ASIAN DEVELOPMENT BANK

PROJECT PROCUREMENT-RELATED REVIEW

Loan 2629-UZB: Talimarjan Power Project

This report has been redacted in accordance with Asian Development Bank’s Public Communications Policy (PCP) issued in 2011. In particular, it excludes confidential and other information in accordance with paragraph 70 of the PCP.

Office of Anticorruption and Integrity
May 2016
CONTENTS

EXECUTIVE SUMMARY i
I. OVERVIEW 1
II. FINDINGS ON PROCUREMENT 4
III. RECOMMENDATIONS 12
IV. CONCLUDING REMARKS 13
NOTE

In this report, $ refers to US dollars.
A project procurement-related review is a review undertaken by OAI on ongoing ADB-financed projects to assess compliance with applicable ADB policies, guidelines, and the loan/financing agreements, with a focus on preventing and detecting integrity violations (http://www.adb.org/site/integrity/integrity-violations) involving ADB-related activities as defined under ADB’s Anticorruption Policy as amended (http://www.adb.org/documents/anticorruption-and-integrity-policies-and-strategies) and ADB’s Integrity Principles and Guidelines (http://www.adb.org/documents/integrity-principles-and-guidelines) as amended from time to time.

ADB’s Anticorruption Policy requires all parties, including borrowers, beneficiaries, bidders, consultants, suppliers, contractors, and ADB staff to observe the highest ethical standards when participating in ADB-related activities. The Policy supports ADB’s obligation, in accordance with Article 14 (xi) of the Agreement Establishing the Asian Development Bank, to ensure that the proceeds of ADB financing are used only for intended purposes.

The PPRR assesses internal controls in place, identifies irregularities and instances of non-compliance, inspects the project outputs, and recommends enhancements to mitigate or eliminate opportunities for fraud, corruption, or abuse of resources and to help improve development effectiveness of future projects.

A project procurement-related review is not an investigation of fraud and corruption nor an evaluation to assess development effectiveness of ADB-funded projects. It does not review project outcomes or development impact, which can only be assessed after the completion of a project.

OAI conducts follow-up reviews on selected PPRRs to assess the progress of the implementation of PPRR recommendations and to assist the executing/implementing agencies and ADB in addressing remaining recommendations.
**EXECUTIVE SUMMARY**

1. The Office of Anticorruption and Integrity (OAI) of the Asian Development Bank (ADB) conducted a special review (the review), following the project procurement-related review methodology, of Uzbekistan’s Talimarjan Power Project (the Project). The review took place in Tashkent from 27 April to 22 May 2015 and comprised an independent assessment of the procurement of the turnkey contract in this Project. The subject procurement followed ADB’s 2-stage bidding process in which 1st stage bids were invited through advertisement and evaluated. Responsive 1st stage bidders were then invited to make changes to their technical bids to bring them into compliance with the employer’s requirements and place them on a common ground for final evaluation. Bids submitted during the 2nd stage bids included price proposals. After establishing that the grounds for rejecting four bids at the 1st stage were valid, the review focused on the examination of the four bids submitted at both the 1st and 2nd stages of the bidding process, as shown in Figure 1. Two bidders that were invited to submit 2nd stage bids did not do so. Further document review and analyses and internal discussions with concerned ADB parties were undertaken subsequent to the fieldwork. This report presents the findings and recommendations resulting from the review.

![Figure 1: Review Scope and Focus](image-url)

2. The overall objective of the special review is to verify compliance by Uzbekenergo, the executing agency, and ADB stakeholders involved in project implementation with applicable ADB policies, guidelines, and loan agreement with a focus on preventing and detecting integrity violations. Recommendations from the review are intended to strengthen accountability, enhance transparency, and improve project oversight.

3. The overall outcome of the bidding was in line with ADB’s procurement process, although there were lapses in the procurement of the contract reviewed. These lapses did not affect the evaluation outcome. The disqualified bids contained material deviations, reservations or omissions requiring their rejection. This report discusses these findings in detail. A summary of the review results is shown in Table 1.
**Table 1: Summary of Review Results**

### Deviations from the Requirements of the Bidding Documents

- Proposed modifications to the obligatory commercial terms and conditions
- Nomination of multiple subcontractors for major plant items listed in Addendum 3
- Proposed a Time Schedule that did not comply with prescribed Time for Completion
- Deficient specifications for major technical components of the plant
- Did not submit complete information and/or documents comprising the bid as per instructions to bidders

### Disqualified Bids

1. **Material deviation, reservation, or omission**
2. **Non-material deviation**
3. **Mandatory grounds for the rejection of a bid**
4. **Potential integrity violation**

### Lapses Identified During the Review

- Erroneous disclosures in bid Form LIT: Pending Litigation
- Insufficient/incorrect documents to support financial capacity
- Deficiency in personnel/work experience of proposed staff
- Advance payment security observations
- Inconsistent BER narratives
- Inconsistent treatment of incomplete bid Form FIN-4: Current Contract Commitments

### Responsive 1st Stage Bidders

1. **Material deviation, reservation, or omission**
2. **Non-material deviation**
3. **Mandatory grounds for the rejection of a bid**
4. **Potential integrity violation**

**Legend:**

1. Material deviation, reservation, or omission – one that if accepted (a) would affect in any substantial way the scope, quality, or performance of the plant and services specified in the contract; or (b) would limit in any substantial way, inconsistent with the bidding documents, the rights of the employer or the bidder’s obligations under the proposed contract; or (c) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids
2. Non-material deviation – deviations other than those falling within the description of a material deviation, reservation or omission and not a cause for rejection of the bid
3. Mandatory grounds requiring the rejection of a bid – explicitly provided in the bidding documents
4. Potential integrity violation – acts or omissions that may be the subject of investigation by ADB for failing to strictly comply with ADB’s Anticorruption Policy
4. In view of the lapses identified during the review, key recommendations to the Evaluation Committee are given below to prevent the same from being repeated in future ADB-financed projects.

- Ensure the completeness, accuracy, and consistency of bid evaluation report (BER) narratives by implementing quality control of the BER before submission to ADB; and
- Adequately document its determination of bidders’ substantial responsiveness and decision to award a contract, which should be based on sound justification that may include further evaluative narrative for bids found to contain deficiencies or conflicting information.

5. All findings were discussed with and acknowledged by representatives from Uzbekenergo's Department of Foreign Economic Relations and Investment and the PMU. Recommendations are presented in paragraphs 31-33 of this report. OAI will conduct a follow-up review on a future ADB-financed project implemented by Uzbekenergo.

6. Although the Project is expected to be completed in 2018, all contracts to be financed have already been awarded. Notwithstanding, lessons learned from this review, if adopted, will strengthen the integrity and transparency of other ADB-financed and/or administered projects in Uzbekistan.

7. OAI appreciates the courtesy and support extended to the review team and cooperation by Uzbekenergo officers and staff at the Department of Foreign Economic Relations and Investment, PMU, the contractor, project implementation consultant, ADB’s Uzbekistan Resident Mission, ADB’s Energy Division, Central and West Asia Department, and ADB’s Operations Services and Financial Management Department in this exercise.
I. OVERVIEW

1. The Office of Anticorruption and Integrity (OAI) of the Asian Development Bank (ADB) conducted a special review (the review), following the project procurement-related review methodology, of the Talimarjan Power Project (the Project) in Tashkent, Uzbekistan from 27 April to 22 May 2015 in response to concerns raised by an internal ADB stakeholder. After validating the grounds for rejecting bids at the 1st stage, the review was focused on the examination of the bids that were evaluated during both the 1st and 2nd stages of the bidding process. This report presents the findings and recommendations resulting from the special review.

2. The overall objective of the review is to verify compliance by the executing agency and ADB stakeholders involved in project implementation with applicable ADB policies, guidelines and the loan agreement, focusing on preventing and detecting integrity violations. The Project vulnerabilities and risks, specifically, in the area of procurement were identified through the review of the largest contract awarded under the relevant ADB loan.

Background

3. The Project seeks to increase electricity supply and energy efficiency through clean power generation utilizing technology of more efficient combined cycle gas turbines. The increase in power supply is anticipated to be 4,700 GWh per year, and power generation efficiency is expected to increase from 31% to 50%. The total value of the Project is presented as being $1,280 million, which includes $340 million provided from ADB’s ordinary capital resources (Loan 2629-UZB), $300 million equivalent from co-financing by Japan International Cooperation Agency (Loan 8244-UZB), $650 million from domestic resources, and $10 million equivalent from ADB’s Asian Development Fund to be used for capacity development initiatives. A summary of funding sources is depicted in Figure 1.

4. JSC Uzbekenergo (Uzbekenergo) is the executing agency within which a dedicated full-time project management unit (PMU) was established to manage project implementation.

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including procurement and execution of a turnkey contract and a consulting contract. The director of Unitary Enterprise Talimarjan Thermal Power Plant (TTPP), who is stationed at the plant, concurrently manages the operations of the existing plant and coordinates the construction activities with the contractor and project implementation consultant.

5. The Government appointed the members of the Tender Evaluation Committee (TEC)\(^2\) for the Project, which was supported by an Evaluation Committee consisting of two groups: a Technical Group\(^3\) and Economic Group.\(^4\) Bid evaluation reports (BERs) for the contract reviewed by the review team were prepared by an international consulting firm,\(^5\) which was assisted by experts from the PMU and TTPP.\(^6\) The BERs were subsequently endorsed by the Evaluation Committee and approved by the TEC. The BER preparation and approval process observed within Uzbekistan for the contract reviewed is illustrated in Figure 2.

![Figure 2: BER Preparation and Approval Process](image)

6. The Project’s main contract is a turnkey contract for design and construction of a Two Combined Cycle Power Plants (Gross 929 MW) at the TTPP. ADB’s 2-stage international competitive bidding procedure was used. As of the review cut-off date,\(^7\) the turnkey ICB contract represented 98% of the value of contracts awarded under the Project as recorded in

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\(^2\) The TEC comprised of cabinet members and senior level officials from various Government ministries and agencies, the executing agency, and a national bank in Uzbekistan. The TEC makes the final procurement decisions.

\(^3\) The Technical group consisted of 11 senior officers from a number of Government departments involved in the various technical aspects of the procurement.

\(^4\) The Economic group consisted of seven members chosen from financial and economic institutions and Government departments.

\(^5\) TA 7350-UZB Talimarjan Power Project. Due to the lack of capacity of the executing agency and upon the executing agency’s request for assistance an international consulting firm was retained to assist it in preparing bidding documents and evaluating bids.

\(^6\) The international consulting firm and staff from the PMU and TTPP formed working groups to perform detailed evaluation of bids and provide inputs to the Evaluation Committee.

\(^7\) The review cut-off date was 15 April 2015.
ADB’s loans and grants financial information system, which was equivalent to $572 million,\(^8\) as depicted in Figure 3. While examination of end-to-end procurement process was covered in this review, particular attention was given to the detailed evaluation of bids.

**Figure 3: Contracts Awarded and Contract Reviewed Under the Project**

![Contracts Awarded and Contract Reviewed Under the Project](image)

7. The subject procurement followed ADB’s 2-stage bidding process in which 1\(^{st}\) stage bids were invited through advertisement and evaluated. Ten bidders submitted technical bids during the 1\(^{st}\) stage of the bidding for this Project. Following the 2-stage bidding procedure,\(^9\) six of the ten bidders were invited to submit 2\(^{nd}\) stage bids. Of the six invited to submit 2\(^{nd}\) stage bids, four submitted updated technical bids and price proposals.

**Review Scope**

8. To ensure that the bid evaluation of the critical aspects of the contract was properly conducted, the 1\(^{st}\) and 2\(^{nd}\) stage submissions of the four bidders were reviewed for completeness and substantial responsiveness. The review of the bids of the two invited bidders who did not submit 2\(^{nd}\) stage bids, as well as of other 1\(^{st}\) stage disqualified bidders did not

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\(^8\) The total amount of awarded contracts of $572 million is the aggregate of the respective portion of contracts financed and fully administered by ADB, namely, from ADB’s ADF and OCR, and JICA under Loans 2629/2630/8244-UZB, respectively. Thus, for presentation purposes, the percentages exclude domestic financing sources (ex. Government of Uzbekistan, Uzbekenergo, and Uzbekistan Fund for Reconstruction and Development), which do not affect the sampling as the review was focused on the procurement process.

\(^9\) In a 2-stage bidding procedure, bidders first submit technical proposals without the prices. Technical bids are opened in public at the date and time stipulated in the bidding documents. The technical proposals are evaluated; and deficiencies permitted, extraneous provisions, and unsatisfactory technical features, along with bidders’ comments, are carefully considered and documented to allow bidders to adjust technical proposals to meet the requirements of the executing agency. Substantially responsive technical bids are selected subject to ADB’s no objection. In the 2\(^{nd}\) stage, shortlisted bidders are invited to submit price proposals based on the revised technical proposals. Price proposals and revised technical proposals are opened in public at the date and time indicated in the bid invitation. Following the evaluation of price and revised technical proposals, ADB’s no objection is obtained for the award of contract to the lowest substantially responsive bidder.
identify any material issues. Observations on the 1st and 2nd stage evaluation of the bids of the four bidders are described in the next section of this report.

9. The review also included examining minutes of meetings held by the TEC and Evaluation Committee and assessing the treatment of deviations by the TEC, Evaluation Committee, and international consulting firms in determining substantial responsiveness of bids. The evaluation of bids was complex, and each stage of the procurement procedure took a considerable amount of time to complete. A timeline of the significant procurement milestones is presented in Figure 4 to illustrate this.

Figure 4: Timeline of Major Procurement Milestones

10. A visit was made to the Project site in Nuristan District, Kashkadarya Region, Uzbekistan together with an OAI-engaged expert engineer from 6 to 8 May 2015, to obtain additional inputs on the technical aspects of the bid evaluation.

II. FINDINGS ON PROCUREMENT

11. The review found that Uzbekenergo generally complied with ADB’s Procurement Guidelines and Guide on Bid Evaluation. While the outcome of the bid evaluation was in line with ADB’s procurement processes, lapses by both bidders and the evaluation committee were noted by the review team. The specific lapses in bid evaluation and contract awarding are discussed below and the most critical ones are depicted in Table 1. Recommendations to address these are subsequently provided to prevent the same from occurring in future ADB-financed contracts.
Table 1: Summary of Lapses Identified During the Review

<table>
<thead>
<tr>
<th>Nonconformance to Requirements of the Bidding Documents and Applicable ADB Policies and Guidelines</th>
<th>Responsive 1st Stage Bidders</th>
</tr>
</thead>
<tbody>
<tr>
<td>Erroneous disclosures in bid Form LIT: Pending Litigation</td>
<td>① ②</td>
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<td>Insufficient/incorrect documents to support financial capacity</td>
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<td>Inconsistent BER narratives</td>
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<tr>
<td>Inconsistent treatment of incomplete bid Form FIN-4: Current Contract Commitments</td>
<td>①</td>
</tr>
</tbody>
</table>

Legend: ① non-material deviation, reservation, or omission  ② potential integrity violation

Definitions:
① non-material deviation, reservation, or omission – one which (a) can be rectified; (b) is not a cause for rejection of the bid, if taken individually; (c) would not affect in any substantial way the scope, quality, or performance of the plant and services specified in the contract; (d) would not limit in any substantial way, inconsistent with the bidding documents, the rights of the employer or the bidder’s obligations under the proposed contract; or (e) if rectified, would not unfairly affect the competitive position of other bidders presenting substantially responsive bids
② potential integrity violation – acts or omissions that may be the subject of investigation by ADB for failing to strictly comply with ADB’s Anticorruption Policy

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A. Quality of the bid evaluation report

12. The BERs contained some information that was (i) inaccurate, (ii) not fully supported, or (iii) incomplete. As discussed in detail below, they may lead to flawed evaluation results in future tenders if improvements are not made.

13. Pending litigation. In the assessment of bidders’ compliance to the information requirements of the bidding documents for pending litigation, the review team found that three bidders erroneously stated in their 1st and 2nd stage submissions of Form LIT that they were not involved in ongoing legal disputes, contrary to the disclosures in their respective audited financial statements.⑩ When considering the disclosures made in the financial statements, these bidders still met the qualification criteria with their net assets being more than twice the amount of the total estimated value of pending lawsuits.⑪ However, the incorrect statements may be tantamount to misrepresentation by bidders, which is a potential violation of ADB’s

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⑩ Section 3 – Evaluation Criteria, Criterion 2.2 Pending Litigation has since been refined to emphasize that all pending litigation and arbitration should be disclosed in the bid form.

⑪ Based on information from the submitted audited financial statements, where available.
Anticorruption Policy, to be taken separately and referred by OAI for possible investigation. Neither the international consulting firm nor the Evaluation Committee detected the discrepancy during the review of 1st and 2nd stage bids. The relevant evaluation criterion in the bidding documents is shown in Figure 5.

Figure 5: Section 3 – Evaluation and Qualification Criteria

Criteria 2.2 of the bidding documents, states that each partner of a joint venture must meet by itself or as partner to past or existing JV the requirement of the bidding documents that all pending litigation shall be treated as resolved against the Bidder and so shall in total not represent more than fifty (50%) of the Bidder’s net worth. Compliance to the requirement will be facilitated by submission of accurate information in bid Form LIT-1.

14. Financial capacity. Instances of unsupported and incomplete statements in the BER were observed in the review of bid Form FIN-3 of two bidders. In one case, a bidder was considered compliant with the financial capacity requirements of the bidding documents based on the data presented in bid Form FIN-3. One of the consortium members did not submit documentary evidence to support its line of credit and overdraft. While the available financial resources of this consortium member exceeded the minimum cash flow requirements based on Form FIN-3, as shown in Figure 6, its line of credit and overdraft facility claimed were not supported.

15. In the case of another bidder, a member of the consortium submitted bid Form FIN-3 which had discrepancies with its submitted audited financial statements resulting in higher cash and cash equivalents in bid form FIN-3. Another consortium member submitted its annual earnings release for the year ended 31 March 2012 in lieu of audited financial statements to

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12 Misrepresentation by omission
13 Section 3 – Evaluation and Qualification Criteria, Clause 2.3.3 Financial Resources states that the Bidder must demonstrate access to, or availability of, financial resources such as liquid assets, unencumbered real assets, lines of credit, and other financial means, other than any contractual advance payments, to meet a cash-flow requirement of USD 300 million. In particular, each partner to a joint venture / member of a consortium should meet at least 25% of the requirement, and one partner / member must meet 40% of the requirement. In other words, a consortium should satisfy both requirements in order to qualify. Compliance to the requirement will also be facilitated through submission of Form FIN-3: Financial Resources.
14 Member of the consortium presented cash and cash equivalents amounting to $869 million, which did not tally with the audited financial statements that showed a figure totaling $631 million.
support its bid Forms FIN-1 to FIN-3. Nonetheless, both consortium members exceeded the minimum cash-flow requirements as seen in Figure 6.

**Figure 6: Comparison of Bidder’s Financial Capacity Against the Requirements of the Bidding Documents**

[Bar chart showing financial capacity comparison]

16. In another case, both members of a bidder's consortium disclosed only current contract commitments in its bid Form FIN-4 for power plant projects and presented that other contract commitments would be provided at the request of Uzbekenergo. The bidding documents required all current contract commitments to be disclosed. The EA sought clarification and this was provided for only one of the two members of the consortium. Although this omission did not provide grounds for automatic bid rejection, the evaluation of the bidder’s financial capacity should have considered all current contract commitments of all consortium members.

17. **Personnel and work experience.** Deficiencies in years of general and/or specific work experience of personnel presented by a bidder were noted in their respective curricula vitae, as shown graphically in Figure 7. Of the 17 key personnel proposed, 7 did not meet the requirements of the bidding documents based on the review team’s examination, while the Evaluation Committee identified 14 proposed personnel to be non-compliant. The Evaluation Committee sought clarification from the bidder and received updated forms for only three proposed personnel. No follow-up request about the curricula vitae for the 11 remaining personnel was made by the Evaluation Committee. Notwithstanding, the bidder was deemed responsive to the personnel requirements of the bidding documents.

18. Key personnel are not a contractual requirement, but details are requested as a supplement to a bidder’s experience in performing similar contracts as a further assurance that the bidder has the resources in place to perform the contract. While the above may have been

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15 As part of the supporting documents to Form FIN-1: Financial Situation, each bidder is required to attach complete historical financial statements for the last three years that must be audited by a certified accountant, including all notes to the financial statements, among others.

16 Form FIN-4: Current Contract Commitments provides that bidders and each partner to a JV should provide information on their current commitments on all contracts that have been awarded, or for which a letter of intent or acceptance has been received, or for contracts approaching completion, but for which an unqualified, full completion certificate has yet to be issued.

17 Section 3 – Evaluation and Qualification Criteria, Clause 2.5 Personnel provides a listing of the respective number of years that should be met by identified key personnel with respect to both general experience and specific experience.
treated only as a minor deviation following the ADB *Guide on Bid Evaluation*,\(^{18}\) to protect the Project from quality issues and delays, the Evaluation Committee should have sought commitment from the bidder to ensure that all key staff meet the experience requirement prior to commencement of the contract.

**Figure 7: Deficiencies in General and Specific Work Experience of Key Staff Proposed by Bidder**

![Graph showing deficiencies in work experience](image)

19. Similarly, a member of a bidder’s consortium fell short of the 10-year requirement of the bidding documents.\(^{19}\) Experience provided was only 9.7 years at the time of the 1\(^{\text{st}}\) stage submission. Although this bidder ultimately did not win the contract, the BER indicated that the bidder met the experience requirements of the bid documents.

20. *Advance payment security*. During the 2\(^{\text{nd}}\) stage bid evaluation, a bidder did not satisfactorily address the clarifications raised by the Evaluation Committee with respect to bidder’s compliance to the accepted forms of advance payment security,\(^{20}\) although the BER presented that concerns raised were adequately addressed. The same observation is noted as a point for improving the Evaluation Committee’s monitoring of clarifications sought and received from bidders.

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\(^{18}\) ADB *Guide on Bid Evaluation*, Section II. Bid Evaluation Procedure, para. 2.4 provides that a *major deviation is one which (a) has an effect on the validity of the bid; or (b) has been specified in the bidding documents as grounds for rejection of the bid; or (c) is a deviation from the commercial terms and specifications in the bidding documents whose effect on the bid price is substantial but cannot be given a monetary value*. Para. 2.24 (b) Adjustment for Technical Compliance supports non-rejection of minor deviation and, further, provides remedies to the Evaluation Committee when minor deficiencies are noted.

\(^{19}\) Section 3 – Evaluation and Qualification Criteria, Clause 2.4.1 General Experience states that each partner of a joint venture / member of a consortium must have experience under contracts in the role of contractor, subcontractor, or management contractor for at least the last ten (10) years prior to the bid submission deadline.

\(^{20}\) Section 7 – General Conditions of Contract, para. 13.2.2 *Advance Payment Security* provides that the security shall be *in the form provided in the bidding documents or in another form acceptable to the Employer*. It is understood that a suggested form of security is a bank guarantee, based on the template form in Section 6 – Employer’s Requirements, 5.2 Form of Advance Payment Security of the bidding documents.
B. Inconsistencies in bid evaluation

21. The review team noted that the Evaluation Committee treated similar deviations in bids inconsistently. This had no effect on the evaluation’s outcome. Future bids should be evaluated consistently with rationales clearly documented to minimize concerns or complaints on the fairness and integrity of evaluation process and results, and in keeping with the ADB Guide on Bid Evaluation.\(^{21}\)

22. Contradicting statements in the BER. Inconsistencies in assessing a bid were observed which undermined the Evaluation Committee’s justification in declaring the bidder non-responsive to the bid requirements. In one case, the BER stated that “the bid was complete in most respects and the bidder responded generally in accordance with the changes required pursuant to the First Stage Evaluation...”\(^{22}\) This conflicted with another paragraph in the BER which indicated that “the quality and contents of submission make the bid incomplete and substantially non-responsive to the bid requirements...”\(^{23}\) (i.e., the technical bid was considered grossly inadequate and considered a major deviation by the Evaluation Committee).

23. Current contract commitments. During the 2\(^{nd}\) stage bidding, a bidder submitted an incomplete Form FIN-4, which was treated by the Evaluation Committee as a major commercial deviation. Specifically, contract values and average monthly invoicing amounts for seven projects were not provided. The international consulting firm recommended seeking clarifications from the bidder on the said observation, however, the Evaluation Committee overruled the recommendation.\(^{24}\) Submission of incomplete Form FIN-4 was similarly noted in another bid (see para. 16 above) for which the Evaluation Committee sought additional information and did not treat the missing information as a major commercial deviation.

C. Other areas of concern

24. The review disclosed other aspects of the procurement process which may have undermined bid submission and contract implementation.

25. Late issuance of Addendum No. 5. Addendum No. 5 was issued seven days prior to the 2\(^{nd}\) stage bid submission deadline. Notwithstanding that the intention of the said addendum was to remove conflicting provisions in the bidding documents, the timing of the issuance did not provide bidders time to consider its effect on their bids, if any. The review team noted a representation from a bidder indicating that it could have effected certain revisions in its bid had the addendum been issued earlier. The inconsistent provision, which was present in the standard bidding documents and was not Uzbekenergo’s shortcoming, was subsequently corrected by ADB. See Figure 4 for key procurement milestones timeline, Figure 8 for conflicting provisions in the bidding documents, and Figure 9 for the extract of Addendum 5.

\(^{21}\) ADB Guide on Bid Evaluation, Section I. General, para. 1.3 states that evaluation of bids must be consistent with the terms and conditions stipulated in the bidding documents.

\(^{22}\) Section 2.2.3 of 2\(^{nd}\) stage BER

\(^{23}\) Section 9.2.3 of 2\(^{nd}\) stage BER

\(^{24}\) The review team was informed that clarifications from these bidders were deemed unnecessary because of other material deviations.
26. **Russian translation of technical manuals is needed.** During the review of the 2nd stage technical proposals, the Evaluation Committee requested clarifications from the winning bidder on how it would comply with providing Russian-language documents, as required in the bidding documents. The winning bidder provided a non-committal statement, which appeared to satisfy the Evaluation Committee.\(^{25}\) During fieldwork, the review team observed that translated technical manuals are essential to ensure the safe and consistent operation of power plant

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\(^{25}\) In its 18 October 2012 letter reply to the Evaluation Committee’s 11 October 2012 clarification, bidder stated that it “...will do our best to provide the required documentation in Russian language.”
facilities, and the discussions on which party is responsible for providing Russian translation of
the technical documents has not been resolved.26

27. Insufficient due diligence for proposed additional subcontractor. Uzbekenergo requested
ADB’s no objection to the contractor’s request to include a new subcontractor of building and
construction works in the list of subcontractors not included in the bid. However, said
subcontractor was neither an established construction company nor an experienced civil works
firm. A review of the same subcontractor’s profile also revealed that it was ineligible to
participate in the contract since it was dissolved or had no legal personality capable of entering
into contractual agreements at that time, among other reasons.27 ADB declined to grant a no
objection. In addition to the ambiguous role that the subcontractor was to perform for the
Project, Uzbekenergo and the contractor were also amiss in dealing with a firm that was
ineligible with respect to the relevant requirements of the contract.28 Moreover, as part of
Uzbekenergo’s strict enforcement of its authority under the contract to pre-approve changes or
additions to the list of subcontractors, Uzbekenergo should have obtained documentation from
the contractor establishing the proposed subcontractor’s compliance to the requirements of the
contract, including eligibility, among others, before endorsing the proposal to ADB. Uzbekenergo should have demonstrated that they were fully satisfied with the vetting
procedures conducted by the contractor and the results thereof.

D. Overall responsiveness of bids

28. Notwithstanding the lapses identified during the review, these would not affect the
evaluation outcome because the deviations committed by three bidders were material. The
deviations, which formed part of Evaluation Committee’s overall assessment of the substantial
responsive of bids as reflected in the 2nd stage bid evaluation report and that the review team
examined and concurred with, are summarized below in Table 2. This is in keeping with ADB’s
Guide on Bid Evaluation, which states that all valid bids shall be scrutinized following the terms
and conditions of the bidding documents, and only bids which do not substantially meet the
requirements of the bidding documents may be rejected.29

26 On 7 March 2016, ADB Project Officer confirmed that the contractor will provide Russian translation of technical
documents as an agreement had been reached between Uzbekenergo and the contractor.
27 Section 1 – Instruction to Bidders, para. 17.3 Technical Proposal, Subcontractors provides that the bidder shall be
responsible for ensuring that any Subcontractor proposed complies with the requirements of ITB 4, and that any
plant, or services to be provided by the Subcontractor comply with the requirements of ITB 5 and 15.1. ITB 4, 5,
and 15.1 list the mandatory eligibility requirements to be met by bidders and subcontractors.
28 During fieldwork, the review team did not obtain any information that would indicate what the subcontractor was
intending to do or what role it was to perform for the Project.
## Table 2: Major Deficiencies in Bids of 2nd Stage Bidders

<table>
<thead>
<tr>
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<td>Deficient specifications for major technical components of the plant</td>
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<tr>
<td>Did not submit complete information and/or documents comprising the bid as per instructions to bidders</td>
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</tr>
</tbody>
</table>

**Legend:**
- *material deviation, reservation, or omission*  
- *mandatory grounds for the rejection of a bid*

**Definitions:**
- *material deviation, reservation or omission* – one which (a) would affect in any substantial way the scope, quality, or performance of the plant and services specified in the contract; (b) would limit in any substantial way, inconsistent with the bidding documents, the rights of the employer or the bidder’s obligations under the proposed contract; or (c) if rectified, would unfairly affect the competitive position of other bidders presenting substantially responsive bids
- *mandatory grounds for the rejection of a bid* – basis for treating a bid as non-responsive as explicitly provided in the bidding documents

29. In respect of the major deviations of one of the disqualified bidders, the same were highlighted as deviations during the 1st stage evaluation. However, the bidder failed to rectify these in its 2nd stage bid.

30. Further, the review team agrees with the treatment of deviations of the winning bidder, which were resolved through post-bid clarifications, since the operability of the plant would not be substantially affected and due to its minimal cost impact vis-à-vis the total cost of the contract.

### III. RECOMMENDATIONS

31. To address the contract implementation issue identified in this review, the review team recommends that the PMU, without delay, obtains an assurance from the contractor in writing to provide the Russian translation of technical manuals in accordance with the requirements set forth in the contract agreement, and should strictly enforce this (para. 26).

32. Further, in future biddings, to add rigor to bid evaluations and enhance the transparency of the procurement process, the review team recommends that:
The Evaluation Committee

a. ensures that the BER narratives are complete, accurate and consistent with the tables and appendices, and are reflective of actual documents submitted. Further, BERs should undergo quality control before submission to ADB (paras. 12-20); and

b. adequately documents its determination of bidders’ substantial responsiveness and decision to award a contract based on sound justification, which should flow from the thorough and consistent application of evaluation criteria. Further discussion should be presented for bids found to contain deficiencies or to include conflicting information (paras. 21-23).

The PMU

c. ensures that bidding documents are carefully drafted to avoid issuance of critical bid addenda that may compromise the time allotted to bidders to prepare the lowest substantially responsive bids (para. 25); and

d. obtains documentation from the contractor establishing the proposed subcontractor’s compliance with the requirements of the contract, including eligibility, among others. The PMU should be satisfied with the vetting procedures conducted by the contractor and the results thereof (para. 27).

33. The review team also recommends that ADB’s Energy Division, Central and West Asia Department (CWEN) monitor PMU’s implementation of the recommendations in this report and application of lessons learned from the review to future similar projects.

IV. CONCLUDING REMARKS

34. These recommendations are intended to strengthen project oversight, enhance transparency, and protect Project funds from improper use. OAI plans to closely consult and work with relevant ADB departments to look closely at how existing bidding templates and guidance notes may be improved to prevent situations where significant addenda to bidding documents are issued at the very late stages of the procurement and to ensure discretion exercised by executing agencies in reaching crucial procurement decisions will not be misconstrued as to allow unfair competition favoring particular bidders. Moreover, treatment of deviations that are not subject to automatic bid disqualification should be revisited. Stricter requirements may be incorporated in the bidding documents to ensure that bidders have a better appreciation of the implications of non-compliance.

35. Strong procurement capacity and oversight of the PMU and compliance with relevant guidelines are crucial to deter fraud and corruption, mitigate the risk of improper use of Project funds, and maximize development effectiveness. The procurement weaknesses identified in this report should be addressed. The review team encourages CWEN to continue to work with the Government of Uzbekistan to strengthen its commitment in promoting transparency and accountability. Implementation of recommendations in this report can only augment results achieved to date.
36. The review team acknowledges and thanks officers and personnel of the External and Economic Relations and Investment Department of Uzbekenergo, Talimarjan TPP, and the PMU for their cooperation and assistance during the review.

37. The review team appreciates the support received from CWRD’s Energy and Portfolio & Results and Safeguards & Social Sector divisions and its Uzbekistan Resident Mission, and ADB’s Operations Services and Financial Management Department in the planning and execution of the review. OAI remains available to discuss matters in this report or issues that may affect the integrity of project implementation.