

Procurement Capacity Assessment Report and Recommendations

Proposed Project Name: Golovnaya 240 MW Hydro Power Plant Rehabilitation Project	Proposed Amount US\$: \$ 101.3 million for Turnkey Component; \$8.7 million for Implementation Consultancy Component
Executing Agency: Barki Tojik (BT)	Source of Funding: ADB and Government
Assessor: C. Pappas/Staff Consultant and L. Mtchedlishvili, CWRD/CWEN	Date: 25 August 2013

A. Expected Procurement

Procurement under the subject ADB Project (Golovnaya 240 MW Hydro Power Plant Rehabilitation Project) will consist of three contracts: (i) two turnkey contracts to fully refurbish and upgrade electric and mechanical equipment for power generation and transmission at Golovnaya Hydropower Plant (HPP) in Tajikistan with an estimated value of approximately \$101.3 million; and (ii) a project implementation consulting services contract with an estimated value of approximately \$8.7 million. The procurement will follow International Competitive Bidding (ICB) procedures using standard bidding documents for plant design, supply and install contract. The turnkey contract for rehabilitation of generation units will use Two-Stage Bidding Procedure without prequalification due to technical complexity typical for hydro power plant rehabilitation projects. The turnkey contract for rehabilitation of switchyards will use Single Stage Two Envelope Bidding Procedure without prequalification. Consulting services will be procured following ADB's Quality- and Cost-Based Selection (QCBS) method. Quality cost weighting of 90:10 will be used to ensure quality implementation of complex systems. Advanced contracting will be undertaken for consultant recruitment.

B. Assessment of the National Environment

(a) The Law

Public procurement in Tajikistan is regulated by the Law of the Republic of Tajikistan on Public Procurement of Goods, Works and Services, adopted in March 2006 (PPGWS Law). The Law is based on the 1994 United Nations Commission on International Trade Law (UNCITRAL) model and provides for basic features of public procurement. In 2008 Ministry of economic Development and Trade issued Regulations on the State Procurement. In 2012 PPGWS Law was updated as it was not in line with international procurement practices. The PPGWS Law includes instruments promoting competition and transparency in procurement and provides sufficient regulation of public procurement processes. It provides for open tender as a default procurement procedure and establishes rules for tender solicitation and evaluation. However public procurement planning and contract management are not regulated. There are no negotiated procedures available for complex projects and there are no special policies for concession projects. The PPGWS Law does not allow for domestic preferences. The

procurement planning and contract administration seem to be well regulated by internal policies adopted by contracting entities, generally public contracts are not completed within the budget or on schedule.

The PPGWS Law in Tajikistan does not incorporate several integrity safeguards and efficiency instruments recommended by current international public procurement standards. Overall the basic legal and institutional framework for public procurement is in place and of medium compliance with international standards.

(b) Public Procurement Processes in the Electricity Sub-Sector

The procurement Entities involved in the Tajik Energy sector include the following;

- The Ministry of Finance: oversees public procurement to which the PPGWS applies
- Ministry of Economy: publishes all procurement relevant for coal, oil and gas
- Ministry of Energy and Industry helps to prepare procurement documents as required by Government projects, coal, oil and gas projects
- Project Management Unit (PMU) originally established to implement donor funds but now also implements some Government funded projects
- Ragunstroi established to conduct procurement activities for Rogun Hydropower Plant construction activities.
- Energy enterprises; The Power enterprises are responsible for the development of technical specifications, the design and implementation of the bid process including the establishment of a tender committee.

The majority of electricity sub-sector procurement is conducted under the auspices of the country's power utility, Barki Tojik (BT) through its procurement subsidiary "Energasrab" working with the 17 regional utility offices. However BT does not have sufficient expertise to undertake procurement and implementation of large projects. In order to facilitate continuity and transparency of donor procurement, in the early 2000s, the donor community introduced the Project Management Unit (PMU) mechanism. Since then the PMU has effectively become a stand-alone government agency where its director and management staff are appointed by the nation's President. The PMU is presently responsible for the preparation of tenders and the implementation of procurement activities for both donor and some government funded energy infrastructure project work as well as for certain fuel procurement contracts. Because most Tajik energy operations remain under the purview of Government, the Law on Procurement is applied to all tenders conducted by all state entities in all sectors except where donor procedures are in place and to which Government has agreed.

The law regulates the procurement of domestic and foreign goods, works and services for government administrations and institutions and Government owned utility companies (such as BT). Issues that have emerged with this arrangement are; (i) PMU management staff are appointed and approved by the President; (ii) the PMU has become the stopping ground for all large energy infrastructure procurements – donor or otherwise - that has not improved energy enterprise (particularly that of BT) procurement capacity; (ii) the PMU's work has entered into policy making – i.e., the PMU head attends the daily BT management meetings.

The 2009 combined World Bank (WB) and ADB assessment of the Tajik "Public Expenditure and Financial Accountability" highlighted among other deficiencies the following;

"The banks and the government recognize the need for efficient project implementation setup away from the stand-alone PIUs. Both banks have not set up stand-alone PIUs during the

period covered by this review. Progress has been made in using joint PIUs for projects that are funded by both banks, in particular in the energy sector. However, the review shows that PIUs are not effectively linked to the relevant sector strategies of the line ministries. This poses a serious challenge to the growth of the portfolio and conceptualization of the new projects. Serious capacity constraints need to be overcome in the line ministries before the banks and the government can rely on the relevant line ministries or government agencies to implement projects.”

In general the capacity to conduct, control and supervise procurement activities remains weak in BT. Most public officials responsible for procurement do not have sufficient formal training and there are no specialized agencies that can offer such procurement related training programs. However, multiyear experience of working on projects financed by international donor organization developed sufficient procurement capacity within PMU.

C. General Agency Resource Assessment

Although BT is nominally the executing agency for the Project, the staff of the PMU has been charged with the coordination of all procurement related matters on this Project. PMU does not report to BT but to its own Head and is responsible for management and coordination of procurement including procurement for large projects. The staff of the PMU has written terms of reference and is familiar with local procurement legislation and procedures and has knowledge of the procedures of ADB and other donors. Basically, the project management and procurement for projects financed by international financial institutions is outsourced to PMU.

At present there are 5 procurement experts in the PMU and PMU staff is familiar with ADB procedures. Within the PMU professional staff there is only one person fluent in English but the other 4 are taking steps to learn English. However, there is pool of translators. The Implementation Consultants will be primarily responsible for procurement and contract management. The Implementation Consultants will need to be familiar with ADB procurement procedures to ensure timely approval of bid documents and bid evaluation reports by ADB. As responsibility for procurement of this contract and its implementation fully rests with BT and the PMU. The allocated counterpart staff should possess adequate experience and a sound basis to work alongside the international consultants. This will also ensure effective knowledge transfer.

Evaluation of bids for goods and works as well as for consulting services is done by a working group consisting of experts from other departments of BT, the PMU and the implementation consultants. The results of the evaluation are presented to the Tender Committee for approval and the minutes of the meeting are recorded.

D. Agency Procurement Processes: Goods and Works

The main challenge for BT and the PMU will be to prepare the technical specifications, bidding documents, bid evaluation reports and supervise implementation of the contracts. The BT's capacity for construction supervision can be assessed as limited as up till now the Government has entrusted procurement and construction supervision to the PMU. PMU has vast experience in procurement of goods and works for generation, transmission and distribution projects. Since the establishment PMU successfully procured more than 30 turnkey contracts financed by international financial institutions of which 16 were/are financed by ADB.

E. Agency Procurement Processes: Consulting Services

The PMU has successfully completed the recruitment of consulting services for the international implementation consultants for the ADB funded project: L1912; L1817; L2303; G0124; and G0213. Separately, PMU has also successfully recruited consultants for project financed by other donors like IsDB and KfW. The PMU therefore has acquired sufficient expertise to undertake recruitment of international implementation consultants for the current project.

F. Process Control and Oversight

The preparation of the RFP for the implementation consultants and bid documents for the turnkey contract for the proposed project will be done by Sector Operational Performance Improvement Program (SOPI) under ADB grant 0213. SOPI consultants prepared the feasibility study for the project and will assist EA and PMU with evaluation of the bids as well. Upon the recruitment of implementation consultants, supervision over the implementation of the turnkey contract will be handed over to implementation consultants. EA and PMU will have prime responsibility for control and oversight of procurement activities for this project. Technical aspects for the bid documents will be prepared by staff of BT together with the SOPI consultants.

The bid evaluation will be done by a working group comprising of BT, PMU and SOPI consultants and results will be presented to the Tender Committee. A Tender Committee will review and endorse bid evaluation reports and decisions on contract award will be set up by the Chairman of the State Committee on Investments and State Property. The Tender committee will comprise of 5 to 9 members selected from different ministries and authorities. They will include the President's Administration Office, Ministry of Finance, Ministry of Energy and Industry, State Committee on Investment and Management of State Property, BT PMU and other ministries and authorities depending upon project requirements.

G. Records Keeping and Audit

In general, the control and oversight system including records keeping in the EA appears to be set up appropriately. A trail of auditable documents is set up too. PMU keeps an archive of all procurement and recruitment documents undertaken since PMU establishment.

H. Summary Assessment and Recommendations

The capacity of BT staff is considered to be less than adequate. However, capacity PMU is fully adequate for effective implementation of the proposed project. Also, the current arrangement, BT providing technical expertise and PMU procurement and administrative support, works quite efficiently.

Since the Project will have only three contracts, priority should be given to recruitment of implementation consultants. The recruitment of implementation consultants will be supported by SOPI consultants. Once appointed, implementation consultant should provide hands-on procurement and project implementation training to the PMU staff including contract management. Detailed project implementation arrangements are included in the PAM and must be given special attention for the whole duration of this project.

ADB on its side needs to ensure the following: (i) establishment of a commercially and technically experienced project management team within ADB, (ii) carrying out continuous due

diligence through frequent missions and constant project management supervision, (iii) providing hands on project management, procurement and contract administration support to the EA and the consultants, (iv) ensure that the technical specifications of the bidding document are best practice and drawn up in a way to enable bidders to submit responsive proposals and to permit widest possible competition, (v) Close coordination with other IFIs in the country and take into account lessons learned from their past projects (ADB and Islamic Development Bank), (vi) close coordination with World Bank during their processing on procurement related matters, (vii) joint donor reviews of project progress to ensure intended outcomes, (viii) close monitoring of knowledge transfer and capacity building efforts of Consultants, (ix) establish an early warning system and critical path for the timely project implementation and putting in place rectification strategies for potential issues related to project management and procurement, (x) progress reports.

General Recommendations, Procurement Environment

Capacity Constraint	Recommended Action	Responsibility and comment
Discrepancy between ADB's and the Government's procurement procedures	During project processing and at grant negotiations ADB has to emphasize to the Government and BT that all procurement activities shall be undertaken in strict compliance with ADB procedures and based on ADB's standard bidding documents, and that the Government's procedures will not apply for this ICB. This should be recorded in the Minutes of Grant Negotiations.	Relevant government agencies, BT, the PMU and ADB.

General Recommendations, EA Capacity

Capacity Constraint	Recommended Action	Responsibility and comment
EA and PMU Capacity	It is desired that PMU procurement capacity is further strengthened. It is recommended that implementation consultants provide on the job training to the relevant PMU staff during recruitment of implementation consultants and procurement of the turnkey contract.	EA, PMU and implementation consultants

Specific Recommendations, Project Implementation		
EA Capacity Constraint	Recommended Action	Responsibility and comment
The EA and the PMU staff capacity on ADB's procurement procedures.	<p>During Inception Mission, a full set of procurement documents has been provided to the concerned PMU staff. ADB's standard bidding documents for <i>single</i> stage 2-envelope two stage bidding procedures for Procurement of Plant: Design, Supply and Install have been provided to the concerned PMU staff to enable them to familiarize themselves with the updated document.</p> <p>The project SOPI consultant shall bear prime responsibility for;</p> <p>(i) Preparation of all bidding documents including preparation of the technical specifications for the project. (ii) assisting the PMU in bid evaluation, (iii) assisting the PMU in contract negotiations and (iv) assisting in the preparation of the contract document in conjunction with BT/PMU legal experts. BT/PMU shall be responsible for all internal approvals of bidding documents and all other internal approvals. It is suggested that ADB together with BT/PMU draw up a comprehensive plan of all required internal and Government approvals and come up with a comprehensive list.</p>	BT, PMU, ADB, SOPI and Implementation Consultants.

Procurement Capacity Assessment Appendix 1 General Procurement Environment Assessment

Risk Ratings	Extremely High	High	Average	Low
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I. Specific Assessment and Ratings

Question	Yes/No	Narrative Explanation	Risk
A. LEGAL AND REGULATORY FRAMEWORK			
1. Is there a procurement law? <i>Is there a single law governing procurement that is consistent with internationally accepted principles and practices; or is procurement governed through various laws, decrees etc.?</i>	Yes	There is law of the Republic of Tajikistan about State procurement of goods, works and services (dated 06.03.2006 and updated on 16.04.2012) which regulates procurement financed at the cost of state budget and international financial organizations.	Low
2. Does the procurement law have implementing regulations? <i>Does the procurement law have implementing rules and regulations that support it by providing the details that are not normally found in a law? Are these clear, comprehensive and consolidated as a set of regulations that are available in a single and accessible place? Are these regularly updated?</i>	Yes	1) The Regulations of Ministry of Economic Development of the Republic of Tajikistan on procurement of goods, works and services (dated 17.01.2008). 2) The Rule on opening of Bid proposal for procurement of goods, works and services under the state investment projects of the RT No.500 dated 02.10.2010, at this time, this rules are updated and handed to the Government of Republic of Tajikistan for confirmation.	Low
3. Are the procurement law and regulations clear and concise? <i>If there is a single law that is easy to follow, then the risk is "low". If the law is complex and difficult to follow, then the risk is "average". If there is no single law, then the risk is "extremely high" or "high".</i>	Yes	The law and regulations do not define the specific elements necessary to bring SBDs at par with international standards.	Low
4. What does the procurement law/regulation cover? <i>If there is a single law, the risk will be "low" if it covers drafting and use of standard bidding documents, evaluation, contracting through to the management of</i>	Yes	On the base of Law of the Republic of Tajikistan about State procurement of goods, works and services (dated 03.03.2006, updated on 16.04.2012), by the Ministry of economic development and trade of the	Low

Question	Yes/No	Narrative Explanation	Risk
<p><i>contracts, including payment, warranty and defects liability periods. The less the procurement process is covered the higher the risk. If there is no single law, then the risk is "extremely high" or "high".</i></p>		<p>Republic of Tajikistan was developed and confirmed the Regulations on state procurement procedures that covers all procurement period, i.e. from developing of Bid documents, evaluation, contracting through contract management, including payment, guarantee and defect liability period.</p>	
<p>5. Does the procurement law/regulation cover the procurement of consulting services? <i>If there is a single procurement law that also covers consulting services, then the risk is "low". If consulting services are not covered, or there is no law, then the risk is "extremely high" or "high".</i></p>	Yes		Low
<p>6. Does the procurement law/regulation differentiate between processes for goods, works and consulting services? <i>If there is a single law that deals separately with consulting services, then the risk is "low". If there is a single law that provides some differentiation, but the processes are similar, then the risk is "average". If there is no single law, or it applies the same processes to consulting services as for goods and works, then the risk is "extremely high" or "high".</i></p>	Yes	<p>Regulations cover the procurement of Consulting services for financing by multilateral banks but this is not applicable to procurement of consulting services using Government financing.</p>	Average
<p>7. Does the law/regulation require the advertisement of all procurement opportunities? <i>A "low" risk may be indicated if advertisement is required for all procurements above \$25,000. An "average" risk may be indicated if advertisement is required only for procurements above \$100,000. A "high" risk may be indicated if advertisement is required for all procurements above a threshold that is higher than \$100,000. An "extremely high" risk should be indicated if no advertisement is required.</i></p>	Yes	<p>In accordance with regulation of Article 31 of this Law, the procuring entity expresses its intention to implement state procurement through publication in public nationals and international mass media and in bulletin of state procurement and invitation to Bid.</p>	Low
<p>8. Are contract awards advertised?</p>	Yes	Under Article 45 of the PPGWS	Low

Question	Yes/No	Narrative Explanation	Risk
<i>The same thresholds as stated at A7 should be applied.</i>		Law, notice of contract award is to be posted in the Public Procurement Bulletin. Also, the procuring entity obliged after selection of bid successful bidder to inform about this all suppliers (contractors) no less than 3 days by the any acceptable method.	
9. Are there restrictions on goods, works and services on the basis of origin? <i>If there is no limitation, restriction and/or preference scheme, then the risk is "low". If there are restrictions or a national preference scheme, then the risk is "average". If procurement is solely limited to those of national origin, then the risk is "extremely high" or "high".</i>	No		Low
10. Does the procurement law or relevant legislation and regulation provide acceptable provisions for the participation of state-owned enterprises (SOEs)? <i>If an exception is given to SOEs that are legally and financially autonomous and are not dependent agencies of the purchaser/employer, then the risk is "low". Otherwise, the risk is "extremely high" or "high".</i>	Yes	SOEs can participate in procurement funded from Government budget and by MDBs	Average
11. Are there restrictions on the nationality of bidders and consulting firms to be invited? <i>If there is no limitation, restriction and/or preference scheme, then the risk is "low". If there are nationality restrictions or a national preference scheme, then the risk is "average". If procurement is solely limited to national firms and individuals, then the risk is "extremely high" or "high".</i>	No		Low
12. Are foreign bidders and consultants forced to submit offers through or with local partners? <i>If this is never required, then the risk is "low". If this is required under certain circumstances, then the risk is "average". If this is always required, then the risk is "extremely high" or "high".</i>	No		Low
13. Is there a domestic preference	No		Low

Question	Yes/No	Narrative Explanation	Risk
<p>scheme? <i>If there is no scheme, then the risk is "low". If it is applied in limited circumstances, then the risk is "average". If a domestic preference scheme is applied across the board, then the risk is "extremely high" or "high".</i></p>			
<p>14. Is there a national standard mandated for the use for quality control purposes? <i>If there are no mandated national standards or if these have direct and accessible international equivalents, then the risk is "low". If there are mandated national standards that have no international equivalents, then the risk is "high".</i></p>	Qualified yes	There are no mandated procedures but each procurement entity is made responsible for quality control	Average
<p>15. Are any agencies or parts of public expenditure exempt from the procurement law/regulation? <i>If yes, such as defense equipment, then the risk may range from "average" to "extremely high, depending on the extent of the exemption. For example, if an exemption is outrightly granted to medicines, text books or other similar commodities, then the risk is "extremely high".</i></p>	Yes	In accordance with regulation of Article 1 of Law on State procurement of goods, works and services (dated 03.03.2006). The efficiency of this Law are distributed for all procurement made in the Republic of Tajikistan territory, except for state procurement for national security protection, state confidences, gemstone, as well as for disposition last emergency condition and other case of emergency, according to decision of the Government of Republic of Tajikistan.	Average
<p>16. Is the default method for procurement open competition? <i>If yes, then the risk is "low". If no, or if it is not clearly established, then the risk may be "extremely high" or "high".</i></p>	Yes	In accordance with regulation of Article 24 of Law RT about state procurement of goods, works and services (dated 03.03.2006), the main method of state procurement is bidding with unlimited participants. This method should be used by the procuring entities always, except that cases, when the current Law allows the using of other method.	Low
<p>17. Is open competition easily avoided? <i>If avoidance requires the approval of an oversight agency, then the risk is "low". If open competition can be avoided by senior management decision, then the</i></p>	No		Low

Question	Yes/No	Narrative Explanation	Risk
<p>risk is "average". If the procurement law/regulation allows the avoidance of open competition above a certain national threshold on the basis of circumstances that are not in response to natural disasters, i.e. simple urgency, then the risk is "extremely high" or "high".</p>			
<p>18. Does the procurement law/regulation require pre-qualification? If it is only for complex or high value contracts, then the risk is "low". If no pre-qualification is allowed, then the risk is "average". If it applies to all contracts, then the risk is "high".</p>	Yes	In accordance with regulation of Article 17 of Law RT on State procurement of goods, works and services (dated 03.03.2006).	Low
<p>19. Does the procurement law/regulation require the pre-registration of bidders? If no pre-registration is required, then the risk is "low". If it is only required for special types of goods, such as medicines, then the risk is "average". If yes, then the risk is "extremely high" or "high".</p>	No		Low
<p>20. Does the procurement law/regulation mandate the use of standard documents? If it does and there are documents for goods, works and consultants services, then the risk is "low". If it is required just for only two of the three procurement types, then the risk is "average". If it is required for only one of the procurement types, or it is required but no documents have yet been issued, then the risk is "high". If standard documents are not required, then the risk is "extremely high".</p>	Yes	Standard bidding documents are referred to in the PPGWS Law. Some standard forms are included in the attachments to Regulations. However, the law and regulations do not define the specific elements necessary to bring SBDs at par with international standards.	Average
<p>21. Have these standard documents been approved for use on ADB projects? If yes, then the risk is "low". If some, but not all, then the risk is "average". If no, then the risk is "extremely high" or "high".</p>	No	Only ADB standard bidding documents have been used so far	High
<p>22. Is there a national procurement manual or guide? If an omnibus procurement manual or guide exists, then the risk is "low". If a manual exists, but it is out of date or is not widely</p>	Yes	Regulation of procedures of State procurement of goods, works and services of the Ministry of economic development and trade of RT dated 17.01.2008, No.4	Low

Question	Yes/No	Narrative Explanation	Risk
<p><i>used/distributed, then the risk is “average”. If there is no manual, then the risk is “extremely high” or “high”.</i></p>			
B. INSTITUTIONAL FRAMEWORK			
<p>23. Which body oversees public procurement? <i>If there is a regulatory body at an adequate level in government, and financing is secured by the legal/regulatory framework, then the risk is “low”. If the body is at an adequate level, but financing is subject to administrative decisions and can be changed easily, then the risk is “average”. If the level of the body is too low or financing is inadequate for proper discharge of its responsibilities, then the risk is “high”. If there is no body, or the body is too low with no independence to perform its obligations, then the risk is “extremely high”.</i></p>	Yes	<p>There is the Agency on Public Procurement of Goods, Works and Services under the Government of the Republic of Tajikistan.</p>	Low
<p>24. What powers does the oversight body have? <i>The rating may range from “low” to extremely high”, depending on whether the body exercises all, some, a few or none of the following responsibilities: providing advice to contracting entities, drafting amendments to the legal/regulatory framework, monitoring public procurement, providing procurement information, managing statistical databases, reporting on procurement to other parts of government, developing/supporting the implementation of initiatives for improvements to the public procurement system, and providing implementation tools and documents to support capacity development.</i></p>		<p>In accordance with regulation of Article 20 of Law RT on State procurement of goods, works and services (dated 03.03.2006).</p> <ol style="list-style-type: none"> 1. Normative legal act, provided by the current Law for functioning state procurement sphere, that include order and procedure of procurement, contract signing and payment by its 2. Coordination and regulation of procuring entities action on procurement at the state funds cost. 	Average
<p>25. Is there a nationwide procurement training plan? <i>If procurement trainings are regularly implemented nationwide and needs are regularly assessed, then the risk is “low”. If there is an existing program, but it is</i></p>	Yes	<p>Under PPGWS Law, the Agency on Public Procurement of Goods Works and Services is required to develop such programs. However, no such program can be identified in practice.</p>	Average

Question	Yes/No	Narrative Explanation	Risk
<p><i>insufficient to meet national needs, then the risk is "high". If there is no formal training program, then the risk is "extremely high". Consider also the existence of a helpdesk.</i></p>			
<p>26. Is there a procurement accreditation or professionalization program? <i>If there is an externally recognized program, then the risk is "low". If it is a government sponsored program, then the risk is "average". If there is no accreditation or professionalization program, then the risk is "high".</i></p>	No	The program was before adoption of Law of RT on State procurement of goods, works and services (dated 03.03.2006).	High
<p>27. Are major projects identified within agencies' appropriations or budgets? <i>If yes, then the risk is "low". If no, but a system is in place for the ring-fencing of project funds, then the risk is average. If neither condition exists, then the risk is "high".</i></p>	Yes		Low
<p>28. Is the procurement cycle tied to an annual budgeting cycle, i.e. can procurement activity only commence once a budget is approved? <i>If yes, and a medium-term expenditure framework is in place, then the risk is "low". If an activity may start up to, but excluding contract award, then the risk is "average". If the procurement cycle is not tied to an annual budget, then the risk is "extremely high" or "high".</i></p>	Yes	It is required under PPGWS Law. Procurement activities of all government departments must be strictly linked with the approved budgets.	Low
<p>29. Once an appropriation or budget is approved, will funds be placed with the agency or can the agency draw them down at will? <i>If yes, then the risk is "low". If not, such as when additional bureaucratic controls are imposed (such as a cash release system), then the risk is "extremely high" or "high".</i></p>	Yes		Low
<p>30. Is there a nationwide system for collecting and disseminating procurement information, including tender invitations, requests for proposals, and contract award information? <i>If there is an integrated information</i></p>	Yes	There is an authorized agency at the Procurement Agency, at the Government of RT and the special site on procurement is created.	Low

Question	Yes/No	Narrative Explanation	Risk
<p><i>system that provides up-to-date information and is easily accessible at no or minimum cost, then the risk is "low". If there is such an integrated information system that covers majority of contracts, but access is limited, then the risk is "average". If there is a system, but it only provides information on some of the contracts and is not easily accessible, then the risk is "high". If there is no procurement information system, except for some individual agency systems, then the risk is "extremely high".</i></p>			
<p>31. When an agency is implementing a project using funds from the national budget, are there general experiences/reports of funding delays that significantly hamper procurement? <i>If no, then the risk is low. If yes, then the risk is "extremely high" or "high".</i></p>	Yes		High
<p>32. Is consolidated historical procurement data available to the public? <i>If yes, then the risk is "low". If the data is too much or too little, then the risk is "average". If none, then the risk is "extremely high" or "high".</i></p>	Yes	All historical data for internationally financed projects is stored in the archive in PMU.	Low
<p>33. Does the law/regulation require the collection of nationwide statistics on procurement? <i>If yes and statistics are actually collected, then the risk is "low". If yes, but data is not collected or used, then the risk is "average". If there is no requirement, then the risk is "extremely high" or "high".</i></p>	No		Extremely High
C. PROCUREMENT MARKET AND OPERATIONS			
<p>34. Do formal mechanisms exist to encourage dialogue and partnerships between the government and the private sector, and are these well established in the procurement law/regulation? <i>If such mechanisms exist, such as programs to build the capacity of private companies and small businesses to participate in public procurement, and these are effective, then the risk is "low". If</i></p>	No		High

Question	Yes/No	Narrative Explanation	Risk
<p><i>such mechanisms exist, but there is no proof of its effectiveness, then the risk is “average”. If no such mechanisms exist, then the risk is “extremely high” or “high”.</i></p>			
<p>35. Are private sector institutions well organized and able to facilitate access to the market? <i>If the private sector is competitive, well organized and able to participate in open competition, then the risk is “low”. If there is a reasonably well functioning private sector, but competition for large contracts is concentrated in a relatively small number of firms, then the risk is “average”. If the private sector is relatively weak and/or competition is limited owing to monopolistic or oligopolistic features in important segments of the market, then the risk is “high”. If the private sector is not well organized and lacks capacity and access to information for participation in the public procurement market, then the risk is “extremely high”.</i></p>	Yes		Low
<p>36. Is there an alternative disputes resolution process independent of the government and courts? <i>If there is an arbitration law with an independent process, then the risk is “low”. If there is no arbitration law, but the standard contracts use ICC or similar dispute resolution provisions, then the risk is “average”. If alternative dispute resolution is not practiced, or if arbitration is through the courts or can be overturned by the courts, then the risk is “extremely high” or “high”.</i></p>	Yes	Tajikistan became a member of the New York Convention in 2012 and member of WTO in 2013.	Low
D. INTEGRITY OF THE PROCUREMENT SYSTEM			
<p>37. Are there systematic procurement process audits? <i>If yes, then the risk is “low”. If only financial audits are conducted, then the risk is “average”. If no systematic audits are conducted, then the risk is “extremely high” or “high”.</i></p>	Yes		Low
<p>38. Does the procurement law/regulation contain provisions for dealing with misconduct, such</p>	Yes	There is a debarment system for unreliable suppliers/contractors. Corrupt, fraudulent, or collusive	Low

Question	Yes/No	Narrative Explanation	Risk
as fraud and corruption? A cross reference to an anti-corruption law will suffice. <i>If yes, then the risk is "low". If no, then the risk is "extremely high" or "high".</i>		practices are included in Criminal Code.	
39. Is fraud and corruption in procurement regarded as a criminal act, whereby the penalty includes imprisonment? <i>If yes, then the risk is "low". If no, then the risk is "extremely high" or "high".</i>	Yes	In accordance with the article 12 of legislation of the RT on fighting corruption and articles 247 and 257 of the Criminal Code of the Republic of Tajikistan	Low
40. Have there been prosecutions for fraud and corruption? <i>If there have been successful prosecutions for fraud and corruption, then the risk is "low". If prosecutions seem to focus solely on low grade/junior staff, then the risk is "average". If there is no evidence of any prosecution, then the risk is "extremely high" or "high".</i>	Yes		Average
41. Does the legal/regulatory framework allow for sovereign immunity to agencies for claims against them? <i>If plaintiffs can sue the government for contractual non-performance, then the risk is "low". If they cannot, then the risk is "extremely high" or "high".</i>	Yes	In accordance with regulation article 82 of the Law of RT on Public procurement of goods, works and services (from 3 March 2006)	Low
42. Do the regulations allow for the debarment of firms and individuals? <i>If there is a debarment process that is transparent and equitable, and undertaken by an independent oversight agency, then the risk is "low". If there is a process and it is administered by a single agency, such as the Ministry of Finance, then the risk is "average". If it is administered by the procuring agency, then the risk is "high". If there is no debarment mechanism, then the risk is "extremely high".</i>	Yes	In accordance with regulation article 19-21 of the Law of RT on Public procurement of goods, works and services (from 3 March 2006)	Low

II. General Ratings

Criterion	Risk
A. Legal and Regulatory Framework	Low

B. Institutional Framework	Medium –Low
C. Procurement Market and Operations	Medium – low
D. Integrity of the Procurement System	Low
OVERALL RISK RATING	Medium – low

Procurement Capacity Assessment Appendix 2 Agency Questionnaire

Risk Ratings	Extremely High	High	Average	Low
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I. Specific Assessment and Ratings

Question	Answer/Finding	Risk
A. ORGANIZATIONAL AND STAFF CAPACITY		
A.1. How many years experience does the head of the procurement department/unit have in a direct procurement role?	6 years	Low
A.2. How many staff in the procurement department/unit are:	5 person	Low
i. Full Time?	5 full time	
ii. Part Time?	Not applicable	
iii. Seconded?	Not applicable	
A.3. Does the procurement staff have English language proficiency?	Yes. (one employee) the remaining specialists of procurement department take English classes. PMU has a pool of translators	Average
A.4. Are the number and qualifications of the staff sufficient to undertake the additional procurement that will be required under the proposed project?	Yes. All specialists of department have enough qualification and technical skills, skills in work with different programs	Low
A.5. Does the unit have adequate facilities, such as PCs, internet connections, photocopy facilities, printers, etc., to undertake the planned procurement?	Yes. There is different equipment such as: PCs, printers, Xerox, scanners, etc.	Low
A.6. Does the agency have a procurement training program?	NO.	High
A.7. Does the agency have a Procurement Committee that is independent from the head of the agency?	NO.	High
A.8. Does the agency have a procurement department/unit, including a permanent office that performs the function of a Secretariat for the Procurement Unit, and which serves as the main support unit of the Procurement Committee??	The procurement for all projects financed by international financial institutions is outsources to a separate Project Management Unit of Electroenergy Sector (PMU). The head of PMU is appointed by the President. Local procurement of Barki Tojik is managed by a subsidiary enterprise "Tajikenergossab". This enterprise is holding a tender for providing of material and technical work	Low
A.9. If yes, what type of procurement does it undertake?	PMU is managing international competitive bidding, while Tajikenergossab for national	

Question	Answer/Finding	Risk
	competitive bidding.	
A.10. At what level does the department/unit report (to the head of agency, deputy etc.)?	The Executive Director of PMU report to the President and the Government	Low
A.11. Do the procurement positions in the agency have job descriptions, which outline specific roles, minimum technical requirements and career routes?	<u>Yes.</u>	Low
A.12. Is there a procurement process manual for goods and works?	Yes. There is a management on procurement process for goods and works of ADB, IDB, KFW also there is a local management on procurement of goods, works and services such as: 1.Law of RT about Government procurement of goods, works and services (dated March 3, 2006); and 2.Rules on opening of tender applications on procurement of goods, works and services on state investment projects in RT confirmed by Government decree of the Republic of Tajikistan No. 500 dated October 2, 2010	
A.13. If there is a manual, is it up to date and does it cover foreign-assisted projects?	<u>Yes.</u> There is a management of financing banks on Consultant selection but local management on consultant engaging is not applicable.	
A.14. Is there a procurement process manual for consulting services?	<u>Yes.</u>	
A.15. If there is a manual, is it up to date and does it cover foreign-assisted projects?	<u>Yes.</u>	
A.16. Are there standard documents in use, such as Standard Procurement Documents/Forms, and have they been approved for use on ADB funded projects?	<u>Yes.</u> There is a standard documents/forms on standards of local procurement but were not used in the projects financed by ADB.	
A.17. Does the ToR follow a standard format such as background, tasks, inputs, objectives and outputs?	<u>Yes.</u>	
A.18. Who drafts the procurement specifications?	Implementation consultants with support of BT and PMU.	Low
A.19. Who approves the procurement specifications?	Barki Tojik	
A.20. Who drafts the bidding documents?	Implementation consultants with support of BT and PMU.	
A.21. Who manages the sale of the bidding documents?	PMU	
A.22. Who identifies the need for consulting services requirements?	Barki Tojik	Low
A.23. Who drafts the terms of reference (ToR)?	PPTA consultants and relevant departments of Barki Tojik	
A.24. Who prepares the request for proposals (RFPs)?	PPTA consultants and relevant departments of Barki Tojik	
B. INFORMATION MANAGEMENT		

Question	Answer/Finding	Risk
B.1. Is there a referencing system for procurement files?	<u>Yes.</u> There is an archive in PMU office.	Low
B.2. Are there adequate resources allocated to record keeping infrastructure, which includes the record keeping system, space, equipment and personnel to administer the procurement records management functions within the agency?	<u>Yes.</u>	Low
B.3. For what period are records kept?	From 2002 till the present time	Low
B.4. Are copies of bids or proposals retained with the evaluation?	<u>Yes</u> All copies of applications and evaluation report are kept in PMU archive	Low
B.5. Are copies of the original advertisements retained with the pre-contract papers?	<u>Yes</u> All announcements and pre-contractual documents are kept in PMU	Low
B.6. Is there a single contract file with a copy of the contract and all subsequent contractual correspondence?	<u>Yes.</u> Each contract has separate folder with subsequent correspondence with contractors and consultants.	Low
B.7. Are copies of invoices included with the contract papers?	<u>Yes.</u>	Low
C. PROCUREMENT PRACTICES		
Goods and Works		
C.1. Has the agency undertaken foreign-assisted procurement of goods or works recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	<p>ADB: “Stabilization of Baypaza landslide” Project, ADB loan 1912-TAJ: 1 Turnkey Construction Contract</p> <p>Project «Energy Sector Rehabilitation» Loan ADB 1817: 1 Contract of consulting services 10 Turnkey Construction Contracts</p> <p>Regional Transmission Interconnection Project, ADB loan 2303 TAJ: 1 Contract of consulting services 3 Turnkey Construction Contracts</p> <p>Nurek 500 kV Substation Reconstruction Project, ADB Grant 0124-TAJ: 1 Contract of consulting services 1 Turnkey Construction Contract</p> <p>«Regional Power transmission project» ADB Grant 0213 TAJ, at starting rehabilitation stage: 1 Contract of consulting services 1 Turnkey Construction Contract and it will expected 2 ones.</p> <p>IDB: Project «Construction of MHPP in rural area of the Republic of Tajikistan», IDB loan 0022 TAD: 1 Contract of consulting services 8 Turnkey Construction Contracts.</p>	Low

Question	Answer/Finding	Risk
	<p>Project «Energy Sector Rehabilitation» IDB loan 011, 029, 031: 2 Turnkey Construction Contracts</p> <p>«Regional Power transmission project»: Rehabilitation of Unit No.3 at Golovnaya HPP, IDB Loan 0030 1 Turnkey Construction Contracts</p> <p>KFW: Project “ Replacement of 220 kV Substation at Nurek HPP” 1 Contract of consulting services 1 Turnkey Construction Contract</p> <p>KFAED: Dushanbe City Electricity Network Rehabilitation Project, KFAED Loan 665 1 Contract of consulting services 5 Turnkey Construction Contracts</p> <p>Exim Bank (China): «Construction of 220 kV OHL Lolazor- Khatlon»: 1 Turnkey Construction Contract</p> <p>«Construction of 500 kV OHL South - North» 1 Turnkey Construction Contract</p> <p>«Construction of 220 kV OHL Khujand - Ayni» 1 Turnkey Construction Contract</p> <p>Creating of unified energy system in North Region of Tajikistan 1 Turnkey Construction Contract</p>	
C.2. If the above answer is yes, what were the major challenges?	Was not any problems	
C.3. Is there a systematic process to identify procurement requirements (for a period of one year or more)		
C.4. Is there a minimum period for preparation of bids and if yes how long?	<u>Yes</u> . Mainly its depend on procurement type, for example, consultant recruitment 45 days, for procurement of goods not less than 60, for construction of difficult civil works not less than 90 days.	Low
C.5. Are all queries from bidders replied to in writing?	<u>Yes</u>	
C.6. Does the bidding document state the date and time of bid opening?	<u>Yes</u>	Low

Question	Answer/Finding	Risk
C.7. Is the opening of bids done in public?	<u>Yes</u>	Low
C.8. Can late bids be accepted?	<u>NO.</u>	
C.9. Can bids be rejected at bid opening?	Without reason <u>NO.</u>	
C.10. Are minutes of the bid opening taken?	<u>Yes</u>	Low
C.11. Who may have a copy of the minutes?	State Committee on Investment and Management of State Property of the Republic of Tajikistan, Barki Tojik, PMU, Consultant, financing bank	
C.12. Are the minutes free of charge?	<u>Yes</u>	
C.13. Who undertakes the evaluation of bids (individual(s), permanent committee, ad-hoc committee)?	Consultant together with Tender committee	Low
C.14. What are the qualifications of the evaluators with respect to procurement and the goods and/or works under evaluation?	Minimal requirement - higher technical education, work experience on procurement procedures	Low
C.15. Is the decision of the evaluators final or is the evaluation subject to additional approvals?	Subject to Bank's approval	Low
C.16. Using at least three real examples, how long does it normally take from the issuance of the invitation for bids up to contact effectiveness?	This mainly depend on the size and nature of project difficulty, for small projects 6 months; for big and complicated projects 1.5 year	Average
C.17. Are there processes in place for the collection and clearance of cargo through ports of entry?	<u>Yes</u>	Low
C.18. Are there established goods receiving procedures?	<u>Yes</u>	Low
C.19. Are all goods that are received recorded as assets or inventory in a register?	<u>Yes</u>	Low
C.20. Is the agency/procurement department familiar with letters of credit?	<u>Yes</u>	Low
C.21. Does the procurement department register and track warranty and latent defects liability periods?	<u>Yes</u>	Low
Consulting Services		
C.22. Has the agency undertaken foreign-assisted procurement of consulting services recently (last 12 months, or last 36 months)? (If yes, please indicate the names of the development partner/s and the Project/s.)	<u>Yes.</u> In frame of two projects financing by ADB the consulting services of Fichtner GmbH& Co. KG (Germany) and Fichtner GmbH& Co. KG/TEPSCO (Japan) have been procured	Low
C.23. If the above answer is yes, what were the major challenges?	No problem	
C.24. Are assignments and requests for expressions of interest (EOIs) advertised?	<u>Yes.</u> The Invitation for Expression of Interest was published in local newspaper and on the ADB's website	Low
C.25. Is a consultants' selection committee formed with appropriate individuals, and what is its composition (if any)?	<u>Yes.</u> Commission was composed form representatives of different Ministries and Authorities such as President Administration Office of the RT, Ministry of Finance, Ministry of Energy and Industry,	Low

Question	Answer/Finding	Risk
	State Committee on Investment and Management of State Property of the RT, Barki Tojik and PMU	
C.26. What criteria is used to evaluate EOIs?	Mainly the following criterion have been used: 1.total and full work experience of the Company; 2.Work experience on projects SS and high voltage OHL; 3.Work experience in such geographical regions or countries; 4. Annual rotation of Company for the last five years; 5. Main characteristics, work cost, scope of person/month, staff, location and type of activity of performing at the present time projects; 7. Information regarding permanent professional workers of Company;	Low
C.27. Historically, what is the most common method used (QCBS, QBS, etc.) to select consultants?	QCBS	Low
C.28. Do firms have to pay for the RFP document?	<u>NO.</u>	Low
C.29. Does the proposal evaluation criteria follow a pre-determined structure and is it detailed in the RFP?	<u>Yes.</u>	Low
C.30. Are pre-proposal visits and meetings arranged?	<u>Yes.</u> pre-bid meetings.	Low
C.31. Are minutes prepared and circulated after pre-proposal meetings?	<u>Yes.</u>	
C.32. To whom are the minutes distributed?	To participants and financing bank	
C.33. Are all queries from consultants answered/addressed in writing?	<u>Yes.</u>	Low
C.34. Are the technical and financial proposals required to be in separate envelopes?	<u>Yes.</u>	Low
C.35. Are proposal securities required?	<u>Yes.</u>	Low
C.36. Are technical proposals opened in public?	<u>Yes.</u>	Low
C.37. Are minutes of the technical opening distributed?	<u>Yes.</u> To participants and financing bank	
C.38. Do the financial proposals remain sealed until technical evaluation is completed?	<u>Yes.</u>	Low
C.39. Who determines the final technical ranking and how?	Tender Committee first and then verified by financing bank according rules and procedures	
C.40. Are the technical scores sent to all firms?	<u>NO.</u>	
C.41. Are the financial proposal opened in public?	<u>Yes.</u>	Low
C.42. Are minutes of the financial opening	<u>Yes.</u> To participants and financing bank	

Question	Answer/Finding	Risk
distributed?		
C.43. How is the financial evaluation completed?	Least cost	Low
C.44. Are face to face contract negotiations held?	<u>NO.</u>	
C.45. How long after financial evaluation is negotiation held with the selected firm?	After approving the evaluation report by financing bank	
C.46. What is the usual basis for negotiation?	Contract negotiations was conducted within the financing bank procedures	
C.47. Are minutes of negotiation taken and signed?	<u>Yes.</u>	
C.48. How long after negotiation is the contract signed?	Maximum one month	Low
C.49. Is there an evaluation system for measuring the outputs of consultants?	Liabilities control under signed contracts	Low
Payments		
C.50. Are advance payments made?	<u>Yes.</u>	Low
C.51. What is the standard period for payment included in contracts?	30 days	Low
C.52. On average, how long is it between receiving a firm's invoice and making payment?	20-28 days	
C.53. When late payment is made, are the beneficiaries paid interest?	<u>NO.</u>	
D. EFFECTIVENESS		
D.1. Is contractual performance systematically monitored and reported?	<u>Yes.</u>	Low
D.2. Does the agency monitor and track its contractual payment obligations?	<u>Yes.</u> Agency requires from consultant quarterly statements after which invoice will be paid	Low
D.3. Is a complaints resolution mechanism described in national procurement documents?	Complaints on national procurements are considering under the law of the Republic of Tajikistan on state of goods procurement, works and services (from 3 march 2006);	Low
D.4. Is there a formal non-judicial mechanism for dealing with complaints?	<u>NO.</u>	Average
D.5. Are procurement decisions and disputes supported by written narratives such as minutes of evaluation, minutes of negotiation, notices of default/withheld payment?	<u>Yes.</u>	Low
E. ACCOUNTABILITY MEASURES		
E.1. Is there a standard statement of ethics and are those involved in procurement required to formally commit to it?	Each employee of PMU is obliged to observe the standards etiquette which has been specially expressed in duty regulations, in particular, upon entering employment, each employee assumes the ethical and legal obligation not to disclose a confidential or representing trade secret of information and has to avoid actions and the acts involving his in the conflict of interests.	Low
E.2. Are those involved with procurement	<u>Yes.</u>	Low

Question	Answer/Finding	Risk
required to declare any potential conflict of interest and remove themselves from the procurement process?		
E.3. Is the commencement of procurement dependent on external approvals (formal or de-facto) that are outside of the budgeting process?	NO.	Low
E.4. Who approves procurement transactions, and do they have procurement experience and qualifications?	According to rules on opening of tender applications on goods procurement, works and services on the state investment projects in RT approved by Government Resolution of the Republic of Tajikistan No. 500 dated 02.10.2010, management and coordination of projects, financing by external donors assigned on State Committee on investment and management of state property. All procurement transactions are arranged and conduct headed by State Committee on investment and management of state property. Corresponding tender committees on each separate investment project, form by State Committee on investment order and consist of ministries and departments representatives which have necessary experience in procurement field.	Low
E.5. Which of the following actions require approvals outside the procurement unit or the evaluation committee, as the case may be, and who grants the approval?		Low
a) Bidding document, invitation to pre-qualify or RFP	OSHPC Barki Tojik and Financing Bank	
b) Advertisement of an invitation for bids, pre-qualification or call for EOIs	Employer and Financing Bank	
c) Evaluation reports	State Committee on investment and management of state property and Financing Bank	
d) Notice of award	Financing Bank	
e) Invitation to consultants to negotiate	Employer has agreed with Financing Bank	
f) Contracts	Employer and Financing Bank	
E.6. Is the same official responsible for: (i) authorizing procurement transactions, procurement invitations, documents, evaluations and contracts; (ii) authorizing payments; (iii) recording procurement transactions and events; and (iv) the custody of assets?	i) - bidding organize and conduct by State Committee on Investment and management of state property of the Republic of Tajikistan procurement transactions; - evaluation is confirmed by above body; - authorizing procurement transactions, procurement invitations, documents, evaluations and contracts are responsibility of Employer and Financing Bank	Low

Question	Answer/Finding	Risk
	ii) Withdrawal application confirms Barki Tojik, PMU and Ministry of Finance of the RT. iii) recording procurement transactions and events are executed by Employer/PMU	
E.7. Is there a written auditable trail of procurement decisions attributable to individuals and committees?	<u>Yes.</u>	

II. General Ratings

Criterion	Risk
A. Organizational and Staff Capacity	Low
B. Information Management	Low
C. Procurement Practices	Low
D. Effectiveness	Low
E. Accountability Measures	Low
OVERALL RISK RATING	Low