



TOR No SMH-22-001

“Customs clearance formalities and inland transportation in Thailand.”

Date: 27 July 2022

TABLE OF CONTENTS

TABLE OF CONTENTS	1
INVITATION FOR BID PROPOSAL.....	3
INTRODUCTION AND BACKGROUND	4
ELIGIBLE BIDDERS	6
4.1 PART I: GENERAL TERM	8
4.1.1 BIDDING PROCESS AND CONDITION OF BID	8
4.1.2 TOR DOCUMENTS	10
4.1.3 REQUIRED BIDDER SUBMISSION DOCUMENTS	11
4.1.4 SUBMISSION OF BID PROPOSAL.....	12
4.1.5 DELIVERY AND SHIPMENT (DELIVERY PORTION).....	14
4.1.6 BID EVALUATION PROCESS.....	15
4.1.7 INSURANCE.....	18
4.1.8 PAYMENT.....	19
4.1.9 SECURITY.....	20
4.1.9.1 ADVANCE BOND.....	20
4.1.9.2 PERFORMANCE BOND	20
4.1.9.3 WARRANTY BOND.....	20
4.1.9.4 RETENTION MONEY	20
4.1.11 LIQUIDATED DAMAGE	20
4.1.12 ENTER INTO CONTRACT	22
4.1.13 CONFIDENTIALLY AND INTELLECTUAL PROPERTY.....	23
4.1.15 SITE VISIT	25
4.1.16 KEY PERSONNEL	26
4.1.17 HPC'S GENERAL OBLIGATIONS	27
4.1.18 BIDDER'S GENERAL OBLIGATIONS	28
4.1.19 TENTATIVE BIDDING SCHEDULE.....	29
4.1.20 TAX AND DULY PROVISION	30

4.1.21 ACCEPTANCE OF DELIVERABLES	32
4.1.22 COVID-19 PREVENTION MEASURES.....	33
4.1.23 TOR DOCUMENT DISCREPANCY	34
4.2 PART II WORK QUALITY AND SPECIFICATION	35
4.2.1 HPC'S PARTICULAR OBLIGATIONS	36
4.2.2 BIDDER/CONTRACTOR'S PARTICULAR OBLIGATIONS	37
ANNEX I Price Bid Form	38
ANNEX II Technical Bid Form (Please see in one drive).....	39
ANNEX III Commercial Bid Form	40
ANNEX IV Documentation Report Form	41
ANNEX V Bidder Experience	42
Schedule 1: CA REQUIREMETNS AND COMPLIANCES	43
SCHEDULE 2: General Conditions of Contract for Procurement of Goods	44

INVITATION FOR BID PROPOSAL**Customs clearance formalities and inland transportation in Thailand.**

On behalf of Hongsa Power Company Limited (the “HPC”), I am pleased to invite you to propose the HPC Co-Working Space for Hongsa Mine Mouth Power Plant, located in Hongsa District, Xayabouly Province of the North-West of Lao PDR.

HPC established in 2009 by Banpu Power Limited (BPP), Ratchaburi Electricity Generating Holding Public Company Limited (RATCH) and Lao Holding State Enterprise (LHSE) for the project operation of 1,878 MW coal-fired mine mount power station to develop and operate for supplying sustainable source of energy in Laos and Thailand.

Regarding the procurement of [•], the Bid Proposal shall be submitted as specified in this TOR and shall be lodged in the reception of the procurement, not later than 05:00 PM Laos Standard Time (LST) on the closing date **15 July 2022** provided that late submission of the Bid Proposal may not be considered under any circumstances.

Currently, HPC operates power plant stations for 5 years foregoing commercial operation since 2015. The Bidders can access and view our certain commitment and information at the HPC’s website www.hongsapower.com. In addition, the Bidders may request additional information for the performance of Bid Proposal during the event.

Kind regards,

Visakorn Ueareekul

Chairman of Procurement Committee

for, and on behalf of the Procurement Committee’s Hongsa Power Company Limited

INTRODUCTION AND BACKGROUND

Hongsa Power Plant serves as a part of the development of 1,878 MW coal-fired power project to supply electricity to Laos and Thailand, located in Hongsa District, Xayabouly Province of the North-West of Lao PDR includes all the project facilities related thereto (together, the “**Hongsa Project**”) in the National Power Development Program of Laos.

Since the Hongsa Project comprises, not only the Power Plant but also 500 kV Transmission Lines, 500 kV Substation, 115 kV Substations, Coal Mine, 2 Dams and Water reservoir so that varieties of equipment, spare parts, and tools for the Hongsa Project.

On the whole, this Term of Reference (the “**TOR**”) is orderly prepared to provide enquiries and invite potential suppliers for the Bidding Process by following the intention of Customs clearance formalities and inland transportation services in Thailand.

OBJECTIVE

Hongsa Power Company Limited (the “**HPC**” or “**Employer**”) requires hiring service providers to process transportation from original to destination point and custom clearance at Thai as identify by HPC (collectively referred to the “**Work**”).

Provide that the scope of work, terms and conditions on the matters follow the HPC’s requirements, having standard, quality, and immediate readiness for using.

The Scope of Work will broadly to be further performed as the following:

The service provider shall carry out and complete the local transportation and custom clearance formalities services. The scope of work is to be undertaken by the service provider represents it has full knowledge and understanding of its duties and obligations. The service provider shall perform the services promptly as following tasks:

1. Inland transportation service from the point of delivery to destination point as identify by HPC such as Bangkok, Chonburi, Rayong, Nan, Hongsa etc. which separate as follows.
 - 1.1 Regular process: HPC will inform transportation plan 3 days in advance.
 - 1.2 Emergency process: HPC will inform emergency transportation plan immediately or in advance 1 days.
 - 1.3 Re-packing, Re-lashing for over size or heavy product which delivery to Nan (FCA, CIP-Nan)
 - 1.4 Perform loading and unloading for over size or heavy product which delivery to Nan (FCA, CIP-Nan)

- 1.5 Perform drop point for over size or heavy product which delivery to Nan (FCA, CIP-Nan)
 - 1.6 Transportation service and custom clearance formalities shall be cleared correctly and in timely manner to avoid any potential delays or cost and keep inform HPC for any unpredictable event that will affect to the delay and cost of process.
 - 1.7 Survey main route of transportation and alternative routes in case cannot transport by main route that will not affect cost.
 - 1.8 The Service provider shall coordinate with the assigned vendors (seller) as HPC's requirement for receiving and inspecting as agreed INCOTERMS according to Purchase Order or as the HPC's assignment such as
 - a. Packaging visual inspection.
 - b. Packaging quantity count.
 - 1.9 If damaged is occurred such as packaging damaged or missing of quantity according to relevant shipping document (Invoice/ Packing List, Purchase Order etc.), the Service provider shall immediately inform the HPC's representative to consideration for next process.
 - 1.10 Coordinate with the assigned vendor (Seller), to ensure goods are picked up and transported without delay.
 - 1.11 Perform documentation receiving from the seller at the delivery point and submit to HPC's representative for recording.
 - 1.12 Relevant shipment information update to HPC such as Invoice, Packing Lis etc.
- 2 Perform customs clearance formalities
- 2.1 Regular process
 - 2.2 Re-export.
Re-exportation route Laos – Thailand - Laos.
 - 2.2.1 Free Zone process
 - 2.2.1.1 Free Zone: route Laos to Thailand
 - a) Perform customs clearance formalities according to Free Zone conditions.
 - 2.2.1.2 Free Zone: route Thailand-Laos
 - b) Perform customs clearance formalities importation and exportation to Free Zone.
 - c) Perform customs clearance formalities at Thung Chang Customs, Nan province, Thailand.
 - 2.2.2 Customs guarantee process
 - 2.2.2.1 Route Laos-Thailand
 - d) Perform customs clearance formalities at Thung Chang Customs by customs guarantee process.

2.2.2.2 Route Thailand-Laos

- e) Perform customs clearance formalities from Thung Chang customs, Nan province, Thailand.

2.2.3 Paying import tax process (Thailand)**2.2.3.1 Route Laos-Thailand**

- f) Perform customs clearance formalities at Thung Chang customs, Nan province, Thailand.

2.2.3.2 Route Thailand-Laos

- g) Perform customs clearance formalities from Thung Chang customs, Nan province, Thailand.

However, HPC reserves the right to accept or reject all or any parts of the Bid Proposal without assignment of any reasons whatsoever.

Besides, HPC is also entitled to verify all statements, information and documents submitted by the Bidders in response to the TOR provided that any such verification or lack of such verification by HPC to undertake such result shall not relieve the Bidders of their obligations or liabilities nor will affect any rights of HPC.

Currency and Language

- All prices in the Bid Proposal should be quoted in Thai Baht.
- Unless otherwise specified by HPC, all Bid Proposal including the supporting information and/or documents should be written in English. If any supported document attached is translated and in case of any ambiguity the translation (original as translated by the Employer) shall be prevail.

Bidding Process Fees

The Bidders are not required to pay the Bidding Process Fee.

ELIGIBLE BIDDERS

The bidding is opened] to all firms, either alone or in joint-venture or in consortium (jointly and severally responsible) satisfied to the required qualifications by HPC as the following: (HP allows the Bidder to propose the sum of its corporations)

Transportation service

- i. Having at least 1 years of experiences for transportation services in Thailand and Lao PDR
- ii. Having own or partner trucks fleets
- iii. Having own or partner valid license for international transportation services.
- iv. Having own or partner area or space for drop point of over-size or heavy product at Nan province, Thailand.
- v. Having forklift or equipment for loading and unloading at drop point.

Customs clearance formalities

- i. Having at least 1 years of experiences for customs clearance formalities in Thailand.
- ii. Having valid license for the activity of the customs broker issued in Thailand.
- iii. Having own or partner valid Free-Zone license.
- iv. Having guarantee customs contract for re-export by Customs Guarantee process

What's more the Bidders shall:

- i. Being a juristic person, duly and legally incorporated.
- ii. Having the business objective in carry on related to TOR's objective (supply and/or services).
- iii. Having the legal authority to execute the Bid Proposal according to this TOR.
- iv. Not being a bankrupt or liquidated.
- v. Having adequate finances to perform the scope of work as described in this TOR.
- vi. Never breach of contract/agreement or any work to HPC, HPC's counterparties or HPC's suppliers or contractors.
- vii. Not sharing any collusive information with other Bidders and commit any action in obstruction of the fair competition.
- viii. No having business, financial, personal, or other interests to HPC's activities, the project or others that related thereto.

Finally, Any Bidders who submit any fraudulent document to HPC or misrepresent any documents shall be deemed disqualified in all cases.

4.1 PART I: GENERAL TERM

4.1.1 BIDDING PROCESS AND CONDITION OF BID

Bidding Process

The TOR Document is to distribute to the Bidders by e-mail or USB flash drive and/or HPC 's website. The Bidders shall propose the Technical and Commercial approach based on the provided information, guidelines scripts and table from HPC or specified herein. The Bidders shall submit to HPC in accordance with the schedule as specified in Clause 4.1.19 (Bid Schedule).

Addenda

No amendment to the TOR Document, shall be effectual unless in the form of a written addendum thereto issued by HPC.

An addendum may be notified in writing, facsimile transmission, or e-mail. HPC may, in its discretion, extend the Bid period to allow the Bidders for consideration the addenda.

The Bidders shall formally acknowledge the receipt of each and all addendum to the TOR Document issued by HPC and received by Bidder during the Bidding period.

Cost of Bid

For Bid Proposal Submission, the Bidders acknowledge that the Bid Proposal entirely at their own costs and expenses. HPC is not responsible for payable any costs and/or expenses as incurred by any preparation and submission of the Bidders.

Discrepancies, Errors, Question and Omissions

If bidder finds any discrepancy, error, or omission in, or requires clarifications of the TOR, shall notify HPC no later than **8 July 2022** in writing.

HPC is going to respond in writing (with a copy to others) to any notification that received within **15 July 2022**.

Enquires of Bid or technical nature may be directed, in the first instance by e-mail to:

To : Rada Charadram

E-mail: rada_c@hongsapower.com

Tel.: + 856 20 5244 1800

Cc: Attachai Thitipaisan

E-mail: Attachai_t@hongsapower.com, jantana_g@hongsapower.com

Acceptance and Rejection of Bid Proposal

HPC reserves the right, at its sole discretion, to accept the proposal that is most responsive and best offer, or to reject any or all proposals, or to waive minor irregularities and informalities in any proposal submitted.

HPC will reject any proposal, which at its judgment, is not responsive. Notwithstanding, HPC shall not be bound to award a contract to the Bidder who has submitted the lowest price proposal. On the other hand, HPC will take into account all evaluating factors and other factors such as compliance with the TOR Documents, technical and financial qualification, capability of the Bidder, and other related matters as HPC deems appropriate to execute the works promptly and vigorously in such manner as to secure Work and/or completion within the timeframe specified.

Moreover, HPC also reserves the right to separate its order into several purchase orders for different amounts and/or for the selected items to different Bidders and/or to remove any part of scope of Work specified herein and in the TOR Documents after the Bid Evaluation process is completed in order to fulfill its business profit and budget utilization plan.

Ultimately, HPC reserves the right to cancel proposal submission by all Bidders on date and time as designed in TOR due to necessitates the change in our procurement plan.

4.1.2 TOR DOCUMENTS

The TOR Documents shall be issued by HPC for the Bid Proposal as comprised of the document lists as the following together with other documents that required by the conditions to be submitted by the Bidders with Bid Proposal:

1. Invitation for Bid Proposal
2. Introduction and Background
3. Bidding Process and Conditions of Bid
4. HPC's Requirements
 - a) Part I: General Terms; and
5. Bid Proposals
 - a) Annex I: Price Bid Form.
 - b) Annex II: Technical Bid Form.
 - c) Annex III: Commercial Bid Form.
6. Schedule to TOR Document
 - Schedule I: CA Requirements and Compliances
 - Schedule II: General Conditions of Contract

- Intentionally omitted -

4.1.3 REQUIRED BIDDER SUBMISSION DOCUMENTS

Notwithstanding, the Bidders shall submit the following documents but not limited to:

i. Price Proposal Documents (Envelope 1)

- a) Quotation.
- b) USB Flash Drive contains the PDF file (Annex I, II)

ii. Commercial Proposal and Corporate Documents (Envelope 2)

is to be used for the examination of the Bidder, consist of:

- a) Printout of the completely filled-up [Annex III- Commercial Bid Form];
- b) Copy of Certificate of Registration of the Bidder (not outdated more than 6 months);
- c) Copy of Tax Certificate.
- d) Copy of Passport / ID Card of the Company Directors.
- e) Copy of Power of Attorney (if any);
- f) Copy of Passport / ID Card of the Authorized Representatives if in case that there is a Power of Attorney, if any
- g) Company profile, reference project list, and other documents required by HPC.
- h) Company Organization Chart.
- i) The last Financial Statement Audited. (Upon HPC request)
- j) ISO 9001, ISO 14001, ISO 45001, and OHSAS 18001 Certificates (if any); and
- k) USB Flash Drive contains the Excel File of [Annex III – Commercial Bid Form] and PDF Files of Items a) to j).

Provided that, the above documents must be certified by the authorized person(s) and affixed with the company seal of the Bidder.

HPC provides to the Bidders one (1) completed set of TOR Document as electronic format.

However, the Bidders shall immediately return all TOR and materials provide by HPC and copies thereof at Procurement Division in Hongsa as the following:

- i. If a party invited to Bid, determines that it will not do so;
- ii. If a Bidder notified by HPC, the Bid has been unsuccessful.
- iii. Upon request in writing by HPC.

4.1.4 SUBMISSION OF BID PROPOSAL

1. The Bid Proposal shall be submitted to HPC in three (2) separate sealed envelopes:
 - i. **Envelope 1 (Price Proposal):** sealed envelope shall contain the quotation together with the Price Proposal Documents.
 - ii. **Envelope 2 (Commercial Proposal and Corporate Documents):** sealed envelope shall contain the quotation together with the Commercial Proposal Documents.
2. Prior to submission of the Bid Proposal, the Bidders shall thoroughly review and study the entire the Bid Documents as well as attachments and deeply comprehend of the conditions as stipulated herein.
3. The Bidders shall seal the original of the Bid Proposal in the envelopes address to:

“The Procurement Committee of Customs clearance formalities and inland transportation in Thailand.”

Bid Proposal for Customs clearance formalities and inland transportation in Thailand.

and label the envelope as follow:

Envelope 1: Price Proposal

Envelope 2: Commercial Proposal

The submission of the Bid Proposal shall be addressed to HPC’s personnel and office address as provided, no later than 05:00 PM local time on the date of **15 July 2022**

4. The lodgment of Bid Proposal Submission

Bid Proposal shall be enclosed 2 in sealed envelope and addressed to:

Hongsa Power Company Limited

Attention: Ms. Rada Charadram
(Section Manager – Non-Technical
Procurement)

3/37-38 Woravichai Road, Nai-Wieng
District, Muang Nan, Nan Province
55000, Thailand

or

Hongsa Power Company Limited

Attention: Ms. Rada Charadram
(Section Manager – Non-Technical
Procurement)

Phonchan Office, Hongsa District,
Xayaboury Province, Lao PDR.

or

Hongsa Power Company Limited

Attention: Rada Charadram (Section
Manager – Non-Technical
Procurement)

NNN Building 4th Floor/Room No. D5,
Boulichan Road, Phonsinouan Village,
Sisattanak District Vientiane Capital,
Lao PDR

5. For the determination of the deadline for the Bid Proposal Submission, any documents submission by the Bidders later than the date of **15 July 2022**. HPC reserves the right to consider as deem appropriated either reject or receive such delay Bid proposal Submission.

- Intentionally Omitted -

4.1.5 DELIVERY AND SHIPMENT (DELIVERY PORTION)

N/A

- Intentionally Omitted -

4.1.6 BID EVALUATION PROCESS

Bid Evaluation Process

The Bidders shall respond all requirements in the TOR to the maximum extent possible to ensure that all aspects of the evaluation criteria are covered. HPC also encourages the Bidders to expand their responses to include details of technical infrastructures, standards, and key differentiators.

Besides, the Bidders are required to clearly identify limitations and expectation to the specifications and requirements inherent in the proposed Bid Proposal.

Any Bidder who submits the documents and information that are not complied with the materials, conditions, and specifications as HPC's requirements, shall be rejected from the determination.

The conditions of Bid Evaluation process as the following:

Bid Opening

- i. Bid is going opened after 05:00 PM on the next date of closing date for Bid Submission date, provided that the Bid Opening is internally private.
- ii. In the event that Bid received after the time as set for the receipt of Bid Submission may be returned, unopened or retained for consideration entirely at the option of HPC.
- iii. Related information to the examination, clarification and evaluation of Bid and recommendations concerned on the award is confidential to HPC, who shall be under no obligation to disclose the information to any Bidders.

Clarification and Evaluation of Bid Proposal

- i. To assist on the examination, evaluation and comparison of Bid Proposal, HPC may at its discretion, inquire any Bidders for clarification of their Bid Proposal. However, the requested clarification and response shall be in writing and no change in the Price or substance of Bid Proposal, shall be sought, offered or permitted.
- ii. The Bidders may be requested to participate the Bid Evaluation meeting at the site in Laos, Nan Office in Thailand, or Tele-Conference (if any).
- iii. HPC may waive any informality in any received Bid Proposal and reject any and/or Bid Proposal without assigning reasons, therefore.

Right to Negotiation

- i. HPC may in its discretion to negotiate with any Bidders after the Bid closing.
- ii. During the Bid Evaluation period, HPC may negotiate with the Bidders to vary some aspect of HPC's specification and requirements or the Bidders' Bid Proposal, including but not

limited to conditions of contract, scope of work, capability, costs and effectiveness or matters that related to the combination of part of the Bid Proposal with another of Bid.

Bid Evaluation Criteria

The Bid Evaluation Criteria for the Awarded Bidder selection is listed as the following:

i. Qualification of Bidder

The completeness and qualified criteria of the following documents, including but not limited to bidder's profiles and experiences, financial statement and current asset value, statement of capability, team members and proposed safety, system and procedures.

ii. Commercial Evaluation

- a. The completeness and conformance as specified in Annex III- Commercial Bid Form.
- b. HPC reserves the right for consideration in any portion of such commercial in entire benefit of HPC.

iii. Price Evaluation

- a. Price of Works for all relevant costs and expenses as specified in Annex I- Price Bid Form.
- b. HPC reserves the right not to accept the lowest price or any portion of the price or the entire proposed price.

Bid Evaluation Process

i. Examination of the Bidders' Proposal

Upon the Bidders qualified the non-price aspects, HPC considers and examines to price proposal evaluation by using the result from the scoring criteria as solely designed and specified by HPC.

- a. If the rates and prices specification of the price proposal are non-conformance with the provided to the Bid Document or is not reasonable or inconsistent with any type, size, dimension of Works or services to be further supplied, HPC may disqualify such Bidders.
- b. In consideration of assessment the appropriated bidder of enter the Contract, HPC shall entitlement to request for the rates and prices declaration, status and other facts relating to the Bidder. However, HPC reserves the right to reject the Price Proposal or enter the Contract with the Bidder in case of the evidence is not appropriated and/or incorreceted.
- c. HPC still reserves the right to reject the lowest Price Proposal or some portion of the price or the entire Price Proposal at its own determination on basis of the best benefit of HPC.
- d. If the lowest proposed Bidder submits low price beyond expectation, which may likely result in the inability for the Bidder to perform, HPC may request the Bidder to explain and present evidence, which will increase the credibility of the ability of that Bidder to fully fulfill his obligations. If the explanation is not reasonable or justifiable, HPC, at its own discretion, is entitled to reject the proposed price of that Bidder.

- e. the bidder acknowledged and accepted that the selection process is fully authority by HPC's its own decision.

Bid Proposal Validity Period

Bid Proposal shall remain valid for a period of 60 days from the expiration of the proposal submission date. The bidder has to specify the validity in Annex III.

- Intentionally Omitted -

4.1.7 INSURANCE

Before Service provider commence their work or services, the Service Provider shall obtain and ensure to obtain and maintain, at its own costs and expense, the insurances referred below.

The insurance amounts indicated here below are minimum requirements and not limits of liability, and they shall not be construed as HPC's consent to waive its financial liability in excess of the amounts set forth, except as otherwise agreed by both parties.

(a) Comprehensive General Third-Party Liability and Property Damage Insurance, including Pollution Insurance, with a limit of not less than THB 2,000,000 (Two Million Thai Baht) combined single limit any one occurrence.

4.1.8 PAYMENT

1. HPC shall pay the service provider after completion of the work.
2. Subject to this TOR, all payments for the services payable to the Bidder shall be made as the following conditions:

- (a) If an invoice is submitted to HPC during the date of 1-15 in any month, the payment of such invoice will be paid on the date of 10 of the following months.

In this regard, when there is the case that such submitted invoice is incorrect of the work performed or goods procured is not in compliance with the requirements provided under the contract, the bidder could be entitled to receive the payment on the same due date **only on the conditions that** such invoice is revised to HPC's satisfaction or the work has been performed or the Works has been procured in compliance with the requirements thereof; and that the revised invoice is re-submitted to HPC within the date of 15 of such month.

- (b) If an invoice is submitted to HPC during the date of 16-31 in any month, the payment of such invoice will be paid on the date of 25 of the following months.

In this regard, when there is the case that such submitted invoice is incorrect of the work performed or Works procured is not in compliance with the requirements provided under the contract, the bidder could be entitled to receive the payment on the same due date **only on the conditions that** such invoice is revised to HPC's satisfaction or the work has been performed or the goods has been procured in compliance with the requirements thereof; and that the revised invoice is re-submitted to HPC within the end of such month.

3. the bidder shall be as specified its payment term in [Annex III – Commercial Bid Form of the TOR Documents] but the proposal that will be complying with the preferred Payment Terms without L/C or Advance Payment shall be primarily considered by HPC.
4. The Credit Terms for processing the payment shall be as specified in [Annex III – Commercial Bid Form of the TOR Documents], which are subject to the company's payment cycle.

- Intentionally Omitted -

4.1.9 SECURITY**4.1.9.1 ADVANCE BOND**

N/A

4.1.9.2 PERFORMANCE BOND

N/A

4.1.9.3 WARRANTY BOND

N/A

4.1.9.4 RETENTION MONEY

N/A

4.1.11 LIQUIDATED DAMAGE**DELAY LIQUIDATED DAMAGES:**

- a) The Contractor acknowledges that the Employer may suffer serious economic and opportunity loss if there is any delay in the completion or failure to complete the Work within the Scheduled Completion Date. The Contractor at all times shall use its best endeavors to complete the Work strictly within the Scheduled Completion Date. Where any part of the Work is not completed within the period stated above (or extended period as to be agreed by the Employer), the Contractor shall be liable to pay to the Employer delay liquidated damages in daily rate of ten (10%) percent.
- b) If the Contractor cannot start performance in a proper time or delays in proceeding which is contrary to the terms of this Agreement with no fault of the Employer and the Employer foresees that the Work will not be finished within the agreed period, the Employer shall entitle to employ other persons to carry out the remedial work. Except to the extent that the Contractor would have been entitled to payment for the work. The Employer reserves the right to deduct the costs payable to the Contractor in an amount equivalent in costs arising from that failure.

OTHER

- a. In the event that the Contractor doesn't perform in compliance with rules and/or regulations of the Employer, the Employer is entitled but not obligated to verbally instruct the Contractor to rectify such non-compliance performance. Provided that

the Contractor doesn't rectify its performance as instructed by the Employer, the Employer shall be entitled to deliver notice of instruction for such rectification within seven (7) days after receiving such notice, unless the Contractor doesn't perform in compliance with this sub-clause, the Bidder shall be imposed liquidated damages subject to sub-clause b)

4.1.12 ENTER INTO CONTRACT

- After the Bidding Period has been evaluation and completed as the specified in the Bidding Schedule herein, the Letter of Award (LOA) or Letter of Intent (LOI) may be issued by HPC to the successful Bidder in order to advise the successful Bidder of HPC's intent to award a contract of this project prior the enter into the contract thereto.
- the parties are responsible for preparing the contract upon the terms and conditions as preliminary set forth in the General Conditions of Contract (schedule II) as attached thereof.
- The successful Bidder shall provide HPC the performance security in the amount and conditions as specified herein of the TOR Documents on or before the contract execution.
- Subject to Law PDR Laws requirement, the successful Bidder shall register the temporary tax identification number and be the corporate income tax of Laos and any other required/complied under a) HPC Concession Agreement and b) Lao PDR Laws.

- Intentionally Omitted -

4.1.13 CONFIDENTIALLY AND INTELLECTUAL PROPERTY

The information in this TOR Document is considered to be the confidential by HPC. The implementers shall use the information only as it pertains to complete the Bid Proposal and MUST not disclose to any third party without the written consent by the Employer.

All Bidders shall treat the TOR Document as confidential and shall be circulated to as few persons and other organizations as possible compatible with the Bidder's ability to submit the best commercial Bidder Sum.

The Bidders shall keep confidential all documents, drawings and other information supplied by HPC as marked "**Confidentiality**" and shall not disclose such information or items to a third party except as may be required by law or for the proper execution of the work.

Ultimately the conditions shall survive the termination or expiration of the TOR Documents.

- Intentionally Omitted -

4.1.14 CONTACT PERSON

The following HPC personnel shall be the point of contact for any queries relating to the commercial and technical part of the TOR Document during the bidding stage.

Contact Person (Commercial):
Ms. Rada Charadram
(Section Manager- Non-Technical
Procurement)
E-mail: rada_c@hongsapower.com

Contact Person (Technical):
Mr. Attachai Thitipaisan
(Division Manager- Procurement)
E-mail: Attachai_t@hongsapower.com

- Intentionally Omitted -

4.1.15 SITE VISIT

N/A

- Intentionally Omitted -

4.1.16 KEY PERSONNEL

N/A

- Intentionally Omitted -

4.1.17 HPC'S GENERAL OBLIGATIONS

N/A

- Intentionally Omitted -

4.1.18 BIDDER'S GENERAL OBLIGATIONS

- The successful bidder shall comply with HPC regulation such as site permit to work, SHE training and any other specified in the Schedule I ,at its own cost.

- Intentionally Omitted -

4.1.19 TENTATIVE BIDDING SCHEDULE

HPC shall endeavor to adhere to the following schedule:

No.	Event Description	Estimated Date
1	TOR Document issuance	May-June 2022
2	Q&A close date	1-8 July 2022
3	Site visit	N/A
4	Addenda/Amendments	10 July 2022
5	Bid Proposal Submission	15 July 2022
6	Technical Review	15-20 July 2022
6	Bid examination and negotiation	20-25 July 2022
7	Bidder Award	25-31 July 2022
8	Contract preparation and Negotiation	1-15 August 2022

Remark:

- HPC, at its discretion retains right, but is not obligated, to extend the Bid Submission Date by issuing the corrigendum.
- This timetable may be varied upon HPC's discretion.

- Intentionally Omitted -

4.1.20 TAX AND DULY PROVISION

Tax Privilege and Tax Liabilities

No.	Lao Taxes	Privileges Granted
1	Corporate Income Taxes	The successful Bidder shall be responsible for paying any applicable Corporate Income Taxes is required under the laws of Lao PDR.
2	Business Turnover Tax	Exempted for all non-Lao domiciled the successful Bidder and Subcontractors.
3	Value Added Tax	<p>The following items will attract a 0% VAT rate for all non-Lao domiciled the successful Bidder and Subcontractors:</p> <ul style="list-style-type: none"> a) all goods, equipment, machinery, materials and services provided to HPC relating to the operation of the Project (excluding consumer goods and foods, fuel, diesel oil and petroleum-based products); and b) all spare parts, chemicals, lubricants and other similar consumables imported into the Lao PDR by the successful Bidder or Subcontractors in the name of HPC for use in connection with the Project. <p>Please note that the 0% VAT rate does not apply to goods and services procure from suppliers in Lao PDR.</p>
4	Imported Duties and Taxes	<p><u>Goods, Equipment, Machinery, Materials and Services</u> All goods, equipment, machinery, materials and services imported by or provided to HPC relating to the construction and operation of the Project (including all chemicals, lubricants, explosive and other consumables (but excluding for the avoidance of doubt consumer goods and foods) used by the Project) shall be fully exempted from import duties and taxes.</p> <p><u>Steel Rebar and Cement</u> There are no import duties on steel rebar and cement so long as such items are not available in Lao PDR based on quality, quantity, or price competitiveness.</p> <p><u>Fuel</u> During the Operation Period, there is no exemption from import taxes and duties and the successful Bidder and Subcontractors must pay all customary taxes on imported fuel, diesel oil, and petroleum-based products.</p> <p><u>Spare Parts</u> All spare parts, chemicals, lubricants and other similar consumables imported into the Lao PDR by the HPC or any of its bidders or Subcontractors in the HPC's name for use in connection with the Project shall be</p>

No.	Lao Taxes	Privileges Granted
		<p>exempted from import duties and taxes and all other government duties and taxes payable under Lao PDR Law.</p> <p><u>Trucks and Construction Vehicles</u> All trucks and construction vehicles (including construction equipment, cranes, heavy lifting equipment, pick-up trucks, and dump trucks) purchased or leased by or on behalf of HPC, and registered in the name of, and bearing a license plate or tag issued to HPC or Mining Company are exempted from applicable import duties.</p> <p><u>Passenger Vehicles</u> All sedans and passenger vehicles purchased or leased by the successful Bidder or Subcontractors, and registered in the name of, and bearing a license plate or tag issue to, HPC, and used in connection with the Project will be subject to an import tax of one percent (1%).</p> <p>Any truck or vehicle that is not registered to HPC or which does not bear the appropriate license plates or tags will be fully subject to applicable import taxes and no exemption will apply.</p> <p>Note: There will be no tax exemption on fuel of office vehicles (passenger sedans and other vehicles not used at the construction site for construction activities) during construction and operation period.</p>

- Intentionally Omitted -

4.1.21 ACCEPTANCE OF DELIVERABLES

N/A

- Intentionally Omitted -

4.1.22 COVID-19 PREVENTION MEASURES

The successful Bidder shall strictly comply with COVID-19 prevention measures as stipulated by Lao Government, Hongsa District and HPC's policies while the successful Bidder including its personnel or agents staying and/or performance of the works in Hongsa Site.

the successful Bidder has acknowledged itself through this covid-19 pandemic crisis, which shall not release the Bidder to the fullest extent the Bidder's provision under the purchase agreement contributed to the covid-19 pandemic crisis.

For avoidance of doubt, in no event shall the Bidder's delay or failure to perform in accordance with the purchase agreement in which is caused by foreseeable event on the date of the submission of the proposal, including but not limited to covid-19 pandemic crisis, will be claimable as impracticable performance and deemed as force majeure. The Bidder shall use, at its own cost and expense, all reasonable efforts to remedy its inability to perform and to resume full performance hereunder as soon as practicable.

- Intentionally Omitted -

4.1.23 TOR DOCUMENT DISCREPANCY

In any event of any discrepancy, the documents to prevail shall be given precedence in the following order: (i) the Part I of this TOR: General Terms, (ii) the Part II of this TOR, the Work Quality and Specification, (iii) the Schedule to this TOR, and (iv) the Bid Proposal (Annex of this TOR) ;

- Intentionally Omitted -

4.2 PART II WORK QUALITY AND SPECIFICATION

N/A

4.2.1 HPC'S PRATICULAR OBLIGATIONS

N/A

4.2.2 BIDDER/CONTRACTOR'S PARTICULAR OBLIGATIONS

N/A

ANNEX I Price Bid Form

Please see in one drive.

ANNEX II Technical Bid Form (Please see in one drive)

N/A

ANNEX III Commercial Bid Form

Please see in one drive

ANNEX IV Documentation Report Form

N/A

ANNEX V Bidder Experience

N/A

Schedule 1: CA REQUIREMENTS AND COMPLIANCES

CONCESSION AGREEMENT

Please see in one drive

SCHEDULE 2: General Conditions of Contract for Procurement of Goods

Clause 1: Definitions

“**Acceptance Letter**” means a written letter of HPC signed by its consent person and approval person as an evidence that the Goods has been delivered, duly received, and met the specifications in all respect as set forth in the Contract;

“**Applicable Incoterms**” means the Incoterms® 2010 or 2020 which shall be applied to this procurement of the Goods as stated in ‘Delivery Term’ field of the PO;

“**Contract**” means the contract of the Parties relating to this procurement of the Goods consisting this present General Conditions of Contract for Procurement of the Goods, PO, Quotation, TOR (if any), amendment (if any), and all attachments incorporated by referenced, which shall form an integral part of Contract. *In any event of any discrepancy*, the documents to prevail shall be given precedence in the following order: (i) the PO, (ii) the General Condition of Contract for Procurement of Goods, (iii) the TOR, (iv) the Quotation, and (v) the other attachment of this Contract agreed by both Parties;

“**Delivery Address**” means the location(s) or place(s) where the Goods shall be delivered to, according to Applicable Incoterms, as specified in the ‘Delivery Address’ field of the PO;

“**Delivery Date**” means the latest possible date of which the Goods or each partial Goods shall be delivered by the Vendor to the Delivery Address as specified in the ‘Delivery Date’ field of the PO;

“**Force Majeure**” means any event having chance to incur or to cause disaster, and that event is beyond the ability to prevent its effect by any person who has to face or nearly face with that event, notwithstanding that reasonable care as might be expected by any person under such conditions and situations would have been exercised;

“**Goods**” means all of the goods to be supplied to HPC under the Contract;

“**HPC**” means Hongsa Power Company Limited;

“**Incoterms® 2010**” means the International Commercial Terms published by International Chamber of Commerce (ICC) in the year of 2010;

“**Parties**” means HPC and the Vendor;

“**Party**” means HPC or the Vendor, as it is applicable;

“**Quotation**” means formal statement of promise submitted by the Vendor to supply the Goods including related services (if any) describing the specification of the Goods as attached herewith;

“**TOR**” means the documents issued by HPC describing the conditions and requirements of the Goods which HPC requires as attached herewith, no matter that its head title stated as the term of reference or not; and

“**Vendor**” means the person or entity named in the ‘Vendor’ field of the PO.

Clause 2: Scope of this conditions

This General Conditions of Contract for Procurement of Goods shall be only applied to all procurement of the Goods which HPC agrees to make to Vendor. Therefore, the Vendor has obligations to procure, supply, test, and deliver the Goods having the specification and requirement as agreed to HPC at the Delivery Address on or before the Delivery Date.

No any conflicting, contrary or additional term shall be deemed to be accepted by HPC unless HPC expressly agrees in writing.

Clause 3: Delivery and Shipment

Unless otherwise agreed in writing by the Parties, the risk, right and responsibility of each Party under the Contract shall be in accordance with Applicable Incoterms. Vendor shall deliver the Goods to the Delivery Address no later than the Delivery Date in accordance with the conditions and period hereunder as evidenced by the Acceptance Letter.

The partial shipment shall not be allowed unless HPC agrees with in writing.

Clause 4: Packing

Unless otherwise instructed by HPC, the packing of the Goods shall be in accordance with the normal practice of Vendor; provided that Vendor warrants that it shall use its best effort and in good industry practice to pack the Goods as the reasonable and suitable standard.

Clause 5: Title of the Goods

The Goods shall be delivered free of any third party’s rights and passed to HPC upon the actual delivery at the Delivery Address and accepted by HPC in accordance with Clause 8.

Clause 6: Contract Price and Condition of payment

- a) Subject to the Applicable Incoterms, the contract price stated in PO is inclusive of all costs and expenses that HPC is obligated to pay to Vendor in consideration of the procurement and supply of the Goods to the Delivery Address. The price of the Goods shall be as stated in the PO and shall not be increased except with the express written consent of HPC.
- b) Unless stated otherwise in PO, the payment term shall be a single payment payable in full price made upon the issuance of the Acceptance Letter.
- c) Each payment shall be payable within thirty (30) days conditional upon HPC received the undisputed invoice and the issuance of the Acceptance Letter.
- d) Each invoice shall be marked as HPC’s address, telephone and facsimile number, and attention to Managing Director of Hongsa Power Company Limited.
- e) Each invoice shall be submitted to one or the other following addresses:
 - Hongsa Power Company Limited (Head Office)
 - NNN Building, 4th Floor, Room No. D5, Boulichan Road, Phonsinouan Village, Sisattanak District, Vientiane Capital, Lao PDR; or
 - Hongsa Power Company Limited (Representative Office)
 - 3/37-38 Woravichai Road, Nai-Wiang District, Muang Nan, Nan Province 55000 Thailand; or
 - Hongsa Power Company Limited (Site Office)
 - Phonchan Office, Phonchan Village, Hongsa District, Xayabouly Province, Lao PDR
 - Attention to name of the Requestor stated in the PO.
 - Telephone number: +66(0) 54 775 869, 775 894.
- f) Each Party shall be responsible for any bank, government, and other charges at its own side.

Clause 7: Test

Unless agreed otherwise in writing by the Parties, the condition of the test of the Goods shall be in accordance with TOR. Vendor obligates to provide, no additional charge, the test certificate or any other document which warrants the test result of the Goods.

Where there is no any particular certificate or document stated in TOR, Vendor obligates, no additional charges, to provide the

standard certificate or document to confirm the specification, quality and or test result of the Goods.

Notwithstanding, any nominated person by HPC for joining any test shall be a witness, not an inspector. Such person shall have no any responsibility to assist or support the Vendor for the tests. The Vendor acknowledges that despite of the nomination of HPC's personnel or third party as a witness of the test, the Vendor shall not be released from its obligations under the Contract such as defect, transfer of the ownership, any delay, liquidated damages, and warranty obligation, etc.

Clause 8: Acceptance of the Goods

The Goods shall be deemed to be accepted by HPC conditional upon the issuance of the Acceptance Letter. Such letter shall be issued within seven (7) days without any unreasonably withheld conditional upon, respectively:

- (a) The performance of the condition in Clause 7 (if any);
- (b) HPC checks and inspects the Goods at the Delivery Address; and
- (c) Such Goods are in compliance with any requirement and specification set forth under the Contract.

Clause 9: Warranty

Unless stated otherwise in PO, Vendor warrants to HPC, notwithstanding such Goods manufactured by Vendor or not, that the Goods shall be free from defect in materials and workmanship within twelve (12) months from the date of delivery as stated in the Acceptance Letter. Vendor has an obligation to provide HPC the warranty certificate and claims policy of the Goods, or Vendor's document clearly stated the warranty condition and claim policy of the Goods.

Clause 10: Insurance

Subject to the Applicable Incoterms, the Vendor has to provide the property insurance for the Goods at its costs and expenses with the reputable and financially sound insurer.

Unless otherwise instructed by HPC, the property insurance policy to be provided by Vendor shall be in accordance with the Institute Cargo Clause A (all risk) and shall cover, at a minimum, the contract price plus ten (10) per cent (i.e. 110%) in the currency of this Contract.

Clause 11: Set-off

HPC shall be entitled to set off against any sum payable by HPC to Vendor:

- (a) any debt or other money due from Vendor to HPC; and
- (b) any claims for money which HPC may have against Vendor whether for damages (including liquidated damages) or otherwise.

Clause 12: Liquidated Damages

If the Goods are not delivered to the Delivery Address on the Delivery Date as evidenced by the Acceptance Letter, Vendor agrees to pay to HPC the delay liquidated damages in daily rate of zero point one (0.1) percent of the total price of the undelivered Goods for each day of delay. However, the total delay liquidated damages payable by Vendor under the Contract shall not exceed a maximum amount of ten (10) percent of the contract price.

Nonetheless, in case the Vendor fails to deliver the Goods within the agreed Delivery Date, HPC allows a grace period of ten (15) days free of the liquidated damages; provided that the Vendor has to obligate to inform HPC such failure in advance prior the Delivery Date at least seven (7) days. Notwithstanding, after such period, the Vendor will be charged with a liquidated damages of such ten (15) days instantly.

Clause 13: Indemnity

Vendor shall indemnify including defence and hold harmless, HPC for any and all liabilities, claims, losses, damages, costs and expenses of any kind (including without limitation reasonable attorney fees and court costs) incurred by (a) any of them relating to or arising out of any breach of Contract by Vendor, its personnel or its subcontractor; (b) any actual or alleged patent, trademark or copyright infringement or violation of other proprietary right or other litigation or threatened litigation of any kind in connection with any of the Goods; (c) any actual or alleged injury to persons (including death) or property resulting from the contemplated or foreseeable handling or use of the goods; and (d) any other negligence, willful misconduct or other wrongdoing by Vendor.

Clause 14: Termination

If Vendor is in breach of any obligation under the Contract and such breach is not remedied within seven (7) days following the receipt of the notice given by HPC, HPC may terminate the Contract, which shall take effect from the date of a further notice advising Vendor of such termination. Vendor shall, subject to Clause 15, indemnify HPC against all actual damages, costs, expenses, charges, penalties and liabilities of any kind incurred by HPC as a result of or in connection with the breach by Vendor.

Moreover, if Vendor fails to deliver the Goods to the Delivery Address within the Delivery Date by the date on which HPC has become entitled to the maximum amount of the delay liquidated damages, or Vendor becomes bankruptcy or insolvency including winding up or receiving any order in bankruptcy, HPC may terminate the Contract with immediate effect. This condition shall not prejudice any rights that HPC has under the Applicable Laws.

Clause 15: Force Majeure

Neither Party shall be liable for any failure to perform its obligations under the Contract to the extent that such failure is caused by Force Majeure; provided that such affected Party must inform other Party in writing within seven (7) days from the date that the affected Party becomes aware or should become aware of such Force Majeure. If the affected Party fails to do so, no any extension of time in connection with such Force Majeure shall be allowed.

If the Force Majeure continues for a period of thirty (30) consecutive days or more, then either Party may terminate the Contract upon giving the other Party written notice of termination. The termination shall be without prejudice to the accrued rights of the Parties.

Clause 16: Notice

Where any notice is to be given to Vendor under the Contract, such notice shall be submitted to the address and to the person stated in the PO; provided that Vendor hereby confirms that such address is affirmed and such person is authorized as a legal representative of Vendor. The Vendor obligates to provide HPC an evidence of such legal representative such as recent power of attorney, and/or registered company certificate, prior the entering into the Contract.

Where any notice is to be given to HPC under the Contract, such notice shall be submitted to the address and to the person as stated in 'Managing Director' field in PO; provided that HPC hereby confirms that such address is affirmed, and such person is a legal representative of HPC.

Clause 17: Advance payment bond

Unless otherwise stated in the PO, when the Vendor requests HPC for the advance payment, the Vendor is obligated to arrange and deliver the advance payment bond in an amount equivalent to the advance payment to secure its obligations under the Contract. Such bond shall be arranged having the standard conditions as

follows:

- a) Expressly stating that the guarantor shall be liable in the same manner as a joint debtor or being as a joint debtor.
- b) HPC has its right to draw under each security any number of time but not exceeding than the security amount as specified thereunder and within a validity period.
- c) The guarantor must make payment in the same currency as agreed under each contract, to the HPC's designated account within five (5) business days after receiving HPC's demand; provided that HPC and Vendor shall be responsible for any charges, fees, expenses and taxes in relation to such security drawing levied by their own side.
- d) Validity period of bond:
 - upon return of the original security document to the guarantor; or
 - the guarantor receives written confirmation from HPC, as the beneficiary, to release the guarantor from liability under the relevant security in a legally binding manner; or
- specified calendar date which is not sooner than one month after the date of issuance of the Acceptance Letter **whichever is sooner.**
- upon the aforementioned conditions, the guarantor shall not revoke such security during the validity period. In order to be valid, any demand made thereunder must reach the guarantor on or before the expiry date of the validity period; the guarantor shall hold no responsibility or obligation whatsoever for any demand made thereafter.
- e) Willingly agreeing to the extension of the Validity Period, if required by HPC with reasonable causes, Vendor is responsible to inform the guarantor;
- f) The advance payment bond shall be governed by Thai laws.

In the event that bond is issued with a fixed expiry date and such expiry date may occur prior to the end of the period of cover to be provided in the relevant bond, Vendor shall ensure that the expiry date under the applicable bond is extended to the end of relevant period or deliver a replacement bond to cover such period.

Such extended or replacement bond shall be duly executed and delivered to HPC no later than thirty (30) days before the relevant expiry date. Any expiry date under the bond or an extension or replacement thereof shall be without prejudice to existing claim made under such bond.

If Vendor fails to provide an extension to the bond or replacement bond, HPC shall be entitled to draw down the full amount of available amount outstanding under such bond and to hold the funds drawn down as a security for compliance by Vendor with its obligations and liabilities under this Agreement.

HPC shall be entitled to make deduction against the amounts so held in respect of any claim for which it would have been entitled to call against such extended or replacement bond, the remaining balance of such amounts so held shall be returned to Vendor following the end of the relevant period of cover to be provided in the relevant bond.

All fees, taxes and expenses associated with the procuring, establishing, comparing, completing, maintaining, replacing, amending and stamping (if applicable) each of the bond shall be borne by Vendor.

Clause 18: Tax and duties

HPC being the importer will have to provide Vendor with the official documents issued by the government to beneficiary of eventual tax exemption before shipment of the Goods or to settle the import taxes when needed.

Except the exemption of tax privilege granted by the government of Lao PDR to HPC, Vendor shall be responsible for any costs and expenses related to the supply of the Goods subject to the Applicable Incoterms.

Claim 19: Claim

Subject to Clause 15, if each Party considers itself to be entitled to any additional payment, or extension of time, or obligation hereunder or in connection with this Contract, such Party shall give a written notice to the other Party describing the event, circumstance giving the rise of the claim as soon as possible; however, no later than fourteen (14) days after the affected Party became aware, or should have become aware of any event. The other Party shall consider that such claim and reply the determination no later than four (14) days after the receiving of the claim notice.

It is expressly stated here that other Party shall have a right to request the affected Party to provide the complete and thorough details of such claims.

If the affected Party fails to do so, no any additional payment or extension of time shall be allowed, and the other Party shall be discharged from all liability in connection with such claim.

Clause 20: Settlement of disputes

Where any dispute arises under the Contract between the Parties, the dispute shall be notified in writing to the other Party. Within seven (7) days of the date of the notification, which shall contain details of the dispute, the Parties shall negotiate in good faith to resolve the dispute to their mutual satisfaction. Any resolution of the dispute shall be recorded in writing and signed by the Parties and shall be final and binding.

If the Parties fail to settle the dispute amicably within thirty (30) days from the date which the Parties commence the negotiation, such dispute shall be settled through the arbitration proceeding to be conducted at Thai Arbitration Institute in Thailand according to the recent Thai Arbitration Rules, or any other place and rule as agreed by the Parties. Unless agreed otherwise by the Parties, the language used in the proceeding shall be in English.

Amount of the Arbitral tribunal:

- a) In case that the contract price does not exceed than THB 3,400,000 or USD 100,000, the arbitral tribunal shall consist of one (1) arbitrators appointed in accordance with the conditions of the Thai Arbitration Rules; or
- b) In case that the contract price exceeds than THB 3,400,000 or USD 100,000, the arbitral tribunal shall consist of three (3) arbitrators. Each Party shall appoint one arbitrator. The two arbitrators so appointed shall, in turn, appoint the third arbitrator who shall serve as the chairman of the arbitral tribunal. If a Party fails to appoint its arbitrator within a period of twenty (20) days after receiving notice of the arbitration, or if the two arbitrators appointed cannot agree on the third arbitrator within a period of fifteen (15) days after appointment of the second arbitrator, then such arbitrator shall be appointed pursuant to the procedures of the Thai Arbitration Rules.

The Parties hereby expressly agree that the arbitrator's award shall be final and binding upon them and that the judgment upon the award may be entered into any court having jurisdiction thereof.

Notwithstanding the existence of any dispute each Party shall at all times proceed diligently with the performance of its obligations under the Contract.

Moreover, each Party shall bear its costs and expenses incurred with the arbitration, including solicitors' fees. The Parties shall also share equally the arbitrators' fees and expenses provided, however, that the arbitrators may provide for alternative

allocation of such expenses to a Party if the arbitrators determine in writing that such Party's position was not taken in good faith.

Clause 21: Independent Vendor

The Parties acknowledge that Vendor is an independent supplier and in the business of supplying the Goods and is not for any purpose a partner, employee, agent or representative of HPC. Vendor shall not be entitled to bind HPC or pledge the credit of HPC. Nor shall Vendor be entitled to collect or to pay money on behalf of HPC unless expressly authorized by HPC to do so.

Clause 22: Severability

In the event that any provision of the Contract is void, invalid or unenforceable by law, both Parties agree that such provision shall not affect the validity of any other provision of the Contract.

Clause 23: Consequential damages

Neither Party shall be liable to the other Party for any indirect, incidental, consequential nor punitive damages as a result of the performance or nonperformance of its obligations imposed pursuant to the Contract.

Clause 24: Assignment and subcontracting

None of the rights and/or obligations accruing hereunder may be assigned, subcontracted or otherwise divested by Vendor without HPC's prior written consent. Any such consent shall not relieve Vendor from any liability or obligation under the Contract and Vendor shall be responsible for the acts, defaults and negligence of its subcontractors, agents, representatives or workmen as fully as if they were the acts, defaults or negligence of Vendor itself.

Clause 25: Amendment

No amendment, alteration or modification to the Contract will be effective unless it is in writing and signed by both Parties.

Clause 26: Governing Law and Language

The Contract shall be governed by and construed in accordance with laws of Thailand. Any document or notice made under the Contract shall be made in English.
