST initiative. As a result, a Multi-Stakeholder Working Group (MSWG) was formed to lead the development of an implementation plan and establish a National Secretariat and Multi-Stakeholder Group. It was also agreed that the National Procurement Authority would be the first procuring entity to test the process of public disclosure.

The purpose of this scoping study should provide information useful for the decision-making process on what the scope and reach (added value) of A-CoST can be and to assess various aspects of current levels of disclosure of information on publicly funded construction projects and in doing so, to provide a baseline measure of transparency.

This study has been commissioned by GIZ-OPFAF to a research team composed of: Dr. Juanita Olaya, providing international backstopping and team leadership; and the local researchers Mohammad Naser Timory and Sebghatullah Karimi and also Ahmadullah Mauj who on behalf of Integrity Watch Afghanistan (IWA) were selected to undertake the ground research and manage for IWA the A-CoST Scoping Study project respectively.

The study combined desk research and ground research and observation. The ground research included both interviews and observation of disclosure practices using the CoST standard as reference. The interviews conducted gave insights in to the background and context and also into the concrete challenges of the selected procurement entities. Annex 1 explains in detail the methodology and the steps undertaken during the research. The research focused on on-budget projects only, and doesn't examine military projects, or off-budget projects of any kind.

The study is not meant to be and can't be considered an evaluation of the disclosure and accountability policies and practices in infrastructure projects in Afghanistan, as this is not its purpose. It also reflects the views and information we had access to, in an effort to consider and reflect different perspectives.

## BACKGROUND AND CONTEXT

In the case of Afghanistan, examining the potential added value that CoST could have requires considering the bigger picture and the complexities of the particular situation. In this case this means among other things:

- Understanding the infrastructure projects institutional and regulatory landscape in Afghanistan requires considering both the Afghan government institutions and legal frameworks but also the donor institutional and regulatory landscape and how they interact. In fact international (donor) funding of infrastructure projects amounts to 86.9% of the development budget for this fiscal year<sup>1</sup> and has been at this level since the reconstruction started in 2001 and is meant to remain substantial during the transformation period as well.

Because of this we have considered necessary to include in this document a perspective that do not just focus on the Afghan government institutions but also on the institutions and implementation arrangements by donors, to the extent possible. While we do not analyze the donor procurement guidelines and practices we bring them into the picture. This introduces another degree of complexity that is inevitable and reflects the reality in Afghanistan. On the other hand we have made a special effort to gather different perspectives on the issues at hand and reflect them here, for the purpose of this study is not to draw judgment but to make a description that enables the identification of CoST's potential added value.

- It is not possible to take laws, reforms and institutions for their face value. The current political and social stage of Afghanistan, undergoing reconstruction, still experiencing active internal conflict and with the international actors transitioning out makes institutions and regulations vulnerable and unstable. An ARTF document expresses this accurately when stating *“Afghanistan is in the midst of multiple transitions toward self-sufficiency, including security, financial, and political. These multiple transition processes add to the stresses of an already fragile state”*<sup>2</sup>
- Much of the institutional and regulatory framework relevant to infrastructure projects is relatively new. This needs to be considered when making an effort to understand it, not only because some of the laws and regulations are so recent that are in the process of being implemented or have been recently approved, but also because some of the arrangements they have introduced are completely new to Afghanistan. This combined with the specifics of Afghanistan's history, conflict and current political dynamics result in the impossibility to judge these regulations and their effectiveness doing general country comparisons or superficial judgments on their efficacy.
- In its condition of “multiple transitions” Afghanistan's progress and setbacks need to be considered in context, for they do not mark definite successes or failures. These can at best be considered as achievements and challenges of a nation going through an evolution process.<sup>3</sup>

1 For the detail see Table 1 Afghanistan Development Budget FY 1395 – Sources of Funds and Table 2 Distribution of the FY1395 Budget by Sectors.

2 ARTF Financial Strategy FY 1396-1393. P.3

3 Following again a similar wording and idea expressed in the ARTF Financial Strategy. P 3.

- Any topic in Afghanistan, but particularly those related to governance, accountability and disclosure need to be considered in context, and can hardly be looked at with the usual governance “check-lists”. In Afghanistan, it is noticeable that there is a wide gap between laws and practices<sup>4</sup> and the recurrence to the use or the abuse of force is still pervasive.<sup>5</sup> In light of the above citizens often turn to informal justice.<sup>6</sup> Trust is based on personal networks (tribal too) not on institutional references, and this applies to all segments of society. While broader concerns of citizens remain unaddressed,<sup>7</sup> a number of parallel structures and institutional duplication and their roles remains a key characteristic.<sup>8</sup> In this context, the usual approaches perhaps valid to other countries can be of little impact here. The best and most effective source of wisdom for the way out lies in Afghan people themselves.

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4 Transparency International and Integrity Watch Afghanistan. National Integrity System Assessment (NIS). Afghanistan 2015. p.8

5 Idem. Citing the Bertelsmann Study of 2014

6 Ibid.

7 Ibid.

8 Ob. Cit NIS P 14

# PART1. DESCRIPTION OF THE PROCUREMENT SYSTEM

## A. PUBLIC INVESTMENT IN INFRASTRUCTURE

The total public budget for the year 1395 (equivalent to FY2016) amounts to USD 6.635 Billion (equivalent to AFs 444.6 Billion),<sup>9</sup> of which %62 corresponds to the operational budget and %38 to the development (or investment) budget amounting together to USD 2.515 billion.

The resources devoted to infrastructure are included in the development budget. As described in Fehler! Verweisquelle konnte nicht gefunden werden., the donor's contribution to the development budget accounts for USD 2,515,714,000, which corresponds to %86.9 of the development budget (and about %33 of the total budget). Of this contribution, the majority of funds (close to %69 of the development budget) are non-discretionary, which means that the government has little or no control over it.

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9 Using an exchange rate of 0,0.1492 Afs (USD 67 = 1 Afs)

**Table 1 Afghanistan Development Budget FY 1395 – Sources of Funds**

Development Budget Source of Funding (FY 1395)	Total AFS 000	as % of development budget	Modes of Delivery	Afs 000	USD 000	as % of Development budget
	Afs 000					
Total Development Budget	168,552,860	100%		168,552,860	2,515,714	100%
Grants	146438188	87%	Discretionery	29899018	446254	18%
Loans	3879501	2%	None-Discretionery	116539170	1739391	69%
Government's own Source	18235171	11%	World Bank	15438410	230424	9%
			Asian Development Bank	35456807	529206	21%
			ARTF(Afghanistan Reconstruction Fund	37242960	555865	22%
			USAID	9418794	140579	6%
			other None-Discretionery aid	18982174	283316	11%

Source: MoF, Directorate General Budget, National Budget of 1395 (FY2016)

The Table 2 shows the breakdown of the development budget by sectors. As it can be seen, alone the infrastructure sector takes close to 50,1% of the development (investment) budget for the current fiscal year.

**Table 2 Distribution of the FY1395 Budget by Sectors**

Sectors	Afs 000		Total Budget		Sector as % of total budget	Sector % share of TotalDevelopment budget	Sector % share of sector Budget
	Operating	Development	Afs 000	USD 000			
Security	175,583,235	1,573,670	177156905	2644133	40%	1%	1%
Governance	14,249,696	3,041,757	17291453	258081	4%	2%	18%
Infrastructure	5,964,383	84,467,680	90432062	1349732	20%	50%	93%
Education	37,442,438	21,144,630	58587068	874434	13%	13%	36%
Health	2,959,532	18,276,487	21236019	316956	5%	11%	86%
Agriculture and Rural Development	2,083,101	27,145,460	29228561	436247	7%	16%	93%
Social Protection	21,301,733	1,782,706	23084440	344544	5%	1%	8%
Economic Governance	2,990,352	8,997,871	11988223	178929	3%	5%	75%
Contingency Codes	13,479,426	2,122,600	15602026	232866	4%	1%	14%
Total	276,053,896	168,552,861	444606757	6635922			
% of total	62%	38%					



In sum, not only the infrastructure sector constitutes a relevant portion of public investment in Afghanistan, but foreign aid plays a decisive role in it.

In addition to the figures above, which reflect on-budget infrastructure investment, there have been and continue to be substantial amounts invested through off-budget projects. We could not find unequivocal consolidated figures on off-budget investment, but the closest proxy indicator lies in the 2010 Kabul Conference and reflected in the TMAF commitments in 2014, where it was agreed that at least 50% of civilian development aid would be channeled on budget and 80 percent would be aligned with Afghan priorities.<sup>10</sup> Assuming this as the maximum threshold, and considering an estimate of USD 2.515 billion of investment in civilian infrastructure for the FY 1395, this means that about USD 2.515 billion of funds could still be being channeled as off-budget projects.<sup>11</sup>

A report by the United States Government Accountability Office in 2011 indicated that for the period between 2006 and 2010, "About 79 percent of Afghanistan's estimated total public expenditures of about \$54 billion were off budget"<sup>12</sup> this is about USD 43 billion, and that about %55 of this was non-security related.

The off-budget projects are relevant for the purpose of this scoping study for various reasons. The main one, because although they should be decreasing in volume, there has been and still is a significant effort of infrastructure development channeled through off-budget sources. The second one, because they are absent of the study: due to lack of access to information on those projects (and resource constraints) we could not examine standards and practices of disclosure on these projects. Despite of this, the overall potential impact of an effort by CoST needs to consider that these projects would be not under its reach or focus, although they do have an impact on the overall governance and accountability of the sector. This because off-budget projects are ruled and carried out by the donor's own procurement regulations and practices thus having an impact towards the procurement culture in the country. It is beyond the reach of our study to characterize this culture or its impact, but it deems to be considered in the greater context of the initiative.

10 Tokio Mutual Accountability Framework. "The International Community welcomes the Afghan strategy, and reaffirms its commitment of aligning 80 per cent of aid with the NPPs and channelling at least 50 per cent of its development assistance through the national budget of the Afghan Government in accordance with the London and Kabul Communiqués."

11 MoF, Directorate General Budget, National Budget of 1395 (FY2016), page 1

12 United States Government Accountability Office Washington, DC. Sep 2011 20, p. 7. That estimate includes all donors, although the report also indicates that the US is the major donor, providing about %62 of the total donor funds. Accessible here: <http://www.gao.gov/assets/323608/330.pdf>

## B. DESCRIPTION OF CURRENT PROCUREMENT/CONTRACTING LAWS IN AFGHANISTAN

### 1. Current Legal and Regulatory Framework

In an effort that started in 2001 to build new institutions, most of Afghanistan's regulatory framework is relatively new (with a few exceptions, among those the criminal code). This is particularly the case for the framework relevant for public infrastructure projects. The Fehler! Verweisquelle konnte nicht gefunden werden. below lists these laws and regulations. Some of those have even been already revised within this period, like the procurement regulations and its rules of procedure.

Table 3 Main Laws and regulations relevant for Infrastructure Projects

Law/Act	Year of Approval	Amendment/ Renewal
Constitution of Afghanistan	2004	
Public Financial Management and Expenditure Law	2005	
Procurement Law	2005, 2008	2015
Rules of Procedure of Procurement	2010	2015
Access to Information Law	2014	
Supreme Audit Law	2013	
Internal Audit Regulation	1981	
Afghan Criminal Code	1976	
Law on Supervision of Implementation of the National Anti-Corruption Strategy	2008	
Decree 261 on Establishment of the High Council Against Corruption	2016	
Afghanistan Civil service Law / Civil Servants Law	2006	

#### a) The Constitution of Afghanistan

The Afghan Constitution issued on 2004, contains the basic legal and institutional framework that is relevant for CoST. Most of them are summarized in the

The Constitution foresees that the budget and the development plan be approved by the National Assembly. The budget has indeed been regularly approved through this procedure for several years now, but the development plan has not been yet submitted to approval and has been up to now issued without consulting with the National Assembly. There have been instances where the MPs agree with part of the budget but not all of it, although the Constitution requires (Article 97) that the National Assembly can either approve or reject the proposed national budget as *whole*.

One of the concerns raised by the MPs during discussions on the national budget is the lack of balanced development across provinces as stipulated in Article 6 of the Constitution. To address this the Ministry of Finance now prepares a provincial breakdown of the national budget. The balanced development is understood to be the justifying logic behind the July 2016 protests in Kabul. The movement called *Junbish Roshanayee* (the enlightenment movement) called on the government to change the route of a power grid from Salang to Bamyán because the latter is underdeveloped and needs more attention.

The government of the Islamic Republic of Afghanistan, is organized as a central administration (Article 137). The Constitution foresees the possibility of “transferring” power and authority to the local administrations “to accelerate and improve economic, social as well as cultural matters, and fostering people’s participation in developing national life”. While at the same time recognizes its diverse ethnic (tribal) composition (Article 4). Currently there is debate and pressure to increase the authority (both budgetary and contractual) of the Provinces. Some Ministries are starting to consider (or to implement) expanded contracting authority arrangements for some Provinces. However, when it comes to infrastructure projects and budget, the Provinces have currently very little participation.

Article 50 of the Constitution spells out for the right of access to information in Afghanistan: “The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provision of the law. This right shall have not limit except when harming rights of others as well as public security”.

**Table 4 Summary of main Constitutional mandates relevant for CoST**

Law/Act	Core Objectives	Items Relevant for CoST
The Constitution, 2004	The terms of relations of the state with the people, duties and authorities of the state and the general principles of divisions of power between the three major organs of the state.	<p>A6: The state shall be obligated to create a prosperous and progressive society based on social justice, preservation of human dignity, protection of human rights, realization of democracy, attainment of national unity as well as equality between all peoples and tribes and balance development of all areas of the country.</p> <p>A50: The citizens of Afghanistan shall have the right of access to information from state departments in accordance with the provisions of the law. This right shall have no limit except when harming rights of others as well as public security.</p> <p>A75: The Government shall have the following duties:</p> <ol style="list-style-type: none"> <li>3. Maintain public law and order and eliminate every kind of administrative corruption;</li> <li>4. Prepare the budget, regulate financial conditions of the state as well as protect public wealth;</li> <li>5. Devise and implement social, cultural, economic and technological development programs;</li> <li>6. Report to the National Assembly, at the end of the fiscal year, about the tasks achieved as well as important programs for the new fiscal year;</li> </ol> <p>A95: The proposal for drafting laws shall be made by the Government or members of the National Assembly or, in the domain of regulating the judiciary, by the Supreme Court, through the Government. Proposals for drafting the budget and financial affairs laws shall be made only by the Government.</p> <p>A97: The House of People shall consider the draft laws, including budgetary and financial affairs as well as the proposal for obtaining or granting loans, and, after debate, either approve or reject as a whole.</p> <p>A137: The government, in preserving the principles of centralism, shall transfer necessary powers, in accordance with the law, to local administrations in order to accelerate and improve economic, social as well as cultural matters, and foster peoples’ participation in developing national life.</p> <p>A154: The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior to and after their term of office by an organ established by law.</p>

## b) Public Financial Management and Expenditure Law (PFMEL)

The core objective of this law is regulating public revenues and expenditure management. The government annual expenditures are reflected in the national budget that is also a subject of the PFMEL. Article 1 of the law stipulates, “This law is enacted to organize public finances, [regulate] management of public finances, protect public finances, prepare the national budget, and [guide] the expenditures of the government agencies inside and outside the national territory.” The basis and criteria for the preparation of the national budget, according to this law, are “multiyear development programs, security and the structure of the national economy.”<sup>13</sup> The national budget outlines the direction of the national development strategy.<sup>14</sup>

According to this law each government agency submits a plan that outlines its revenues and expenditures to the Ministry of Finance on an annual basis. The MoF is responsible to approve the estimates in those plans. The expenditure plan includes each fiscal year’s procurement plans. Therefore, the MoF has the general expenditure plans of all government agencies. A four member committee (the budget hearing committee) consisting of the Ministry of Finance, the Ministry of Foreign Affairs, the Ministry of Economy and one representative appointed by the President decide which projects should be included in the national budget. Each of the government agencies are requested to present and defend their own proposed expenditures before this committee.

The process by which provincial needs are incorporated in the budget is less clear, in a way less formalized and has been also a cause of concern by the Afghan government itself.<sup>15</sup> For the 1395 National Budget, the government has introduced a provincial budgeting process whereby the provincial directorates submit their development plans to the Ministry of Finance instead of through the sectorial ministries.

Article 59 of the PFMEL requires the Supreme Audit Office to complete audit all the public finances of each year six months following the completion of each fiscal year. The government should submit the audit report to the national assembly. The audit report shall be published for the public knowledge.

**Table 5 Summary of PFML Relevant Measures for CoST**

Law/Act	Core Objectives	Items Relevant for CoST
Public Financial Management and Expenditure Law, 2005	<ul style="list-style-type: none"> <li>– Article 1: this law is enacted to organize public finances, management public finances, protect public finances, prepare the national budget, and expenditures of the government agencies inside and outside the national territory.</li> <li>– Article 12: each government can only spend the amount of money allocated by the MoF in writing to them.</li> <li>– Article 27: the national budget is prepared considering multiyear development programs, security and the structure of the national economy.</li> <li>– Article 29: each government agency is obligated to submit their proposal for budget to the MoF. The MoF approves the estimates of proposed budgets.</li> <li>– Article 31: the national budget should outline the direction of the national development strategy.</li> </ul>	<ul style="list-style-type: none"> <li>– Article 52: the MoF is obligated to publish the national budget that includes the allocations of funds to each budgetary units and related information.</li> <li>– Article 54: the MoF should report to the President on quarterly basis and publish such reports.</li> <li>– Article 59: the SAO completes audit of all public finances of each year six months following the completion of each fiscal year. The government should submit the audit report to the national assembly.</li> </ul>

13 Article 27 of the PFMEL

14 Article 31 of the PFMEL

15 “Provincial officials report insufficient consultation by headquarters offices during budget formulation and untimely notice of budgetary allocations. The methods for allocation of budgets across provincial offices by many budgetary units are opaque.” See Ministry of Finance. Public Financial Management Roadmap. July 2010, 14. Accessible here <http://mof.gov.af/Content/files/PFM20%Roadmap20%FINAL20%2014%July202010%.pdf>

### c) Public Procurement Law

Afghanistan has issued three procurement laws in the last ten years. One in 2005, followed by a new law in 2008 and a recent amendment to it adopted in 2015. There are “rules of procedure” for each procurement law set which are equally important and contain further detail to the implementation of the main procurement law. This section presents a description of the Procurement Law of 2015 followed by its comparison to the law of 2008.

The procurement law of 2015 was issued as a legislative decree of the President shortly after the appointment of the “National Unity Government” or NUG . During the period of writing this study the decree was tabled and approved by the National Assembly for its approval and bears now the status and authority of a law. As a legislative decree however, it had been enforced since its enactment.

The objective of the law as stipulated in its Article 1 is to “*introduce transparency in public procurement, ensure procurement that secures value for money and provides a fair chance for bidders.*” There are explicit provisions in the law that require the procuring entities to release information proactively and document certain information that can potentially be released reactively. This will be analyzed in detail in Part 2 of this document.

**Table 6 Summary of the Procurement Law Provisions Relevant for CoST**

Law/Act	Core Characteristics	Items Relevant for CoST
Procurement Law 2015	<p>A2: The purposes of the law: transparency in public procurement, ensure economical procurement and fair chance for bidders.</p> <p>A3: It defines construction as: construction, repairing, installation, decoration, related services, and survey.</p> <p>Article 7: the government should give priority to domestic products in procurement provided the cost does not exceed a specific threshold. A regulation shall provide further details to it.</p> <p>Article 18: four kinds of procurement are predicted: request for proposal, open procurement, limited procurement, and procurement from a single source.</p> <p>Article 56: The NPA is in charge to improve procurement system, prepare policies, improve technical skills, coordinate procurement plans, provide oversight to procurement, facilitate procurement, and provide oversight to implementation of contracts.</p>	<p>Article 19: each agency shall announce tenders through its website and NPA's, and other websites introduced by NPA. In addition, tenders should be announced in one of popular media channels. A tender should include: what is procured, time of submission of offers and bidding session, address of agency, securities, and other information.</p> <p>Article 23: each agency shall announce acceptance letter of winner in the media and send it to the winner itself.</p> <p>Article 27. Public Private partnerships and concessions will be regulated separately.</p> <p>Article 30: a) contract amendment in amount or time of a project is the authority of awarding officer considering the allocation to a project in the national budget and reasons provided by the contractors. Rules of Procedures of Procurement shall provide more information. b) amendment shall not change the main objective of a project. C) the maximum change in cost shall be outlined in rules of procedures of procurement. d) if amended on the above conditions, a contract is enforceable. E) if the amendment cost exceeds above, it shall be retendered. F) time amendment is possible if it is reasonable. G) an amendment not based on this law is not enforceable.</p> <p>Article 31: cost amendment should be predicted in the original contract.</p> <p>Article 39: each agency shall outline penalties for time overruns by itself and contractors in the original contract. 5) If a contractor completes a project before the due time, it should be financially complimented.</p> <p>Article 43: each agency shall publish the details of a winner, the winning cost, and completion time of a project.</p> <p>Article 45: each agency shall prepare and keep the following document with itself: a) what is procured b) all bidders details 3) offers prices 4) summary of offers assessment 5) any request for information and reply to it 6) explain the choice of kinds of procurement for the specific project 7) explain reasons for rejection of offers 8) the legislative documents of procurement. each agency can share the above information with bidders unless a court of law or NPA direct differently. Each agency shall share the information provided the secrecy of business information is maintained. Each agency shall share the summary of the above information with NPA.</p> <p>Article 46: registration of contracts. A copy of signed contracts should be sent to NPA.</p> <p>Article 53: contracts shall be registered with the database of each agency and sent to NPA.</p> <p>Article 57: oversight by NPA does not limit other mandated agencies to provide oversight and audit of procurement.</p>

The law basically designates the National Procurement Authority (NPA) as the maximum contracting authority in charge of regulation, policy, facilitation and oversight of procurement processes. It also has key disclosure functions at the central level and also has authority to debar companies from procurement.<sup>16</sup> The National Procurement Commission (NPC) provides oversight to the NPA, has decision-making power on policy and in contract awards above a certain threshold. The contracting authority under the new reform is granted not on the basis of a threshold but on the basis of capacity assessments undertaken by the NPA. In practice, this has led to a concentration of contracting authority under the NPA (and the NPC). The institutional system is described in more detail in the next section.

The procurement law also incorporates provisions on cost and time management:

- Article 31 stipulates that cost amendments should be predicted in the original contract. The awarding officer has the authority to amend the time and cost of a contract. There are, however, explicit criteria and limitations in the law to make an amendment possible:
  - a) It should be reasonable,
  - b) It should be made considering the allocation of funds to a project in the national budget,
  - c) It for cost extension is twenty percent of total of the project,
  - d) If the cost extension requested exceeds the threshold established in the procurement rules of procedure (currently %25 of the total contract value), it shall be re-tendered.
- In the original contract, penalties for time-overruns both in completion of the project by the contractor and payment by the government agency should be spelled out.

The regulation of public-private partnerships and concessions relevant for infrastructure has been explicitly mentioned by the law (Article 27) to be a subject matter of a separate regulation. The SMAF commitment had included a deadline of March 2016 for this to be issued.<sup>17</sup> At the moment of writing we don't have information on whether this has been the case.

### Brief Comparison of the Previous and the Current Procurement Law

According to the NPA website, "*The aim for the reform is to boost economic growth, effective control of financial expenditure and root out corruption as well.*"<sup>18</sup> The NPA replaces all procurement related entities created in the past i.e. Procurement Policy Units (PPU), Contract Management Offices (CMO) and the Afghanistan Reconstruction and Development Services (ARDS). According to a senior advisor to the NPA, the reform clarified confusions and established a single address for any procurement related issues.<sup>19</sup>

Broadly speaking, there are different perspectives on the virtues and shortcomings of the Procurement Law of 2015. For some it was made mirroring World Bank procurement guidelines and thus assuring international standards,<sup>20</sup> for others it was not enough to promote efficiency and integrity in procurement.<sup>21</sup> Others argue that the changes introduced in 2015 only aim at centralizing procurement and re-organizing some functions but do not really make structural changes in comparison to the law of 2008.

16 Art. 70.

17 §22 of Area 5 (Private Sector Development and Inclusive Growth and Development) of the SMAF Short-Term deliverables Annex. Kabul, September 2015 ,05

18 <http://www.npa.gov.af/Beta/English/AboutUs.aspx>

19 Interview with Sohail Kaakar, Strategic Advisor, NPA, dated 26 April 2016.

20 Background Interviews. See also in this regard Alastair J. McKechnie. "Post-war programme implementation and procurement. Some lessons from the experience of Afghanistan. Overseas development Insitute, August 2011.

21 Background interviews. Among them, interview with a MEC member.

The new procurement law has been appreciated for its brevity and clarity. However, centralization, lengthier procedures and disclosure of information have raised concerns for the stakeholders. Critics argue that the procurement has been centralized in the Office of the President. To some, this has been the cause of delays and marks a difference with the past where the Procurement Special Commission took 14 days for large contracts to approve but the newly established National Procurement Commission takes 28 to do the same. There are instances, according to some procuring entities, that a contract documents are submitted to NPA and it took more than four months to approve.<sup>22</sup> However, a senior advisor to the National Procurement Authority argues that procurement has not been centralized under the NUG but it has been organized when it started to be conducted and overseen from a single address that is the NPA. Furthermore, he points out that the National Procurement Commission has approved three times more than the former Special Commission for Procurement.<sup>23</sup> It is true that the National Procurement Commission has approved three times more than its predecessors but it is also the case that because of changes in the procurement law, more and more contracts require the President's approval.

In the former procurement law, chapter nine outlined the procurement authority of the awarding officers (ministers, head of independent agencies) by default and on the basis of thresholds. For example, the law stipulated that construction contracts of more than AFN 100 million required approval of the Procurement Special Commission. The current system is based on a capacity assessment done by the NAP and decided by the NPC on the basis of its recommendations. With no threshold, construction projects of all costs could require the President's approval. If procurement entities are not awarded contract authority, the Directorate of Procurement Facilitation within the NPA conducts the procurement process for them.

Provisions that mandate disclosure of information have been clarified but also limited under the new procurement law. Article 62 of the procurement law (2008) stipulated that *"In order to ensure access to information to interested citizens following information shall be in the public domain: procurement laws, procurement processes, and results of procurement."* Although the procurement processes were actually not disclosed under the former law, the possibility was at least included in the law. Under the new procurement law, procurement agencies are required to publish the tender announcement, the winner announcement and a list of the contracted projects. Any other steps along the procurement processes including the bid evaluation are not mandatory anymore.

The Fehler! Verweisquelle konnte nicht gefunden werden. below summarizes the main features of both the 2008 law and the reform of 2015.

22 Mohammad Taqi Kazemi, Procurement Manager, Da Afghanistan Breshna Sherkat, Herat, dated 12 July 2016.

23 Interview with Sohail Kaakar, Strategic Advisor, NPA, dated 26 April 2016.

Table 7 Summarized comparison between the procurement Law of 2008 and the reform of 2015

Procurement Law of 2008	Procurement Law of 2015
Legislative Decree by Karzai	Legislative Decree by Ghani
Ten chapters, 96 articles	8 chapters, 67 articles
Objectives: transparency, control of public funds, economical procurement, and fair opportunities for business.	Same.
Procurement Delegates	Dropped
Article 15: agency can divide a contract to many if such an action result the agency to incur financially lesser amount for the same contract.	Agency can divide a contract to many if such an action is for the general benefit of the agency.
Article 7: a candidate can participate a tender if not convicted for business irregularities by a court in the last three years.	A candidate can participate a tender if not convicted for business irregularities by a court in the last two years.
Article 18: a bidder has to submit documents to prove its eligibility to agency in 7 days for national and 14 days for international procurements.	A bidder has to submit documents to prove its eligibility to agency.
Article 19: Ministry of Finance and other agencies have to have a database of eligible bidders.	Dropped
Article 20: seven kinds of procurement.	Four kinds of procurement.
Article 23: conditions of limited procurement	Dropped
Article 24: conditions of procurement from a single source	Dropped
Article 27: publish tender in a local or international media.	Publish tender in a popular local or international media.
Article 29: bidders to limited procurement and their offers shall be published.	Dropped
Article 58: if a contract abrogated due to contractor breaches, until the next contract is signed, the first contractor is obligated to pay financial damages to the agency.	
None	If a contractor completes before the due time, it shall be financially complimented.
Article 62: in order to ensure access to information to interested citizens following information shall be in the public domain: procurement laws, procurement processes, and results of procurement.	Agency shall publish the details of winner of a tender.
Article 75: Procurement delegates	Dropped
Article 77: Commission for Special Procurement takes 14 days to approve.	National Procurement Commissions takes 28 days to approve.
Chapter nine: authorities of awarding officers: Awarding officers shall approve up to: in open procurement (national) products: 20 million AFS construction: 100 million AFS services: 20 million AFS	The chapter is dropped. The NPA suggests awarding officers threshold authority and National Procurement Commission approves it.
Commission for Special Procurement as the highest procurement authority in the country presided by the minister of finance. Procurement Policy Unit and Contract Management Office performed secretariat functionalities and provided oversight to procurement at national level.	National Procurement Commission presided by the President as the highest procurement authority in the country. National Procurement Authority has replaced Procurement Policy Unit and Contract Management Office.



#### d) Access to Information Law

Since its enactment in 2014 Afghanistan has an access to information law, the first in its legal tradition. The law develops the constitutional right to access to information and mandates the government and non-government organizations to release information and respond to requests for access to information.

**Table 8 Summary of Access to Information Law measures relevant for CoST**

Law/Act	Core Characteristics	Items Relevant for CoST
Access to Information Law 2014	<p>Access to information is a right. (Article 4)</p> <p>Each government organizations must publish and publicize proactively its legal mandate, activities report, and financial status.</p> <p>Each government agency must provide information to citizens in 10 days and 3 days for journalists. (Article 6)</p> <p>Under certain conditions like threat to national security, disclosure of information is prohibited. (Article 15)</p> <p>Non-governmental agencies are required to follow this law in disclosing reactive information.</p>	<p>Article 14(7): GOs are required to publish the following information annually: contracts, national and international protocols and MoUs.</p>

The law makes a distinction between proactive and reactive disclosure of information. It also includes a rather long list of broad exceptions that could apply to exempt disclosure and creates the High Commission of Access to Information to oversee the implementation of the law.

In practice, most Ministries, governmental agencies and also Provinces have a website where they publish certain information, even if the law doesn't require them to do so. Radio and other alternative means are of more common use in the Provinces.

The access to information Law is seen by NGOs as good but weak, and back then, they saw the absence of a strong independent commission to oversee its implementation as a current challenge.<sup>24</sup> At the time of this writing the Commission has been put in place.

#### e) Supreme Audit Office Law

**Table 9 Summary of CoST' relevant provisions in the Supreme Audit Office Law**

Law/Act	Core Objectives	Items Relevant for CoST
Supreme Audit Law 2013	<p>A2/5: To ensure transparency in the implementation of national budget and revenue collection including confidential ones based on the enforceable laws and Identify irregularities, inefficiencies, uneconomical aspects of public finances.</p> <p>A12: SAO is obligated to submit its audit reports six months following the end of each fiscal year.</p>	<p>A11: audit of procurement process, distribution and maintenance of public properties.</p> <p>A20: SAO audit is final; no other agency can repeat it unless there is a presidential decree to its effect.</p>

The Supreme Audit Office Law regulates the role and functions of the Supreme Audit Office (SAO), created by the Constitution as a non-partisan entity in charge of financial audits at the national and provincial levels. The SAO is accountable to the President and the Wolesi Jirga ( the lower House of Parliament).

The Supreme Audit Office (SAO) conducts external audits on all government revenues and expenditures to ensure transparency in the implementation of the national budget and in the collection of revenues, and to identify irregularities, inefficiencies and aspects of economic efficiency of public expenditure. In addition, the SAO audits procurement processes, distribution and maintenance of public properties. According to article

24 NIS p. 16

5 of the law, all expenditures are subject to the scrutiny of the SAO. The agency also has authority to audit confidential expenditures of the government. The audit conducted by the SAO is final and no other agency can repeat it unless there is a presidential decree to its effect.

The audit of each year should be completed six months following the end of each fiscal year. The audit report or Qatia is submitted to the President and the National Assembly. The SAO shall publish the audit reports for public use and the summaries are available on its website.

The SAO is considered among the strong governmental agencies. Among its current challenges it has been noted that it needs to improve its capacity and resources particularly at the provincial level, and that there are still difficulties to get Ministries to act on their recommendations and a lack of responsiveness by the Attorney general’s Office to its findings<sup>25</sup>. It has also been noted that effort is needed to increase the Parliament members’ capacity to read audit reports for their functions to be fully effective.<sup>26</sup>

**f) The Internal Audit Units Regulation**

Each of the government agencies has an internal audit unit that reports to and works directly under the minister or head of the agency. The legislation that guides internal audit dates back to 1981 and although it is deemed as still relevant and used by the government agencies, in our point of view it is in need of amendment and/or renewal.

**Table 10 Internal Audits Regulation Summary as relevant for CoST**

Law/Act	Core Characteristics	Items Relevant for CoST
Internal Audit Units Regulation, 1981	The base of internal audit is resolution of the council of ministers and related legislation and any other standard financial management regulation.	<p>Article 3: the internal audit dept. of each agency reports to and work under the minister or the director of the agency</p> <p>Article 7: internal audit dept. should audit and recommend remedies to improve financial management.</p> <p>Article 17: if there are irregularities in finances of a department, the minister or the director the agency shall be introduced the suspects to the Attorney General Office.</p>

Like the external audit, the internal audit units recommend remedies to improve financial management. In cases where there is evidence for embezzlement or misuse of the government funds, the findings are relayed to the Attorney General Office for investigation.

**g) Anti-Corruption related Laws and Institutions**

Afghanistan signed and ratified the UN Anticorruption Convention (UNCAC) in 2004. While an anticorruption law per se is absent, the Law on Supervision of Implementation of National Anti-Administrative Corruption Strategy<sup>27</sup> typified certain conducts as administrative corruption (bribery, embezzlement, stealing of documents, concealing the truth, misusing of duty power among others). The law also created the High Office of Oversight for the Implementation of the Anti-administrative Corruption Strategy, a Strategy issued in 2006 to guide initial effort across the Government. This law, however, did not include any measures regarding transparency and disclosure of information. The functions of the HOO have been later amended and reduced.

25 Ob Cit. NIS p. 112 and 113.

26 Ob Cit. NIS P. 101

27 The text can be found here <http://anti-corruption.gov.af/Content/files/002000000000200200000000/00020%Law20%English20%version201%.pdf>

**Table 11 Law on Supervision and Implementation of the National Anti-Corruption Strategy**

No	Law/Act	Core Characteristics	Items Relevant for CoST
1	Law on Supervision and Implementation of the National Anti-Corruption Strategy, 2008	<p>A2: The High Office of Oversight shall provide oversight to the implementation of the national anti-corruption strategy.</p> <p>A3: Eighteen actions considered administrative corruption including bribery, embezzlement, and forgery of documents among others.</p> <p>A19: the AGO shall create special units to investigate corruption cases. The Supreme Court shall create special courts to hear corruption cases.</p>	<p>A13: 1) The HOO shall register the assets of the government officials stipulated in article 154 of the constitution. 2) the HOO shall also register the assets of the MPs, members of provincial and district councils, deputy ministers, head of independent agencies, ambassadors, governors and mayors and their deputies, judges, prosecutors, ministry of defense and ministry of interior's senior officers, district governors, 2<sup>nd</sup> grade civil servants and higher than that, and government employees working in financial, audit and procurement units.</p> <p>A14: whistle blowers are protected by law and shall be rewarded.</p>

This law has remained a legislative decree since 2008 since the National Assembly has not ratified it yet. A controversial article of the law stipulates that members of the National Assembly shall register their assets with the High Officer of Oversight. This has never happened in practice. Up to now, only two members of the National Assembly have registered their assets out of 249 members of the Lower House and 102 of the Upper House.<sup>28</sup>

Under President Ghani's National Unity Government, the oversight power of the HOO, AGO and NDS were abolished. In addition to the High Council Against Corruption that is mandated to provide coordination between the government agencies, the Specialized Anti-Corruption Justice Center is in the process of creation to investigate and prosecute cases of corruption against high-ranking officials including ministers and governors.<sup>29</sup>

In addition, the Major Crimes Task Force was established in 2010 to investigate corruption cases against high-ranking officials. During these years, the Attorney General Office and the National Directorate of Security assumed the task of proving oversight to governmental entities as a preventive measure against corruption. The government also created specialized units within the Attorney General Office and Specialized Anti-Corruption Courts. In spite of the number of anti-corruption institutions created during President Karzai's tenure (-2001 2014), they have been assessed as ineffective due to lack of political will, parallel functions and institutional confusion and lack of a clear strategy (see Table XX).<sup>30</sup> In 2015 President Ghani reduced HOO's mandate "to two functions: 1) asset registration and 2) simplifying administrative procedures".<sup>31</sup>

In 2010, the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC) was created to provide continued assessment of government and donors' anti-corruption efforts. The MEC continues to perform its duties with 3 Afghan and 3 foreign commissioners and is valued for producing quality anti-corruption research.<sup>32</sup>

28 Ob. Cit NIS. P. 141.

29 <http://www.gmic.gov.af/english/analysis/-406establishment-of-anti-corruption-criminal-justice-center-critical-to-fighting-corruption-in-afghanistan>

30 In this sense see NIS, p.17 and 114 ff.

31 NIS, p. 114

32 NIS page 126.

## h) Decree 168, 2016 on the promotion of the High Council of Governance and Justice to the High Council of Governance, Justice and Anti-Corruption (HCAC)

The HCAC is mandated to coordinate government agencies' activities against corruption, take preventive measures, and conduct public accountability and public outreach.

Although the National Unity Government promised to establish an independent anti-corruption commission with prosecutorial power that draws its membership from government and non-governmental organizations in December 2014 in London Conference on Afghanistan, the government changed its mind and instead established an exclusive government high council to prepare an anti-corruption strategy and guide the government agencies against corruption. In addition, the government has established an Anti-Corruption Justice Center (ACJC) to prosecute high-level cases of corruption. Anti-corruption experts welcome the establishment of ACJC but are critical of establishment of the high council. They argue that the government has acted against its commitment and has not established an independent anti-corruption agency.<sup>33</sup>

Table 12 The High Council of Governance, Justice and Anti-Corruption

Law/Act	Core Characteristics	Items Relevant for CoST
Decree 168, 2016 on promotion of High Council of Governance and Justice to the High Council of Governance, Justice and Anti-Corruption.	<p>Establishes a council presided by the President to coordinate governmental agencies' activities against corruption.</p> <p>A2: the Council is presided by the President and has the following as its members: the CEO, the Vice-president, the Chief Justice, Presidential Advisors on Justice and Transparency affairs, the Minister of Justice, the Attorney General (AGO Director), the Director of Supreme Audit Office. The Director of High Office of Oversight and Anti-Corruption (HOO), the Director of Independent Administrative Reform and Civil Service Commission and the Director of Independent Directorate of Local Governance</p> <p>A4: the council has a secretariat that shall be established within the policy unit of the Administrative Office of the President.</p> <p>A9: the Council shall present the anti-corruption strategy to the Cabinet for approval. The Council shall report to the public and the Cabinet annually.</p>	<p>A1: the Council is established to eradicate corruption in the country.</p> <p>A3: the Council prepares the anti-corruption strategy of the government. Government institutions reports to the Council on their anti-corruption measures.</p>

## i) The Criminal Code

The existing Afghan penal code dates back to forty years back in 1976. Its anti-corruption provisions are limited. For example, it does not entail illicit enrichment—something very significant in Afghanistan in the last decade. However, the law should be appreciated to have made briber taking, bribe giving and its intermediary a crime. In 2008, the Criminal Law Reform Working Group (CLRWG) was established and completed its work on a new criminal procedure code in 2012 and since then has started to work on a comprehensive penal code that includes a separate section on anti-corruption.

33 Zafar Shah Ruhe, "Az Markaz adli wa qazayee ta shura aali mubareza ba fasaad-e edari [From establishment of Anti-Corruption Justice Center to Creation of High Council to fight corruption," Hasht-e Subh, <http://8am.af/09/05/1395/center-for-justice-the-supreme-council-for-fight-against-corruption/> (accessed on 20 October 2016).

Table 13 The Afghan Criminal Code of 1976

Law/Act	Core Objectives	Items Relevant for CoST
The Penal Code, 1976	Activities and actions considered crimes and their respective punishments.	<p>A254-267 Bribery</p> <p>A254-255: the bribe taker, the intermediary and the briber shall be imprisoned for not less than two years and not more than ten years. In addition, cash fine of equivalent of what has been requested as bribe shall apply.</p> <p>A259: If a member of parliament...request something for himself or someone else...shall be sentenced according to the provisions of this law.</p> <p>A267: the final decision of the court regarding the conviction of a person for bribery shall be published.</p> <p>A268-274 Embezzlement</p> <p>A268: Any official of the publish services to whom the goods of the state or persons have been in the line of his duty and he embezzles it or hides it shall be sentenced to long imprisonment of not more than ten years.</p>

### j) Civil Servants Law/Civil Servants Code of Conduct

Based on this law, the civil servants may declare any type of information as containing secrets and refrain from sharing it with the media and civil society. In addition, the code of conduct of civil servants further places constrains on information disclosure as stipulated in article 7 of the law: “a civil servant shall: 1) present accurate data and information to his/her seniors. 2) keep the secrets of the government organization during the duty unless ordered to do otherwise. 3) reject a request for government documents, and reject a request for interview by media unless authorized to do so.” Arguably, the access to information law enacted in 2014 implicitly amended these mandates.

Table 14 The Code of Conduct of Civil Servants

Law/Act	Core Objectives	Items Relevant for CoST
The Code of Conduct of the Civil Servants, 2006	It regulates the relation of a civil servant with his/her colleagues and people.	A7: to ensure transparency and accountability, a civil servant shall: 1) present accurate data and information to his/her seniors. 2) keeps the secrets of the government organization during the duty unless ordered to do otherwise. 3) reject a request for government documents, and reject a request for interview by media unless authorized to do so. In such cases, accurate data and information should be presented. Personal views should be avoided.

## 2. Procurement Institutional Arrangements

### a) Procurement Institutional responsibilities at the national level

The reform of 2015 created the National procurement Commission (NPC). The President establishes the Commission, appoints its Chair and determines its members. The NPC reviews and approves contract awards beyond a certain threshold and decides on the procurement entities’ contracting authority upon recommendation of the NPA (Art. 54).

The National Procurement Authority (NPA) reports to the NPC and has policy, regulatory, monitoring and implementation functions, according to the Article 56 of the procurement law the NPA’s tasks are :

- improve the procurement system
- policy and professional development
- consolidation of procurement plans
- monitoring procurement proceedings

- facilitating procurement affairs
- monitoring progress in contract implementation

Its monitoring functions include:

- supervising and monitoring procurement proceedings to ensure transparency, efficiency and compliance with the law
- monitoring contract progress
- a duty to report violations of the law to the relevant authorities

Regulatory and Policy-making functions:

- prepare and approve procurement policies, procedures, regulations and standardized documents and procedures
- assess entities' procurement capacities and grant contracting authority (certificate)
- revise the threshold for the award authority and recommend changes to the NPC
- debar bidders and contractors
- issue a policy for the use of information technology in procurement
- conduct research on procurement for policy-making

Implementation functions:

- Capacity development activities (training, certification programmes) and providing support in the recruitment of procurement staff
- Facilitate procurement affairs
- Host a central register of contracts and contract information and publish a list thereof (Art. 46)

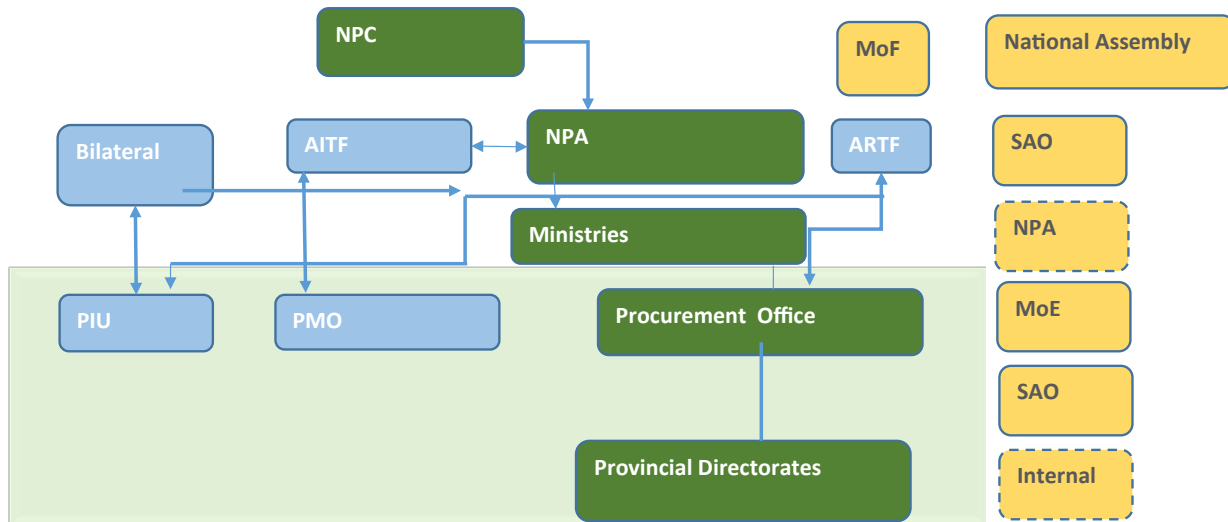
The National Procurement Authority has four directorates under its structure: (a) The Procurement Policy Directorate (b) The Procurement Facilitation Directorate (c) The National Procurement Commission Secretariat Directorate (d) The Contracts Implementation Monitoring Directorate.<sup>34</sup> According to the NPA, between November 2014 until April 2016, it has evaluated approximately 900 contracts out of which 725 were approved with a total cost of AFN 136 billion (USD 2 billion) and it has saved AFN 14 billion.<sup>35</sup>

According to the previous Procurement Law (of 2008) the contracting value of a project was the determinant factor to decide whether procurement was to be conducted by the PEs or by the (then) Special Procurement Commission (now replaced by the National Procurement Commission).

34 See <http://www.npa.gov.af/Beta/English/AboutUs.aspx>

35 See <http://www.npa.gov.af/Beta/Dari/NewsMaster.aspx?code=103>

Graph 1 Procurement institutional arrangements in Afghanistan.



The reform in 2015 eliminated the threshold system but left to the NPA to decide on a case-by case basis whether to delegate procurement authority to procurement entities depending on their assessment of their capacity. It also enabled “special arrangements” for contracting pending the capacity development of procurement entities.<sup>36</sup> In practice, this has meant that the NPA has centralized procurement authority and this has apparently caused delays in the processes generating a backlog in various projects.<sup>37</sup> Currently only 16 PEs have received contracting authority to conduct procurement themselves, and some of them have received authority only temporarily, as listed in Table 15. The actual threshold for contracting authority may vary from PE to PE and depends on the score they get through the NPA’s assessment. The information concerning these assessments is not public.

In this context, the procurement facilitation functions of the NPA in the case of those entities without contracting authority, means that the NPA, through its Directorate of Procurement Facilitation conducts the main steps of the procedures on behalf of the procurement entities.

36 Article 64 of the Procurement Law.

37 See SIGAR Report to Congress, April 2016 ,30,. This was confirmed in various interviews with experts working for donors or development banks.

**Table 15 Entities that have received Procurement Certificate under the Procurement Law of 2015**

No	Ministries	Issue date	Description
1	Ministry of Public Health	1394/8/5	Only Grants and Service Contracts Management Unit (GCMU)
2	Ministry of Education	1394/5/5	Only for four and a half months (contingent)
3	Ministry of Urban Development Affairs	1391/3/22	
4	Ministry of Energy and Water	1391/7/23	
5	Ministry of Labor, Social Affairs, Martyrs & Disabled	1391/8/29	
6	Ministry of Rural Rehabilitation and Development	1394/7/28	For the procurement department only for four months (contingent)
7	Ministry of Counter Narcotics	1394/7/15	For four months
8	Ministry of Women Affairs	1392/8/7	
9	Ministry of Communication and Information Technology	1392/9/11	
10	Ministry of Defense	1394/10/15	For six months
11	Ministry of Agriculture Irrigation and Livestock	1392/12/14	
12	Office of State Minister for Parliamentary Affairs	1393/05/05	
13	Minister of Interior	1394/10/01	For six months
14	President protective service	1394/11/15	For six months
15	Administrative Office of the President	1394/11/20	For six months
16	Ministry of Public Works	17/1/1395	for procurement department For six months granted (contingent)

Source: <http://www.ppu.gov.af/Beta/English/CertifiedOrgs.aspx><sup>38</sup>

The procurement law bestows oversight authority to both the procuring entity and the NPA. This doesn't exclude the oversight performed by other governmental agencies, like the SAO or the Ministry of the Economy. Article 35 of the law also stipulates that each agency shall state its terms and conditions for the monitoring and the audit of a project in the original contract.

The Ministry of Finance (through the Budget Hearing Committee) determines the final viability of the project by approving (or rejecting) its inclusion in the budget. The MoF also authorizes payments and oversees progress of the procurement plan based on completion reports submitted by the respective Ministries. Only projects that have been approved by the MoF and then officially included in the budget upon its approval by the National Assembly can be included in the procurement plans for contracting to be initiated.

The current procurement institutional arrangements are broadly depicted in

Graph 1.

### **b) Procurement Institutional responsibilities at the provincial level**

Afghanistan is established constitutionally as a centralized republic<sup>39</sup>, and therefore the Provinces fall under the contract authority delegation (concentration or des-concentration) system of the national level. Perhaps for this reason, the procurement law makes no distinction between national and provincial levels and the application of

<sup>38</sup> The NPA reviews this list from time to time and it may have changed from the moment of writing.

<sup>39</sup> Article 137, Constitution of the Islamic Republic of Afghanistan.



the procurement law is therefore implicit,<sup>40</sup> and the law makes clear that the NPC grants contracting authority and special arrangements for contracting at both the national and provincial levels (Art. 64-1). The procurement law is however silent on outlining the specific institutional framework or procedures for provincial procurement.

With the approval of the NPC and under NPA's recommendation, the Ministries can delegate their contract authority to the provincial directorates on a case-by-case basis. Contracts that are beyond provincial contractual authority are conducted centrally at the national level either by the Ministry's Procurement Office or by the NPA (if no contract authority has been granted to the Ministry or the contract is above the authorized threshold).

Currently, provincial procurement continues to be regulated by the Cabinet Resolution 18 dated 24/05/1390. The resolution initially determined the procurement authority of the governors and directors at provincial level. Based on this resolution, the procurement authority of governors differs based on the grade of their provinces as shown in Table 16.<sup>41</sup>

**Table 16 Thresholds for Provincial Procurement According to Resolution 18**

Grade	Threshold for Directors	Threshold for Governors
One	100,000 AFN (works) -(USD 1538) 50,000 (good and services)	40 million AFN (works) 3 million AFN (good and services)
Two	500,00 AFN (works) (USD 769)	30 million AFN (works)
Three	30,000 AFN (works) (USD 461)	20 million AFN (works)

In terms of institutional framework, the resolution implicitly requires the provinces to form a provincial procurement committee (PPC). The PPC is to be established by the governor, and is composed of a representative of the governor's office, the finance directorate, the directorate of economy and the procuring directorate. The procuring directorate acts as the secretariat of the committee—it announces the bids, receives the offers, processes the opening and the evaluation of the offers through the committee and finally announces the winner of the bid. It also conducts the procedures in case of single sourcing.

In implementing the current provincial regulations there has been confusion over who is the awarding officer: the governor or the director. In practice there are instances that governors sign the contract and in other cases the directors.

In practice provincial procurement is thus currently regulated under a mix of the current and the previous procurement regulations. As the ground research showed, not all Provinces have currently contracting authority, and when assigned it usually follows the thresholds under resolution 18 (for example 100,000 AFN for Provincial directorates of category 1 provinces). On both counts, provincial authority contracting is either very low or absent which in practice means that contracting procedures, even for provincial contracting remains centralized. This has an impact on both the accountability, the monitoring possibilities and the disclosure, as will be discussed in section 4 of this document.

There are current efforts to regulate Provincial contracting, at the same time that budgeting des-concentration efforts start taking place. With the establishment of Provincial Budgeting Unit within the Ministry of Finance, the ministry initiated a plan to regulate procurement at the provincial level (for governors, provincial directors and municipality majors). The proposed plan suggests the establishment of a provincial procurement committee and has lowered the procurement authority of the governors to AFN 10 million in construction, AFN 5 million in goods, and AFN 1 million in services. The Cabinet later rejected this plan, and the National Procurement Authority was tasked to prepare a provincial procurement plan.

40 Article 4 of the Procurement Law on Scope of Application limits its scope to all procurement entities contracting with public funds, irrespective of whether national or provincial in character. Provincial contracting is also not considered among the exceptions of application

41 These figures may have changed. We had this information from secondary sources and couldn't confirm its full accuracy.

According to our information,<sup>42</sup> the NPA has prepared a new plan that proposes the replication of the central institutional framework at the provincial level. A provincial procurement commission that is presided by the governor shall be established with membership of the directors of finance, economy, justice, and the procuring entity. A Directorate of Procurement shall be established reporting to the NPA and shall act as the secretariat of the provincial procurement commission. The same structure is to be replicated in the municipalities. The awarding ceilings for the governor are two times higher of those suggested in the initial proposal by the MoF. The procurement commission can award contracts worth AFN 20 million in construction, AFN 4 million in goods, and AFN 4 million in non-consulting services. The NPA plan is at the moment of writing pending the Cabinet's approval.

The text of a proposal we had access to,<sup>43</sup> foresees that the technical monitoring of the implementation is responsibility of the contracting authority.

### 3. Monitoring, Audit and Oversight

Different government agencies have monitoring, audit and oversight roles according to the legal framework in Afghanistan at different stages of the contracting processes.

**The Ministry of Finance:** with a special focus on budget and financial management, the MoF is determinant in deciding inclusion or not of a project in the budget. The ministry will filter projects that do not correspond to the strategic priorities or do not count with feasible funding and this will be decided in coordination with the donors. It will be involved therefore in two moments:

- a) In deciding the inclusion of a project in the budget. This decision is taken on a budget hearing committee with participation of delegates of the MFA, MoE and as observer, each of the sectorial Ministries concerning their own projects. This meeting is not public and the results are not disclosed but will be reflected in the National Budget
- b) In releasing payment for contractors. Payment is released on the basis of the sectorial Ministries' progress and financial report submitted to the MoF.

In addition the Ministry of Finance assumes oversight functions under financing agreements of the resources granted by donors to the projects.

**Supreme Audit Office:** although its special focus is a financial audit it also looks ex-post into the project's compliance to the procurement law. The audit is performed at the end of the fiscal year on a sample selection of projects, determined depending on how robust the internal audit report is. In addition, the Supreme Audit Office conduct site visits to a very limited number of projects for purposes of verification. They publish general audit reports although it is also foreseen that they publish project-specific reports.<sup>44</sup>

**National Procurement Authority:** has regulatory and oversight functions before and during the contract processes. Its oversight functions also include certifying procurement entities' capacity. On the entities who do have certification they assess PEs performance on the basis of reports. Because of its facilitating function, it ends up performing contractual processes for entities without capacity or authorization to do so. It monitors the implementation of the contracts under the awarding authority of the NPC and performs in these cases limited on-site visits to the projects. It has a central role in disclosing procurement information and in managing a central contract registry.

42 At the time of writing, we have not seen the text of the NPA proposal.

43 It was not clear from the text whether it was the final proposal or not.

44 The published reports can be found here <http://sao.gov.af>

Ministry of Economy: the MoE plays a dual oversight role in the process. Initially, by considering the feasibility of the projects before submitting them for consideration of the MoF for their inclusion in the budget. During implementation it monitors a sample of central-level projects and seeks to monitor all projects at the provincial level.

Sectorial Ministries: are in charge of overseeing the implementation of their own projects either centrally or through their provincial directorates. In addition, their internal control offices are in charge of auditing their own projects.

Provincial Councils: they have functions to monitor projects in their province, including on-site visits to verify the quality of the work. In practice they are not performing this function, at least not in all provinces. According to our research, often when they do supervise, they don't report the findings. In the case of Bamyan, for example, they appeared to be under resourced.

Social Monitoring: there are various social monitoring initiatives. The Community Based Monitoring on infrastructure projects run by Integrity Watch Afghanistan in seven provinces: Balkh, Herat, Nangarhar, Parwan, Panjshir, and Badakhshan and Bamyan. IWA also conducts ground monitoring of some projects for SIGAR. Additionally, the Ministry of Public Works reports having started efforts for community monitoring in one of its projects.<sup>45</sup> These initiatives are however usually civil society driven and need to be funded to be feasible.

Donor audits and oversight: donors will provide control, monitoring and oversight to their projects during procurement and implementation. This can entail various layers of oversight:

- Control and oversight provided by the PMO during procurement ( no objection during process and no objection to start civil works and safeguard compliance)
- The project's performance monitoring system and internal control during implementation. In general it is difficult for donors to provide on-site monitoring.
- Evaluation and ex-post impact assessments.
- External audit and oversight either by third parties or by donor's control and oversight agencies.

**Table 17 Monitoring and Oversight Roles**

Entity	Focus and Scope	on-Site Visits	Desk-based review (documents, reports)	Disclosure
SPECIFIC MONITORING, AUDIT OR OVERSIGHT				
Ministry of Finance	Budget and Financial Management Involved in all Projects	No	Assessing all the projects <ul style="list-style-type: none"> <li>• For inclusion in the budget</li> <li>• For Payment</li> </ul> General Oversight on donor financed projects	Not Public, but budgetary information publicly available. No Public information or payments.
Supreme Audit Office	Financial Audit and Compliance with the Procurement law Audits a limited Sample of projects.	Yes, limited	Their audit is ex-post and covers both: on-going or completed contracts	Public
Internal Control office	Financial Audit	No	Undertakes audits on their agencies projects.	Not Public

45 Interview with MoPW

NPA	Fulfillment of Procurement procedure of all projects.	No	Oversight into fulfillment of procurement law, procurement capacity assessments. Facilitation activities (Special arrangements) on projects of entities without capacity	Semi-Public (Certification can be know) Procurement Process disclosure according to the law.
GENERAL IMPLEMENTATION MONITORING AND OVERSIGHT				
Sectorial Ministries and agencies	Monitoring implementation (technical and financial)	NO	Monitoring all the projects at the implementation stage at central level and/or through provincial directorates	Not Public
Ministry of Economy	Monitoring of all the projects at central and provincial level	Selected	Initial feasibility and Monitoring a sample of projects during the implementation stage at the central level and the majority of projects at provincial level.	Not Public
National Procurement Authority	Monitoring implementation (Limited)	Yes(Limited)	Monitoring of projects under the awarding authority of the NPC	Not Public
Ad-Hoc Commission appointed by the president	For a few specific projects	Yes	To Audit complete programs of 4 large implemented by the of MoEW and advice the president on termination of those contracts	
Other NON GOVERNMENTAL MONITORING ; AUDIT AND OVERSIGHT SYSTEM				
Community Monitoring	CBM-1 of Integrity watch selected projects.	Yes	Mainly Civil Society driven	Reports are published for CBM activities
Donors Audit	Only on the projects they fund	Yes but Limited	Contro and oversight during Procurement (non-objection), during project implementation and ex-post evaluation.In addition to external control and oversights.	Disclosure varies according to the donor

For example, in the case of the ADB's Energy Supply Improvement Investment Program in Afghanistan,<sup>46</sup> "the PMO is expected to provide control and oversight of the procurement. All the procurement process will be assisted and monitored by project supervision consultant to ensure compliance with ADB guidelines and procedures. This will assure transparency and accountability for all procurement activities." Furthermore, the PMO Evaluation team "is responsible to establish a Project Performance Monitoring System for the project, collect baseline data, and update periodically. The team measures the results of ADB projects using a methodology consistent with the Design and Monitoring Framework of the project."(...) "The team will also be responsible for establishing the MIS, as well as preparing reports as required by the government and ADB". In this case the PMOs report to both the donor and the Minister, except for DABS where the PMO reports to the Director only.

While in some cases those roles are clear, particularly with specific oversight functions -as is the case with the role of the SAO, or the role of the MoF- in some others those roles overlap - like the monitoring and oversight roles to contract implementation by the MoE, the sectorial Ministries, the provincial councils and directorates and the NPA do on implementation-. The sectorial ministries (and agencies like DABS) bear the bulk of the responsibility for successful completion of procured projects. Each of the sectorial ministries has provincial directorates in all of the 34 provinces. The oversight to the implementation of projects by contractors is either provided directly by teams from the ministries (or agencies like DABS) at central level or through teams from the

46 Afghanistan: Energy Supply Improvement Investment Program -Multiranche Financing Facility Administration Manual Project Number: 001-47282 Grant Number: TBD November 2015 Accessible here: <https://www.adb.org/sites/default/files/project-document/-001-47282/176566fam.pdf>

provincial directorates. For example, when the Ministry of Education provides oversight to the construction of a school in the province of Bamyan, the contract implementation is first monitored by the Bamyan Directorate of Education. In certain cases, teams of inspectors from the Ministry of Education visit implementation of projects at provincial level. In addition, the Internal Audit Directorate of the Ministry of Education audits the financial documents of the school.

In turn, the sectorial ministries and agencies report to at least four other oversight agencies during the implementation of projects. These agencies are the Ministry of Finance, the Ministry of Economy, the National Procurement Authority and finally on yearly basis to the Supreme Audit Office. The Ministry of Finance assesses the documents and if satisfied, released payments to the contractors. The Ministry of Economy assesses the reports by the sectorial ministries for two purposes: first to find out if there is any problem in the implementation of projects, and second, to prepare a unified progress report of all the government to be submitted to the President Office. In case that the Ministry of Economy finds out there are problems in the implementation of the projects, it sends its evaluation teams to conduct site visit and suggest remedies. Since recently, the NPA also receives progress reports of the projects to follow up on the completion or lack there-of of projects.

#### **4. International Funding of Infrastructure projects – institutional and regulatory landscape**

Investment in public infrastructure has been a key component of donor and public funds, although the “main” modes of delivery have changed through time. Broadly speaking, one could distinguish four “phases” which may overlap in time:

- Initial reconstruction period. Off-budget military expenditure in infrastructure. Starting with the reconstruction period in 2001, most funds were channeled under off-budget military expenditure for efforts associated primarily with infrastructure needs for stabilization and security, and channeled through military spending. Civilian infrastructure expenditure was then channeled through the Afghan reconstruction Fund (ARTF) initially as off-budget funds to finance reconstruction efforts. The ARTF was constituted in 2002 with a pool of funds from bilateral donors, the World Bank and the Asian Development Bank, and administered by the World Bank.
- In 2010 with the creation of the AITF, the ADB, the WB and other bilateral donors pulled funds together for bigger on-budget infrastructure projects.
- After the 2010 Kabul Conference a progressive move towards on-budget civilian projects is agreed with all donors.
- After the decision of foreign forces to withdraw in 2014 a tendency to move away from military infrastructure projects into civilian infrastructure projects.

Table 18 Illustration of Donor funded Project's Applicable Regimes

Funding Source	On or off Budget	Applicable Law	Additional Oversight
ARTF	On-budget only	World Bank Guidelines and Afghan law (mainly)	WB clearance
AITF	On-budget only	ADB Guidelines and Afghan Law	ADB clearance
Civilian Bilateral development assistance	On-Budget	Donor's procurement regulations (mainly) and Afghan law	Donor's audit and control system in addition to Project Audit. And, Afghan audit and monitoring system.
Military Assistance	Off-budget	Donor's procurement regulations only.	Donor's audit and control system.
	On-Budget	Donors' defence procurement regulations and possibly Afghan law (at least PFML and Atol)	Donor's audit and control system.
	Off-Budget	Donors' defence procurement regulations only	Donor's audit and control system.

Roughly, one could classify infrastructure spending in three categories, which result from these different phases and currently coincide somewhat:

- Military and security-related infrastructure. These funds are mainly off-budget projects.
- Reconstruction projects financed by the ARTF which are all currently on-budget.
- Big infrastructure projects which are funded by the AITF which are all on-budget.
- Civilian bilateral donor's projects, which include off-budget and on-budget funding for -comparatively- smaller infrastructure projects. Although the general tendency has been to reduce the off budget projects and turn into on-budget projects (either implemented directly or through the any of the trust funds) there is still an inflow of off-budget bilateral projects.<sup>47</sup>

The institutional arrangements and the applicable procurement law vary depending on the project funding. In principle the Afghan law would apply by default to all procurement processes of on-budget projects, but will be applied simultaneously with other guidelines and regulations depending on the source of funding. The Afghan procurement law also foresees that it would give way to the procurement rules of an international organization should they conflict with the law. Off-budget projects will be conducted following the donor's procurement guidelines. The Table 18 illustrates a few scenarios of this.

#### a) Afghan Reconstruction Trust Fund Financed Projects

The Afghan reconstruction Fund ( ARTF) was constituted in 2002 after the 2001 Tokyo donor conference. Administered by the World Bank it pools funds from its projects are procured under World Bank Guidelines.

From the beginning the ARTF has focused on both strengthening structures and governance and undertaking programmatic approaches (service delivery, infrastructure, etc.). In 2002 its first project aimed at supporting public financial management. During the period between 2001 and 2009 and in the absence of procurement capacity in the country, the procurement was done primarily through Crown Agents, hired specifically as procurement agents for that process.<sup>48</sup> After the London Conference in 2010 and the "Realizing Self-Reliance Paper" of 2014 there is a strategic change in the approach: to emphasize long term programmatic approaches, to use and strengthen government structures, and a three-year ARTF financial strategy is introduced as a tool to

47 Interview with Ministry of the Interior..

48 Ob. Cit. ODI p.19

“align financing to government priorities and strengthen government ownership of the ARTF and its resources”.<sup>49</sup>

The ARTF runs a Recurrent Cost Window and an Investment Window (IW). Through the latter both governance reform and infrastructure projects, among others, are funded. Through its “Capacity Building for Results Programme” – CBR the ARTF has supported among others public financial management and procurement reform, and have provided support to procurement authorities, currently, also to the NPA. This programme has built the capacity of a number of qualified staff building a form of “second civil service” which should be embedded in time in the afghan civil service to reduce “reliance on external and sometimes parallel structures”.<sup>50</sup>

According to the ARTF Financial Strategy document for 1396-1394, there are a number of carried over projects in the pipeline from the previous strategy due the “prolonged election process” with the current pipeline encompassing new projects for USD1.6 billion. In the context of a tighter financial juncture proposed prioritized new investments for the period 1396-1394 for \$800 million (for \$266 million a year). This includes agriculture and rural development projects as well as energy infrastructure projects.<sup>51</sup>

All of ARTF financing is currently on-budget and according to its Financial Strategy, it is fully aligned with the NPPs at the strategic and programmatic levels, and %95 at the project level.<sup>52</sup>

### *Implementation Mechanisms*

After 2010, its procurement is conducted using different implementation mechanisms. Its Financial Strategy also emphasized its alignment with the NPP and particularly the Afghan government leadership on strategy and prioritization to ensure a country-owned agenda.<sup>53</sup>

The ARTF uses different implementation models chosen depending on the government delivery capacity in a specific area, among them:

1. Implementation units (PIU) established within a ministry
2. Service delivery contracted directly by the ARTF with the Ministry playing a role in contract management
3. Full use of existing capacity within a ministry. In this case, programme management and procurement is conducted by Afghan procurement entities (the respective ministries) with the Bank providing clearance or “no objection” during all stages.

### **b) Afghan Infrastructure Trust Fund (AITF)**

Created in 2010 after the Kabul Conference as a multi-donor trust fund “to pool and deliver financing for infrastructure in Afghanistan and to leverage resources through cofinancing (sic) with private sector and other development partners”.<sup>54</sup> It results from the need to address large infrastructure project finance, since the ARTF supported only small to medium-scale infrastructure projects as laid out in the ANDS 2013-2008. In its constituting document, developing Afghanistan’s hydrocarbon and mineral resources appears as an “opportunity and challenge”<sup>55</sup> that particularly needs to be addressed. At the moment it included contributions from Japan, USAID and DFID, in addition to those of the ADB.

49 ARTF Financing Strategy FY2017-2015) 1396-1394), P. 2

50 Ibid p. 10 and background Interview.

51 Ibid p. 64. A complete list of pipeline projects is also included in the document s Annex 1 –p 34.

52 Ibid. P. 5

53 Ibid, P. 6

54 Afghanistan Infrastructure Trust Fund. Asian Development Bank. 2010. P. 2

55 Ibid. P.1

While there is still a difference between the type of projects funded and the approaches of both the ARTF and the AITF, nowadays, a project may be co-funded by both funds.

According to the ADB's Country Operations Business Plan (COBP) 2018-2016 "ADB's strategic focus supports the government's priorities as set out in this paper, and is aligned with the Afghanistan National Development Strategy and the National Priority Programs, which are being updated by the new government in line with its Realizing Self-Reliance agenda"<sup>56</sup>

### Implementation Arrangements

The fund is managed and also financed by the ADB, due to its track record and experience in managing and delivering big infrastructure projects. Its initial implementation arrangements prescribe the application of ADB guidelines and procedures to projects and contracting financed through the fund, with ADB technical teams reviewing the "proposals and overseeing the execution of AITF -financed projects"<sup>57</sup>, and the possibility of resorting to an outsourced team of experts to deliver procurement services, all with a focus on "getting things done, administrative efficiency, and clear accountability".<sup>58</sup>

In managing the AITF the ADB commits to be "accountable to its Management, Board of Directors and AITF's contributors."<sup>59</sup>

The ADB delivers grants and Technical Assistance, not loans. Its constituting document indicates that all of its funds will be "reflected in the AITF accounts as well as the government's accounts."<sup>60</sup>, suggesting that all of its projects are delivered on-budget.

The procurement for ADB-financed projects can be outsourced or be implemented through Project Management Offices PMOs (in some cases also Project Implementation Units PIUs) hosted in the respective Ministries and meant to facilitate a procurement capacity transfer by being embedded on-site. In the latter case, the Bank's technical teams review proposals, issue non-objections at each step of the process. The actual implementation arrangements will vary from entity to entity. For example, for the Energy Supply Improvement Investment Programme, the arrangement in DABS shows a more autonomous PMO reporting internally and directly to the DABS Director, while the arrangement for the Ministry of Water foresees PMO reporting lines directly to the ADB. Both arrangements are illustrated in the figures below.<sup>61</sup>

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56 ADB COBS. Afghanistan 2018-2016. November 2015. P. 1

57 Ibid p. 3

58 Ibid. P. 2

59 Ibid. P. 3

60 Ibid. P. 2

61 ADB. Afghanistan: Energy Supply Improvement Investment Program. Multitranches Financing Facility Administration Manual (RRP AFG 47282). November 2015



Graph 2 ADB Energy Supply Improvement Programme. DABS and MOW Implementation Arrangements.

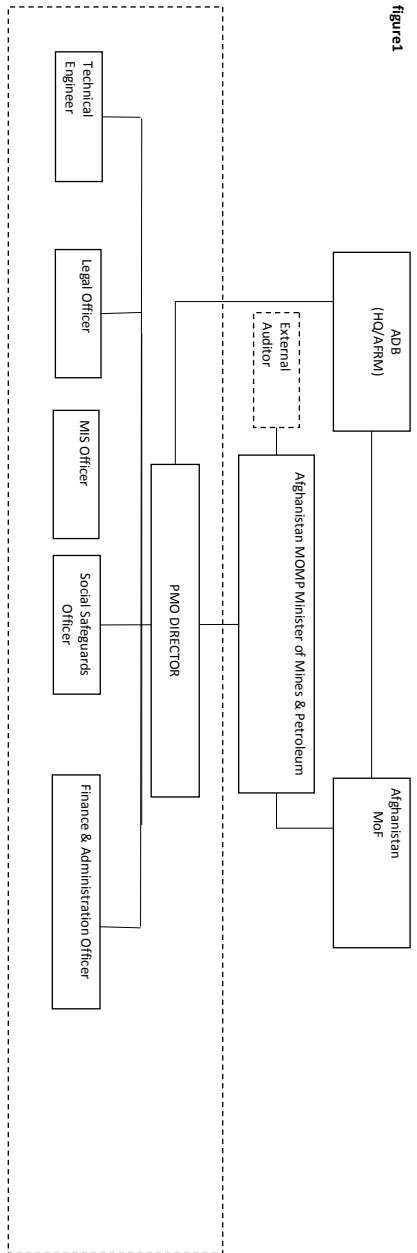


figure 1

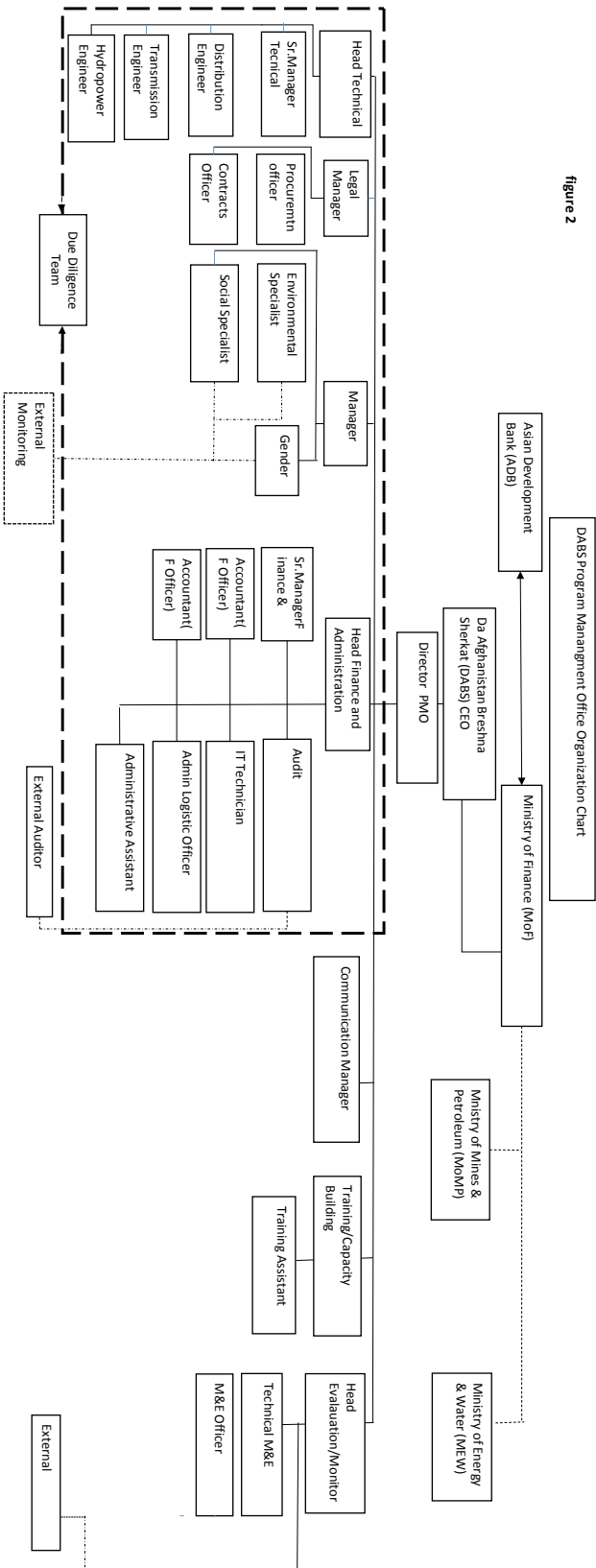


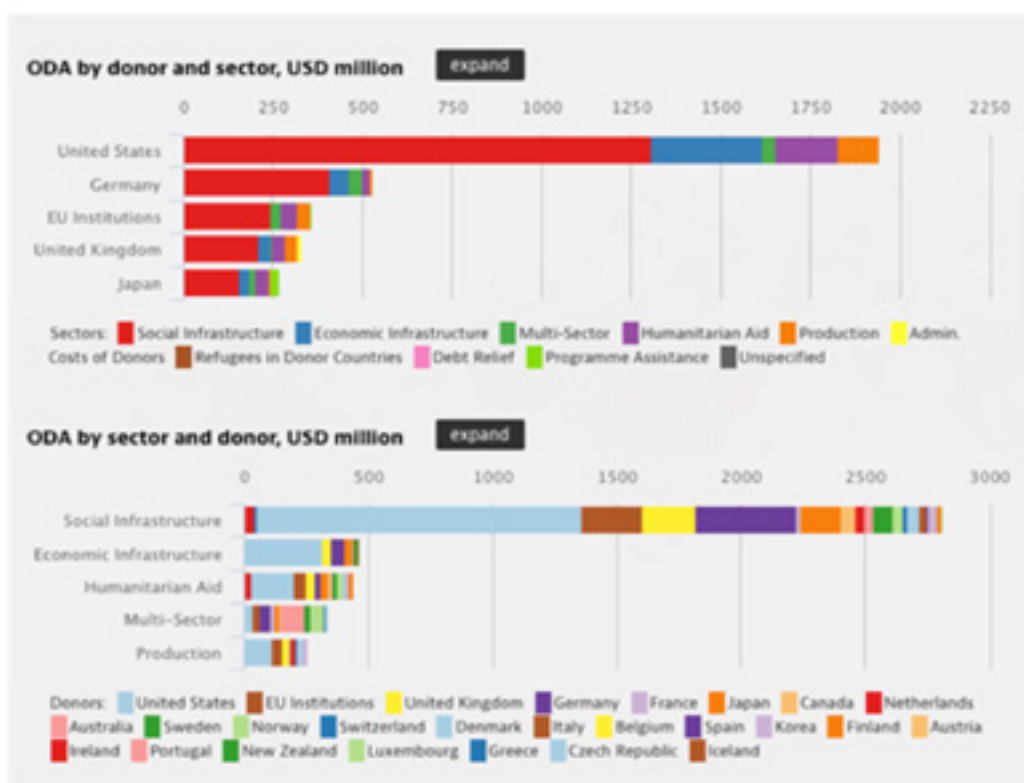
figure 2

### c) Bilateral Donor Funding

According to the OECD OAD Statistics for 2014, the current main sources for official development assistance to infrastructure in Afghanistan are the US, the UK, Germany and Japan, among the DAC members. On average, the US is the biggest bilateral funder of infrastructure. The main non-DAC member donor for economic infrastructure projects is the United Arab Emirates (See

Graph 4). Although China is not included in the OECD figures, public information reports of increased development assistance from China to Afghanistan reveal pledges for \$327 million in 2014<sup>62</sup> with an announcement of USD81,4 million for year 2014 for activities including the infrastructure sector.

Graph 3. ODA to Afghanistan by donor and by sector according to the OECD-DAC



Source: OECD DAC ODA Statistics 2015

Every donor conducts procurement for the projects they finance bilaterally under their own rules and regulations and under their own (thus different) disclosure standards. While modes of delivery also vary and have changed in time, there are mainly three types: On-budget funds, Bilateral agreements and Off-budget funds, in all cases for civilian and military operations.

62 See <http://www.wsj.com/articles/china-pledges-327-million-in-aid-to-afghanistan1414566221-> and here <http://www.centerforsecuritypolicy.org/13/04/2016/china-seeks-stability-in-afghanistan-for-economic-benefit/>

Graph 4 Afghanistan- Recipient Country Profile (OECD-DAC)

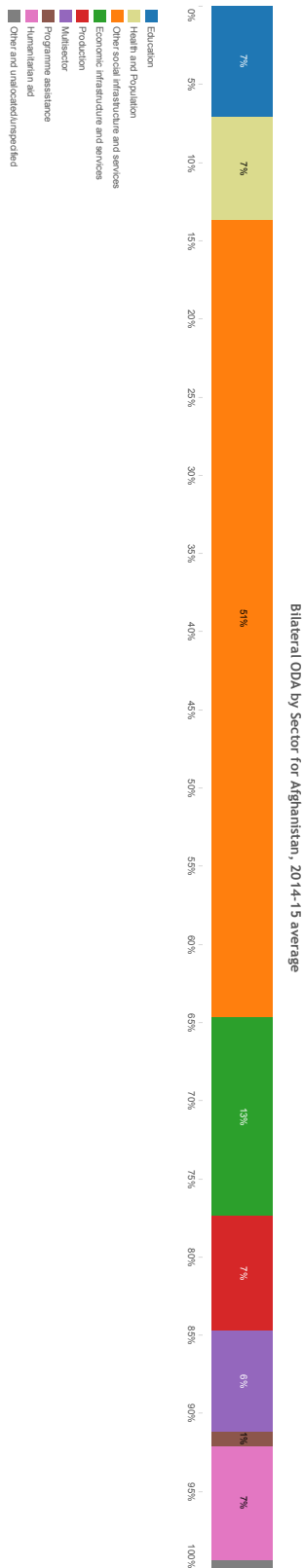
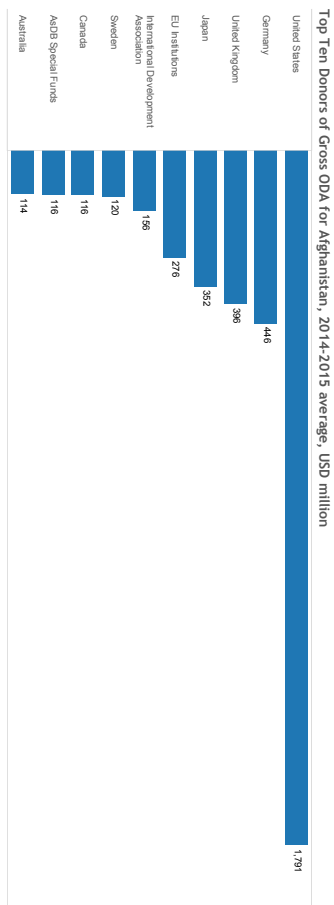
Recipient country  
Afghanistan

**Receipts for Afghanistan**

	2013	2014	2015
Net ODA (USD million)	5,62.5	4,945.1	4,239.2
Net ODA/GNI (%)	23.9	23.9	21.4
Gross ODA (USD million)	5,191.6	5,018.8	4,300.6
Bilateral share (Gross ODA) (%)	85.5	84.2	86.6
Net Private flows (USD million)	25.9	32.0	-4.5
Total net receipts (USD million)	5,238.1	4,983.2	4,301.1

**For reference**

Population (million)	2013	2014	2015
GNI per capita (Atlas USD)	730.0	670.0	630.0



Source: OECD - DAC, <http://www.oecd.org/dac/financing-sustainable-development/development-finance-data/dac-rc-profile.htm>

In addition, the applicable procurement regulations may vary according to the institutional source within a donor country. For example, in the US, the federal regulations (Code of Federal Regulations and the Federal Acquisition Regulations) will apply to all procurement, but specifically Aid Acquisition Regulations (AIDAR) will rule USAID run projects.<sup>63</sup> The Department of Defence's procurement will be run according to its own specific regulations.<sup>64</sup> The US procurement regulations have been regarded as complex, not without trouble and with a complex oversight system.<sup>65</sup> In addition, in many cases donor procurement regulations may include certain conditions on sourcing (nationality, requirements, etc.) and on (non-) payment of local taxes which have an impact and may restrict local procurement.

It is not the purpose of this document to assess or describe in detail donor's procurement procedures. It is however relevant to consider that in the bigger scheme of things in Afghanistan concur new procurement regulations, nascent procurement systems with diverse foreign procurement systems, all with different procedures, accountability and transparency standards making the landscape highly complex and dependent on different variables. This makes also the possibilities of CoST in Afghanistan, unique.

### Conclusions

It is important to understand that in Afghanistan procurement reform and capacity development are still in their initial stages. There are continuing efforts by the Afghan government to improve contracting procedures. The first post-reconstruction procurement law was issued in 2008 and reformed in 2015. For many, the law follows the World Bank model. Under the current system, the National Procurement Authority (NPA) is in charge of facilitating and monitoring all procurement, with the National Procurement Commission (NPC), headed by the President, in charge of making contract awards of high-threshold contracts. Under the current system the NPA assigns contract authority to the Ministries individually depending on their capacity and not under a general contracting threshold. In practice the current lack of contracting authority by many Ministries results in a more involved role of the NPA in conducting procurement processes.

Monitoring, oversight and control is performed by different agencies and initiatives, among which are: the NPA, the SAO, the Ministry of the Economy, the Ministry of Finance, each sectorial Ministry, external independent monitoring, social monitoring initiatives, donor's own supervision and monitoring activities, provincial authorities and an ad-hoc commission created by the President to examine closely a specific set of projects. To some extent, this monitoring and oversight is performed nevertheless insufficiently and with overlapping efforts. Security, limited capacity and resources make it difficult to monitor contract implementation on-site.

Currently, the biggest issue is project delivery and completion. There are concerns related to political influence on contract awards, of unknown beneficial ownership of contracting firms, of real performance capacity of contractors, of limited procurement capacities at the national and provincial levels, of difficulties in translating local needs into national priorities, of misleading subcontracting practices that increase costs, of influence exerted by powerful power holders on willing or unwilling local authorities, and insufficient or overlapping monitoring.

There are mixed perspectives on procurement capacity both at the national and provincial levels. At the national level, the Ministries we spoke to talked about parallel donor structures within the Ministry without accountability to the Ministry or a real transfer of capacity. Donors mentioned efforts to undertake that capacity transfer through the PMO or PMUs, or by supporting the NPA. At the provincial level, provincial authorities speak of having the capacity and the willingness to undertake procurement and some Ministries are starting initiatives to delegate contracting authority to them. Some add that locally procured contracts are more effectively delivered and monitored. On the other hand, some speak of a lack of contracting and implementation capacity at the provincial level and a high exposure to local power holders. Generally, private sector actors expressed concerns with payment delays and contract management delays, that are absent when contracting with donors.

63 See here <https://www.usaid.gov/who-we-are/agency-policy/series300->

64 See here <http://www.acq.osd.mil/dpap/>

65 See Ob. Cit ODI. Pages 15-14

For many of those interviewed, the procurement reform of 2015 has been helpful in limiting political interference but has centralized procurement, which has created additional delays. Centralization is also considered to impede the development of the procurement capacity of entities that are not entitled to conduct procurement at the national and provincial levels. The procurement legislation's full implementation is however affected by its coexistence with other regimes (donor's procurement legislation for both off budget and on-budget projects) and its vulnerability to changes in government, since the current system is heavily dependent on the President. The general impression is that to sustain and support reform would cause more positive impact than to pursue new changes.

On the other hand, the Role of Donors and of the International Community is decisive in infrastructure projects. As of the year 1395 (2016-2015) investment in infrastructure constitutes slightly over %50 of the total development budget of which about %87 is funded by donors. The Afghan Reconstruction Trust Fund (ARTF), managed by the World Bank, and the Afghan Infrastructure Trust Fund (AITF), managed by the Asian Development Bank, take on most of the construction-related activity or at least on the bigger infrastructure projects, but other individual donors continue to or can undertake smaller projects as well. Donors perform their projects under their own procurement and disclosure policies and regulations. To an extent, these will involve Afghan legislation except for off-budget projects and projects donors run exclusively at the provincial level. In this context, to be relevant, CoST Afghanistan needs to include in its scope projects funded by donors, and involve donors in their activities including in the MSG.

There are different and mixed perspectives on projects implemented by donors. For some, donors lack accountability and transparency towards local actors (Ministries, provincial authorities, citizens), install parallel structures within the Ministries and sometimes impose contractors; it is also acknowledged however that many donor's projects are more likely to be implemented, are of a higher quality, and that project management flows more quickly. In a way, this mirrors the challenges that the Afghan government faces today with the varied capacities within its own internal structures.

## C. THE INFRASTRUCTURE SECTOR IN AFGHANISTAN

### 1. Infrastructure Sector Public Budget and Policies

Afghanistan's economic growth has declined from an average rate of 9.6% in 1389-1393 to 3.7% and 1.3% in 1393 and 1394 respectively. With improvements in the security situation and government measures for implementation of the Self-Reliance paper and other new policies, the economic growth is expected to recover to 2.6% in 1394, according to the Ministry of Finance.<sup>66</sup>

As shown earlier, Afghanistan's economy is dependent on international financial assistance, therefore, changes on the international economy and politics will have an effect on the country's economy as well. Actual domestic revenue for FY 1394 (2015) was 121.8 billion AFN (97.4% of the plan) an increase of 22% compared to the FY 1393 (2014). Domestic Revenue for FY 1395 (2016) is projected to be in the amount of AFN 131 Billion (9.7% of GDP) and economic growth for FY 1395 is projected to be 3.4%<sup>67</sup>.

**Table 19 Afghanistan. Sectors' contribution to the economy and mid-term macroeconomic framework**

In percentage change Unless otherwise noted	Historic	Current	Budget	Outer Years (*)	
	1393	1394	1395	1396	1397
Real GDP Growth -Market Price	2.10%	2.60%	3.40%(*)	4.30%	4.50%
Nominal GDP Level (Afs bn)	1193.2	1219.3	1350.2	1533.4	1717.3
Nominal GDP Level (USD bn)	20.8	19.9	20.2		
NGDP by Sector (Afs bn)					
Agriculture	294	280.5	922.4	3043.5	89.3
Industry	252.9	250.3	288.6	303.6	389.3
Services	620.3	655.1	730.4	809.6	901.3
GDP Deflator	-1.10%	-0.40%	7.10%	8.20%	7.90%
CPI Inflation	1.30%	-3.20%	0.20%	6.10%	5.80%
Exchange Rate (Afs/USD)	57.3	61.3	67		

(\*) Estimated

Source: MoF, Directorate General Budget, National Budget of 1395 (FY2016)

The total budget for FY1395 (2006) is USD 6.635 Billion. 31% of this budget is expected to be financed by domestic revenue (AFs 133.473 billion) and 68% depends on international aids (AFs 301.112 billion equivalent to USD 4.494 Billion). Of the total international funds 1% corresponds to loans (AFs 3.879 Billion equivalent to USD 57.903 million). The total external resources (grants and loans) are estimated to make up to 22 percent of the GDP for 1395.<sup>68</sup>

#### Development Budget

As shown in Fehler! Verweisquelle konnte nicht gefunden werden. the development (investment) budget for the FY 1395 amounts to USD 2.5157 billion which is 38% of the total budget<sup>69</sup>, of which USD 1.251 billion is carry-forward (budget carried from previous fiscal years) and the remaining USD 1.264 billion is new budget. Most of the development budget is allocated to the infrastructure, education, health and agriculture sectors (about

66 MoF, Directorate General Budget, National Budget of 1395 (FY2016)

67 MoF, Directorate General Budget, National Budget of 1395 (FY2016), page 2

68 See Table 1 Afghanistan Development Budget FY 1395 – Sources of Funds on page 7.

69 MoF, Directorate General Budget, National Budget of 1395 (FY2016)

90%), with the infrastructure sector alone taking about 50.1% of the development budget, estimated to be 6% of GDP.<sup>70</sup> This budget will be used to fund irrigation systems; energy generation, transmission and distribution; the construction of dams and roads.

The actual budget allocated for infrastructure is in fact slightly bigger. In addition to the infrastructure budget line, the budget allocated for other sectors like health, education, agriculture and rural development programmes covers also a significant amount of social infrastructure projects such as hospitals, Schools, Universities, construction of Irrigation dams, irrigation canals, strengthening river sides and water, among them. In light of the above, we have made an estimate of the Infrastructure and Construction sector share in national budget 1395 for the 56 procurement entities taking into account the following criteria:

a) For PEs, we differentiate between goods, services and works, and only reflect budget related to construction/Infrastructure activities. However, operating budget for the management of construction process such as the cost of feasibility study, design, procurement and oversight is not measured here. They are paid from the government's operating budget, and they can be indirect budget.

b) Projects counted as construction/Infrastructure are the below categories:

- Transportation Infrastructure (Roads, Bridges, Tunnels, etc.)
- Airport Infrastructure (Airports, Landing Stripes, etc.)
- Energy Infrastructure ( Generation, Transmission or Distribution)
- Telecommunications Infrastructure
- Social Infrastructure (Schools, Universities, Hospitals, health or education related facilities, housing, water and sewage, community infrastructure in general including sports facilities, community markets, etc)
- Agriculture Infrastructure (Irrigation, Deposits, etc.)
- Public Buildings / Official Offices etc.

Our estimate shows that of the total development budget, USD 1.632 Billion (65.7%) is effectively related to construction/infrastructure activities.<sup>71</sup> Approximately 94% of the infrastructure related budget is concentrated in 12 agencies that are responsible for the implementation of 790 construction/infrastructure projects out of a total of 928<sup>72</sup> as described in Fehler! Verweisquelle konnte nicht gefunden werden..

In addition, the comparatively lower development budget allocation for the security sector does not mean that little or no construction activities in this sector are taking place. On the contrary important construction projects are underway or on going which are included military barracks, garrisons and camps as well as maintenance of existing military construction projects. However usually, these projects are funded off-budget and therefore not reflected here. For example, according to SIGAR's 2016 report, the US budgeted about \$3.700 USD Million on military (security) spending, although not all of it is to be counted as infrastructure, and spent an accumulated \$68,438 million for the period 2002-2016.<sup>73</sup>

70 MoF, Directorate General Budget, National Budget of 1395 (FY2016), page 12

71 Please refer to Annex 3 for the complete Table showing the calculations for the 56 procurement agencies.

72 See Annex 4

73 SIGAR report 2016. P. 210

Table 20 Afghanistan. Distribution of National Budget. FY 1395

Distribution of 1395 National Budget (Operating and Development)							
Sectors	Afs 000		Total Budget		Total Sector as % of Total Budget	Sector % share of Total Development budget	Sector % share of Total Sector Budget
	Operating	Development	Afs 000	USD 000			
Security	175,583,235	1,573,670	177,156,905	2,644,133	40%	1%	1%
Governance	14,249,696	3,041,757	17,291,453	258,081	4%	2%	18%
Infrastructure	5,964,383	84,467,680	90,432,062	1,349,732	20%	50%	93%
Education	37,442,438	21,144,630	58,587,068	874,434	13%	13%	36%
Health	2,959,532	18,276,487	21,236,019	316,956	5%	11%	86%
Agriculture and Rural Development	2,083,101	27,145,460	29,228,561	436,247	7%	16%	93%
Social Protection	21,301,733	1,782,706	23,084,440	344,544	5%	1%	8%
Economic Governance	2,990,352	8,997,871	11,988,223	178,929	3%	5%	75%
Contingency Codes	13,479,426	2,122,600	15,602,026	232,866	4%	1%	14%
Total in Afs	276,053,896	168,552,861	444,606,756	6,635,922			
Total in USD	4.120.207	2.515.714					
% of total	62%	38%					

Finally, against this context, it is part of the policy to increase budgetary des-concentration in the Provinces, and plans to regulate this are reflects in the SMAF commitments to issue a Provincial Budgeting Policy. According to our understanding, it is foreseen that about 40% of the development budget be implemented in and by the Provinces.<sup>74</sup>

It is also relevant to note that in practice, %87 of the development budget ( and by extension, the infrastructure-related expenditure) is subject to special contractual arrangements that may depart from Afghan law. It is necessary to consider therefore that CoST can't focus on Afghan institutions only. Also, it is important to bear in mind that off-budget projects being considered, the possible scope for CoST does not entail the totality of infrastructure expenditure.

74 Remarks from Naser Sidiqee.



**Table 21 National Procurement Entities with Higher Infrastructure Budgets. Top 12.  
FY 1395**

Central Procuring Entity	Construction Budget (CF+New) USD	Budget Ranking	# Const. Projects	% Share of total construction budget	Infrastructure Category	% Share of agency's Development Budget
Ministry of Public Works	524,009,178	1	211	32.11%	Transportation Infrastructure	100.00%
Da Afghanistan Breshna Sherkat	310,784,871	2	17	19.04%	Energy Infrastructure	98.09%
Ministry of Rural Rehabilitation and Development	234,907,082	3	315	14.39%	Transportation Infrastructure	95.74%
Ministry of Energy and Water	167,173,758	4	45	10.24%	Energy Infrastructure	100.00%
Ministry of Health	61,546,556	5	40	3.77%	Social Infrastructure	22.56%
Ministry of Mines and Petroleum	51,441,469	6	11	3.15%	Mines and Petroleum Infrastructure	75.94%
Ministry of Agriculture, Irrigation and Livestock	46,615,714	7	13	2.86%	Agriculture Infrastructure	35.79%
National Civil Aviation	35,450,773	8	14	2.17%	Airport Infrastructure	51.17%
Ministry of Education	33,146,737	9	81	2.03%	Social Infrastructure	13.73%
Ministry of Higher Education	28,682,189	10	31	1.76%	Social Infrastructure	47.23%
Ministry of Counter Narcotics	25,005,759	11	1	1.53%	Social Infrastructure	97.61%
Ministry of Urban Development	20,016,437	12	11	1.23%	Urban Infrastructure	100.00%
<b>Total TOP 12</b>	<b>1,538,780,523</b>		<b>790</b>	<b>94.29%</b>		<b>69.82%</b>
<b>Total Infrastructure Budget all PEs FY 1395</b>	<b>1,632,026,976</b>					

CF= Carry Forward Budget

## 2. Infrastructure Policies and Planning and Execution

### a) Infrastructure Planning and Priority Setting

The process of setting policy priorities and development plans in Afghanistan is currently a mix of government self-determined priorities and a negotiation and dialogue process with international actors held at biannual conferences aimed at coordination and accountability. The intention has been to enable in time increased self-determination. This is also the spirit that captures the paper “Realizing Self Reliance” Commitments to Reform and Renewed Partnership” issued by the government during the London Conference in December 2014 and is also the goal set already in 2010 by the Kabul Process (initiated at the London Conference) with the objective of laying the ground for an “economically sustainable, socially vibrant and stable Afghanistan, led by Afghans for Afghans, supported by the International Community.

Afghanistan does not have currently a national development strategy that determines sector and project priorities. The ANDS (Afghanistan National Development Strategy) established priorities for the period 2013-2008 but no similar process or policy setting strategy has been undertaken since. The National Unity Government (NUG) in place after the agreement signed on September 2014 21 is still to layout those priorities. As the document “Realizing Self-Reliance – Commitments to Reform and Renewed Partnership” (known as SMAF) issued by the NUG government during the London Conference in December 2014 indicates, the Afghan government is working on the national infrastructure development plan with the support of the Chinese government<sup>75</sup> and is reviewing the National Priority programs (NPPs) to streamline and clarify project priorities for that matter. During our interview with MoE it was confirmed they are currently working on this. The SMAF envisaged that an infrastructure development plan would be launched during the second half of 2016.

Infrastructure has been a key priority since the reconstruction started in 2001. First with an emphasis on military and security-related infrastructure; later the ANDS included infrastructure as one of its 7 main pillars, and it has also been a main focus for international funding, as seen in previous sections. The budget, as seen in the previous section already reflects this relevance by devoting around %67 of the foreseen development budget for infrastructure related activities. In 2014, the SMAF included the infrastructure sector prominently. What is clear is that the infrastructure sector, particularly infrastructure to build national and regional connectivity, and to ensure social services remains a key development priority.<sup>76</sup>

#### b) Decision making process for undertaking an infrastructure project

The Graph 5 below depicts the general decision-making process for incorporating projects in the development budget, including construction and infrastructure projects. At the provincial level, the process starts with the identification of needs by the Community Development Councils (CDCs) and by local people. In principle, these would be reported in writing to the corresponding sectorial directorates (health, education, economy, etc.). With this information, the Provincial

Development Council (PDC) held by members from the governor office and the sector directorates, coordinated by the Directorate of Economy and lead by the Governor evaluate the needs. A positive decision of this committee results in the inclusion of these needs as development projects into the Provincial Development Program (PDP) which is a three-year planning tool. At the central level, the Ministry of Economy evaluates the projects incorporated into the PDP and prioritize and selects projects based on the country’s strategic priorities as stated on different planning and priority instruments, among them the ANDS (Afghanistan National Development Strategy), the NPP (National Priority Program) and the MDGs (Millennium Development Goals). When a new infrastructure plan is laid out by the Government, it will be used here as a reference. A positive assessment by the Ministry of the Economy leads to the project’s inclusion in the Prioritization and Implementation Plan (PIP), which is submitted to the Ministry of Finance for assessment and inclusion in the budget.

The process would be similar at the central level, only that Ministries would submit requests and feasibility studies to the ministry of the economy for their inclusion in the PIP.

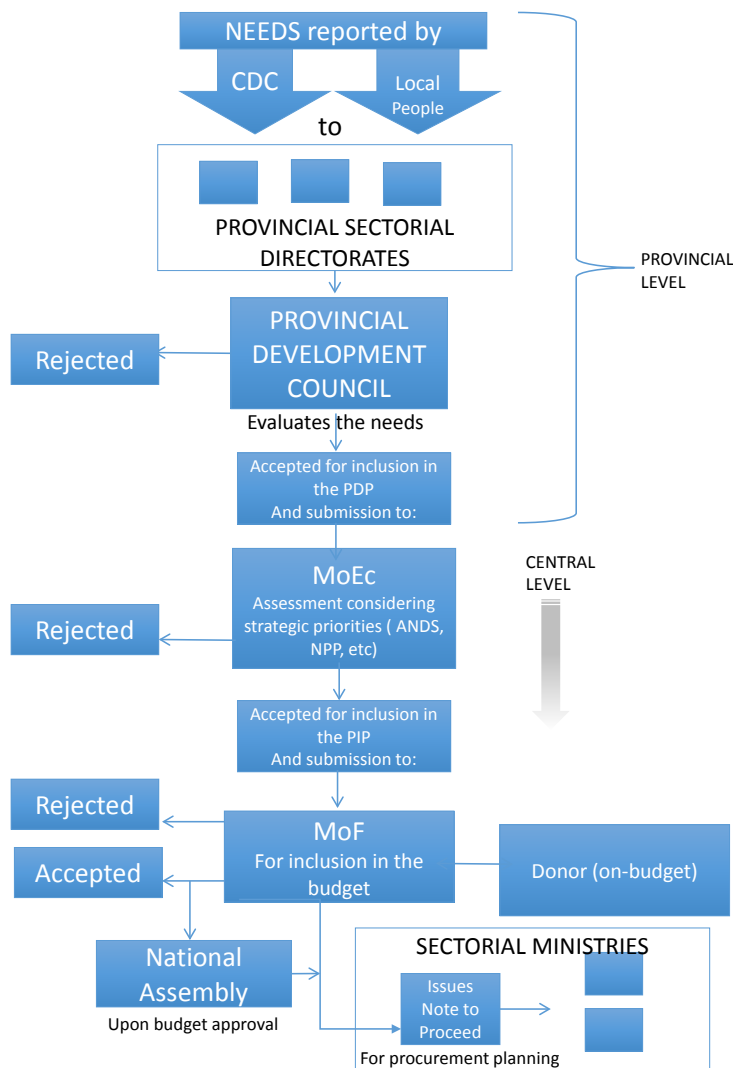
There are different situations under which a manifested need could be rejected for being attended at each stage of decision-making (by the provincial councils, the Ministry of the Economy or by the Ministry of Finance). In the case of Provincial needs, the project could be rejected centrally

In parallel to this process, our interviews indicated that often provinces skip the process and make the request directly to the Ministries and resort to members of Parliament for their support, and that priorities are granted projects related to high-ranking officials or members of parliament.

75 “Realizing Self-Reliance – Commitments to Reform and Renewed Partnership” issued by the government during the London Conference in December 4§ 2014, Page 4.

76 Ibid. §32 and §33 Page 18.

Graph 5 Decision-Making Process for Development Projects



It was also mentioned that the Ministry of Finance could include projects not included by the Ministry of Economy without sharing an explanation. For example, it was mentioned that the Machalghu Dam was rejected by the ministry of economy as not economically feasible but later introduced by the ministry of finance. In practice, the Ministry of Finance takes these decisions within a budget hearing, with participation of the ministry of the economy and the corresponding sectorial ministry, where the reasons for rejection or inclusion would be shared. This meeting is not public, but its results can be observed in the budget submitted for the National Assembly for approval<sup>77</sup>. However, our interviews revealed there is a sense in the Ministry of the Economy that the grounds for these decisions are not shared with them.

Projects have an additional layer of discussion with and by donors for the funding. The Kabul commitments initiated in 2010 sought for donors to increase their project alignment with government priorities, and sought to commit donors to share information on off-budget project.

77 Integrity Watch Afghanistan was invited to the hearing of FY 1396. While this doesn't make the meetings public it does change that trend

## c) The Private Sector

### General Sector Characterization

According to AISA's<sup>78</sup> registries, there have been 19280 construction company registrations up to the end of 2015. Out of this 8882 construction firms are registered in Kabul and a similar amount registered through the provinces. After the withdrawal of international forces in 2014, the registration of companies slowed down from 940 companies a year in 2014 to 510 companies a year in 2015. Before 2002, only a few local companies were able to contract with the government and with NGOs. Therefore, most development projects in the country were implemented by international actors and NGOs such as ACTED (Agency for Technical Cooperation and Development), the Swedish Committee, Oxfam, Concern Worldwide and others. Since 2002, rising business opportunities nevertheless paved the way for knowledge exchange and skills exchange between national and international companies. Today, some local construction firms have now the capacity to contract within higher thresholds while many others either closed, went bankrupt or are inactive. In most of the cases, the absence of managerial skills is part of the reason for this phenomenon but local companies face also other challenges beyond self-improvement.

**Table 22 Registration status fluctuation of construction companies with AISA.**

Registration status as of end of 2015	Numbers
Total construction firms registered with AISA in Afghanistan	19280
<b>IN KABUL</b>	
Total construction firms	8882
Construction firms blacklisted	2772
Construction firms shutdown/closed	991
<b>In the Provinces</b>	
Total construction firms in provinces	8166
Construction firms blacklisted in provinces	590
Construction firms shutdown/closed in provinces	940
Total construction incorporations in Afghanistan	6638
Construction group of companies	22
Construction firms registered in 2014	940
Construction firms registered in 2015	510

There are various construction business associations, among them the Federation of Afghanistan Craftsmen and Traders, the Afghanistan Chamber of Commerce and Industries and the Afghanistan Builders Association who are currently members of the CoST Multistakeholder group.

In addition to the registered formal companies, there are considerable numbers of informal companies operating for licit and illicit purposes. A World Bank investment climate report of 2005 indicated “that much of private sector activity in Afghanistan, even by significant business concerns, is carried out in an environment dominated by informal arrangements and practices”, and that a portion of those informal practices followed patronage-type systems of criminal organizations that in some ways are part of the conflict’s legacy. On the one hand, as coping mecha-

78 AISA describes itself as follows: “AISA began as an agency that provided licenses to companies wishing to invest in Afghanistan. AISA has now evolved into a pro-active institution in promoting and attracting investment to Afghanistan”. See <http://www.aisa.org.af/en/page/profiles/about-aisa>

nisms where proximity to “powerful political leaders and militia commanders “ would provide security and market access. On the other, warlords use business as an alternative source of funding.<sup>79</sup> The report also suggests “It is possible that some firms frequently shift between the formal and informal sectors depending on business needs.”<sup>80</sup>

A rush of construction firms in the market and limited business opportunities on the other hand, made construction projects more competitive and political. Today, very limited companies in the country are able to win a contract (political support is inevitable), interviews indicate there are companies which have been registered with AISA for over 4 years and up to now they couldn’t manage to win a contract, although they could offer improved managerial and financial capacity.

The sector’s contribution to the GDP is also in itself quite significant. According to Central Statistics Office (CSO) of Afghanistan, the contribution of the construction sector to the GDP (between the years 2005-2014) is on average 8.22%<sup>81</sup> and reached 10,49% in 2006/2007 during the earlier reconstruction years ( See Table 23).

**Table 23 Infrastructure sector’s Contribution to GDP**

Sector	1384	1385	1386	1387	1388	1389	1390	1391	1392
	06/2005	07/2006	08/2007	09/2008	10/2009	11/2010	12/2011	13/2012	14/2013
Construction	30134.89	39371.21	41499.65	43740.51	49954.49	57552.46	65199.39	81254.98	93867.87
GDP at Market Prices	327745.4	375152	518613.8	541112.6	632717.1	746859	896162.2	1086198	1196728
Percentage of GDP	9.19%	10.49%	8.00%	8.08%	7.90%	7.71%	7.28%	7.48%	7.84%
Period Average									8.22%

All Figures in Million AFs

Source: Central Statistics Organization (CSO) of Afghanistan

In any case, there is broad agreement on the role that the construction sector plays in a country’s reconstruction and as a driver of the economy, particularly sectors like agriculture, extractives and trade which depend on transport infrastructure, or energy, which strongly impacts the productive capacity of citizens. In the case of Afghanistan, much of the emphasis that was initially played on the extractive industries may have changed in light of the trending fall on commodity prices, bringing an even more decisive role for the construction sector to the economy.

There are nevertheless, a series of hindering problems associated to procurement, transparency and capacity in the industry. There are also project undue cost overruns, delays and loss of resources associated with the delivery of major infrastructure projects such as power plants and roads. According to SIGAR the main concerns of construction activities in Afghanistan are lack of security, lack of sustainability, and lack of management capability in the private and public sectors.<sup>82</sup>

79 Afghanistan Investment Climate. World Bank 2005, p. 31-30. Accesible here: <https://openknowledge.worldbank.org/bitstream/handle/355700/8484/10986AF0white0cover0P0947540ICA01PUBLC1.pdf?sequence=1&isAllowed=y>

80 Ibid.

81 Central Statistics Office, National Accounts and Prices, available from: <http://cso.gov.af/en/page/ict/888/11328>. This table does not reflect off budget funds and is based on government sources and records.

82 SIGAR (2014) Quarterly Report to the United State Congress, Special Inspector General for Afghanistan Reconstruction, /07 /30 2014

For instance, in spite of the massive flow of aid through donors and the Treasury of the Afghan Government, the condition of the roads have not improved much in Afghanistan. According to a SIGAR Report from July 2014 “While the United States has provided \$2.2 billion cumulatively for road construction and O&M and currently spends about \$5 million annually for O&M efforts, the World Bank said 85% of Afghan roads are in poor shape and a majority cannot be used by motor vehicles.”<sup>83</sup>

### The Challenges Companies Face

AISA held a symposium on January 19th 2016 to evaluate Afghanistan’s investment climate.<sup>84</sup> Senior government authorities and Investors from different sectors were invited to address their challenges and propose solutions. Construction companies mentioned very specific issues and among others, some related to government procurement among them the following:

- the requirement to use foreign materials in local projects,
- the use of Afghan currency for contracts,
- the lack of a comprehensive law for the evaluation of government construction projects, particularly the lack of a standard system to evaluate the quality of a project’s work, and the lack of a system for regular reporting about the work progress,
- the existence of corruption in the government offices, particularly in the bidding processes
- the inability of the government to spend their allocated budgets and
- the delays in contract payments.

Other relevant issues included the lack of specific criteria to issue an investment license, without considerations of capacity. AISA was also criticized for not being able to exercise its supportive role for investors. During our background interviews we encountered a similar view of the companies on their industry associations, this being already known and acknowledged by the associations themselves. In our case it was mentioned that the associations lacked enough capacity to voice the industry concerns towards the government, and issues concerning delays in contract payments being a salient problem.

The solutions suggested on the AISA event have little or no reference to disclosure but many to transparency and accountability. Among them they include approaches like creating explicit policies to share local contracts among lower-capacity companies and enable them to build their capacity; or policies to promote the use of local products; or the requirement in contracts to fulfill quality standards and not rules of origin in the materials. They also suggest the “*creation of required criteria for or (SIC) another government organ to assess construction companies, According to these criteria, companies should be classified in view of their capacity.*” On a different note, they ask ASIA to exercise a bigger effort to enable them to participate in big infrastructure contracts.<sup>85</sup>

On the bigger picture, different business surveys give an indication of the most strongly felt factors that affect business in Afghanistan. A survey of 738 Afghan businesses conducted by CIPE in 2010 conveyed that lack of security (78%) followed by corruption (53%), and lack of electricity (44%) where the most salient adverse factors.<sup>86</sup> The World Bank 2005 Report on Afghanistan’s investment climate, surveyed 1066 businesses across the country. The survey identified electricity, access to land, corruption and access to finance (in that order) as the top 4 constraints to their businesses.<sup>87</sup>

83 Ob Cit. P. 179.

84 AISA symposium on evaluation of Afghanistan investment climate, 19 of January 2016, Intercontinental Hotel, Kabul. Available here <http://www.aisa.org.af/Content/Media/Documents/AICES-2016SummaryofChallengesRecommendations73201692210254553325325.pdf> (last accessed on Sept 2016 ,26)

85 Ob Cit. P. 15

86 CIPE (2010) Afghan Business Attitudes on the Economy, Government, and Business Organization s, The Centre for International Private Enterprise, available from: <http://www.cipe.org>

87 Afghanistan Investment Climate. World Bank 2005. Accessible here: <https://openknowledge.worldbank.org/bitstream/handle/10357700/8484/986AF0white0cover0P0947540ICA01PUBLC1.pdf?sequence=1&isAllowed=y>

The local team included a couple of interviews with construction firms and industry associations in their ground research to collect their perspective. They raised concerns over transparency and accountability during the procurement process, about certain companies monopolizing the economy, and their belief that the government is not able to apply laws and regulations equally in the industry. They consider corruption is everywhere and endemic, and perceived to be a normal way of doing business in the country. The collusion between PE officers and contractors and the lack of disclosure of bid evaluations was mentioned as examples. Although, they seemed positive about the recent procurement reforms, they also felt the government has failed to build trust and confidence and to convince private firms of the value of transparency.

They indicated that the payment processes were also as a major problem. According to the procurement law, contractors should receive their payments within 30 working days<sup>88</sup> and be compensated for payment delays. However, in practice payment processes may take more than 3 months and there is no compensation for delay. Corruption, bureaucracy and limited use of technology in the process are counted as the main reasons for this.

On time and cost overruns, they also offered a different perspective. Some attribute it to contractor's lack of managerial and technical capacity. Other perspectives mentioned: contract variations, slow (project) decision making processes, difficulties accessing the site, local government agencies, what they called "local bullies", payment delays, and security (insurgents).

### Importance of disclosure of information for private construction firms

Broadly speaking, private sector actors' interviews were positive about a mechanism of disclosure of project information. However, they were not too optimistic about the enforcement of CoST criteria, considering the context in Afghanistan. They believed that already existing Afghan initiatives like the Oversight Commission to access to information, the SAO and the HOO were active but couldn't bring any significant changes in regard to transparency and accountability. The interference of high-level government officials and members of the parliament were mentioned as reasons for that failure. For them, the government has failed in the past 14 years to enforce the law and to prosecute high level government officials that are accused for corruption and dishonesty. In addition, they claim that large construction contracts are not accessible for ordinary contractors and that there is much collusion between the "economic mafia" and high rank government officials.

While they would welcome disclosure in specific moments of the contracting process, particularly the bid evaluation, some private firms also understand disclosure information as a security threat for themselves: in military construction projects or in exposing them to further extortion. They see disclosure of contractual information to local communities also as opening an opportunity for "bullies or gangsters" to negotiate and take a share of the contract ("*there would not be understanding that there are indirect costs to the project*"). On the other hand, they don't see that communities would be entitled to that information, or that they would have to be accountable to others for their contracts<sup>89</sup>. Disclosure also appeared not to be mentioned as a tool to help solving other pressing private sector problems (like payment delays).

88 Rules of Procedures of Procurement 2015, Article 96.

89 A 2007 report produced by Lorenzo Deslegues mentioned how it was becoming a „marketing practice“ of companies to conduct community dialogues to catch the donors' attention and create a reputation for being accountable to the communities without the real intention to do so.

The Table below summarizes the local researcher's gathered opinions by the of private firms on the difficulties they face during the procurement and implementation processes of construction projects:

**Table 24: Challenges during the procurement and implementation processes of construction projects**

Construction Process		Main challenges	Reasons
Procurement	Bidding	Political and "bullies" interferences Limited access to project information such as project name and scope	Collusion between PE officers and contractors on publishing project information.
	Award	Biased bid evaluations (Mafia, corruption and political influences)	Ordinary contractors do not have access to the evaluation report of their bids
Contract management and implementation	Access to site	"Bullies", insurgents, gangsters and community	Want contractors to pay for them under the threat they have the power to stop the project
	Implementation	Bullies, insurgents, gangsters, community and local government	Contractors must pay for them in order to implement project
	Contract variation	Incomplete feasibility study	Constraints and risks that have not been taken into account during the project feasibility study phase (lack of capacity in Risk Management)
	Decision making process for design changes	Bureaucratic and slow	Lack of use of technology in the process (use of traditional methods of decision making process)
	Payments	Bureaucracy and corruption	Using traditional payment procedure for contractors (limited use of technology)



# PART 2.

# TRANSPARENCY AND

# ACCOUNTABILITY

## A. FRAMEWORK

### Laws and Policies

In terms of transparency and accountability, the legal framework in Afghanistan is fairly new. In the following paragraphs we describe its main elements and characteristics.

### Access to Information

In terms of access to information, the first law regulating the issue was approved by the Parliament at the end 2014 and enacted by the President at the end of that year. The law develops the Constitutional mandate included in Article 50 of the Afghan Constitution, according to which *“The citizens of Afghanistan shall have the right of access to information from state departments in accordance to the provisions of the law. This right shall have no limit except when harming rights of others as well as public security”*.

This is the first access to information law in Afghanistan and upon its enactment, journalists said its application would increase accountability and trust in government, and would enable media to do their work.<sup>90</sup> Shortly thereafter, there were calls to amend the new law to make information accessible to people to improve the complaints mechanisms at the provincial levels.<sup>91</sup> In context, this law faces serious challenges, with Afghanistan’s high illiteracy rates of around %70 the biggest issue is demand and use of information that is mostly available in written form.<sup>92</sup>

While it is too early to draw assessments on its effectiveness and impact, a study conducted by IWA in 2015 on access to information practices in selected Hospitals and in certain DABS’ attention points, indicated that the biggest obstacles to its effectiveness were the lack of awareness by citizens on their rights to demand such information, and in the case of the hospitals, a “tendency to act with hostility toward members of the public seeking help”.<sup>93</sup> The study finds that DABS offers more resources, channels offering information and disposition.

90 See <http://www.af.undp.org/content/afghanistan/en/home/ourwork/crisispreventionandrecovery/successstories/AccessToInformation.html> (last visited July 2016 ,27)

91 See press releases of February 2015 19 <http://ocai.af/en/access-to-information-law-be-amended-journalists/> and of July 29 2015 here <http://ariananews.af/latest-news/integrity-watch-afghanistan-called-for-early-amendment-of-access-to-info-law/>

92 See UNESCO Institute for Statistics. Literacy rates for Afghanistan are low for all population segments: Youth (%58), Adult (%38) and Elderly (%20) wit strong gender gaps within population segments. According to UNESCO and the latest statistics available for Afghanistan: “In %32 ,2011 of the adult population of Afghanistan could read and write, compared to %18 in 1979.” - See more under: <http://www.uis.unesco.org/literacy/Pages/literacy-data-release2014-.aspx#sthash.wUgMMToR.dpuf>

93 IWA. Access to Information in Afghanistan. A Preliminary Review. Kabul, 2015. p. 18

Quite relevant for the purposes of this scoping study, IWA's report finds that the "most common sources of information" (on both access to electricity and health services) "are the word of mouth, trial and error by the information seekers (sic), and experiences from own(sic) or other's past experiences" and encourages DABs to intensify the use of Radio and TV as means to disseminate information about its services in order to reach illiterate people and people in rural areas.

In addition to the Access to Information Law, the Procurement Law and the Public Financial Management Law set out provisions for transparency and disclosure relevant for CoST. These will be discussed in the next Chapter.

### Freedom of Expression and Association

Article 34 of the Afghani Constitution guarantees freedom of expression as "inviolable", and ensures in its article 35 the right of Afghan citizens "to form associations in accordance with provisions of the law" in order to "attain moral and material" goals, including also a few restrictions. Article 36 grants also the right to hold unarmed demonstrations for "legitimate and peaceful purposes".

We didn't find assessments of the effectiveness of these rights, but the active presence of diverse NGOs, associations and private sector organizations point to its effectiveness. Less clear is the effectiveness of rights to demonstration for example, in the context of sustained violence and conflict. A closer example lies in the attack directed on July 25 to protesters of the Shia Hazara ethnic minority, while demonstrating in Kabul for not benefiting from the 500v energy transmission project in the provinces of Bamyán and Wardak.<sup>94</sup>

### Institutions

The Ministry of Information and Culture of Afghanistan<sup>95</sup> has been tasked with the responsibility of undertaking the first steps to implement the access to information law of 2014. It formally constituted the Oversight Commission on Access to Information (OCAI) on September 30, 2015<sup>96</sup> as mandated by the law. The Commission's objective is to ensure that the objectives of the access to information law are achieved. Currently the Chairman of the Commission is Integrity Watch Afghanistan's Executive Director.

Afghanistan has established a number of different institutions to fight corruption in the last decade. In addition to law enforcement agencies and courts, there are several other government agencies that partly or fully have been established to prevent and fight corruption. After the fall of the Taliban, Afghanistan's first anti-corruption agency was the General Independent Administration Against Corruption (GIAAC) created in 2004 with preventive and investigative powers. The GIAAC was later dissolved under characterizations of failure and the High Office of Oversight (HOO) was established in 2008 with preventive and oversight power and later in 2010 with an additional investigative mandate. Currently its role has been reduced.

In practice, because the Procurement law renders a special role to the NPA for purposes of gathering and disclosing procurement related information, the NPA is central to the implementation of disclosure regulation in Afghanistan.

94 See Kabul explosion: Islamic State 'admits attack on Hazara protest in BBC news online <http://www.bbc.com/news/world-asia36874570> (last accessed July 2016 ,27)

95 At the time of this writing, the website of the Ministry was down: [www.moic.gov.af](http://www.moic.gov.af)

96 See <http://ocai.af>

## B. INITIATIVES RELATED TO TRANSPARENCY AND ACCOUNTABILITY

Here we provide an overview of government and donor initiatives that relate to transparency and accountability<sup>97</sup>.

### The Afghan Government-Donor Frameworks

In 2012 the Afghan government and the international community set out an agreed framework during a meeting in Tokyo (Tokyo Mutual Accountability Framework) to determine the process by which they would cooperate for the development of Afghanistan. In their own words: “*The Tokyo Framework sets out a new reinvigorated development partnership between the Afghan Government and the International Community*”.<sup>98</sup>

The Tokyo Framework (TMAF) set a number of relevant ground rules, among them:

- The alignment of assistance to governmental priorities;
- The recognition that on-budget assistance modalities have an impact on the local capacities and the authority’s accountability to the Afghan citizens; and,
- The recognition that “Monitoring of development and governance benchmarks in a transparent manner is a powerful means to enable accountability to the Afghan people, and reinforce reciprocal commitments of donors and the Afghan Government to improved development performance;”
- The creation of a follow-up mechanism that includes bi-annual Senior Official meetings, and Biannual Ministerial-level meetings to report on progress and make mutual agreements. The next Ministerial meeting will take place in Brussels, in October 5 2016 and is therefore the second of this kind, after the London Conference of 2014.

At the London Conference and by then with a newly elected Afghan government, there was agreement to “refresh” the Tokyo Framework, the result of which is the Self Reliance through Mutual Accountability Framework (SMAF) set out in 2015. The SMAF contains a number of relevant agreements and goals, among those the following particularly relevant for the CoST initiative<sup>99</sup>:

- In different forms it reiterates the need for aid to align to government priorities and to enable accountability of development and governance benchmarks to the Afghan people.
- Procurement reform and effectiveness has a salient role in achieving various goals:
  - In the introduction of civilian procurement systems into security ministries to improve security and political stability
  - To tackle corruption and improve governance and rule of law, the National procurement Committee is to be institutionalized and procurement reforms are implemented. Its adoption of service standards is also a deliverable that was set for the second half of 2016.

97 The amount of donor initiatives is also substantial. The list here can’t be considered as exhaustive

98 Annex. Tokyo Mutual Accountability Framework. Available here: [http://www.mofa.go.jp/region/middle\\_e/afghanistan/tokyo\\_conference\\_2012/tokyo\\_declaration\\_en2.html](http://www.mofa.go.jp/region/middle_e/afghanistan/tokyo_conference_2012/tokyo_declaration_en2.html)

99 See the full text here: <http://www.mofa.go.jp/mofaj/files/000102254.pdf>

- Towards reforming development planning and management, and ensuring citizen’s development rights:
  - National Priority Programs (NPPS) are reprioritized, prepared, financed, implemented and monitoring systems are in place.
  - “robust monitoring and data collection systems in ministries for on- and off-budget projects” are developed.
- Seeking an enabling environment for private sector development:
  - A regulation for public-private partnerships will be issued
  - The operational infrastructure and operational capacity will be enhanced, including civil aviation and transport. As a deliverable, it was foreseen that an infrastructure development plan would be launched during the second half of 2016.

### Recent Afghan Government Commitments during the 2016 UK AC Summit

Although they are not legally binding, the commitments made by various governments during the 2016 UK Anti-Corruption Summit have certain political weight.<sup>100</sup> The Afghan government made a number of commitments during the summit<sup>101</sup> many of them directly relevant for procurement, transparency, and accountability and for CoST as well, as follows:<sup>102</sup>

- “Establishing public central registers of company beneficial ownership
- “Taking steps to ensure transparency of the ownership and control of all companies involved in property purchase and public contracting,”
- “Supporting the establishment of transparent central registers of foreign
- companies bidding on public contracts and buying property, and intend to explore options for taking similar action,”
- “Joining the pilot initiative for automatic exchange of beneficial information.
- “Working towards phased implementation of the principles of the Open Contracting Data Standard, focusing on major projects as an early priority”,
- “Exploring the implementation of principles of the Open Data Charter,
- “Exploring ways of sharing information on corrupt bidders across borders,”
- “Launching a practitioner partnership on institutional integrity, coordinated by the OECD”,
- “Working with other countries, civil society, international organizations to support accelerated implementation of the voluntary provisions of the UN Convention Against Corruption”<sup>103</sup>,
- “Supporting the establishment of an OECD Anticorruption centre to strengthen the impact and coherence of the OECD existing anticorruption work,”

100 <https://www.gov.uk/government/topical-events/anti-corruption-summit-london2016->

101 See the Afghanistan Country Statement at the UK Anticorruption Summit 2016 here [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522697/Afghanistan.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/522697/Afghanistan.pdf)

102 Ibid.

103 Afghanistan signed the UNCAC in 2004 and ratified it in 2008.

### The Joint Anti-corruption Monitoring and Evaluation Committee MEC

The MEC was constituted at the London Conference of 2010 as an independent entity accountable to the Afghan public, the donor community the President and the Assembly. It was then called the International Monitoring and Evaluation Mission (IMEM) and was created “to offer it policy advice and monitor and evaluate progress against benchmarks.”<sup>104</sup> The terms of reference for its work are agreed between the international community and the government.

The MEC requests government agencies for information and follows up on the implementations of its recommendations, so in this sense the MEC acts as an agent demanding accountability.

The MEC has issued a number of recommendations for the government to address in regards to the fight against corruption in Afghanistan. It was also the MEC who recommended the government, through the Ministry of the Economy to join CoST. They have also made a number of recommendations relevant to access of information and procurement (summarized here below) that are relevant for the purpose of this scoping study, among them:

- The drafting and the adoption of the access to information law (rec. #1-5)
- The implementation of clear and transparent terms and conditions for procurement processes in DABS (rec # 40.1 and 40.2)
- The NPA ensures the alignment of procurement law to international best practices and its effective implementation, including (rec#53 ):
  - An explicit prohibition limiting subcontracting
  - The law requires that information about contractors and sub-contractors be made publicly available.
- The NPA increases its efforts to raise awareness on the Appeal and review Committee among national and international bidders, particularly on the website (rec #54).
- The NPA ensures that all government institutions with procurement functions are staffed with dedicated procurement specialists (rec. # 55) by:
  - Issuing clear terms of reference, separating their oversight functions and providing check and balances to procurement activities of relevant institutions.
  - Providing training through the MoF for specialists.

A report, dated on December 2015 reviews all these recommendations and their state of their implementation and records that they have been fully implemented.<sup>105</sup>

### The National Procurement Authority (NPA)

The NPA plays a central role in terms of transparency and accountability. The NPA is in charge of disclosing basic information on the procurement processes it facilitates and to operate a registry of all contracts.

One of its main efforts in terms of “institutionalization of transparency” has been the procurement reform itself, with the aim of introducing clarity and consistency. For the first time in Afghanistan, a procurement law was tabled in the parliament, approved and signed by the President in August 2016. The reformed accountability system is different in that the NPA unlike the former PPU does not keep a representative in each procuring entity but ensures the PE’s transparency and accountability through established centralized systems.<sup>106</sup>

104 London Conference, 28 January 2010. P. 63, Available here: [http://www.mec.af/files/2010\\_London\\_Conference\\_Communique.pdf](http://www.mec.af/files/2010_London_Conference_Communique.pdf)

105 See [http://www.mec.af/files/31\\_12\\_2015\\_Fully\\_Implemented\\_Recommendations\\_\(English\).pdf](http://www.mec.af/files/31_12_2015_Fully_Implemented_Recommendations_(English).pdf)

106 Interview with Sohail Kaakar, Strategic Advisor, NPA, dated 26 April 2016.

The NPA announces all procurement bids; both those within the authority of the National Procurement Commission and other procuring entities.<sup>107</sup> The NPA carries a central contract registry, and while it does not publish contracts, it publishes a list with the following information items related to each awarded contract:

- Procuring entity
- Kind of procurement
- Name of project
- Project code number [in the national budget]
- Purpose
- Date of awarding
- Cost of the contract
- Winner
- Date of completion of contract<sup>108</sup>

The NPA also monitors the implementation of the projects. Its monitoring uses the CSSQ approach (Cost, Schedule, Scope and Quality).<sup>109</sup> The NPA monitors only those projects that are above the awarding authority of PEs and within the awarding authority of the NPC. One of the future plans of the NPA is to introduce electronic procurement.

### EITI

Afghanistan adhered to the EITI principles in 2009, constituted a multi-stakeholder group and requested candidacy status, which was then granted in 2010. The Afghanistan Extractive Industries Transparency Initiative Secretariat was established within the Ministry of Finance in July 2010.<sup>110</sup> The multi-stakeholder group was re-constituted in 2014 and its second validation report was due at the end of 2015.

According to EITI's own information: "EITI implementation is not currently mandated by law in Afghanistan. The new mining law includes a provision making compliance with the EITI reporting requirements mandatory for companies operating in Afghanistan." The Government committed in 2013 to contract disclosure, and according to their own information, it has already published over 200 contracts.<sup>111</sup>

EITI's current multi-stakeholder group composition includes representatives of the Ministries of Finance (who also offices as Chair), the Ministry of Mines and the Ministry of Transport and Civil Aviation. Five representatives of civil society organisations including IWA, Humanitarian Organization for Local Development -HOLD, Human Rights Research and Advocacy Consortium -HRRAC, Welfare Association for the Development of Afghanistan -WADAN and Afghanistan Civil Society Forum -ACSFo; and five representatives of the private sector including two representatives of ACCI, and three companies. A number of observers can also participate in the meetings, among them the international NGO Global Witness.

CSO representation in the EITI process is organized through a "civil society coalition" (CSOC) that "will choose some members as its representative to the MSG. The introduced representatives in Ministry of Finance will

107 <http://www.npa.gov.af/Beta/English/English.aspx>

108 <http://www.npa.gov.af/Beta/Dari/ProcuringEntities/AC.aspx>

109 Interview with Sohail Kaakar, Strategic Advisor, NPA, dated 26 April 2016.

110 See <http://aeiti.af/en>

111 See <https://eiti.org/Afghanistan>

have to show the ability to convey the concerns of the coalition”.<sup>112</sup> The charter that regulates this coalition foresees representation of the civil society will be rotated among the members to ensure proper representation. In order to preserve institutional knowledge, each time only two members out of six will be rotated.

Generally people interviewed who knew about the initiative in Afghanistan spoke positively about it and its impact. The publication of the contracts in itself sets a global example, and some interviewed mentioned positive effects of the multi-stakeholder group in terms of inter-agency coordination.

Because of some similarities, the initiative is closely looked as a source of valuable lessons for CoST. Various factors have been mentioned as keys to its success so far, among them the leadership of the Ministry of Finance in the initiative and the commitment of the President. Ratification and reinforcement of the EITI Commitments are usually made during the donor-government conferences and also recently during the UK Anti-Corruption summit of May 2016.

## C. CIVIL SOCIETY PARTICIPATION AND INVOLVEMENT

There have been several organizations and initiatives against corruption by CSOs in Afghanistan since 2001. Many organizations are also active in topics akin such as human rights, governance and minority rights. However, many of the organizations with an anti-corruption emphasis remain active only for a few limited years. For example, NGOs such as Anti-Corruption Watch, Transparency and Accountability Watch, and the Transparency Initiative of Afghanistan, were active for one or two years. There are also some organizations that have remained engaged for several years such as Afghan Coalition for Transparency and Accountability (ACTA), Cooperation for Peace and Development, the Afghan Anti-Corruption Network and Afghans Coordination Against Corruption (AFCAC). Another concern is that NGOs are dependent on donors’ resources.

### ACTA

Founded by Equality for Peace and Democracy in 2010, ACTA “is a coalition of experts and community-based youth groups, women, elders and religious leaders who voluntarily promote transparency and accountability in the government’s policy-making and resource allocation processes.”<sup>113</sup> It is active in Kabul, and in the provinces of Nangarhar, Bamyan and Herat.

### Cooperation for Peace and Development

The Cooperation for Peace and Development “is a non-profit (sic) Non-Governmental Organization aimed at bringing positive changes in perception and behavior of Afghans as the key to ensure Peace and Development through its agreed intervention strategies including awareness raising, civic education, capacity building, advocacy, research, campaigning and service delivery”.<sup>114</sup> Among its work, it launched the “Youth and Women for Promotion of National Anti-Corruption Strategy to contribute to the Afghan anti-corruption movement”. As part of this initiative, CPD developed an anti-corruption handbook and started to use Islamic provisions and values to raise awareness and fight corruption.<sup>115</sup> It is funded by Tawanmandi.

### Afghan Anti-Corruption Network

According to the National Integrity Study of Afghanistan “The Afghan Anti-Corruption Network is an unregistered CSO established in 2010. One of its achievements was to hold a five-kilometer race against corruption in Kabul. Currently, the Afghan Anti-Corruption Network is inactive”, apparently it has not officially registered.<sup>116</sup>

112 Civil Society Coalition Charter. No date.

113 Equality for Peace and Democracy, “Afghans’ Coalitions for Transparency and Accountability”, Equality for Peace and Democracy, [www.epd-afg.org/acta-platform/](http://www.epd-afg.org/acta-platform/) (accessed on 21 August 2016).

114 See CPD’s own presentation at <http://cpd-af.org/sample-page/>

115 <http://cpd-af.org/anti-corruption/success-stories/>

116 NIS p. 167

### Afghans Coordination Against Corruption (AFCAC).

AFCAC was established in 2012 as a coordinating body of CSOs against corruption. According to the NIS, as of July 2015, it has 81 NGOs and individuals as its members. Currently the AFCAC has only one advocacy programme. During the presidential election, AFCAC took written pledges of the presidential candidates in 2014. It holds advocacy events to advocate for President Ghani and CEO Abdullah to fulfill their promises and take on corruption.<sup>117</sup>

### Afghan NGOs Coordination Bureau

According to its website, the Afghan NGO Coordination Bureau (ANCB) “was founded in 1991 as a network of national NGOs in Afghanistan coordinating the activities among its members, with the Government, International organizations, UN and donor agencies.”<sup>118</sup> In addition to coordination, the ANCB has a mandate to enhance the capacity of its member organizations through seminars, workshops and training.<sup>119</sup> Currently, it has 113 members across Afghanistan.<sup>120</sup> It is mainly supported by the Japan International Volunteer Center, Peace Winds (Japan), Official Development Assistance (Japan), the Association for Aid and Relief (Japan) and Civil Sophia.<sup>121</sup> Currently, they are members of CoST’s Multi-stakeholder group.

### South West Afghanistan Bureau for Agency Coordination

The Southern and Western Afghanistan and Balochistan Association for Coordination (SWABAC) is a coordination platform for those Afghan and international NGOs working in southern Afghanistan. According to AREU, “SWABAC’s activities fall within three major categories: coordination, advocacy, and capacity-building. SWABAC provides a forum for members to discuss their concerns about policy guidelines for delivering assistance, resource management, and other operational issues, with the ultimate goal of improving coordination among the assistance community in southern Afghanistan.”<sup>122</sup> Its head office is in Kandahar. SWABAC is currently the lead agency for the Local Cooperation and Coordination Sector of Kandahar’s Provincial Development Committee.<sup>123</sup> It has around four dozens of member NGOs. Currently, they are members of CoST’s Multi-stakeholder group.

### Integrity Watch Afghanistan<sup>124</sup>

The most active civil society organization in the areas of transparency, accountability and the promotion of integrity in Afghanistan is Integrity Watch Afghanistan (IWA). IWA performs research, community monitoring and advocacy activities against corruption. Registered in 2006, its mission is to “increase transparency, integrity and accountability in Afghanistan through the provision of policy-oriented research, development of training tools and facilitation of policy dialogue”.

IWA has conducted numerous research reports on corruption and promoting transparency, including the National Corruption Survey, which measures Afghan, perceptions of corruption every two years. It has monitored the government’s service delivery performance for schools, courts, infrastructure projects and extractive industries. Together with journalists associations IWA advocated for the ratification of the Access to Information Law and was engaged in establishing the Oversight Committee in June 2015. Currently, the Chair of the Oversight Commission on Access to Information, is IWA’s Executive Director. IWA has been tasked to serve as temporary secretariat for CoST while the structure gets settled and is defined.<sup>125</sup>

117 Interview with Sadaqat Ali Zia, Executive Director, AFCAC, Kabul, 8 July 2015.

118 <http://www.ancb.org/pages/intro.php>

119 <http://www.ancb.org/pages/intro.php>

120 <http://www.ancb.org/pages/members.php>

121 Ibid

122 <http://www.areu.org.af/ContentDetails.aspx?ContentId=20&ParentId=#19SWABAC>

123 <http://www.areu.org.af/ContentDetails.aspx?ContentId=20&ParentId=#19SWABAC>

124 IWA’s website has more detailed information. See <http://iwaweb.org>

125 The „tripartite agreement“ refers to it as the „Host Organisation“ in charge of receiving and channelling the funds, administering the MSG including among others establishing the National secretariat, hiring the Coordinator and other relevant staff, and raising stakeholder awareness.



Additional to its advocacy efforts IWA undertakes Community Based Monitoring CBM work in infrastructure projects that is closely keen to CoST's purpose. IWA reports to have monitored with 1700 volunteer local monitors, around 900 infrastructure projects since 2007, in 35 districts of the Balkh, Herat, Nangarhar, Parwan, Panjshir, and Badakhshan and Bamyán provinces.<sup>126</sup>

IWA has played a role and is engaged in various transparency and accountability initiatives, most saliently, IWA is currently attending the NPC meetings as CSO participant<sup>127</sup>, is member to the EITI multi-stakeholder group, and IWA's executive director is currently Chair of the Oversight Commission on Access to Information, in addition of being a CoST MSG member and hosting the CoST Secretariat temporarily. The graph here illustrates IWA's current most salient work and broader scope of engagement. In grey we indicate the initiatives where IWA has an institutionalized (formal) involvement. There are additional engagements not illustrated there and still relevant but more punctual, like for example IWA's partnership with SIGAR to conduct project monitoring through its CBM initiative, recent support of the NUG audit and investigation efforts, its participation at the Stakeholder Anti-Corruption Working Group at UNAMA, its leadership of the Provincial Integrity Network in seven provinces, and its membership to the Mining Watch Network.

One important partner for IWA in implementing its community based monitoring efforts is Integrity Action. Integrity Action is a UK registered Charity active internationally with a network of NGOs, Universities and Think Tanks.<sup>128</sup> It works in partnership with Integrity Watch Afghanistan in the areas of community building and education, and has provided IWA not only with financial support but also with technical expertise and mentoring. Integrity Action has an innovative approach to corruption prevention activities, whereby the actual improvement should be measurable and observed in what they call the "fix-rate". The fix-rate is defined as the number of problems solved over the number of problems identified by a community) and this helps to measure the impact and effectiveness of community monitoring.

The community monitoring activities in infrastructure and other sectors have developed from the community building work. A recent evaluation of the collaboration reveals that the fix rate of the CBM programs in Infrastructure show fix rates of %80 since they started in 2005.<sup>129</sup> The program currently covers 7 provinces in Afghanistan and a varied range of construction-related projects "such as roads, hospitals, schools and training centres." By 2015, the program has trained 1,559 citizens as community monitors; "364 public officials have received integrity training; and 919 infrastructure projects have been monitored".<sup>130</sup>

Through the education program three activities have been undertaken: community –based monitoring of schools, teaching on integrity in Islam and an education programme training "integrity champions" to multiply community-based monitoring activities.

### International Alert

International Alert is currently conducting research to understand the economic impact of conflict and security costs in infrastructure projects within a wider project to work on conflict sensitive employment (CSE) strategies with the private sector. This effort includes research at the Provincial level.

According to their own description, the project "*will identify the conditions needed for construction, infrastructure and transport companies to adopt a CSE framework. It will also create and test the implementation of such a framework, measuring the impact it has on the sector and the potential for its promotion within a larger development and investment strategy.*"<sup>131</sup>

126 See <http://iwaweb.org/cbm-infrastructures/> also for more information on the CBM project on infrastructure.

127 It is not clear whether its attendance is meant to represent CSOs, or whether it has been informally invited to attend.

128 Integrity Action's Website: <http://integrityaction.org/node/5>

129 Afghanistan Learning Paper Closing the Loop and Combining Community Integrity Building with Integrity Education. Joy Saunders, December 2015. NORAD learning Paper Series. P. 5. [http://integrityaction.org/sites/default/files/publication/files/Afghanistan20%Learning20%Paper20%NORAD0\\_202015%.pdf](http://integrityaction.org/sites/default/files/publication/files/Afghanistan20%Learning20%Paper20%NORAD0_202015%.pdf)

130 Ibid. P 7.

131 In this regard see International Alert's home page with information on the project under: <http://www.international-alert.org/what-we-do/where-we-work/south-and-southeast-asia/afghanistan/projects/13285>

Although the topic is different, their local researcher reports that corruption and lack of transparency is a concern raised, and that often questions regarding security, get answered with references to corruption. While this research is on going, they mention the need for municipalities and projects to be accountable to the citizens, but there is reluctance from different actors, and note that transparency could help to reduce conflict and increase trust.

#### HARAKAT<sup>132</sup>

Harakat is a grant-making organisation that defines itself as “independent, non-profit, Afghan-managed organization that aims to improve Afghanistan’s business environment. We provide grant funds to the private sector, government and civil society to implement activities to reduce or remove barriers that currently make it difficult to do business in Afghanistan.” In addition to corruption, it funds work from other organisations on issues like increased private investment in infrastructure and contract enforcement among others. It is funded by DFID and works in partnership with the GIZ and UNDP.

#### Business Integrity Network Afghanistan ( BINA)<sup>133</sup>

BINA is an initiative of HARAKAT and the Afghanistan Investment Climate Facility (AICFO) with the aim of increasing and raising “awareness about integrity and ethics among businesses and individuals through tangible means to reduce corruption leading to an improved business climate” and with this the goal of creating „a group of transparent businesses committed to promote business integrity and transparency as well as help reduce corruption in daily operations of the private business sector”. The initiative is meant to function on a membership basis with differentiated commitments: some members subscribe to an integrity pledge, others commit to certain anti-corruption principles and acquire certain obligations and submit to a compliance review. To the extent of our knowledge, the membership process has not started yet.

#### Afghanistan Public Policy Research Organization<sup>134</sup>

APPRO is a research institution registered as civil society organization with the Ministry of Economy. It focuses on “social research to promote social and policy learning to benefit development efforts in Afghanistan and other less developed countries through conducting social scientific research, monitoring and evaluation, and training and mentoring.” Its research has been focused on Political Economy, Governance, Human Security, Natural Resource and Environmental Management, and Aid Effectiveness. APPRO conducted the baseline study on access to information on the behalf of Integrity Watch. It has regional offices in Mazar-e Sharif (north), Herat (west), Kandahar (south), Jalalabad (east), and Bamyan (center). It is the founder of APPRO-Europe, “a non-profit network organization, whose mandate is to conduct applied research, training, policy advocacy, and program and project evaluations in conflict environments“. It has been funded by Action-Aid and Cafod.

132 See <http://www.harakat.af/about-harakat.html>

133 BINA’s official website can be found here: <http://bina.af>

134 See <http://appro.org.af/about-us/>

## D. THE PERSPECTIVES OF INFORMATION USERS

It is important to understand transparency and accountability in the Afghan context. There are challenges on both the demand and supply side of information and accountability: on the former, stands out the limited capacity by media, civil society organizations and citizens to use the information to hold the government to account are the major challenges, an estimated illiteracy rate of <sup>135</sup>70% and the high proportion of rural population in the country. On the supply side, to the newness of government reforms adds that donors follow their own disclosure policies and practices, that they can be very different from donor to donor and that the inflow of off-budget funds from donors continues,<sup>136</sup> funds, which escape disclosure and scrutiny by local institutions and actors. . Furthermore, the security situation creates not only operational risks, but also risks associated with information disclosure<sup>137</sup>.

Within this context, our research indicates that more relevant than disclosure of information to the wider public appears to be the need to familiarize all actors (on the supply and demand side) with the use and purpose of such information disclosure, to enhance trust and to ensure access to its immediate users in all sectors.

Interviews with different stakeholders result in the following findings, which also reflects different perspectives:

- While there is in most cases a good disposition towards disclosure, it has different implications for different actors, which suggests the need for a staged and targeted approach:
  - Disclosure requires capacity and resources to disclose. It is not necessarily seen as being rights-based and of value, nor is it a habit.
  - Disclosure demands on government agencies with limited capacity, may cause apprehension if the value of such disclosure is not understood or appreciated.
  - Some private sector actors indicated that more transparency would be welcome in the selection processes, but feared that disclosure of contract details would engender criminal activity (extortion), or feared that such transparency would raise the expectations of employees, communities and other local stakeholders.
  - Civil society organizations express a need to increase transparency and disclosure in order to perform social monitoring and demand accountability.
  - Generally, there are implications of disclosure on the relationships between authorities and local power-holders and criminal organizations: it may increase or decrease exposure; or may increase accountability about those relationships.
  - Transparency will not necessarily lead directly to accountability: the responsibility for disclosure follows from the responsibility for the procurement process and if the process is centralized, the place of delivery won't necessarily coincide with the responsibility of procurement.

135 See UNESCO Institute for Statistics. Literacy rates for Afghanistan are low for all population segments: Youth (%58), Adult (%38) and Elderly (%20) with strong gender gaps within population segments. According to UNESCO and the latest statistics available for Afghanistan: "In %32 ,2011 of the adult population of Afghanistan could read and write, compared to %18 in 1979." - See more under: <http://www.uis.unesco.org/literacy/Pages/literacy-data-release2014-.aspx#sthash.wUgMMToR.dpuf>

136 In 2012 through the Tokyo Mutual Accountability Framework a cap of %50 to off-budget funds was agreed by the Afghan Government and the International Community.

137 Part 3 of this document offer further analysis into transparency and disclosure practices.

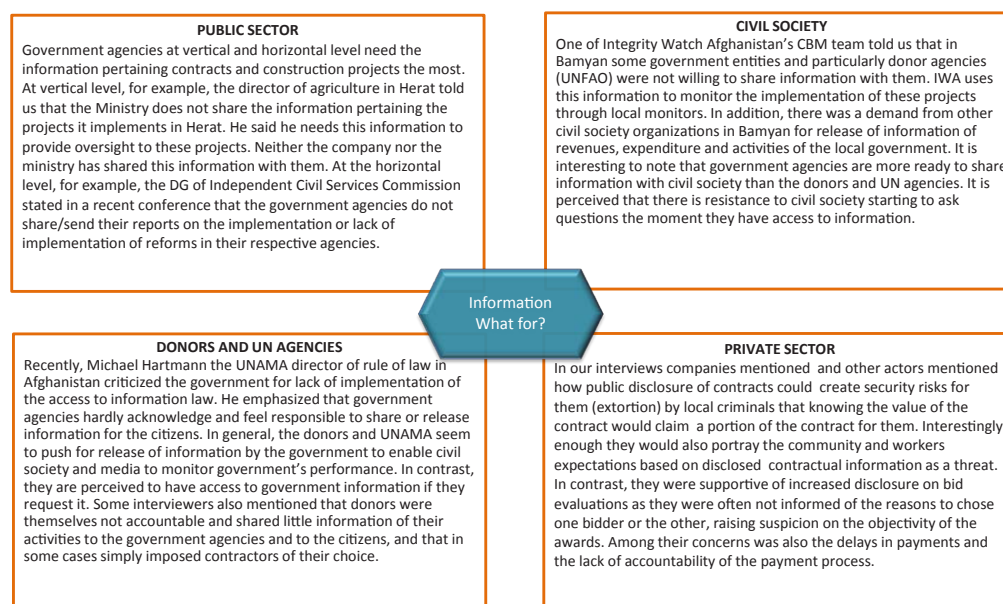
- In some cases government agencies expressed the need to improve internal and interagency (vertical and horizontal, respectively) disclosure, exchange of information and accountability for various purposes:
  - To perform their own monitoring, auditing and control functions
  - To enhance trust and accountability, by understanding the reasons why certain projects could be approved or rejected or the reasons why certain contractors would be selected

The above would also apply among national and provincial authorities and donors.

- There are different perspectives to donor project performance, accountability and disclosure. To some, these have created parallel structures within the ministries, without accountability and outside of their influence. Donors tend to see it as an effort to transfer procurement capacity to the ministries but remain accountable to their governments. It would help to level up national disclosure and accountability practices by both the government and donors.

Graph 6 includes a few concrete examples of different perspectives gathered by the local researchers during their interviews, observations and desk reviews. This shows how disclosure needs are different, and how at the most basic level, it is government agencies themselves who need access to other agencies' information and how this affects other' access (like civil society's).

**Graph 6 Perspectives on the need and use of information**



In addition, the interviews and observations by the ground researchers highlighted a number of factors contributing to the difficulties (or obstacles) to disclosure (supply) in Afghanistan, as perceived by the afghan people and described as follows:

**Mindset:** A good portion of government officials do not feel responsible to proactively release information for people, media, and civil society. This is a new requirement for old government officials who used to work in regimes as different as the Taliban, the Mujahidin, the Communist and a Kingdom's bureaucracy. None of the four previous political systems required information disclosure, consultation with people, engagement of civil society and media for their programs. Although democracy, media, and civil society have brought a lot of changes and the terms 'shafafeyat' (transparency) and ('pasukhgoye') accountability are buzz words in government white pa-

pers, laws, and public statements, still the habit and the frame of mind to release information is not yet fully there. Managing media and civil society criticisms and continued questioning is also very new for government officials. However, there are very few government agencies that have recognized the power of media and civil society and have learned how to engage with them, among them the Ministry of Finance.

Awareness and Apprehension: Irrespective of the mind-set issue, there are also cases where there is simply no clear understanding of the importance of disclosure of information, even if there is no particular position against it. In addition, sharing information will highlight incompetence and mismanagement—something pervasive in government agencies and problematic to be confused with corruption. This creates apprehension from officials towards disclosure. To consider is also the fact that if donors and international actor's disclosure is also deficient. It creates ambivalent messages to the government who is expected to deliver under different standards.

Resources: There are also cases where resources play a role. Information to be used requires some processing in the act of disclosure. Being accessible goes beyond it simply being available. For exam

ple, the Director of Energy and Water of Herat stated, "I have nothing to hide. Give me a technical person, I will disclose all the information." In principle, considering the resources available the government agencies, it is not technically difficult to disclose information. All central PEs and all provinces have websites. All government agencies have access to the Internet. However, the processing of the information, to be published requires an effort and requires resources dedicated to that.

Corruption: A government officials told us (off the record) that the reason ministries do not share information with their own agencies is that there is corruption in contracts. While it is not necessarily always the case ( as the other reasons above demonstrate) it is reasonable to fear, this plays also a role.

## Conclusions

Understanding transparency and accountability in the Afghan context requires thinking outside of the checklists. Afghanistan has a legal-institutional base for transparency and accountability but most of that formal framework is fairly new. The Afghan Access to Information Law has only been sanctioned recently, in 2014, and the Procurement legislation reform was issued in 2015. These add to existing laws like the Afghan Constitution of 2004 and the public financial management legislation of 2005, among others, to form the main elements of the legal framework of disclosure and accountability. There are challenges on both the demand and supply side of information and accountability: on the former, stands out the limited capacity by media, civil society organizations and citizens to use the information to hold the government to account are the major challenges, an estimated illiteracy rate of %70 and the high proportion of rural population in the country. On the supply side, to the newness of the reforms adds that donors follow their own disclosure policies and practices, and that the inflow of off-budget funds from donors continues, funds, which escape disclosure and scrutiny by local institutions and actors. Furthermore, the security situation creates not only operational risks, but also risks associated with information disclosure.

The NPA is in charge of disclosing basic information on the procurement processes it facilitates and to operate a registry of all contracts and makes it a central actor to bring disclosure into practice.

In addition, there are donor disclosure and communication policies. Generally, donors have different disclosure policies (and practices) that are also applicable to the processes they fund, creating an uneven playing field and conditioning disclosure of infrastructure project to their source of funding.

# PART3. PROACTIVE AND REACTIVE DISCLOSURE IN PRACTICE

## A. MANDATORY DISCLOSURE OF INFRASTRUCTURE PROJECTS

### Afghan Legislation

As mentioned in Part 1 of this document, the legal framework for contractual disclosure in Afghanistan can be found mainly in three norms: the access to information law, the procurement law and the public financial management law.

### Mandatory Disclosure according to the Procurement Law

The procurement law foresees mandatory (proactive) public disclosure of two items during the procurement process: the procurement announcement and the (bid) winner announcement.

- The procurement announcement: under Article 19 each government agency is obliged to announce the tenders and the information required to prepare an offer through its own website, the National Procurement Authority’s website (NPA), and other websites introduced by NPA. In addition, the procurement procedures require the tender notices to be broadcasted by radio, TV or any other popular media channels, and for processes to be implemented in provinces, instructs for disclosure using mass media that “have enough wide circulation in the relevant provinces”
- A tender announcement should include:
  - what is procured
  - the means of obtaining bid documents and the bidding documents (Art. 42)
  - the deadline for submission and the time and venue for the bid opening sessions
  - the address of the government agency,
  - whether guarantees are necessary
  - any other relevant information.

- The law does not oblige the procuring entities to release information on the process of selection of bidders. The law only states that government agencies should publish the contract award decision and also inform of this decision to all participant bidders.
- According to Article 43, the published award decision should include
  - the name of the successful bidder
  - the (contracting) price and
  - the time provided for the decision to be questioned
- Single sourced contracts are excluded from this disclosure requirement. While the exclusion is explicit for the award announcement (Art. 43), the procurement announcement requirement refers only to bids and this implicitly excludes single-sourced contracting (Art 19).

The procurement law in its Art. 45 also deals with the information that should be documented by procuring entities but not published as follows:<sup>138</sup>

- What is procured
- Participant bidders' details and their qualifications
- Offers' prices
- Summary of the bid' assessment, any review proceedings and related decisions
- Any request for clarification by bidders and their reply
- The explanation on the choice of procurement procedure for the specific project
- The explanation on the reasons to reject offers or bid cancelation
- The legislative documents of procurement
- Other information as defined in the procurement rules of procedure

In strict sense, this information is not accessible to the public as the procurement law foresees that this information can only be released to the bidders, the NPA or an authorized court upon their request. Technically speaking it would not be reactive information. However, if one interprets the general access granted by the access to information law, that law would have granted reactive access to all citizens also to this information, of course within the restrictions also foreseen by the law.

The law requires the government agencies to send a copy of the signed contracts to the NPA who holds a central registry. The procurement law does not require the government agencies to publish the contracts but to publish a list of the contracts, which is available (<http://www.ppu.gov.af/Beta/English/ProcuringEntities/AC.aspx>) and currently includes 182 contracts. The Procurement Law of 2008 required the MoF to develop and publish a database of projects and potential bidders and to manage procurement-related information including debarred companies.

There is no disposition mandating proactive disclosure at any other stage of the procurement process neither at the early identification, needs assessment or feasibility studies, nor procurement preparation, procurement process or contract implementation stages.

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138 Article 45

### According to the Access to Information Law and the PFML

According to Article 14 of the access to information law all government entities are required to release proactively the following information on an annual basis into the public domain:

- contracts,
- national and international protocols and memorandums of understanding,
- policies, strategies and work plans, among others.

Reactive information has to be disclosed within 10 days for ordinary citizens, 3 days for journalists and 1 day for information pertaining to security and freedom of individuals (Art. 6). The law requires however the use of specific formats to access the information. It is still too soon to judge its effectiveness or its use by Afghan citizens and authorities, however the requirement of a format for access excludes already a high percentage of the population who is currently illiterate.

Article 15 of the law outlines the limitation to disclosure of information by the government agencies. It states information that is forbidden from being published among them when it harms national security, endangers economic political and social bonds relations with other countries, prevents detection of crimes, prevents prosecution of crimes, prevents arbitration of crimes, and information related to personal business and personal affairs. Therefore, reactive disclosure of information is at the discretion of procuring entities to disclose and such lack of disclosure requires justification based on one of the provisions in the law, which being broad enough, enables ample discretion. Citizens can file a complaint before the Oversight Commission on Access to Information in case they are not satisfied with the responses received from government agencies.<sup>139</sup>

The Public Financial Management Legislation by requiring the disclosure of budgets once approved by the National Assembly, ensures indirectly that items like a projects' estimated cost, funding source and project (final) approval dates are publically available.

### Donors' Disclosure Policies

In addition, there are donor's disclosure and communication policies. Generally, their policies and practices vary from donor to donor. For example, in the case of the ADB, their disclosure policy<sup>140</sup> is based on a presumption of disclosure by which "*all documents that ADB produces may be disclosed unless they contain information that falls within the exceptions of the policy specified in paras. (sic) 97 and 101*".<sup>141</sup> The policy has differences for sovereign and non-sovereign operations and generally, the information disclosed in the latter is abbreviated or disclosed under consent. According to it, "*the ADB website will be the primary vehicle for proactive disclosure*".<sup>142</sup> On the other hand, the Islamic Development Bank for example, does not seem to have a disclosure policy<sup>143</sup> and the amendments to their contracting guidelines for works, services and consultants to incorporate elements of integrity and anti-corruption didn't incorporate elements of disclosure.<sup>144</sup> The issue is similar with bilateral donors, having each different disclosure and accountability policies and practices.

139 Art. 19. Access to information law.

140 Public Communications Policy 2011. Disclosure and Exchange of Information. Asian Development Bank

141 Ibid. P. 12

142 Ibid. P. 12

143 No information thereof was found on their website. (<http://www.isdb-pilot.org>). The research team didn't approach the ISDB with this question.

144 See Integrity Amendments tot he Guidelines for procurement of Goods and Works, January 2012 ( Gregorian), accessible here: [http://www.isdb.org/irj/go/km/docs/documents/IDBDevelopments/Internet/English/IDB/CM/About20%DB/Integrity\\_and\\_Anti-Corruption/IntegrityAmmendmentsForProcurement.pdf](http://www.isdb.org/irj/go/km/docs/documents/IDBDevelopments/Internet/English/IDB/CM/About20%DB/Integrity_and_Anti-Corruption/IntegrityAmmendmentsForProcurement.pdf)



In the next section, the ADB's policy is used as an example to compare also one donor's disclosure policy against the CoST standard.<sup>145</sup>

## B. THE COST STANDARD COMPARED TO AFGHAN LEGISLATION AND A DONOR'S DISCLOSURE POLICY

Tables Table 24 and Table 25 summarize a comparison of the Afghan legal framework and the ADB policy framework as an example, against the CoST standards for proactive and reactive disclosure.<sup>146</sup> These are the main findings:

### Proactive Disclosure:

- In the Afghan legal framework, only a few elements of the CoST standard are explicitly mentioned as mandatory, and a majority is implicit or not mentioned. Nothing is explicitly forbidden from disclosure except when falling within the general categories for restricting disclosure. How those exceptions are actually used is a matter of implementation. For example, currently an internal instruction by the NPA forbids publishing or releasing information on the contract estimate cost.
- Generally, the aspects that appear explicitly or implicitly mentioned in the Afghan legal framework are concentrated in the procurement process (in the stages between preparation and issuing the contract). The law is silent on items concerning contract implementation and particularly on contract changes, and issues like beneficial ownership. This is the case for all contracting types.
- The ADB policy follows a similar pattern, with explicit or implicit elements for the procurement process but no reference to elements of contract implementation. The exceptions in the ADB policy are more elaborated ( but also being broad, enable ample discretion).

### Reactive Disclosure

- None of the elements included in the reactive standard are explicitly or implicitly mentioned by the Afghan law. The absence doesn't imply they can't be in principle disclosed so it all depends on how the entities would react to actual requests under normal circumstances.
- In contrast, the ADB Guidelines include some elements of the reactive framework as part of their proactive disclosure elements. However, similarly to the Afghan framework, the policy doesn't mention many of the elements of the reactive framework. Under the general presumption of disclosure, this absence is to be understood as available upon request.<sup>147</sup>

Currently, the Afghan law doesn't make any distinction on the disclosure of contracts for design, supervision or construction. In our analysis reflected in the comparison tables below, we are also making the assumption that the access to information law can indeed be interpreted to support the publication of contracts. Despite the fact that extractive industry contracts are currently being published under the EITI standard, and that publishing contracts would thus not be new to Afghanistan, this feature has not yet been put to use.

<sup>145</sup> In the future it would be good to extend such analysis to other donors as well. Such an exercise would be beyond the time and resources of this scoping study. In this case we examined only the ADB's policies as an example. But these are not the only ones to be referenced to or to consider. The ADB was chosen since it offered a good mix of being a relevant actor, and the opportunity of looking at actual practices through the selected projects.

<sup>146</sup> We contacted the ADB to seek a deeper understanding of their disclosure policy, its limitations and particularly the challenges of its application in Afghanistan, but unfortunately no concrete opportunity to do this was presented to us before the time of this writing.

<sup>147</sup> We did not make concrete information requests to the ADB as to check on their reactive disclosure practices.

Table 25 Proactive Disclosure Standard Comparison

CoST - Proactive Disclosure of Information			Compatibility with Afghan Legal Framework (1)	ADB Disclosure Policy (2) - (Reference is to Policy Paragraphs)
Project Phases		Project Items for Disclosure	Yes E = mentioned Explicitly Yes I = mentioned implicitly	Yes E = mentioned Explicitly Yes I = mentioned implicitly
PROJECT	Project Identification	Project name	Yes I (in Budget)	Yes I (42 and s.s.)
		Project location	Yes I (in Budget)	Yes I (42 and s.s.)
		Purpose	Yes I (in Budget)	Yes I (42 and s.s.)
	Project Preparation	Project scope (main output)	Yes I (in Budget)	Yes I (42 and s.s.)
		Environmental impact	Not mentioned	Yes E (51)
		Land and settlement impact	Not mentioned	Not clear. Policy speaks of Land and Settlement plan
		Funding sources	Yes I (in Budget)	Yes I (41 and s.s.)- Cofinancing available upon request (69)
		Project budget	Yes I (in Budget)	Yes I (42 and s.s.)But with time delay ( not at the moment of approval)
		Project budget approval date	Yes I (in Budget)	Yes I (42 and s.s.)
	Project Completion	Completion cost	Not mentioned	Not clear, not explicit
		Completion date	Not mentioned	Yes E (44 and 65)
		Scope at completion	Not mentioned	Yes I (44 and 65)
		Reasons for project changes	Not mentioned	(44)Only reasons for termination or for major changes (63)
		Reference to audit and evaluation reports	Not mentioned	Yes E (62) Annual audited project accounts and Evaluation reports (66-68)

CONTRACT FOR DESIGN	Procurement	Contract title	Yes E (NPA list)	Yes I (76) - procurement plan
		Procurement process	Mentioned to be disclosed reactively /For record keeping Only for bidders	Yes I (76) - procurement plan
		Number of firms tendering	Mentioned to be disclosed reactively /For record keeping Only for bidders	Publish all invitations issued (76-iv) and the names of competing bidders (76-v)
		Contracted firm(s)	Yes E (Proc Law, winner announcement)	Yes E (76)
		Cost estimate	Forbidden during procurement once completed is also not released would be released reactively. No legal base for this, it was in circular by NPA	No / May be in procurement plan (76)
		Contract price	Yes E (Proc Law, winner announcement)	Yes E (76) / Policy speaks of contract award amount funded by ADB only
		Contract scope of work	Not really. Only in tender announcement	Yes I (76)- scope of work
		Contract start date	Yes I (NPA list)	Yes I (76)
		Contract duration	Yes I (NPA list)	Yes I (76)- scope of work
	Implementation	Variation to contract price	Not mentioned	No
		Variation to duration	Not mentioned	No
		Variation to contract scope	Not mentioned	No
		Reasons for price changes	Not mentioned	No
		Reasons for scope and duration changes	Not mentioned	No

CONTRACT FOR SUPERVISION	Procurement	Contract title	Yes E (NPA list)	Yes I (76) - procurement plan
		Procurement process	Mentioned to be disclosed reactively /For record keeping Only for bidders	Yes I (76) - procurement plan
		Number of firms tendering	Mentioned to be disclosed reactively /For record keeping Only for bidders	Publish all invitations issued (76-iv) and the names of competing bidders (76-v)
		Contracted firm(s)	Yes E (Proc Law, winner announcement)	Yes E (76)
		Cost estimate	Forbidden during procurement once completed is also not released would be released reactively. No legal base for this, it was in circular by NPA	No / May be in procurement plan (76)
		Contract price	Yes E (Proc Law, winner announcement)	Yes E (76) / Policy speaks of contract award amount funded by ADB only
		Contract scope of work	Not really. Only in tender announcement	Yes I (76)- scope of work
		Contract start date	Yes I (NPA list)	Yes I (76)
		Contract duration	Yes I (NPA list)	Yes I (76)- scope of work
	Implementation	Variation to contract price	Not mentioned	No
		Variation to duration	Not mentioned	No
		Variation to contract scope	Not mentioned	No
		Reasons for price changes	Not mentioned	No
		Reasons for scope and duration changes	Not mentioned	No

CONTRACT FOR CONSTRUCTION	Procurement	Contract title	Yes E (NPA list)	Yes I (76) - procurement plan
		Procurement process	Mentioned to be disclosed reactively /For record keeping Only for bidders	Yes I (76) - procurement plan
		Number of firms tendering	Mentioned to be disclosed reactively /For record keeping Only for bidders	Publish all invitations issued (76-iv) and the names of competing bidders (76-v)
		Contracted firm(s)	Yes E (Proc Law, winner announcement)	Yes E (76)
		Cost estimate	Forbidden during procurement once completed is also not released would be released reactively. No legal base for this, it was in circular by NPA	No / May be in procurement plan (76)
		Contract price	Yes E (Proc Law, winner announcement)	Yes E (76) / Policy speaks of contract award amount funded by ADB only
		Contract scope of work	Not really. Only in tender announcement	Yes I (76)- scope of work
		Contract start date	Yes I (NPA list)	Yes I (76)
		Contract duration	Yes I (NPA list)	Yes I (76)- scope of work
	Implementation	Variation to contract price	Not mentioned	No
		Variation to duration	Not mentioned	No
		Variation to contract scope	Not mentioned	No
		Reasons for price changes	Not mentioned	No
		Reasons for scope and duration changes	Not mentioned	No

(1) Access to Information Law of 2014, Procurement Reform of 2015, Public Financial Management Law.

(2) Public Communications Policy 2011. Disclosure and Exchange of Information. Asian Development Bank. According to this Policy, "the ADB website will be the primary vehicle for proactive disclosure" (p.12); the policy is based on a presumption of disclosure by which "all documents that ADB produces may be disclosed unless they contain information that falls within the exceptions of the policy specified in paras. 97 and 101" (p.12). The policy has differences for sovereign and non-sovereign operations. generally, the information disclosed in the latter is abbreviated or disclosed under consent.

Table 26 Reactive disclosure standard comparison

CoST – Reactive Disclosure of Information		Project Items for Disclosure	Compatibility with Afghan Legal Framework	ADB Disclosure Policy (2) (Reference is to Policy Paragraphs)
Project Phases			Yes I= Implicit Yes E= Explicit	Yes I= Implicit Yes E= Explicit
PROJECT	Project Identification and Preparation	Multi-year program & Budget	Not clear, depends on donors	Proactively (42 +43)
		Feasibility study or equivalent	Not mentioned. MoE and Pes have them	Not explicit/ It is TA. They may in practice
		Resettlement and compensation plan	Not mentioned	Proactively (52)
		Financial agreement	Not clear depends on donors	Cofinancing requirements proactively; (69) agreements only upon request
		Project approval decision	Not clear depends on donors	Proactively (40 ,42,58)
	Project Completion	Project completion report	Not mentioned	Proactively (44)
		Project evaluation report	Not mentioned	Proactively (66-68)
		Technical audit reports	Mont mentioned	Not mentioned
		Financial audit reports	Yes I (Supreme Audit Office)	Proactive (62)
	CONTRACT FOR DESIGN	Procurement	Tender evaluation results	Yes only accesible for bidders, after winner announcement (45)
Contract		Contract agreement and conditions	Yes I ( Acces to Information Law)	Proactively (76)
		Registration and ownership of firms	Yes I (Acces to informaion law, but not on beneficial ownership)	Not mentioned
		Specifications and drawings	Not mentioned	Not mentioned
Implementation		Progress reports	Not mentioned	Yes at Project level, proactive (44)
		Quality assurance reports	Not mentioned	Not mentioned
		Disbursement records or payment certificates	Not mentioned	Disimbursement implicit (42) Payments are Not mentioned
	Contract amendments	Not mentioned	Not mentioned	

CONTRACT FOR SUPERVISION	Procurement	Tender evaluation results	Yes only accesible for bidders, after winner announcement (45)	Not mentioned
	Contract	Contract agreement and conditions	Yes I ( Acces to Information Law)	Proactively (76)
		Registration and ownership of firms	Yes I (Acces to informaion law, but not on beneficial ownership)	Not mentioned
		Specifications and drawings	Not mentioned	Not mentioned
	Implementation	Progress reports	Not mentioned	Yes at Project level, proactive (44)
		Quality assurance reports	Not mentioned	Not mentioned
		Disbursement records or payment certificates	Not mentioned	Disimbursement implicit (42) Payments are Not mentioned
		Contract amendments	Not mentioned	Not mentioned
CONTRACT FOR CONSTRUCTION	Procurement	Tender evaluation results	Yes only accesible for bidders, after winner announcement (45)	Not mentioned
	Contract	Contract agreement and conditions	Yes I ( Acces to Information Law)	Proactively (76)
		Registration and ownership of firms	Yes I (Acces to informaion law, but not on beneficial ownership)	Not mentioned
		Specifications and drawings	Not mentioned	Not mentioned
	Implementation	Progress reports	Not mentioned	Yes at Project level, proactive (44)
		Quality assurance reports	Not mentioned	Not mentioned
		Disbursement records or payment certificates	Not mentioned	Disimbursement implicit (42) Payments are Not mentioned
		Contract amendments	Not mentioned	Not mentioned

(1) Access to Information Law of 2014, Procurement Reform of 2015, Public Financial Management Law.

(2)Public Communications Policy 2011. Disclosure and Exchange of Information. Asian Development Bank. According to this Policy, “the ADB website will be the primary vehicle for proactive disclosure” (p.12); the policy is based on a presumption of disclosure by which “all documents that ADB produces may be disclosed unless they contain information that falls within the exceptions of the policy specified in paras. 97 and 101” (p.12). The policy has differences for sovereign and non-sovereign operations. generally, the information disclosed in the latter is abbreviated or disclosed under consent.

The analysis here reflects what the policy mentions. We did not submit a request to the ADB to chec for reactive disclosure.

Table 27 Reactive Disclosure Standard Comparison

No	Suggested Procuring Entities	Infrastructure Budget FY 1395 AFGs	# of Projects	Shar of infrastructure Budget as % of Total Infrastructure Budget	Infrastructure Category	Criteria				Potential Alternative Procuring Entities for selection
						BR	AC	DI	SI	
1	Ministry of Public Works	524,009,178	211	32.11%	Transportation Infrastructure	1	Yes	M	H	Ministry of Rural Rehabilitation and Development
2	Da Afghanistan Breshna Sherkat	310,784,871	17	19.04%	Energy and water infrastructure	2	Yes	IPC	H	Ministry of Energy and water
3	Ministry of Health	61,546,556	40	3.77%	Social Infrastructure	3	Yes	M	H	(1) Ministry of Education, (2) Ministry of Higher Education
4	Ministry of Mines and Petroleum	51,441,469	11	3.15%	Mines and Petroleum Infrastructure	4	Yes	M	H	National Civil Aviation
5	Ministry of Agriculture , Irrigation and Live stock	46,615,714	13	2.86%	Agriculture Infrastructure	5	Yes	M	H	Ministry of Urban Development
Total		994397788	292	60.93%						
BR= Budget Ranking AC=Accessibility DV=Diversity SI=Social Impact H=High M=Medium L= Low MI= Ministry IPC= Independent Public Company										
Source: Budget FY 1395. Calculations performed by the research team.										



## C. PROACTIVE AND REACTIVE DISCLOSURE IN A SAMPLE OF PES (ANALYSIS OF DATASHEETS)

### PEs' Selection Process

The team of local researchers conducted desk and ground research on 20 projects at the Ministries of Mines, of Agriculture, of Public Works, of Energy and at DABS, at the national level. It also included the Provinces of Kabul, Herat, Bamyán and Baghlan. The Tables Fehler! Verweisquelle konnte nicht gefunden werden.Table 27 below depict the PE's general characteristics.

Table 28 Sample Selection of National Agencies and Summary of Criteria

No	Suggested Procuring Entities	Infrastructure Budget FY 1395 AFGs	# of Projects	Shar of infrastructure Budget as % of Total Infrastructure Budget	Infrastructure Category	Criteria				Potential Alternative Procuring Entities for selection
						BR	AC	DI	SI	
1	Ministry of Public Works	524,009,178	211	32.11%	Transportation Infrastructure	1	Yes	M	H	Ministry of Rural Rehabilitation and Development
2	Da Afghanistan Breshna Sherkat	310,784,871	17	19.04%	Energy and water infrastructure	2	Yes	IPC	H	Ministry of Energy and water
3	Ministry of Health	61,546,556	40	3.77%	Social Infrastructure	3	Yes	M	H	(1) Ministry of Education, (2) Ministry of Higher Education
4	Ministry of Mines and Petroleum	51,441,469	11	3.15%	Mines and Petroleum Infrastructure	4	Yes	M	H	National Civil Aviation
5	Ministry of Agriculture , Irrigation and Live stock	46,615,714	13	2.86%	Agriculture Infrastructure	5	Yes	M	H	Ministry of Urban Development
Total		994397788	292	60.93%						

Table 29 Sample selection of Provinces and Summary of Criteria

Suggested Provinces								
No	Selection Criteria	Grades	Corresponding Provinces					
1	Diversity and Grade	Grade 1	Kabul, Herat, Nangarhar, Kunduz, Balkh, Kandahar	Suggested Provinces	Bamayan	Baghlan	Herat	Kabul
		Grade 2	Helmand, Baghlan, Badakhshan, Faryab, Parwan, Takhar, Jowzjan, Paktiya, Ghazni, Farah					
		Grade 3	Bamayan, Badghis, Nimruz, Ghor, Samanghan, Kapisa, Wardak, Paktika, Logar, Khost, Daikundi, Kunar, Laghman, Nooristan, Sare Pul, Uruzgan, Panjshir, Zabul		Grade 3	Grade 2	Grade 1	Grade 1
2	Budget	Grade 1	Kabul, Herat, Nangarhar,	Suggested Provinces	Largest Construction Budget Among Grade 3 Category	Second Largest Construction Budget Among Grade 2 Category	Second Largest Construction Budget Among Grade 1 Category	The Largest Construction Budget Among All Provinces
		Grade 2	Helmand, Baghlan, Badakhshan					
		Grade 3	Bamayan, Badghis, Nimruz					
3	Feasibility: Security and Travel	Grade 1	Kabul, Herat, Nangarhar, Kunduz, Balkh, Kandahar	Suggested Provinces	Feasible	Feasible	Feasible	Feasible
		Grade 2	Baghlan, Badakhshan, Faryab, Farah, Jowzjan					
		Grade 3	Bamayan, Badghis, Daikundi, Uruzgan					
				# of Projects	32	33	37	80
				Total Number of Projects				182
				Alternative Options	Badghis, Daikundi or Uruzghan	Badakhstan or Farah	Potentially Balkh or Nangarhar	

The main criterion for selection used at the national level was the level of infrastructure budget controlled by other criteria. The main criterion used for the selection of provinces was diversity. The projects selected for observation at the national level were not chosen randomly as the level of implementation is low. For methodological details and criteria used in the selection process please consult Annex 2.

In conducting the ground research, the local researchers had to swap the Ministry of Health or the Ministry of Education with the Ministry of Energy and Water, which initially appeared as alternate to DABS. While it would have been relevant to cover them it was not possible to set up ground interviews with the Ministry of Health. At the time the research was meant to be conducted Ministry of Energy and Water had already granted interviews and insisting with the other agencies further would have delayed the ground research much longer.

The observation of proactive disclosure was limited because of two reasons: on the one hand, the legal framework in Afghanistan as seen in the previous section, limits the proactive disclosure to two items: the tender announcement and the winner announcement. These were observed across the sample. On the other hand because many of the on going and all of the concluded projects were carried under the previous procurement law and without any access to information law, so in practice the findings here are not conclusive to the current situation. At best one can say that indeed the two pieces of information are proactively released.

The reactive disclosure observation was carried out through personal interviews where the information was then requested. In the case of the DABS, they requested the standard and in addition to the interview, they sent the information inserted on the excel tables themselves. It doesn't therefore represent what is actually accessible reactively.

Following initial feedback from MSG members, the final sample of projects observed sought to reflect diverse projects and not to focus on any particular type.

The Annex 2 provides further details and information on the methodology used for selecting the PEs and conducting the ground research.

### a) Procurement Entities' (PEs) Disclosure Practices at the National Level

The Table included in Annex 4 summarizes the reactive information data gathered and that together with the interviews conducted, serves as basis for these findings. At the national level the following was observed:

- The PEs published (according of the records) in most cases both the tender announcement and the winner announcement. A sample of a tender announcement is included further below. On average, the winner announcements would include information on the title of the contract, the name of the contractor and the contracted price, and would give some time for people to inform the procurement entity of existing liabilities.
- Broadly speaking, the information requested on CoST's proactive standard, was reactively disclosed by PEs during the ground research.
- Broadly speaking the ADB offered proactively the same type of information accessible reactively through the PEs. As mentioned in the methodology description, we looked into the proactive information published by the ADB for the sample projects that according to our information received ADB funding (which basically covered all projects implemented by DABS). Our finding confirms what the standard comparisons had suggested.
- Implicitly, this means that the availability of certainly proactively disclosed information at the moment depends on the different donor's practices. If those practices are better than the current Afghan standard, there will be more disclosure. It also means that where Afghan institutions are willing to provide information reactively, the actual level of disclosure (practices) is higher than the minimum included in the law. As mentioned before though, the local researchers' perception is that the access they had

to the information was exceptional<sup>148</sup> and would not be indicative of the level of access an average Afghan citizen would have to the information.

- We also faced restrictions with the information disclosed by donors. In our list of projects the funding sources lead to two donors: the Asian Development Bank and the Islamic Development Bank. We didn't find any project information disclosure by the latter or a disclosure policy for that matter.<sup>149</sup>The ADB has a disclosure policy since 2011 and there was information available on its website, on the basis of which we collected the information included on the Table. However beyond one background interview, we were not able to set up ground research interviews to understand the greater context of ADB disclosure, or to double check the information gathered.<sup>150</sup> A MEC study published on November 2015, and aimed at reviewing foreign assistance programmes implemented in Afghanistan faced also challenges to access information from donors.<sup>151</sup>
- The understanding of the PEs of proactive disclosure usually coincided with the expectations of the Afghan law, but the understanding of reactive disclosure made reference to the need of an official letter to gain access, not to the use of a format (as the access to information law foresees) nor to the idea that any one could have a right to that access.
- Information Filing and Management. We didn't look into document (information) management practices. But the fact that the information was available (but not processed) to the researchers on paper files, and that in some cases they were incomplete, indicate also issues regarding the conditions for disclosure. While disclosure itself may not be resource intensive, the information filling and management is resource intensive, and here the challenge may be considerable in Afghanistan. This was confirmed by some interviews where officials mentioned the need for resources.

In addition to the above, our sample analysis also shows the following observations:

- The disclosure takes place where the procurement responsibility is and not where there is an interest for it: This means that in practice the proactive information may be found but dispersed among different sources (donors' reports, PE publications and files). In one case there was no information at the Ministry level because the contracting concerned a state company in a Province and it was argued that the information would be found there, and there was no obligation to send information to the Ministry, although the Ministries have an oversight duty on all of their projects. This situation was confirmed at the Provincial level on the opposite situation, where information on procurement processes performed by national authorities was not available there even if the procurement was relevant locally. Also In the case of the MPW the contracting information was (then) published on the ARDS website not on its own. The same for the case of donor funded projects and procurement entities, for example the ADB makes an effort and has translated some project documents to Dari, but is their disclosure really reaching the Afghan citizens? And what about the Donors who don't disclose at all?

148 The local researchers had the impression though that the level of access they had to reactive information would not necessarily be the same in other cases (without an official letter for example). In fact before the official letter was granted it was not possible to set up appointments for the interviews

149 No information thereof was found on their website. (<http://www.isdb-pilot.org>). The research team didn't approach the ISDB with this question.

150 The ADB does include a specific contact for additional information in its website.

151 Independent Joint Anti-Corruption Monitoring and Evaluation Committee. A Review of selected Foreign-Assistance Programs Implemented in Afghanistan. November 2015. Accesible here: [http://www.mec.af/files/08\\_11\\_2015\\_Review\\_of\\_Selected\\_Aid\\_Programs\\_\(English\\_Full\\_Report\).pdf](http://www.mec.af/files/08_11_2015_Review_of_Selected_Aid_Programs_(English_Full_Report).pdf)

- The above connects with something mentioned in the background and in the PE interviews: In some cases government agencies expressed the need to improve interagency disclosure, exchange of information and accountability for various purposes:
  - To perform their own monitoring, auditing and control functions
  - To enhance trust and accountability, by understanding the reasons why certain projects could be approved or rejected or the reasons why certain contractors would be selected

The above would also apply among national and provincial authorities and donors.

- There was generally a good disposition towards disclosure, within the context of how access was granted here, officials seemed open for disclosure. From all projects examined, one Ministry spoke about secrecy of the process between the tender announcement and the award, and of this being not accessible. During the interviews, the local researchers found that information disclosure is prevented by factors such as lack of capacity, lack of use of technology, lack of explicit legal procedures, norms and customs, institutional will, lack of understanding the significance of transparency, external pressure, and lack of public demand.
- There are different perspectives to donor project performance, accountability and disclosure. To some, these have created parallel structures within the ministries, without accountability and outside of their influence. Donors tend to see it as an effort to transfer procurement capacity to the ministries but remain accountable to their governments.
- Single sourced contracts' disclosure. In the sample one contract was single sourced and there was no information available on it. The law indeed does not require disclosure of single sourced contracting processes. The question is whether this is good practice, and whether it is necessary to reduce disclosure of single-sourced contracts. Usually, this difference leads to practices to avoid tendering processes.
- Generally, there is no information disclosed proactively on project/contract implementation. The current law also doesn't require Afghan authorities to do so. Some information regarding implementation was reactively disclosed (in the case of PEs) or proactively available by donors (in the case of the ADB). However because the ADB information is not updated in real time, it would not be usable for purposes of monitoring. There is also no information available on contract changes, or on the early stages of procurement (needs' assessments).
- The biggest challenge remains implementation. Aside from the issue of disclosure, contracting process and project implementation remains a challenge. As the sample shows most projects have not been completed and many have been cancelled. This was also confirmed by the many of the interviews at the national level.
- In those cases where we looked at both ADB and Government information we could observe:
  - In some cases there was complementarity: information not made available by one was made available by the other.
  - In some cases there was conflicting information: some of it may be due to time differences (ADB's reports available were older as the information provided on-site by DABS), in some others the differences may be due to a different understanding (the researcher's understanding of the available information).
  - In some cases the information provided by the ADB was not always complete when compared to their own standard.
  - In one case the information by contract ( as opposed to -by project) was more complete as provided by the PE as by the ADB as it was disaggregated.

- **Capacity.** It is important to bear in mind that Afghanistan’s procurement system is still in its early stages. It is not possible to expect a fully functional system, but also not to oversee efforts of improvement. According to the local researchers, compared to previous years, PEs capacity, skills and experience are gradually improving. In an interview with one of the PEs they mentioned that most projects that were procured by PEs between 2002 and 2010 were plenty of mistakes and deficiencies and that those procured after 2010 and the method used seemed better. This was confirmed when the local researchers looked at the files (dossiers) of the 20 construction projects in different PEs, they could see that projects that had been procured earlier had more mistakes and coincide actually with the cases where the files were incomplete.

Graph 7 A sample of bid announcement from the MoPW as available on the Web. Screen-shot taken on August 15, 2016



Translation of Graph 7

Bid announcement:

For the construction of Shurabak to Spin Buldak, section one, with the length of 23 km, from 0 km to 23 km. The Ministry of Public Works invites all eligible companies to collect bid documents of the above project in return for AFN 1500 nonrefundable and submit their offers at the latest by 10th of Sunbula 1395 (Hijri Calendar). The offer opening session shall be held on the same day at 10:00 at the Ministry of Public Works. In addition, companies have to submit a bank guarantee of AFN 900,000 to provide insurance.

For the construction of Shurabak to Spin Buldak, section one, with the length of 23 km, from 0 km to 23 km. The Ministry of Public Works invites all eligible companies to collect bid documents of the above project in return for AFN 1500 nonrefundable and submit their offers at the latest by 10th of Sunbula 1395 (Hijri Calendar). The offer opening session shall be held on the same day at 10:00 at the Ministry of Public Works. In addition, companies have to submit a bank guarantee of AFN 900,000 to provide insurance.

## b) Procurement Entities' (PEs) Disclosure Practices at the Provincial Level

Because of lack of procurement authority, in practice provinces are not undertaking construction-related procurement. The projects are managed centrally and the information is also disclosed centrally. This means that neither proactive nor reactive disclosure was available locally and therefore there is no project-by-project sample analysis of project disclosure. Here we share therefore the observations and analysis coming from the interviews held by the local researchers in the Provinces.

- The disclosure takes place where the procurement responsibility is and not where there is an interest for it. Because of current concentration of contracting authority at the national level, this means that the demand for information (on site, in the Provinces) is far away from the supply (in Kabul) and means there is little or no accountability to the local people as contractors are accountable to the PE centrally, in the case of donor projects contractors are accountable to the donor and it is hard for local groups to access relevant information (like for social monitoring) that would only be available in the capital. However provinces remain in charge of operation and maintenance and to support monitoring and oversight activities by the national authorities.

CSOs expressed difficulties in accessing information of donors and of PEs at the national level on contracts relevant to provinces but not procured there. The situation is different for smaller locally procured projects, where access to information for social monitoring is more feasible. Provincial councils were supposed to perform monitoring and oversight duties but this has also not been effective. CSO at the provincial level have identified the scope of work, the price and the quantities of the project among the most essential pieces of information for them to monitor. This information concerns also project implementation. They gave the example of a project that stopped, and when they tried to inquire at the Ministry of Finance they got no response. For local CSOs and communities, the first sources of information are the local governance structures.

- Views on centralization. There are different perspectives on centralization. Some think it is necessary while procurement capacities are low. Others, particularly at the local level, think that centralization creates undue pressure in Kabul and weakens governance structures in the provinces. In addition, it is argued that decentralization would increase accountability, efficiency and effectiveness of the projects. Civil society organizations argue that when a project is procured at the provincial level, they can voice their concerns and advocate for change. The government officials argue that projects that are procured at the provincial level hardly face time and cost overruns because the provincial officials know the terrains and local companies are well-aware of the existing materials and climate in the province. The MoPW and the MoEW are starting activities to delegate contracting authority to the provincial Directorates.

The paradox is that in a way, the national government is replicating at the Provincial level (and with some of its national procurement entities) the same strategy that the donors have used to manage procurement in Afghanistan in the absence of procurement capacity: by taking away responsibility and the possibility of gaining experience and assigning it to a different structure. The point is that in both, centralized or decentralized approaches, transparency and accountability needs to be ensured and that both approaches entail risks and opportunities. Therefore the relevant question for CoST's purposes is not which approach is the best how to manage transparency and accountably also in a centralized procurement system so that the end users of the information and of the services to be delivered can demand accountability.

- There are long Sub-contracting chains. Both government officials and civil society representatives argue that local companies finally implement the projects that are procured and awarded at the centre to national construction companies. There are often second, third and even longer<sup>152</sup> sub-contracting chains, which affect the quality and the accountability of the projects.<sup>153</sup> In the interviews it was mentioned that at best, the national companies provide quality assurance to the projects while they charge up to fifty per cent of the total project, when it is the provincial companies that ultimately implement the projects. In this scenario they ask why not conduct procurement at provincial level and save money and time and provide the environment for accountability.

The issue of sub-contracting has also been mentioned before. A report in 2007<sup>154</sup> had already raised the issue and pointed out that “the presence of independent intermediaries or multiple companies reduces the amount of money available to do the work” and have also negative effects on the accountability as the monitoring responsibilities get diluted.

- Agency oversight is weak because of lack of interagency disclosure, and lack of capacity. The provinces hardly can provide oversight to the projects that were procured and implemented by donors in their provinces. Now that donors’ presence has decreased in the provinces, the provincial governments cannot provide oversight to the projects procured by the central PEs. In both cases, due to several reasons. First, almost all those interviewed complained that the central PEs do not share all project information for them to provide oversight to the projects. Second, some government officials acknowledge that there is not enough capacity to provide oversight to complex and large projects. Finally, for all the projects procured at the central level, an oversight team arrives from the capital. At best, the central oversight team requests a member of the provinces directorate to accompany them. In other cases, the central oversight team would undertake the oversight alone.
- Views on capacity. While there are differences among Provinces, they all expressed having the capacity and the ability to conduct procurement. In fact it will be hard for Provinces to develop such capacity without being able to have the experience. Currently, directorates serve as operation and maintenance (O&M) units, administrative units, and conduct formalities of oversight and procurement. In Herat the governor office mentioned that in some cases even procurement under the provincial threshold is being carried out centrally, and it was mentioned that capacities across directorates were underutilized. All of those interviewed at the local level claimed for further delegation of contracting authority (if not decentralization) to the Provinces. The local researchers were also adamant about this. In fact a great portion of the infrastructure budget is meant to be spent in the Provinces and by the Provinces<sup>155</sup>. This puts additional burdens and expectations on the Provinces, but also challenges that call to be addressed promptly.

It was mentioned during the background interviews that there are implications of disclosure on the relationships between (local) authorities and local power-holders and criminal organizations. On the one hand too much contractual disclosure may increase the exposure of local entities including contractors to extortion. Under certain circumstances the same disclosure could decrease exposure by levelling the playing field. On the other hand disclosure may increase accountability about those relationships. It is, either way, a factor to consider.

152 In an interview a CSO showed us a list of 38 Projects they monitor in different Provinces, they all had minimum 2 chains of sub-contracting.

153 Article 36 of the Procurement Reform of 2015 introduced some limitations to sub-contracting of contracts subject to bidding procedures, among them that they required the written consent by the procurement entity and that they must be foreseen on the bid. The law is however silent on single-sourced contracts.

154 Delesgues, Lorenzo. „Afghan Roads Reconstruction: Deconstruction of Lucrative Assistance“. IWA, TIRI, 2007. Accesible here: [https://iwaweb.org/wp-content/uploads/12/2014/afghan\\_road\\_deconstruction\\_deconstruction\\_of\\_a\\_lucrative\\_assistance\\_2006.pdf](https://iwaweb.org/wp-content/uploads/12/2014/afghan_road_deconstruction_deconstruction_of_a_lucrative_assistance_2006.pdf) ( last accessed Sept 2016 ,26)

155 According to Naser Sidiqee about %40 of the development budget in the coming years should be spent by the Provinces.



### c) Existing Good Practices

The efforts Afghanistan is making must be seen compared to the very same challenge it faces. There is improvement and there are steps forward in the right direction. In terms of disclosure the National Procurement Authority for example has responded to the challenge and has ensured in the transition (of roles and functions) that the contract list remains published. The website holding the initial database was off for a while, and the current NPA list has a total of 186 contracts.<sup>156</sup>

An interesting and outstanding example is given by DABS. The background interview we conducted with private firms indicated that they were not happy with the bid evaluation process in the PEs as the information on the bid evaluations was not made public. The law also doesn't require the evaluations to be public but just to be available for the bidders (upon their request). We found that DABS has in some cases published the bid evaluations like in the case illustrated below.<sup>157</sup> The information includes the participant bidders, the reasons for disqualification and the next steps taken. While it is not evident to us that the evaluations are published in all cases, it is commendable that DABS has taken this step and shows it is possible. The bid evaluations are sensitive pieces of the process. The CoST standard includes them as part of the reactive standard. They contain valuable information to monitor contracting processes.

Illustration of DABS Bid Evaluation Disclosure (Top Screenshot – Taken Sept 2016 ,26)

The screenshot shows the DABS Website interface. At the top, there is a navigation menu with links: HOME, ABOUT, SERVICES, PUBLICATION, REPORTS, PROCUREMENT, CAREERS, CONTACT US. The main heading is "DABS-94-ICB-015 – NEPS/SEPS Transmission Line - Results of Evaluation." Below this, there is a "GO BACK" button. The main content area contains a table with the following details:

Tender Category	Distribution
Contract Ref no	DABS-94-ICB-015
Description	DABS-94-ICB-015 – NEPS/SEPS Transmission Line - Results of Evaluation.
Project Funded By	Co-Afghanistan Bintra Shirkat
Publish Date	2015-10-13
Bid submission Date	2015-09-28
Contact Person Name	Shahzad Ahmad Nasser
Contact Person Phone	9702002963
Contact Person Email	tenders.dabs@dabs.af
Attachments	

Below the table, there is a section titled "RESULTS OF EVALUATION" for "DABS-94-ICB-015". It states: "NEPS/SEPS Connector Five Transmission Lines from Ghazni to Kandahar East in One Lot". Under "Results of Evaluation", it says: "In accordance with the ITS 43.2 of the RFP of DABS-94-ICB-015 the following results are herewith being published".

1. Date of Solicitation	: February 10, 2015
2. The Bid Meeting date	: March 23, 2015
3. Date of opening of Bids	: June 21, 2015
4. Number of firms that submitted the bids	: 4 Firms

Names of Bidders who submitted bids:

1. Mr Hunan Xiangyang Electric Power Construction Group, LME, China
2. Mr Seon Engineering and Construction / LS Networks Co. Ltd LME, Korea
3. Mr Dextron Engineering, Nigeria
4. Mr Rajpatary Power Transmission Limited, India

1. Technical Bids opened on	: June 21, 2015
2. Financial Bids opened on	: September 21, 2015

156 As of September 2016 ,26. We had checked approximately in July and it had then 120 contracts in the list, and during May the list was not available.

157 DABS contracts information is published here <http://main.dabs.af/Tenders>. The source of the example is here: <http://main.dabs.af/Tenders/TenderDetail/109> ( last consulted on September 2016 ,26). Should the link not work, the search tool in the website enables searches under the project number.

## Illustration of DABS Bid Evaluation Disclosure (Bottom Screenshot – Taken Sept 2016 ,26)

September 21, 2016

2. Financial Bids opened on  
 3. Bid prices as read out at financial bid opening  
 Bid of only M/s Kaptaru Power Transmission Limited, India was opened as it was the only technically qualified bid - USD \$17,196,832.00

1. Names of bidders whose bids were rejected and the reasons for rejection.

S.No.	Name of the bidder	Reason for rejection
1	M/s Hunan Xiangyang Electric Power Construction Group, Ltd.	Did not submit the bid security hence not considered for detailed examination. Rejected at preliminary stage
2	M/s Saen Engineering and Construction /LS Networks Co. Ltd (LN)	Not meeting the Qualifying requirements per the required Project Specific experience as in the RFP. Hence rejected after Technical evaluation.
3	M/s Dextron Engineering, Nigeria	Not meeting the Qualifying requirements per the required Project Specific experience as in the RFP. Hence rejected after Technical evaluation.
4	M/s Kaptaru Power Transmission Limited, India	Rejected after Financial evaluation as the quoted price is higher than the estimated value of the contract.

**Summary of the Bids submitted**

a) 1 Bid was rejected at the preliminary stage of evaluation.  
 b) 2 Bids were rejected after the Technical evaluation.  
 c) 1 Bid was rejected after the Financial evaluation.

Hence all the bids have been rejected and it is proposed for re-solicitation of the project.

Shakib Ahmad Hossain  
 COO & Acting CEO

## Conclusions

Disclosure in Afghanistan is in its initial stages. More relevant than disclosure of information to the wider public appears to be the need to familiarize all actors (on the supply and demand side) with the use and purpose of such information disclosure, to enhance trust and to ensure access to its immediate users in all sectors.

There are a few differences between the CoST standard, the legal framework in Afghanistan, and donor's policies, mostly in regard to information on contract implementation made proactively available. But the biggest issue at the moment is not in our opinion, to get a perfect framework, but rather to get implemented what Afghanistan already has and to operate on that basis and to prompt a form of disclosure that would at the same time increase accountability, and help the goal of improving implementation and delivery rates.

While there is in most cases a good disposition towards disclosure, it has different implications for different actors, which suggests the need for a staged and targeted approach:

- Disclosure requires capacity and resources to disclose. It is not necessarily seen as being rights-based and of value, nor is it a habit.
- Disclosure demands on government agencies with limited capacity, may cause apprehension if the value of such disclosure is not understood or appreciated.
- Some private sector actors indicated that more transparency would be welcome in the selection processes, but feared that disclosure of contract details would engender criminal activity (extortion), or feared that such transparency would raise the expectations of employees, communities and other local stakeholders.
- Civil society organizations express a need to increase transparency and disclosure in order to perform social monitoring and demand accountability.

- Generally, there are implications of disclosure on the relationships between authorities and local power-holders and criminal organizations: it may increase or decrease exposure; or may increase accountability about those relationships.
- Transparency will not necessarily lead directly to accountability: the responsibility for disclosure follows from the responsibility for the procurement process and if the process is centralized, the place of delivery won't necessarily coincide with the responsibility of procurement.

Little or no information is available on contract implementation, contractual changes, and on early stages of contracting (needs assessment) also reactively on both the donors and the government's sides. The CSOs require more availability of information on scope of contracts and prices and quantities to perform social monitoring. Afghanistan's framework enables (or at least doesn't forbid) that disclosure.

With different sources, policies, and different accountability lines, there is a need for consistent, homogeneous information. Donors apply their own disclosure and procurement guidelines, when they have them. The levels of observed reactive disclosure by the PEs in the sample of projects examined by the research team was high. However the impression was that this was an exception, due to the high level access granted by the support of the NPA to the research. The local researchers got the impression the same level of access would be absent for other actors, including among government agencies.

Most importantly, the disclosure takes place where the procurement responsibility is and not where there is an interest for it. While Afghanistan decides for or against more or less centralization, for the time that processes remain centralized the challenge is how to manage transparency and accountability also in a centralized procurement system so that the end users of the information and of the services to be delivered can demand accountability both at the national and provincial levels.

# PART 4. A-COST'S GOVERNANCE STRUCTURES AND POTENTIAL ADDED VALUE

In this section we look in to CoST's (governance and executive) structures in Afghanistan and also the possibilities and opportunities that arise (or not) for CoST to add value in Afghanistan. In fact both are in many ways connected. Not only because the first serves to realize that added value, but because the governance structures in CoST as a multi-stakeholder activity have potential to offer added value in and of itself.

## The Multi-Stakeholder Group (MSG)

The A-CoST MSG met for the first time in February 2014, shortly after Afghanistan's decision to join CoST in October 2013. The current composition foresees the following membership:

Government	Civil Society	Private Sector
Ministry of Economy (Chair)	Afghan NGOs Coordination Bureau	Afghanistan Chamber of Commerce and Industries
Ministry of Public Works	South West Afghanistan Bureau for Agency Coordination	Afghanistan Builders Association
Ministry of Rural Rehabilitation and Development	Integrity Watch Afghanistan	Federation of Afghanistan Craftsmen and Traders
Ministry of Energy and Water		

**Membership:** with the aim of seeking different perspectives and interest representation and the involvement of relevant stakeholders that provide it with legitimacy,<sup>158</sup> the analysis in the previous sections enable a few observations on the current and future MSG composition as follows:

- *Government Representatives:* The Ministry of Finance and the NPA are strong and relevant government stakeholders within the national procurement framework that are not currently formally involved in CoST. Their involvement and participation is not only necessary but would add strength to the initiative. It needs to be discussed what the optimal forms of involvement could be, but it is advisable that in any case such involvement be formalized.

When discussing this finding with the NPA they considered their engagement relevant but also important to preserve the independency of CoST, as they see that in certain occasions it would need to challenge the NPA. While this doesn't rule out a membership to the MSG is a genuine concern to have. On the other hand, given the

158 CoST Guidance Note 4.

current contracting framework, the NPA is perhaps the most key governmental stakeholder on the issue and its involvement in the initiative is imperative.

- CoST needs to work in active involvement with the NPA. The actual forms for that can be determined by common agreement and can change in time.

The Ministry of Finance is currently the government agency that not only has the “big picture” but takes decisions at key points of infrastructure projects (including, what projects will take place and making the last check on implementation before payment). It is also the main “customer” so to speak of the national monitoring and oversight system. Furthermore, with approximately %65 of effective construction-related projects in the budget, infrastructure is a fiscal issue in Afghanistan. It is therefore a key decision-maker and key source and recipient of disclosure.

- A functioning CoST would have an impact on the MoF's work and the MoF would have a decisive impact on it, reason why we consider decisive that the MoF joins the MSG to provide it further strength.

Feedback to the “Main Findings and Recommendations” document indicated that the High Commission on Access to Information should also participate as a MSG member.<sup>159</sup>

- *Civil society representation* has been active in the MSG and has proven to be a crucial driving force for the initiative. IWA has been additionally tasked to provide temporary secretariat functions and a coordinator has been recently hired. IWA's capacity and knowledge are a strong, necessary and positive ingredient to the initiative, and is a legitimate and necessary member of the initiative. However IWA is also in high demand and participating in many initiatives, which creates vulnerabilities resulting from a stretched capacity, or the natural potential conflicts of interest that come with IWA having a wide agenda. It is also “wearing too many hats” in the initiative (as secretariat, as MSG member, and as part of the scoping study team) which may make its roles vulnerable vis a vis the other civil society actors. This speaks for broadening the range of CSOs involved in CoST and to engage in addition with other groups.

One could also consider organizations working on a broad but relevant range of topics, including

access to information, human rights and the environment and not just anti-corruption or integrity.

- It is recommended for A-CoST to actively undertake engagement with different civil society organizations to create awareness about its work and to diversify and strengthen the civil society's voice and input.
- Our interviews with *private sector* associations and with a few companies indicate that some companies don't feel well represented by the associations, and that the associations are aware of this. Also, that there is a need to increase the private sector's trust and understanding of the value of transparency and accountability. Thought needs to be given on how to enable a wider and more diverse company engagement with the initiative.
- It is recommended that the initiative takes on active engagement with the private sector to create awareness about its work and to enable wider channels of communication with them.
- *Donors and representatives of the international community* are also key stakeholders in the construction sector in Afghanistan. Given their role in current funding and implementation of projects it makes sense for them to be involved also in the MSG. One could think of different engagement approaches with different donors for example those currently working more intensively on infrastructure programmes like the World Bank (ARTF), the ADB (AIF), USAID, DFID or the GIZ that would need to be involved in the initiative at the MSG level. While broader awareness raising engagement should be

159 Comment by Sayed Ikram Afzali (IWA).

sought with other donors that are increasing their contribution on infrastructure ( Like China, India or the Islamic Development Bank).

- Given their role in current funding and implementation of projects it makes sense for those who are providing the greatest amounts of resources for infrastructure projects to be involved also in the MSG.
- In general, it seems that a broader engagement and communications strategy for A-CoST could prove useful. This could be specifically aimed at all government, society and private sector stakeholders to create awareness about its work and its purpose, support initial steps and to encourage participation and involvement by different groups.

The MSG as driver of the initiative. The existence of the Group and of a temporary Secretariat exercised by IWA are already positive steps in the sense that they give already some shape and presence to the initiative. So far the Group has not addressed the content of a possible work plan. The process of the scoping study envisaged interaction with and the incorporation of feedback of the MSG members and initially a subcommittee was put together for that purpose under the leadership of the Ministry of Economy. While a few individual members did provide valuable insights and comments, broadly speaking there was little collective engagement and feedback from the Group, In addition, during the period of the scoping study there was a high level of rotation of the representatives of the different entities and low participation at the meetings.

- This suggests that it will be important to provide more intensive support (or mentoring) to the MSG in its initial stages, to familiarize members (and other stakeholders with the initiative and its possibilities and to empower them for action.
- It may also be worth considering whether the model of CoST to follow in Afghanistan needs to start with a mandate (work plan) determined by the MSG at a point where the MSG does not have yet the drive to push and provide strategic guidance. Other alternatives are possible that while preserving the existence of a MSG at the core of the initiative, its role is lightened up on the implementation functions (see section on added value for some suggestions).
- A rotating Chairmanship of the MSG could be considered to enable leadership by different sectors. Generally it is relevant that the MSG makes conscious efforts to harness a sense of ownership in all MSG members.

The leverage: the timing for the initiative is right. The key strategic value for social and economic development of infrastructure is unquestionable and reflected in key policy decisions and political steps. The current focus on getting procurement right in Afghanistan is also another contributing factor. Although infrastructure has less “appeal” than for example, the extractive industries, infrastructure is key to all economic sector’s productivity and competitiveness and even extractives itself is heavily dependent on infrastructure. This speaks also for the potential added value of the strategy.

The MSG offers great potential to give voice and facilitate exchange among different stakeholders, and as a forum where the private sector and the CSOs can bring in their knowledge and share concerns. However the relationships among the different stakeholders in Afghanistan is still rough, all actors have weaknesses and often they get magnified under well-intentioned initiatives that seek collaborative multi-stakeholder work. This is all the more relevant the moment international actors enter the MSG as members. This begs for thinking through ways to empower all stakeholders in the MSG evenly, without jeopardizing its governance structure, for example, by giving a vote per sector, and as mentioned before, by rotating the Chairmanship.

Furthermore it would be advisable to have right from the start some impact indicators at hand, to follow up, assess and communicate progress. Because of the ways CoST generally operates, there is no embedded external drive for implementation (unlike EITI’s validation scheme) and an overarching, external “pressure” for delivery would be useful in keeping momentum and fostering drive.

Operations: the study indicates that there are a number of relevant partners for CoST to work with on the ground. With some of them the work is necessary: like the NPA. With others partnerships and collaboration is highly recommendable (to add resources of scale, complement efforts and avoid duplication), these include the SAO, the Access to Information Commission, the Ministry of the Economy and the MEC.

As indicated in the added value section, other initiatives like Open Contracting and actors like Integrity Action offer also a potential added value in collaborating closer with them.

### The Secretariat

Currently, the Secretariat functions have been temporarily tasked to IWA under a tripartite agreement (CoST-MSG-IWA). This has also enabled taking further necessary steps into shaping the structure of the initiative (including the hiring of the coordinator, etc.). There has been however some confusion between IWA and the Ministry of the Economy on this and on an understanding of the differences between the roles of hosting the Secretariat and of the MSG Chairmanship (and indirectly the role of the Secretariat). This could be addressed in further efforts to mentor de MSG through the next stages.

A key issue for the sustainability and impact of CoST in Afghanistan is achieving both independence and strong support at the same time. In this sense:

- Presidential support for CoST is crucial, and also support and recognition at the Government-International Community biannual Ministerial level meetings.
- The initiative's final hosting arrangement needs to consider also both of these aspects. Different options offer different trade-offs (risking independence or risking support) that will need to be considered. It seems that in the initial stages it is important that the Secretariat's host be also instilling drive into the initiative together with the MSG's Chairmanship. The current arrangement results in a positive CSO-Government collaboration.
- Eventual changes to the Secretariat's "location" should be considered should the MSG convene additional members.
- The Ministry of the Economy is a key champion to the initiative and can reap great benefits from it. However its leverage within the government is less strong than other Ministries (for example compared to the Ministry of Finance). This also has an impact on the initiative's own drive within the public sector, on the Chairmanship's capacity to convene other actors and perhaps also on the robustness of the initiative.

### Adding Value in Afghanistan

There are a number of sources of add value and opportunities for CoST in Afghanistan. That the basic situation is precarious and complicated speaks for making a smart approach, not for not undertaking it.

There are in our view a few minimum requirements to enable value creation:

- it is common to observe parallel structures in Afghanistan. It is important for CoST's impact to avoid this by working in partnerships with the existing institutions, particularly the NPA, the Oversight Commission on Access to Information and the SAO among others and to define its work in ways that would complement and enhance these institutions' work.
- Adding value in this case doesn't mean adding standards. Reforms are recent, institutions are being built; It doesn't make sense to start by imposing new ones but rather by working on supporting the implementation of what there is, offering constructive support. There are already other institutions meant to perform "watchdog" functions. The initiative's work should not seek sweeping reforms but rather support current efforts.

- When it comes to disclosure and accountability, it is both the supply and the demand that need to be worked on. This gives a particular dimension to disclosure and assurance efforts by the MSG and the initiative in the future. The efforts to improve information disclosure need to consider filing and document management issues. It is also important to support vulnerable efforts to make them sustainable, address apprehension and encourage disclosure not by criticism or intimidation but by showing its positive impacts. The assurance processes also need to consider the usability of that information. Supply and demand for information need to meet, so it is important (first) to ensure that those actors (public, private, civil society, donors) that are direct users of information to perform their roles get access to it- particularly monitoring and oversight. Also, that these actors are aware of the value of information to them and of their own right to it. Pushing for public access of contractual information doesn't seem at this point the most impacting effort, it is relevant but in the mid-term.
- Efforts of disclosure and assurance need to include both government and donors. CoST in Afghanistan would not be effective by focusing only on the government's policies and practices.

In term of its content and scope of work, all speaks for a staged approach that takes on realistic, concrete and purposeful action. The suggestion is for CoST to start small and focused on a handful of projects but working purposefully across and with all stakeholders, with clear impact indicators. With that experience it can then plan for a mid-term work plan. This would also take off some of the broader planning and implementation burden from the MSG focusing their energies and input.

On this basis, we examine here the concrete sources of potential value add structured around stakeholders. This includes ideas and observations coming from our analysis but also includes ideas mentioned by our interviewees:

#### With and for Government

- Work on communicating, training and raising awareness on the positive impact of accountability and disclosure.
- Support and strengthen disclosure efforts by the NPA and in all procurement entities.
- Assurance efforts could also support SAO's work.
- Generally speaking, it would add value to deploy assurance efforts to strengthen both disclosure of procurement processes and contract implementation where an independent input would be helpful to build trust and strengthen monitoring oversight capacities across the government.
- Purposeful, effective transparency and accountability efforts can be made to support Afghan development but may not look like those in other countries. More important than disclosing more, is disclosing well, and purposefully, for example:
  - By compiling, consolidating and crossing information coming from different sources so that government agencies receive information from other agencies they need to work, and disclosure is consistent throughout projects independently of the funder.
  - By providing assurance on the quality and relevance of such information and disclosure in a timely manner so that it can be used.
  - By focusing on a few yet crucial aspects of the contracting process to improve and thus to enhance trust among stakeholders: for example on selection of bidders, or on contract implementation.
  - By ensuring that information reaches their purposeful users first and eventually the larger public in a meaningful way – in their own language, through reasonable means, in a way that is usable to support social monitoring activities



- By working with the NPA and the Oversight Commission on Access to Information to develop and implement a strategy that complements their efforts (and avoids duplicating or undermining their efforts)
- The government is considering the creation of a special monitoring entity for big infrastructure projects, where CoST could play a role bringing in a multi-stakeholder perspective.
- The (currently) upcoming Infrastructure Plan gives an opportunity for all to prioritize and focus work. Further priorities can also be discussed with the NPC and the NPA. This could be a source for CoST to select a few projects to work on that could be used as an opportunity to:
  - Level-up the playing field in terms of disclosure practices of donors and government agencies
  - Help collate disperse information and facilitate coordination.
  - Identify concrete leverage points to facilitate disclosure
  - Provide assurance on a focused number of projects
- At the Provincial level, it is too soon to start full-fledged work, but as one commentator suggested it, the relevance of provincial actors in spending makes it necessary to start paving the way.<sup>160</sup> CoST could for example mentor initial des-concentration (delegation) efforts to enhance disclosure and accountability.
- The public-private partnerships and concessions regulation (infrastructure contracting) is still to be issued. This offers an opportunity for advocacy, to include high standards of disclosure and accountability.

#### With and for Civil Society

- CoST can support efforts to process (chew) information to make it usable for civil society actors, and to instil the right to demand it and to use it appropriately.
- It can also strengthen their voice, for example, by identifying acute points of information blockage that need to be released to enable civil society monitoring on specific projects.
- On going Initiatives of community based monitoring are showing results and could multiply their impact with CoST's support, offering a concrete, targeted work option in the Provinces.
- Civil Society can also make a decisive contribution to CoST with their experience and the lessons learnt through their work.

#### Donors and International Initiatives

- CoST could help bringing in alignment, coordination and visibility to the donor's disclosure practices.
- Its assurance process could also provide an independent check that could help build trust, coordination and strength to scattered monitoring and oversight efforts.
- The government is subscribing a MoU with the Open Contracting Partnership following the London Conference to determine its scope of work and CoST could play a role in supporting its implementation.

160 Naser Sidiqee (GIZ). Commenting the „Main Findings and Recommendations Document“.

### Private Sector

- Undertake a broad company engagement and work on communicating, training and raising awareness on the positive impact of accountability and disclosure.
- It can also strengthen their voice, for example, by identifying acute points of information blockage that need to strengthen the accountability of contracting processes.
- A few interviews mentioned that creating a bidder (or contractor in general) registry with an assurance mechanism on their capacity, ownership and track record would be helpful.

Finally, the MSG has a relevant value to offer in terms of offering voice to different stakeholders and of coordination and knowledge management, ensuring different actors can bring in their knowledge and share concerns, and create a strong information base to guide policy reforms. Its structure and governance (as described in the previous section) can be aligned for that purpose.

### **Conclusions**

It is timely to support the development of a habit for transparency and accountability, with a staged approach that strengthens institutions and trust, is clever in asserting informal governance structures, recognizes resources and capacity requirements and overcomes apprehension while realistically acknowledging risks.

The initiative needs to involve donors and to include in its scope donor-funded projects. Proactive outreach and engagement of different stakeholders would strengthen the initiative. Key government actors and donors still need to be involved. The initiative is an opportunity to contribute to strengthen the monitoring and oversight of capacity government agencies. There are also concrete on-going opportunities to realize the value add that could be used. In the overall potential impact of CoST it needs to be considered that off-budget projects would be not under its reach or focus, but nevertheless have an impact on the contracting system and its accountability.

From our perspective, the core contribution of CoST to Afghanistan is not innovation but strength.

## ANNEXES

### Annex 1 Methodology

This annex describes the methodology used to conduct the A-CoST Scoping Study and the process undertaken. There are two main references to this methodology: (1) The TORs issued for the consultants determined what was expected. There were separate but complementary TORs issued to both the local consultants (IWA) and the international backstopping (Dr. Juanita Olaya). In this document we refer to them simply and indistinctively as TORs; (2) CoST's Standard and Guiding Documents establish a reference of how certain things could or should be set up when implementing the initiative, and are thus also of obliged reference.

#### Goals

As stated in the TORs, the following are the goals of the Scoping Study:

- Gather the information needed to adapt the CoST programme to Afghanistan
- Provide a baseline measure of 'transparency' in publicly funded construction

To fulfill the first function, the scoping study profiles the local construction sector encompassing:

- The laws and regulations affecting the procurement and delivery of construction projects
- The relevant institutions and initiatives relating to the governance of the process and,
- The stakeholders involved.

For the second function i.e. to provide a baseline measure of transparency, the study assesses various aspects of current levels of proactive and reactive disclosure of information on publicly funded construction projects.

The study provides valuable knowledge that feeds into the design of a CoST Afghanistan programme - including the disclosure and assurance processes and the further strengthening of the already existing Multi-Stakeholder Working Group (MSWG).

#### Outputs

The research team produced the following main outputs:

1. An Inception Report
2. A proposal to select the PEs subject to the study
3. A Main Findings and recommendations Document
4. A Final Report

During the process of producing the study a number of changes were undertaken to the initial outputs in consultation with the CoST secretariat and GIZ-OPAF as follows:

- The foreseen timeline was altered to manage the risk of delays with the ground research. For this purpose the PE selection criteria and process were started earlier and swapped with the production timeline of the background report. The feedback of the MSG was considered decisive but came in with delays that undid the time initially saved. Furthermore there were substantial delays in conducting the ground research among others due to difficulties securing the interviews with the PEs.

- As a result of those delays and in order to continue with the research it was decided not to produce a separate background report beforehand but to simply include it with the final complete draft.
- To seek feedback and engagement from the MSG it was agreed that the team would produce a “main Findings and recommendations” document for the end of August 2016 instead. This was delivered and submitted to the MSG. One observer of the MSG made comments to that document.
- Because the framework and the contracting process disclosure practices are focused only on two items of the process and only valid at the national level, filling out the spreadsheets containing the CoST standard offered little insight for the analysis. They were substituted with the Table included in the Annex 4 which focuses on a few specific aspects of proactive and reactive disclosure as chosen by the local researchers as relevant. The table reflects the information as gathered by the researchers for the local projects. In this sense it gives an accurate overview of how local experts would validate local information. For example, some projects are recorded to be funded by the government. It could well be the case that these are not, but the available information suggests they are.
- In the context of the current CoST review effort, less emphasis is being put to baseline indicators and more on possibilities for value add. This and the ground results made us make an emphasis on OD aspects of the initiative and its value add instead of enumerating baseline indicators.

## Scope

The desk and ground research focused on the construction (infrastructure) sector and the contracting laws, institutional arrangement and procedures thereof. It aimed at describing basic institutional arrangements and actors within all contracting types in the sector but there was no (or not enough) information available at the project level particularly for military contracting, donor-funded projects and off budget projects. In these cases the study only makes broad descriptions based on exiting analysis.

The initial effort was meant to include procurement entities’ projects at both the national and provincial levels. However, due to current lack of contracting authority at the provincial level, we could only capture information to describe broadly, the institutional landscape of procurement and not to conduct research on a sample of projects. This part will be further refined once the research for the sample PEs at the provincial level has been concluded.

The main criterion for selection used at the national level was the level of infrastructure budget controlled by other criteria. The main criterion used for the selection of provinces was diversity. The projects selected for observation at the national level were not chosen randomly as the level of implementation is low. Annex 2 elaborates further detail on PE and project selection.

## Method

### *The Desk-Based Research*

The desk-based research covered existing relevant laws and regulations and existing relevant studies from national and international resources

### *Interviews:*

Interviews were conducted with two different purposes:

- a) For background and general information, leading to information relevant to the background parts of the report and to the considerations regarding the organisation of the CoST secretariat. These interviews were semi-structured or open depending on the topic needed.

b) With the selected PEs, in order to fill out the CoST Matrix and identify proactive and reactive disclosure. These interviews were structured in the sense that they will first aim at covering the information incorporated in the CoST structure and also incorporated open questions aimed at elaborating on relevant contextual and background information.

In the inception report we planned to conduct 47 background interviews and 50 ground research interviews. In practice, we had fewer ground interviews as we assumed we would be interviewing local directorates of each Ministry interviewed nationally, which turned out not to be feasible since the provincial contracting activity was less than foreseen. See Annex 6 for a List of the total interviews conducted.

#### Frameworks

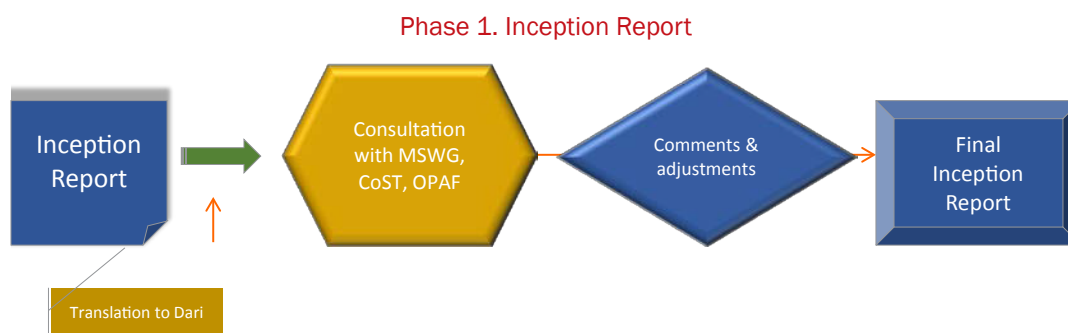
To facilitate the analysis of information we resorted to certain “frameworks” or sets of organized categories, that are either provided to us in the TOR or defined by us, as follows:

- To study the selected PEs and analyse and document active and passive disclosure we used the CoST criteria (core items) for proactive and reactive disclosure and the linked spreadsheets that provided by CoST.
- To analyse the enabling context and organisational form for the Secretariat we used stakeholder analysis to identify added value and identify aspects that need strengthening.

#### Research Process

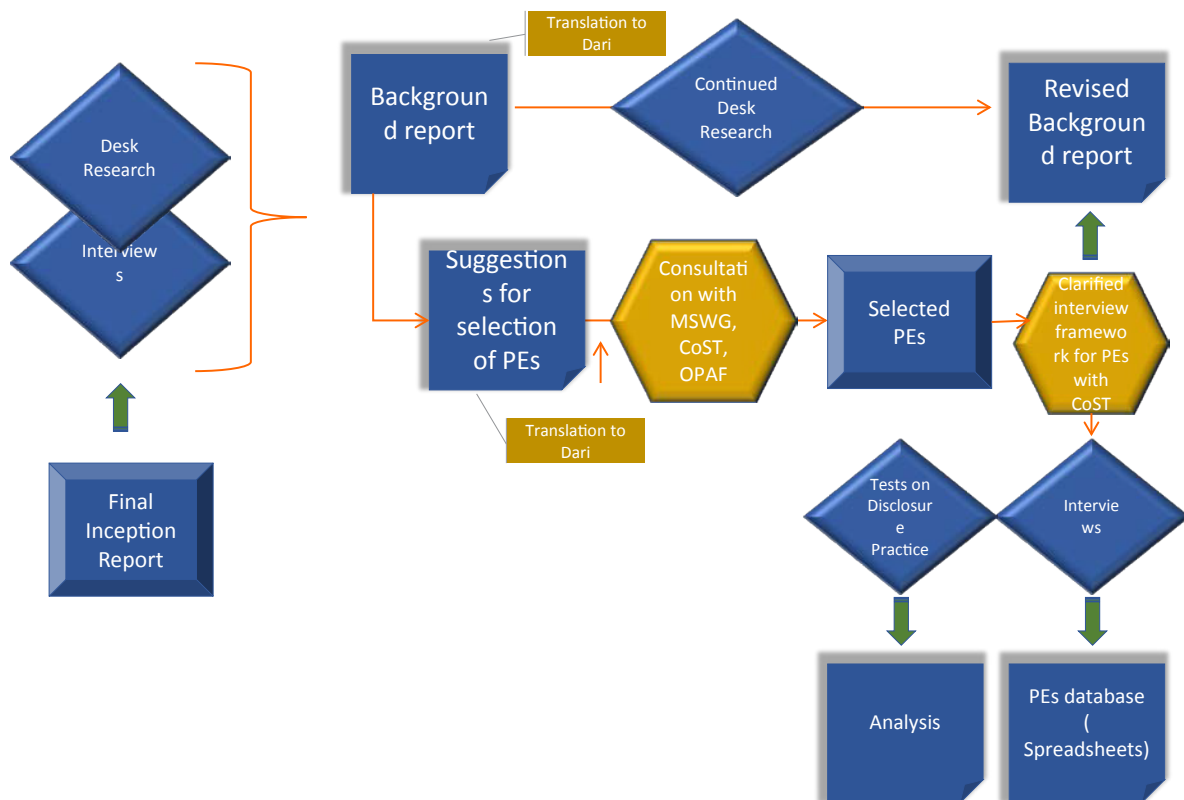
The research process followed three Phases as described in the Graphs below. Two important features characterize the process:

1. Relevant outputs for consultation with the MSWG were translated to Dari. These included the : Inception Report, the document containing criteria and suggestions for the selection of PEs and the Draft Final Report.
2. Key steps of the process involved formal consultations with the MSWG, CoST and GIZ-OPAF. Although input from the MSG was sought in different occasions, their feedback was limited. Some members shared their view individually, but it was not possible to hold collective discussions on the subject.



Once the inception report was reviewed, the work on the other outputs started. The background research included both desk research and interviews to understand the current context.

Phase 2. Background Report and Ground Research



As mentioned before, during this phase the order of the ground research and the background report were swapped and the background report was integrated into the final report ( as Part 1 and 2) and not discussed separately. In addition a “Main Findings and Recommendations” document was produced and submitted to the MSG for feedback.

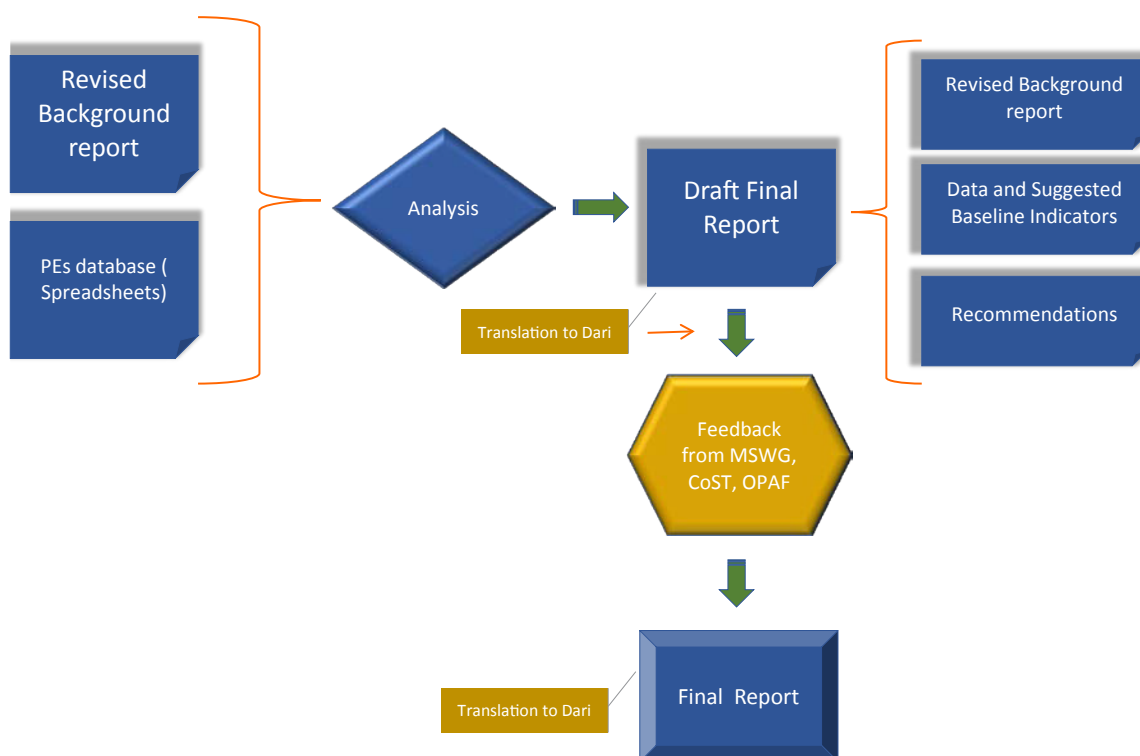
The NPA was crucial in enabling the PE ground interviews. This issued a letter that was used by the local researchers to introduce themselves and request interviews. We undertook a background interview with an ADB external consultant. We also requested ground research interviews to the ADB, but these were not granted.

The ground research followed mainly these steps:

1. The local researchers located an initial list of projects from the Ministry of the Economy. It was not clear whether the list was complete. The list was not translated into English. With the list they made an initial pre-selection of projects and try to include a diverse sample of them following the suggestions by the MSG. Initially, there were concerns on whether to look into on-going or finished projects and the fact that all projects involved foreign funding. The sample ended up including examples of all.
2. The local researchers presented the letter of support provided by the NPA in each of the selected PEs and requested an interview with them. Once granted, they went through a series of (structured) questions and then asked them for the information on the selected projects. The PE officials usually gave them the project dossiers for them to look into, in some cases shared the contracts as well.
3. The local researchers looked at the information available in the dossier and whether it was complete or not. In one case (DABS) the officials requested the spreadsheet to fill in the information themselves. The information they provided was included by the international consultant also separately in the Table.

4. On the basis of the information in the dossiers they filled out the Table included in Annex 4. In this sense it gives an accurate overview of how local experts would validate local information. For example, some projects are recorded to be funded by the government. It could well be the case that these are not, but the available information suggests they are.
5. For the cases of the projects funded by the ADB the international consultant looked at the information available on the ADB website for those same projects observed by the local researchers and recorded in the table the information available. This enabled to compare three levels: the information provided by the donor, by the PE and the last one as processed by the local researchers. We requested interviews with the ADB to provide context to the ground research and understand the opportunities and challenges for disclosure for them but this was not granted. We didn't file a specific request for reactive information with the ADB.

### Phase 3. Drafting of Final Report



### Limitations and Foreseen Obstacles

Generally, the scoping study has a number of limitations.

- A few circumstances restricted the possibility of making a comprehensive political economy analysis, among them: the research the time span, the security conditions on the ground and possible restrictions in addressing complex issues during the interviews.
- The framework for domestic procurement is relatively new. Construction and infrastructure spending is still heavily dependent on international funds and international actors (donors and contractors). This context sets specific challenges in terms of access and availability to information, or forecasting the success or failure of reforms that are not present in other contexts.

- Generally, there is limited access to information and this is the operational basis of the work undertaken. While this in itself is information valuable for the scoping study, it means we were not able to get all the information we would have wanted.

The help of the NPA proved crucial in accessing information, and supporting the identification of appropriate authorities to interview. Both CoST and the GIZ-OPAF were also of valuable help in securing interviews and further identifying relevant actors.

Finally, one of the questions of the scoping study concerned the ideal hosting and organisational design for the A-CoST Secretariat, a role that IWA is presently performing. At the same time, the team leader Dr. Juanita Olaya is currently a Board Member of Integrity Watch Afghanistan (IWA) and IWA had been selected to perform the groundwork of the scoping study. As this situation could be perceived as a conflict of interest, both the team leader and the research team find it important for it to be disclosed here as we think it is relevant that it remains clear that this situation didn't entail an actual conflict of interest and that if so perceived they did undertake steps to manage it in the sense that:

- It made a commitment to explore the question of the A-CoST secretariat openly and irrespective of the fact of IWA's current role in it.
- It made a commitment to openly and genuinely speak to other actors and listen to different perspectives.
- The situation was been disclosed to IWA's Board and Dr. Olaya has excused herself from taking part on any decisions that relate to A-CoST during IWA Board meetings.
- The above was made explicit in the inception report.

#### *Consultations*

As the research process diagrams above indicate consultations with the MSGW, CoST and GIZ-OPAF were foreseen and took place throughout the process.

To facilitate the feedback of the MSG the main outputs were translated to Dari, and the local researchers attended the meetings so discussion could be held in the local language.

Additionally, to facilitate a fluid dialogue between the RT and the MSGW also outside the formal consultation times, we proposed that the MSGW designate a small subcommittee (of maximum 3 members) who can communicate also in English and who would enable communication between the RT and the whole MSGW. The subcommittee was selected and appointed by the Chair but it didn't really operate.

### **Team**

This study was commissioned by GIZ-OPAF to a research team composed of: Dr. Juanita Olaya, providing international backstopping and team leadership; and the researchers Naser Timory and Sebghatullah Karimi and also Ahmadullah Mauj who on behalf of Integrity Watch Afghanistan (IWA) were selected to undertake the ground research and manage for IWA the A-CoST Scoping Study project respectively.

The Research Team started work on January 1st, 2016.



## Annex 2. Selection of PEs

### SAMPLE SELECTION OF PROCUREMENT ENTITIES (PEs)

The TORs require we conduct ground research (undertaking interviews and filling out a database using CoST's spread-sheet format) on a selected sample of procurement entities (PEs). This document presents for your feedback the suggested sample selection of PEs we would undertake that research on.

### SAMPLE SELECTION

We propose to conduct the ground research on 5 national agencies and 4 Provinces: the Ministry of Public Works, Da Afghanistan Breshna Sherkat, the Ministry of Health, the Ministry of Mines and Petroleum and the Ministry of Agriculture, irrigation and Livestock and also in the Provinces of Bamayan, Baghlan, Herat and Kabul.

According to our calculations this entails a total of 292 projects at the national level and 182 projects at the provincial level, for a grand total of 474 projects. Considering our research capacities we propose to take a sub-sample of 40 projects out of this (about %8 of total) to check for actual project disclosure. This sample will be identified during the first interview with the PEs.

Tables 1 and 2 below summarize the results and how the selection criteria apply to them both at the national and at the provincial levels. We applied the criteria outlined in the Inception report to select both national-level agencies and Provinces. The criteria are explained in further detail in the next section.

**Table 1. Sample Selection of National Agencies and Summary of Criteria.**

No	Suggested Procuring Entities	Infrastructure Budget FY 1395 USD	# of Projects	Share of infrastructure Budget as % of Total Infrastructure Budget	Infrastructure Category	Criteria				Potential Alternative Procuring Entities for selection
						BR	AC	DI	SI	
1	Ministry of Public Works	524,009,178	211	32.11%	Transportation Infrastructure	1	Yes	M	H	Ministry of Rural Rehabilitation and Development
2	Da Afghanistan Breshna Sherkat	310,784,871	17	19.04%	Energy and water infrastructure	2	Yes	IPC	H	Ministry of Energy and water
3	Ministry of Health	61,546,556	40	3.77%	Social Infrastructure	3	Yes	M	H	(1) Ministry of Education, (2) Ministry of Higher Education
4	Ministry of Mines and Petroleum	51,441,469	11	3.15%	Mines and Petroleum Infrastructure	4	Yes	M	H	National Civil Aviation
5	Ministry of Agriculture, Irrigation and Live stock	46,615,714	13	2.86%	Agriculture Infrastructure	5	Yes	M	H	Ministry of Urban Development
Total		994397788	292	60.93%						
BR= Budget Ranking AC=Accessibility DV=Diversity SI=Social Impact H=High M=Medium L= Low MI= Ministry IPC= Independent Public Company										

Source: Budget FY 1395. Calculations performed by the research team.

Table 2. Proposed Sample selection of Provinces and Summary of Criteria

Suggested Provinces								
No	Selection Criteria	Grades	Corresponding Provinces					
1	Diversity and Grade	Grade 1	Kabul, Herat, Nangarhar, Kunduz, Balkh, Kandahar	Suggested Provinces	Bamayan	Baghlan	Herat	Kabul
		Grade 2	Helmand, Baghlan, Badakhshan, Faryab, Parwan, Takhar, Jowzjan, Paktiya, Ghazni, Farah					
		Grade 3	Bamayan, Badghis, Nimruz, Ghor, Samanghan, Kapisa, Wardak, Paktika, Logar, Khost, Daikundi, Kunar, Laghman, Nooristan, Sare Pul, Uruzgan, Panjshir, Zabul		Grade 3	Grade 2	Grade 1	Grade 1
2	Budget	Grade 1	Kabul, Herat, Nangarhar,	Suggested Provinces	Largest Construction Budget Among Grade 3 Category	Second Largest Construction Budget Among Grade 2 Category	Second Largest Construction Budget Among Grade 1 Category	The Largest Construction Budget Among All Provinces
		Grade 2	Helmand, Baghlan, Badakhshan					
		Grade 3	Bamayan, Badghis, Nimruz					
3	Feasibility: Security and Travel	Grade 1	Kabul, Herat, Nangarhar, Kunduz, Balkh, Kandahar	Suggested Provinces	Feasible	Feasible	Feasible	Feasible
		Grade 2	Baghlan, Badakhshan, Faryab, Farah, Jowzjan					
		Grade 3	Bamayan, Badghis, Daikundi, Uruzgan					
				# of Projects	32	33	37	80
				Total Number of Projects				182
				Alternative Options	Badghis, Daikundi or Uruzghan	Badakhstan or Farah	Potentially Balkh or Nangarhar	

For both national agencies and provinces we suggest alternative options as each Table reflects. The main purpose of this is to count with sound and feasible alternatives should unforeseen difficulties arise, or travel be made difficult in the case of the Provinces. The alternative options also offer MSWG members, the GIZ and the CoST Secretariat feasible options to consider. Because of its uniqueness, the province of Kabul has no alternative option.

## CRITERIA USED

### A. General Comments

Our main criteria for the selection of PEs here is the amount of infrastructure/construction budget. The figures here used result from our own calculations using the following method:

1. We are considering the development (Investment) budget of FY 1395 only. It may well be that operational budgets still contain infrastructure-related activities like feasibility studies) that are not counted here.
2. We differentiate between goods, services and works, and only reflect budget related to construction/ Infrastructure work as included in the budget.
3. Infrastructure/construction activities are understood to be within any of the following categories:
  - Transportation Infrastructure (Roads, Bridges, Tunnels, etc.)
  - Airport Infrastructure (Airports, Landing Stripes, etc.)
  - Energy Infrastructure (Generation, Transmission or Distribution)
  - Telecommunications Infrastructure
  - Social Infrastructure (Schools, Universities, Hospitals, health or education related facilities, housing, water and sewage, community infrastructure in general including sports facilities, community markets, etc.)
  - Agriculture Infrastructure (Irrigation, deposits, etc.)
  - Public Buildings / Official Offices etc.

We have also requested the Ministry of Finance for the list of all public-funded infrastructure projects. During the background research and in preparation to the PE research we will complement, compare and refine our data with the information provided on that list.

For purposes of Afghanistan's public budget, non-discretionary and discretionary funds relate to funds that are tied up or not to a specific purpose, respectively. These categories refer particularly to donor funds and we have considered them when relevant.

Other criteria such as diversity, pertinence and feasibility, have been applied in the selection process in this same order of priority to agencies both at the national and at the provincial levels.

### B. National Level Agencies

- Infrastructure Budget

There are a total of 56 procurement agencies in Afghanistan at the national level. For the FY1395, their consolidated net development budget totals USD 2.484 billion of which %65.7 (USD 1.632 Billion) is related to construction/infrastructure or infrastructure activities. Approximately %94 of the infrastructure related budget is concentrated in 12 agencies as described in Table 3. We concentrate therefore in these 12 for the basis of our selection.

Table 3. National Procurement Entities with Higher Infrastructure Budgets. Top 12. FY 1395

Central Procuring Entity	Construction Budget (CF+New) USD	Budget Ranking	# Const. Projects	% Share of total construction budget	Infrastructure Category	% Share of agency's Development Budget
Ministry of Public Works	524,009,178	1	211	32.11%	Transportation Infrastructure	100.00%
Da Afghanistan Breshna Sherkat	310,784,871	2	17	19.04%	Energy Infrastructure	98.09%
Ministry of Rural Rehabilitation and Development	234,907,082	3	315	14.39%	Transportation Infrastructure	95.74%
Ministry of Energy and Water	167,173,758	4	45	10.24%	Energy Infrastructure	100.00%
Ministry of Health	61,546,556	5	40	3.77%	Social Infrastructure	22.56%
Ministry of Mines and Petroleum	51,441,469	6	11	3.15%	Mines and Petroleum Infrastructure	75.94%
Ministry of Agriculture, Irrigation and Livestock	46,615,714	7	13	2.86%	Agriculture Infrastructure	35.79%
National Civil Aviation	35,450,773	8	14	2.17%	Airport Infrastructure	51.17%
Ministry of Education	33,146,737	9	81	2.03%	Social Infrastructure	13.73%
Ministry of Higher Education	28,682,189	10	31	1.76%	Social Infrastructure	47.23%
Ministry of Counter Narcotics	25,005,759	11	1	1.53%	Social Infrastructure	97.61%
Ministry of Urban Development	20,016,437	12	11	1.23%	Urban Infrastructure	100.00%
Total TOP 12	1,538,780,523		790	%94.29		%69.82
Total Infrastructure Budget all PEs FY 1395	1,632,026,976					
CF= Carry Forward Budget						

Infrastructure appears to be a relevant priority at the moment. While we have to confirm this with further research, our data suggests that many agencies development budgets (including those with lower budgets) are planned to be used mostly in infrastructure activities.

— Diversity, Impact and Feasibility

Our main criterion to consider diversity is the different sectors (category of infrastructure activities) where these agencies are active and this also ensures weighing on impact. While we also looked at measurements of impact looking at potential number of beneficiaries for the agencies, we realized this was already “embedded” in the sector or relative. For example, the Ministry of Education’s direct impact is on population in schooling age only (approximately 9million people), however high illiteracy rates in Afghanistan would foresee that about %70 of the population could be potential beneficiaries<sup>161</sup>.

We therefore made a selection from these 12 agencies considering the diversity of sectors. The inclusion of the Ministry of Mines and Petroleum while not straightforward (other than for reasons of higher budget levels) adds additional value, as it enables us to integrate the recent experience of the country on the Extractive Industries Transparency Initiative- EITI and its potential impact on project disclosure. The Ministry of Education and the Ministry of Health offers equally important alternatives. We included here the Ministry of Health only on the basis of higher infrastructure budget value, but left Education as an equally relevant alternative that put for your consideration. In terms of feasibility or accessibility, all agencies among this top 12 appear accessible.

We restrict our selection to 5 agencies considering our ground research capacity. This selection entails covering %60 of the total infrastructure budget at the national level, and a total of 292 projects, including new projects and projects that are on going.

Table 4. Selection of National PEs

No	Suggested Procuring Entities	Infrastructure Budget	# of Projects	Share of Infrastructure Budget as % of Total Infrastructure Budget	Infrastructure Category	Criteria				Potential Alternative Procuring Entities for Selection
		FY 1395 USD				BR	AC	DI	SI	
1	Ministry of Public Works	524,009,178	211	32.11%	Transportation Infrastructure	1	Yes	M	H	Ministry of Rural Rehabilitation and Development
2	Da Afghanistan Breshna Sherkat	310,784,871	17	19.04%	Energy and Water Infrastructure	2	Yes	IPC	M	Ministry of Energy and Water
3	Ministry of Health	61,546,556	40	3.77%	Social Infrastructure	5	Yes	M	H	(1) Ministry of Education, (2) Ministry of Higher Education
4	Ministry of Mines and Petroleum	51,441,469	11	3.15%	Mines and Petroleum Infrastructure	6	Yes	M	H	National Civil Aviation
5	Ministry of Agriculture, Irrigation and Livestock	46,615,714	13	2.86%	Agriculture Infrastructure	7	Yes	M	H	Ministry of Urban Development
Total		994,397,788	292	60.93%						

BR= Budget Ranking AC= Accessibility DV= Diversity SI=Social Impact H=High M=Medium L=Low MI= Ministry IPC= Independent Public Company

Source: Budget FY 1395. Calculations performed by the research team.

161 See UNESCO Institute for Statistics. Literacy rates for Afghanistan are low for all population segments: Youth (58%), Adult (38%) and Elderly (20%) with strong gender gaps within population segments. According to UNESCO and the latest statistics available for Afghan: “In 2011, 32% of the adult population of Afghanistan could read and write, compared to 18% in 1979.” - See more at: <http://www.uis.unesco.org/literacy/Pages/literacy-data-release-2014.aspx#sthash.wUgMMToR.dpuf>

As alternatives we suggest the Ministry of Rural Rehabilitation and Development as alternative for the Ministry of Public Works as both ministries are involved in transportation infrastructure. The Ministry of Energy and Water can be a potential alternative to DABS, and as mentioned before the Ministry of Education is a strong and equally relevant option to the Ministry of Public Health. Considering only budget levels, the National Civil Aviation could be a valid option to the Ministry of Mines and Petroleum. On the same grounds, the Ministry of Urban Development is suggested as alternative for Ministry of Agriculture, Irrigation and Livestock

### C. Provinces

As suggested in the inception report, the research team has considered three criteria for selection of provinces: diversity (grade), pertinence and budget, and finally feasibility in terms of security and travel.

#### – Diversity

In Afghanistan there are a total of 34 Provinces. According to the local governance law<sup>162</sup> these provinces are classified as Grades I, II, or III considering their population's size; their geographical area; and their economic and social conditions. Table 4 shows the result of such classification as currently applied to all Provinces.

Grade 1 provinces are large and possess institutional experience with public procurement like Kandahar, Herat and Mazar-e Sharif among others, and currently total a number of six. Grade 2 provinces have smaller bureaucracy and less historical experience with public procurement like Baghlan, Faryab, and Ghazni. The majority of Provinces fall under Grade 3, for a total of 18 under this category. Grade 3 Provinces are small and possess little institutional knowledge with public procurement, like Daikundi and Panjshir, which were created in the last decade. Our sample contemplates at least one Province out of the three categories to remain representative. A single Province for each category was selected considering their amount of infrastructure budget as described in the next section.

Table 5. Classification of Province by Grade

Province by Grade				
No	Grade 3 Province	Grade 2 Province	Grade 1 Province	
1	Bamyan	Helmand	Kabul	
2	Badghis	Baghlan	Herat	
3	Nimruz	Badakhshan	Nangarhar	
4	Ghor	Faryab	Kunduz	
5	Samanghan	Parwan	Balkh	
6	Kapisa	Takhar	Kandahar	
7	Wardak	Jowzjan		
8	Paktika	Paktiya		
9	Logar	Ghazni		
10	Khost	Farah		
11	Daikundi			
12	Kunar			
13	Laghman			
14	Nooristan			
15	Sare Pul			
16	Uruzghan			
17	Panjshir			
18	Zabul			

162 Article 1) 4). Ministry of Justice, "Local Governance Law," Official Gazette: 1991[1370] 753): article 1) 4).

— Provincial Infrastructure Budget and Feasibility

The allocation of resources to provinces in Afghanistan is based on the grade, and within each category on a particular province's need. We therefore looked at infrastructure budget allocations for FY 1395 for each category separately in order to ensure a selection from each grade. The results are shown in Table 5, which reflects the provinces organized according to the budget amount in descending order.

**Table 6. Provincial Infrastructure Budget allocation in descending order, by Grade.**

Allocated Infrastructure Budget for Provinces, by Grade. FY 1395								
#	Province	Infrastructure Budget (USD '000)			% of Discretionary from total	Number of Infrastructure Projects		
		Discretionary	Non-Discretionary	Total		Discretionary	Non-Discretionary	Total
<b>Grade 1</b>								
1	Kabul	58,245	283,952	342,198	17.02%	52	28	80
2	Herat	48,347	62,966	111,314	43.43%	25	12	37
3	Nangarhar	18,863	30,124	48,987	38.51%	34	14	48
4	Kunduz	8,397	35,849	44,246	18.98%	18	14	32
5	Kandahar	30,401	12,056	42,457	71.60%	26	11	37
6	Balkh	14,625	22,745	37,371	39.14%	22	14	36
<b>Grade 2</b>								
1	Helmand	2,009	80,261	82,270	2.44%	11	8	19
2	Baghlan	17,402	48,755	66,157	26.30%	21	12	33
3	Badakhshan	8,538	46,189	54,727	15.60%	18	11	29
4	Faryab	13,125	28,469	41,594	31.56%	16	10	26
5	Juwzjan	11,783	25,876	37,659	31.29%	16	12	28
6	Parwan	13,881	23,387	37,268	37.25%	18	10	28
4	Takhar	10,841	19,986	30,827	35.17%	26	9	35
7	Paktiya	13,471	13,093	26,564	50.71%	20	8	28
8	Ghazni	13,028	7,891	20,919	62.28%	26	7	33
9	Farah	9,577	5,934	15,511	61.74%	25	7	32
<b>Grade 3</b>								
1	Bamayan	6,572	107,191	113,762	5.78%	19	13	32
2	Badghis	6,367	36,908	43,275	14.71%	20	6	26
3	Nimruz	26,148	10,480	36,628	71.39%	18	8	26
4	Samanghan	6,270	21,936	28,206	22.23%	29	14	43
5	Kapisa	9,149	18,992	28,141	32.51%	18	7	25
7	Wardak	11,571	13,535	25,106	46.09%	18	7	25
8	Logar	12,175	12,801	24,976	48.75%	23	7	30
6	Paktika	6,369	18,529	24,898	25.58%	22	9	31
9	Ghor	13,525	10,782	24,308	55.64%	28	6	34
10	Khost	5,931	14,407	20,338	29.16%	13	9	22

11	Daikundi	9,757	8,643	18,400	53.03%	18	7	25
12	Kunar	6,702	7,713	14,415	46.50%	17	8	25
13	Sare Pol	6,387	5,489	11,876	53.78%	22	5	27
14	Nooristan	4,776	6,931	11,706	40.80%	16	5	21
15	Panjshir	5,514	5,821	11,335	48.64%	19	5	24
16	Uruzghan	7,372	3,018	10,390	70.95%	15	4	19
17	Zabul	3,750	5,996	9,747	38.48%	13	6	19
18	Laghman	5,237	4,379	9,616	54.46%	17	6	23

On the basis of these figures, the provinces with higher infrastructure budgets are Kabul, Herat, Helmand, Baghlan, Bamayan and Banghis. The provinces with higher proportions of discretionary budgets per category are Herat, Kandahar, Pakhtiya, Ghazni, Farah, Uruzghan, Nimruz and Laghman. However, it is also worth noting that the proportion of discretionary budget doesn't always coincide with higher budgets and this difference is particularly acute for Grade 2 and Grade 3 Provinces. While we take budget levels as the main criteria, we include some provinces with high discretionary levels as alternatives. These are reflected in Table 6. We took as "high proportion of discretionary budget" those showing a proportion of discretionary budget to the total of %40 or higher.

**Table 7. Provinces with High Budget allocation, High Discretionary rates or Both**

Allocated Infrastructure Budget for Provinces, by Grade. FY 1395								
#	Province	Infrastructure Budget (USD '000)			% of Discretionary from total	Number of Infrastructure Projects		
		Discretionary	Non-Discretionary	Total		Discretionary	Non-Discretionary	Total
<b>Grade 1</b>								
1	Kabul	58,245	283,952	342,198	17.02%	52	28	80
2	Herat	48,347	62,966	111,314	43.43%	25	12	37
5	Kandahar	30,401	12,056	42,457	71.60%	26	11	37
<b>Grade 2</b>								
1	Helmand	2,009	80,261	82,270	2.44%	11	8	19
2	Baghlan	17,402	48,755	66,157	26.30%	21	12	33
3	Badakhshan	8,538	46,189	54,727	15.60%	18	11	29
7	Paktiya	13,471	13,093	26,564	50.71%	20	8	28
8	Ghazni	13,028	7,891	20,919	62.28%	26	7	33
9	Farah	9,577	5,934	15,511	61.74%	25	7	32
<b>Grade 3</b>								
1	Bamayan	6,572	107,191	113,762	5.78%	19	13	32
2	Badghis	6,367	36,908	43,275	14.71%	20	6	26
3	Nimruz	26,148	10,480	36,628	71.39%	18	8	26
4	Samanghan	6,270	21,936	28,206	22.23%	29	14	43
5	Kapisa	9,149	18,992	28,141	32.51%	18	7	25
7	Wardak	11,571	13,535	25,106	46.09%	18	7	25



8	Logar	12,175	12,801	24,976	48.75%	23	7	30
9	Ghor	13,525	10,782	24,308	55.64%	28	6	34
11	Daikundi	9,757	8,643	18,400	53.03%	18	7	25
12	Kunar	6,702	7,713	14,415	46.50%	17	8	25
13	Sare Pol	6,387	5,489	11,876	53.78%	22	5	27
14	Nooristan	4,776	6,931	11,706	40.80%	16	5	21
15	Panjshir	5,514	5,821	11,335	48.64%	19	5	24
16	Uruzghan	7,372	3,018	10,390	70.95%	15	4	19
18	Laghman	5,237	4,379	9,616	54.46%	17	6	23

	Higher budget allocated
	Higher Discretionary Budget Levels (>40%)
	Both: higher budget allocations and higher proportion of discretionary budget

#### — Feasibility

Finally, we checked for the feasibility of doing the research in Provinces that would be within our selection with higher budgets and the highest discretionary budgets, results that are summarized in Table 7 and the final selection on this basis on Table 8. The security situation does not allow researchers to travel to all Afghanistan provinces. Travel is especially threatening if done by land so only the possibility of travel by air is considered.

For the final selection, Kabul not only meets all criteria but it is unique in its dimension and status hosting the central government justifying its selection, although this would mean we have in practices 2 Provinces of Grade 1.

Table 6. Feasibility of Higher Infrastructure Budgets and Higher Discretionary Budgets for Provinces, by Grade.

FY 1395

#	Province	Feasibility	
		Green (Travel by Air)	Red (No travel possible)

#### Grade 1

1	Kabul	Y	
2	Herat	Y	
5	Kandahar		N

#### Grade 2

1	Helmand		N
2	Baghlan	Y	
3	Badakhshan	Y	
7	Paktiya		N
8	Ghazni		N
9	Farah	Y	

#### Grade 3

1	Bamayan	Y	
2	Badghis	Y	
3	Nimruz		N
4	Samanghan		N
5	Kapisa		N

7	Wardak		N
8	Logar		N
9	Ghor		N
11	Daikundi	Y	
12	Kunar		N
13	Sare Pol		N
14	Nooristan		N
15	Panjshir		N
16	Uruzghan	Y	
18	Laghman		N

	Higher budget allocated
	Higher Discretionary Budget Levels (>40%)
	Both: higher budget allocations and higher proportion of discretionary budget

**Table 8. Final Provinces' Selection with Alternatives**

Grade	Selection	Alternatives
1	Kabul Herat	Potentially Balkh or Nangarhar
2	Baghlan	Badakhshan or Farah
3	Bamayan	Badghis, Daikundi or Uruzghan

Herat has the largest construction budget among the Grade 1 provinces after Kabul and has high rates of discretionary budgets making our sample diverse. As alternatives Balkh or Nangarhar would have comparatively less infrastructure budget levels or rates of discretionary budget but travel would be feasible.

Among the Grade 2 Provinces, Helmand has the largest construction budget but it is not feasible to travel thus making Baghlan the next best choice. Alternatively, Farah (high discretionary budget) or Badakhshan (high budget allocation) could be good alternative options.

Among the Grade 3 Provinces, Bamayan is a province that is feasible to travel to and has the largest construction budget among the grade 3 provinces. Feasible options would be Badghis, Daikundi or Uruzghan.

### PROJECT SELECTION

Afghanistan does not have currently a national development strategy that determines sector and project priorities. The ANDS (Afghanistan National Development Strategy) established priorities for the period 2013-2008 but no similar process or policy setting strategy has been undertaken since. The National Unity Government (NUG) in place after the agreement signed on September 2014 21 is still to layout those priorities. As the document "Realizing Self-Reliance – Commitments to Reform and Renewed Partnership" issued by the government during the London Conference in December 2014 indicates, the Afghan government is working on the national infrastructure development plan with the support of the Chinese government<sup>163</sup> and is reviewing the National Priority programs (NPPs) to streamline and clarify project priorities for that matter. What is clear is that the infrastructure sector, particularly infrastructure to build national and regional connectivity, and to

163 "Realizing Self-Reliance – Commitments to Reform and Renewed Partnership" issued by the government during the London Conference in December 2014 §4, Page 4.

ensure social services remains a key development priority<sup>164</sup>. Within this context, we don't have at the moment a development policy to rely on the selection of key infrastructure projects for the research.

According to our calculations our PE selection entails a total of 292 projects at the national level and 182 projects at the provincial level, for a grand total of 474 projects. Considering our research capacities we propose to take a sub-sample of 40 projects out of this (about %8 of total) to check for actual project disclosure.

Because the current status of all projects is not clear, we can't build our sample in a random manner. This sample will be therefore identified during the first interview with the PEs to distinguish between on-going from new projects and select the current active ones. This will also enable us to select both projects from discretionary and non-discretionary budgets.

We are not including off-budget projects and military infrastructure expenditure in our sample, but we will address these types of contracting generally in our background research.

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164 Ibid. §32 and §33 Page 18.

## Annex 3 PEs Construction budget ranking

Of all 56 procurement entities.

Central Procuring Entity	Construction Budget (USD)	No Cons Projects	Ranking
Ministry of Public Works	524,009,178.00	211	1
Da Afghanistan Breshna Sherkat	310,784,871.00	17	2
Ministry of Rural Rehabilitation and Development	234,907,082.00	315	3
Ministry of Energy and Water	167,173,758.00	45	4
Ministry of Health	61,546,556.00	40	5
Ministry of Mines and Petroleum	51,441,469.00	11	6
Ministry of Agriculture, Irrigation and Livestock	46,615,714.00	13	7
National Civil Aviation	35,450,773.00	14	8
Ministry of Education	33,146,737.00	81	9
Ministry of Higher Education	28,682,189.00	31	10
Ministry of Counter Narcotics	25,005,759.00	1	11
Ministry of Urban Development	20,016,437.00	11	12
Independent Directorate of Local Governance	14,614,252.00	35	13
Water and Canalization Sherkat	7,444,330.00	6	14
Ministry of Telecommunication	5,772,358.00	1	15
General Directorate of Bodily Training and Sports	5,183,572.00	6	16
Ministry of Finance	5,050,851.00	5	17
Ministry of Information and Culture	4,974,229.00	7	18
Kabul Municipality	4,670,738.00	5	19
Administrative Office of the President	4,495,841.00	12	20
Ministry of Foreign Affairs	4,285,155.00	4	21
Ministry of Haj, Guidance and Ughaf	3,693,471.00	6	22
Ministry of Refugees and Repatriates	3,400,000.00	1	23
Ministry of Economy	2,506,775.00	2	24
National Directorate of Security	2,426,932.00	1	25
Ministry of Tribal and Border Affairs	2,202,078.00	4	26
Independent Administrative Reform and Civil Service Commission	2,102,040.00	2	27
Ministry of Interior Affairs	1,693,633.00	2	28
Independent Board of New Kabul	1,601,424.00	1	29
Attorney General Office	1,594,789.00	3	30
Ministry of Justice	1,421,870.00	3	31
General Directorate of Coordination of Kuchi Affairs	1,415,225.00	3	32
High Office of Oversight	1,255,810.00	1	33
General Directorate of National Radio and TV	1,190,907.00	1	34
Ministry of Transport	1,164,145.00	3	35
Independent Human Rights Commission	950,372.00	1	36
Central Statistics Directorate	875,844.00	1	37

Supreme Audit Office	846,250.00	1	38
National Independent Standard Directorate	734,337.00	1	39
Directorate of Geodesy and Cartography	662,872.00	1	40
Ministry of Commerce and Industries	624,689.00	2	41
National Directorate of Environment Protection	608,664.00	1	42
Ministry of Women Affairs	538,667.00	1	43
Ministry of Labor, Social Affairs, Martyrs, and Disabilities	530,350.00	4	44
Presidential Protection Security	525,807.00	1	45
Supreme Court	525,618.00	2	46
Chief Executive Office (Secretariat of Council of Ministers)	500,000.00	1	47
Meshrano Jirga	450,257.00	3	48
Ministry of State for Parliamentary Affairs	389,509.00	1	49
Wolesi Jirga	322,792.00	2	50
Independent Election Commission	-	0	51
Academy of Sciences	-	0	52
Independent Directorate of Land	-	0	53
Disaster Management Authority	-	0	54
Initiative to Facilitate Small Donors Affairs in Afghanistan	-	1	55
Office of National Economic Council	-	0	56

## Annex 4 Infrastructure Budget estimates

The table below shows the results for the construction budget estimates and its distribution among PEs on the basis of the development budget for the FY 1395. As it can be seen from the table, of the total development budget, USD 1.632 Billion (%65.7) is related to construction/infrastructure activities. The remaining %34.3 is associated to goods and services.

This estimate of the Infrastructure and Construction sector share in national budget 1395 takes into account the following criteria:

1. For PEs, we differentiate between goods, services and works, and only reflect budget related to construction/Infrastructure activities. However, operating budget for the management of construction process such as the cost of feasibility study, design, procurement and oversight is not measured here. They are paid from the government operating budget, and they can be indirect budget.
2. Projects counted as construction/Infrastructure are the below categories:
  - Transportation Infrastructure (Roads, Bridges, Tunnels, etc.)
  - Airport Infrastructure (Airports, Landing Stripes, etc.)
  - Energy Infrastructure ( Generation, Transmission or Distribution)
  - Telecommunications Infrastructure
  - Social Infrastructure (Schools, Universities, Hospitals, health or education related facilities, housing, water and sewage, community infrastructure in general including sports facilities, community markets, etc)
  - Agriculture Infrastructure (Irrigation, Deposits, etc.)
  - Public Buildings / Official Offices etc.

Construction and Infrastructure related budget FY 1395

No	Central Procuring Entity	Development Budget (USD)	Construction Budget (USD)	Share of Construction in Dev. Budget Budget	Comments
Security Sector		23,487,606.00	8,931,527.00	%38.03	
1	National Directorate of Security	2,634,131.00	2,426,932.00	92.13%	
2	Presidential Protection Security	2,311,377.00	525,807.00	22.75%	
3	Ministry of Foreign Affairs	10,080,436.00	4,285,155.00	42.51%	
4	Ministry of Interior Affairs	8,461,662.00	1,693,633.00	20.02%	
Governance, Human Rights and Rule of Law		45,399,356.00	32,316,621.00	%71.18	
5	High Office of Oversight	1,255,810.00	1,255,810.00	100.00%	all development budget is allocated for construction (see NB FY1395)

6	Independent Directorate of Local Governance	18,882,199.00	14,614,252.00	77.40%	
7	Administrative Office of the President	5,252,313.00	4,495,841.00	85.60%	
8	Supreme Court	2,786,381.00	525,618.00	18.86%	
9	Meshrano Jirga	450,257.00	450,257.00	100.00%	all development budget is allocated for construction (see NB FY1395)
10	Wolesi Jirga	422,792.00	322,792.00	76.35%	
11	Attorney General Office	2,836,174.00	1,594,789.00	56.23%	
12	Ministry of Haj, Guidance and Ughaf	3,693,471.00	3,693,471.00	100.00%	all development budget is allocated for construction (see NB FY1395)
13	Ministry of State for Parliamentary Affairs	389,509.00	389,509.00	100.00%	all development budget is allocated for construction (see NB FY1395)
14	Ministry of Justice	5,354,124.00	1,421,870.00	26.56%	
15	Independent Administrative Reform and Civil Service Commission	2,625,954.00	2,102,040.00	80.05%	
16	Independent Election Commission	-	-	0.00%	No Construction Project
17	Independent Human Rights Commission	950,372.00	950,372.00	100.00%	all development budget is allocated for construction (see NB FY1395)
18	Chief Executive Office (Secretariat of Council of Ministers)	500,000.00	500,000.00	100.00%	all development budget is allocated for construction (see NB FY1395)
Infrastructure and Natural Resources		1,260,711,639.00	1,130,801,017.00	%89.70	
19	National Directorate of Environment Protection	608,664.00	608,664.00	100.00%	all development budget is allocated for construction (see NB FY1395)
20	National Civil Aviation	69,274,172.00	35,450,773.00	51.17%	
21	Independent Board of New Kabul	1,601,424.00	1,601,424.00	100.00%	all development budget is allocated for construction (see NB FY1395)
22	Da Afghanistan Breshna Sherkat	316,830,216.00	310,784,871.00	98.09%	
23	Directorate of Geodesy and Cartography	662,872.00	662,872.00	100.00%	all development budget is allocated for construction (see NB FY1395)

24	Kabul Municipality	56,878,138.00	4,670,738.00	8.21%	
25	Water and Canalization Sherkat	7,444,330.00	7,444,330.00	100.00%	all development budget is allocated for construction (see NB FY1395)
26	Ministry of Urban Development	20,016,437.00	20,016,437.00	100.00%	all development budget is allocated for construction (see NB FY1395)
27	Ministry of Energy and Water	167,173,758.00	167,173,758.00	100.00%	all development budget is allocated for construction (see NB FY1395)
28	Ministry of Transport	1,860,157.00	1,164,145.00	62.58%	
29	Ministry of Public Works	524,009,178.00	524,009,178.00	100.00%	
30	Ministry of Telecommunication	26,616,124.00	5,772,358.00	21.69%	
31	Ministry of Mines and Petroleum	67,736,169.00	51,441,469.00	75.94%	
Education Sector		315,591,496.00	73,177,634.00	%23.19	
32	Academy of Sciences	301,721.00	-	0.00%	No Construction Project
33	General Directorate of Bodily Training and Sports	5,183,572.00	5,183,572.00	100.00%	all development budget is allocated for construction (see NB FY1395)
34	General Directorate of National Radio and TV	2,492,038.00	1,190,907.00	47.79%	
35	Ministry of Information and Culture	5,431,820.00	4,974,229.00	91.58%	
36	Ministry of Higher Education	60,726,697.00	28,682,189.00	47.23%	
37	Ministry of Education	241,455,648.00	33,146,737.00	13.73%	Included of Packages: Development projects for 11 North and West border provinces, 5 new Construction projects in paktika
Health Sector		272,783,381.00	61,546,556.00	%22.56	
38	Ministry of Health	272,783,381.00	61,546,556.00	22.56%	
Agriculture and Rural Development Sector		405,156,112.00	306,528,555.00	%75.66	
39	Independent Directorate of Land	3,909,997.00	-	0.00%	
40	Ministry of Rural Rehabilitation and Development	245,364,074.00	234,907,082.00	95.74%	
41	Ministry of Agriculture, Irrigation and Livestock	130,263,282.00	46,615,714.00	35.79%	
42	Ministry of Counter Narcotics	25,618,759.00	25,005,759.00	97.61%	
Social Protection Sector		26,607,558.00	8,086,320.00	%30.39	



43	Disaster Management Authority	71,046.00	-	0.00%	No Construction Project
44	General Directorate of Coordination of Kuchi Affairs	1,415,225.00	1,415,225.00	100.00%	all development budget is allocated for construction (see NB FY1395)
45	Ministry of Women Affairs	561,357.00	538,667.00	95.96%	
46	Ministry of Tribal and Border Affairs	2,452,078.00	2,202,078.00	89.80%	
47	Ministry of Refugees and Repatriates	3,732,192.00	3,400,000.00	91.10%	
48	Ministry of Labor, Social Affairs, Martyrs, and Disables	18,375,660.00	530,350.00	2.89%	
Economic Management Sector and Development of Private Sector		134,296,587.00	10,638,746.00	%7.92	
49	Central Statistics Directorate	4,988,706.00	875,844.00	17.56%	
50	Initiative to Facilitate Small Donors Affairs in Afghanistan	24,006,829.00	-	0.00%	No Construction Project
51	National Independent Standard Directorate	3,144,247.00	734,337.00	23.35%	
52	Supreme Audit Office	10,358,423.00	846,250.00	8.17%	
53	Office of National Economic Council	200,000.00	-	0.00%	No Construction Project
54	Ministry of Economy	4,394,074.00	2,506,775.00	57.05%	
55	Ministry of Commerce and Industries	13,376,239.00	624,689.00	4.67%	
56	Ministry of Finance	73,828,069.00	5,050,851.00	6.84%	
Total for FY 1395		2,484,033,735.00	1,632,026,976.00	%65.70	

## **Annex 5 National PE ground research summary.**

The observation of proactive disclosure was limited because of two reasons: on the one hand, the legal framework in Afghanistan as seen in the previous section, limits the proactive disclosure to two items: the tender announcement and the winner announcement. These were observed across the sample. On the other hand because many of the on going and all of the concluded projects were carried any way under the previous procurement law and without any access to information law, so in practice the findings here are not conclusive to the current situation. At best one can say that indeed the two pieces of information are proactively released.

The reactive disclosure observation was carried out through personal interviews where the information was then requested. In the case of the DABS, they requested the standard and in addition to the interview, they sent the information inserted on the excel tables themselves. It doesn't therefore represent what is actually accessible reactively.

The table reflects the information as gathered by the researchers for the local projects. In this sense it gives an accurate overview of how local experts would validate local information. For example, some projects are recorded to be funded by the government. It could well be the case that these are not ( it could be for example the World Bank's ARTF) but the available information suggests they are.

Following feedback from MSG members, the final sample of projects observed sought to reflect diverse projects and not to focus on any particular type.

In conducting the ground research, the local researchers had to swap the Ministry of Health or the Ministry of Education with the Ministry of Energy and Water, which initially appeared as alternate to DABS. While it would have been relevant to cover them it was not possible to set up ground interviews with the Ministry of Health. At the time the Ministry of Energy and Water had already granted interviews and insisting further would have delayed the ground research much further.

## Annex 6: Information as provided by DABS

Annex 6: Information as provided by DABS				
Reactive Disclosure				
	Project Phases	Project Items For Disclosure		
Project	Project Identification	Project Name	220/20KV Kabul South West Substation(Arghandi)	
		Project Location	Kabul , Arghandi Area	
		Purpose	Construction of a step down Substation to supply kabul, South and eastern Afghanistan	
	Project Preparation	Project Scope (Main Output)	Constrction of a 220/20KV Kabul South West Substation(Arghandi) on turnkey basis.	
		Enviromental Impact	No enviromental impact	
		Land and Settlement Impact	No one has been resettled	
		Funding Sources	Asian Development Bank	
		Project Budget	12,079,403 USD + 6,393,932 EURO	
		Project Budget Approval Date	3-Dec-09	
		Project Completion	Completion Cost	Not completed
	Completion Date		Not completed	
	Scope at Completion		Not completed	
	Reasons for Project Change			
	Reference to Audit and Evaluation Reports		-	
Contract for Construction	Procurement	Contract Title	Procurement of Plant,Design,Supply,Instalation,Testing and commissioning of Kabul South West 220/20KV Substation ( Arghandi)	
		Procurement Process	International Competative Biding of ADB	
		Number Firms Tendering	4 bids Received	
		Contracted Firm(s)	SIEMENS Pakistan	
		Cost Estimate	23,513,064 USD	
		Contract Price	12,079,403 USD + 6,393,932 EURO	
		Contract Scope of Work	Constrction of a 220/20KV Kabul South West Substation(Arghandi) on turnkey basis.	
		Contract Start Date	LC is not established yet, so contract is not effective.	
		Contract Duration	24 Months	
	Implementation	Variation to Contract Price	yes	
		Variation to Duration	No	
		Variation to Contract Scope	yes	
		Reasons for Price Changes	22 number of earth switches added, and 185 mm sq 20KV of cable is removed from contract and Price changes in Demining of the project	
		Reasons for Scope and Duration Changes	22 number of earth switches added, and 185 mm sq 20KV of cable is removed from contract , No change in Duration	

Reactive Disclosure				
	Project Phases	Project Items For Disclosure		
Project	Project Identification	Project Name	design, supply and installation for Baghlan and kunduz distribution network	
		Project Location	Baghlan & Kunduz provinces	
		Purpose	Electrification of Baghlan and Kunduz city	
	Project Preparation	Project Scope (Main Output)	construction of Medium and low voltage distribution network for about 41000 families	
		Environmental Impact	No EI	
		Land and Settlement Impact	No LSI	
		Funding Sources	ADB	
		Project Budget	51.3 M	
		Project Budget Approval Date	1-Feb-09	
		Project Completion	Completion Cost	NO completed yet
	Completion Date		30 - 4 - 2017	
	Scope at Completion		not finalized yet	
	Reasons for Project Change		Funds not available from ADB above \$51.3 M	
	Reference to Audit and Evaluation Reports		ADB Ref: ADB- rrp-42094	
Contract for Construction	Procurement	Contract Title	Design, Supply and Installation of Distribution Plant for Baghlan and Kunduz Distribution Project	
		Procurement Process	EPC Type -Turnkey	
		Number Firms Tendering	five (5)	
		Contracted Firm(s)	CNEEC - MAMMAAR JV	
		Cost Estimate	25.0 M\$	
		Contract Price	US\$ 51.3 M	
		Contract Scope of Work	Construction of Medium and low voltage distribution network for about 41000 families on turnkey bases	
		Contract Start Date	22-Oct-14	
		Contract Duration	30 monts	
	Implementation	Variation to Contract Price	None	
		Variation to Duration	None	
		Variation to Contract Scope	Reduction of 19,000 consumers	
		Reasons for Price Changes	BOQ is insufficient to meet 41,000 consumers based on final design	
Reasons for Scope and Duration Changes		BOQ is insufficient to meet 41,000 consumers		

Reactive Disclosure				
	Project Phases	Project Items For Disclosure		
Project	Project Identification	Project Name	Rehabilitation of Gereshk Hydro Power Plant	
		Project Location	Gereshk, Helmand	
		Purpose	Upgradation of the plant and increasing its generation capacity	
	Project Preparation	Project Scope (Main Output)	replacement of the existing two turbines and installation of an additional turbine in the plant and its related works (e.g. access works and canal repair works)	
		Environmental Impact	No Environmental Impact	
		Land and Settlement Impact	No one has been relocated	
		Funding Sources	Asian Development Bank (ADB)	
		Project Budget	USD 75.6m for the whole Tranche 3 G 280/280/282 AFG - Energy Sector Development Investment Program	
		Project Budget Approval Date	21-Jan-12	
	Project Completion	Completion Cost	Not Completed	
		Completion Date	Not Completed	
		Scope at Completion	Not Completed	
		Reasons for Project Change	No Changes	
		Reference to Audit and Evaluation Reports	N/A	
	Contract for Construction	Procurement	Contract Title	Rehabilitation of Gereshk Hydro Power Plant
Procurement Process			ADB Procurement Guidelines	
Number Firms Tendering			1	
Contracted Firm(s)			AIPL - Honan Allonward JV	
Cost Estimate			40,000,000	
Contract Price			38,004,903 USD	
Contract Scope of Work			replacement of the existing two turbines and installation of an additional turbine in the plant and its related works (e.g. access works and canal repair works)	
Contract Start Date			1-Feb-12	
Contract Duration			720 Days	
Implementation		Variation to Contract Price	N/A	
		Variation to Duration	N/A	
		Variation to Contract Scope	N/A	
		Reasons for Price Changes	N/A	
	Reasons for Scope and Duration Changes	Construction and Installation activities are delayed but the delays were not justified by the Contractor and subsequently not approved by the Employer. Contractor is subject to Liquidated Damages.		

Reactive Disclosure				
	Project Phases	Project Items For Disclosure		
Project	Project Identification	Project Name	Design, Supply and Installation For Chimtala SS - Kabul Southwest SS 220 kV Double Circuit Transmission Line Project.	
		Project Location	Kabul, Afghanistan	
		Purpose	Interconnection Between Chimtala SS and Kabul Southwest SS	
	Project Preparation	Project Scope (Main Output)	Construction of a Double Circuit 220 kV Transmission Line on Turnkey Bases	
		Environmental Impact	No Environmental Impact	
		Land and Settlement Impact	No one has been relocated	
		Funding Sources	Asian Development Bank (ADB)	
		Project Budget	19,627,888,00 USD	
		Project Budget Approval Date	3-Dec-09	
	Project Completion	Completion Cost	Not Completed	
		Completion Date	Not Completed	
		Scope at Completion	Construction of a Double Circuit 220 kV Transmission Line on Turnkey Bases	
		Reasons for Project Change	No Changes	
		Reference to Audit and Evaluation Reports	N/A	
	Contract for Construction	Procurement	Contract Title	Design, Supply and Installation For Chimtala SS - Kabul Southwest SS 220 kV Double Circuit Transmission Line Project.
Procurement Process			ADB Procurement Guidelines	
Number Firms Tendering			4	
Contracted Firm(s)			KEC International Limited	
Cost Estimate			15,000,000 USD	
Contract Price			19,627,888,00 USD	
Contract Scope of Work			Construction of a Double Circuit 220 kV Transmission Line from Chomtala SS to Kabul Southwest SS on Turnkey Bases	
Contract Start Date			3-Mar-14	
Contract Duration			540 Days	
Implementation		Variation to Contract Price	The cost reduced around 3,000,000 USD	
		Variation to Duration	12 months extended	
		Variation to Contract Scope	Multi Circuit Towers were removed from contract	
		Reasons for Price Changes	Multi Circuit Towers were removed from contract	
		Reasons for Scope and Duration Changes	Construction of the Multi Circuit Towers were removed. 95% of the project scope were completed within the project duration. But due to land claim on 3 location of the towers near the Chimtala SS, the project has stopped and not completed.	

## Annex 7 List of Conducted Interviews

Organised alphabetically by first name. The dates refer to the interview date.

1. Abdul Aziz Faqiri , Archive and database manager, Directorate of Procurement, Ministry of Agriculture and Livestock, dated 22 of Jun 2016
2. Abdul Hai, Director of financial and administrative, governor office, Baghlan province, dated 7 Aug 2016
3. Abdul Hashim Hekmat (AHH)-Director of industries and communication, Ministry of Economy, date 18 April 2016
4. Abdullah Sajid, Head of PMO (program management office), Da Afghanistan Brishna Shirkat, dated 29 of Jun 2016
5. Aghagul Haqmal and Yousof Khan, Procurment officers, Ministry of Interior, dated 23 May 2016
6. Ajmal Khaliqi, Program Manager, CBM-I, Integrity Watch Afghanistan, dated 7 April 2016.
7. Amin Zaki, Acting Director of Energy and Water, Bamyan, dated 30 July 22016.
8. Baryalay Omarzai, MSG Members, Head of ANCB (Afghan NGOs Coordination Bureau), dated of interview 26 April 2016.
9. Bashir Ahmad, Manager of Services, Directorate of Public health, Herat province, 12 July 2016.
10. Daniel Weggeland. SIGAR's reserach and Analysis Directorate. June 20, 2016
11. Drago Kos, former MEC Chair and member, April 1 2016.
12. Eng Farid Wafi, Director of Brishna Sherkat, Baghlan province, 7 Aug 2016
13. Eng. Abdul Maruf Wasee, Director of Kabul River Zone, Ministry of Energy and Water.
14. Eng. Habibullah Timory, Director of Publish Works, Herat province, dated 11 July 2016.
15. Eng. Mohammad Anwari, Director of Public Works, Bamyan, dated 31 July 2016.
16. Fazal Rabi. Student, University of Kabul and researcher for International Alert. May 23, 2016
17. Ghulam Abbas Niazi, Managing Director, Amin Kapisa Construction Company, dated 9 May 2016
18. Heshmatullah Enayat, Director of Agriculture, Kabul province, dated 30 July 2016.
19. Hussain Daad Khalili, Head of provincial council, Bamyan, dated 31 July 2016. Hussain Dad Ahmadi, Coordinator, Afghanistan Civil Society Forum Organization, Bamyan, dated 30 July 2016.
20. Ismail Zaki, Coordinator, Civil Society and Human Rights Network, Bamyan, dated 30 July 2016.
21. Jodi Vittori. Afghan Policy Adviser, Global Witness, DC Office. May 20, 2016
22. Judge Ehsan Ul Haq Ehsan, Director of Corruption Prevention, HOO, dated 24 April 2016.
23. Khan Mohammad Alamyar, Poverty analysis manager, Ministry of Economy, date 18 April 2016
24. Luquan Tian, World Bank. June 13, 2016

25. Mahmood Wahidy, Director, Directorate of Ministry of Economy, Baghlan province, dated 7 Aug 2016
26. Mark Harvey, Head of Profession (Infrastructure) | Research & Evidence Division (RED) DFID. May 13, 2016
27. Mateen, Procurement Manager, Governor Office, Bamyan, dated 31 July 2016.
28. Mehrabuddin Ahmadi, Director of Agriculture, Herat, dated 11 July 2016.
29. Merajuddin Rashid, Procurement Director, Ministry of Agriculture and Livestock
30. Michael Bindell. SIGAR research and Analysis Directorate. June 20, 2016
31. Mohammad Abdu, Member of Wolesi Jirga, Member of Commission of Justice Affairs and Anti-Corruption, dated 11 April 2016.
32. Mohammad Arif Azamy, Directorate of Public Works, Kabul province, dated 30 July 2016.
33. Mohammad Asif, Acting Director, Directorate of Agriculture and Livestock, Baghlan province, dated 6 Aug 2016
34. Mohammad Farzad Rahmani, Procurement Manager, Governor Office Director, Herat, dated 11 July 2016.
35. Mohammad Naeem Nikzad, Director of Mines and Petroleum, Herat province, dated 13 July 2016.
36. Mohammad Sabir Nesar, Economic and technical manager, Ministry of Economy, date 18 April 2016
37. Mohammad Sohail Kaakar, Strategic Advisor, NPA, 26 April 2016 and August 27, 2016
38. Mohammad Taqi Kazemi, Procurement Manager, Da Afghanistan Breshna Sherkat, Herat, dated 12 July 2016.
39. Mohammadullah Hakim Ebrahimi, C.E.O, Aria State Construction Company, dated 9 May 2016
40. Najibullah Noor, Director of Mines and Petroleum, Kabul province, dated 30 July 2016.
41. Nesar Ahmad Salimi, Deputy director of Afghan Builders Association and MSG member, dated 5 Jun 2016
42. Rabia Nusrat, Emerging Projects Manager, South and South East Asia, Afghanistan. International Alert May 13, 2016
43. Rafiullah Lodin, Procurment Advisor, Directorate of Procurement, Ministry of Public Works, dated 22 of Jun 2016
44. Rangeena Kargar, Member of Wolesi Jirga, Member of Commission of National Economy, dated 2 May 2016.
45. Rahmani, Director of Energy and Water, Herat province, dated 13 July 2016.
46. Sayed Hasan Hosaini, Construction manager, Directorate of Procurement, Ministry of Agriculture and Livestock, dated 22 of Jun 2016
47. Sayed Mehdi Hussaini, Deputy Director of Policy, Supreme Audit Office, dated 24 April 2016.
48. Sayed Tahir Ghanizada (STG)-Director general (report coordinator), Ministry of Economy, date 18 April 2016



49. Shafiqullah Rasoli-Acting Director of Procurement, Ministry of Public works, dated 18 April 2016
50. Shafiqullah, Accounting and Financial manager, Directorate of Public Works, Baghlan province, dated 6 Aug 2016
51. Shafiqullah, Procurement manager, Directorate of Agriculture and Livestock, Baghlan province, dated 6 Aug 2016
52. Shah Mahmood Faizad, Director, Directorate of Mines and Petroleum, Baghlan province, dated 6 Aug 2016
53. Shapoor Shokor, Contract Manager, Directorate of Procurement, Ministry of Energy and Water, dated 27 of Jun 2016
54. Sukumar Khartik. International Procurement Specialist (Consultant), Afghanistan Resident Mission, ADB. June 11, 2016
55. Wafeullah Kamawi, Director of public health, Bamyán, dated 30 July 2016.
56. Waliullah Jabar Khil- Procurement Director, Ministry of Energy and Water, dated 8 May 2016
57. Yama Torrabi (Dr.), MEC member and IWA Board Member. May 10, 2016
58. Zahir Khan Sadat, Contract Manager, Directorate of Procurement, Ministry of Public Works, dated 22 of Jun 2016

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Following a recommendation from the Monitoring and Evaluation Committee(MEC), The Islamic Republic of Afghanistan, through Ministry of Economy joined the Construction Sector Transparency Initiative (CoST) in October 2013. CoST Afghanistan is administered by a Multi Stakeholder Group (MSG) comprised of 12 members representing government, civil society and private sector. In July 2016, Ministry of Economy established a National Secretariat to provide secretarial and executive support to the MSG and CoST Afghanistan mission.

This Scoping Study was conducted from January through October 2016 which assesses various aspects of current levels of disclosure of information on publicly funded construction projects and provides instructions for decision-making process on what the scope and reach of CoST Afghanistan can be. The Scoping Study combined desk research, ground research and observations.



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