

# **TERMS OF REFERENCE (TOR)**

**of**

## **Customs Clearance Formalities and Inland Transportation Services in Laos**

## Customs clearance formalities and inland transportation services in Laos

### 1. BACKGROUND

Hongsa Power Co., Ltd (HPC) has operated Power Plant in Hongsa District, Xayaboury Province, Lao PDR. HPC has purchased spare parts and materials from Thailand and China then process transportation and custom clearance to Lao PDR by hire customs broker to handle this process.

### 2. OBJECTIVE

HPC would like to hire customs broker to process customs clearance formalities (both import and re-export) included of transportation service at (Nam Nguen, Borten, Wattay Airport, Udomxai, Laung Prabang and Tha Nalaeng) Lao border as identify by HPC.

### 3. PRICE AGREEMENT DURATION

3 years, period during 1 January 2026 to 31 December 2028.

### 4. SCOPE OF WORK

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

- 4.1 Perform customs clearance formalities and inland transportation services as identify by HPC. which separate as follows.
  - 4.1.1 Import and re-export by regular process.
    - HPC will inform customs clearance formalities in advance 3 days for import and 2 days for re-export.
  - 4.1.2 Import and re-export by emergency process.
    - HPC will inform emergency customs clearance formalities and transportation plan immediately or in advance 1 day.
- 4.2 Transportation services and customs clearance formalities shall be cleared correctly and in timely manner to avoid any potential delays or cost and keep inform HPC for any unpredictable events that will affect to the delay and cost of process as follow.
  - IM-EX documents (Import-Export) must be submitted to HPC 2 working days in advance before the shipment arrival.
  - The customs broker shall inform any progress of customs clearance formalities to HPC such as document issued, tariff code, inspection and release issued.
- 4.3 The customs broker shall submit the completed import/export documents after finish customs process to HPC as following.
  - Soft file: every Friday
  - Original: every Saturday
- 4.4 Relevant shipment information update to HPC such as cargo inspection and release status.
- 4.5 Cash Advance Management for Import Tax
  - HPC will provide the cash advance for import tax, statistic fee and NSWA+Fee with proper amount for the shipment under the incoterms responsible by HPC.
  - After the cash advance is utilized for import tax, statistic fee and NSWA+Fee the customs broker shall process weekly for the cash advance clearance with the complete evidence.

## 5 THE CUSTOMS BROKER'S OBLIGATION

### 5.1 Manpower

- a) The customs broker shall be responsible for supply and provision manpower, either its own employees or subcontractor, sufficient for perform and accomplish the Work itself. The customs broker shall ensure that its manpower is suitably skilled, qualified, and experienced for the Work.
- b) The customs broker shall be solely and exclusively liable and responsible for any and all such customs broker's liabilities and obligations in relation to such manpower.
- c) The customs broker shall be responsible for manpower compliance with any applicable laws and regulation at its own costs and expenses.
- d) The customs broker shall be responsible for ensuring compliance with any laws and regulations in relation to health, safety, and environment, any standard which HPC obtains such as ISO including HPC's rules and regulation related thereto. The customs broker shall ensure that working conditions and the working environment at the Site complies with all such rules and regulations.
- e) At the request of HPC, the customs broker will promptly replace any members of its staff or any other of its representatives who are unacceptable to HPC and replace them with someone satisfactory to HPC.
- f) In event that the Parties agree to appoint the key personnel according to the conditions and requirements stated in TOR to perform the Work hereunder, such person shall not be changed or replaced until the customs broker receives a written consent from HPC.
- g) In any event, the customs broker shall promptly provide HPC any document or information related to its manpower such as work experience, organization chart, personal information, etc.

### 5.2 Vehicles, Equipment, Tools, and Utilities

- a) The customs broker shall solely be responsible for providing all utilities for the completion of the Work itself.
- b) The customs broker shall ensure that all vehicles supplied or used by it are of good quality, free of defects, free and clear of any liens are suitable for the purposes for which they are intended, and conform to any agreed, good, and suitable standards and specifications as well as applicable law.

### 5.3 Work

- a) The customs broker is bound to allow HPC to inspect the Work during its progress.
- b) The customs broker cannot have part, or all of works carried out by its subcontractor except receiving the written consent from HPC. However, in case that HPC allows to do so, the customs broker shall remain liable for any act or fault of the subcontractor.
- c) The customs broker shall keep HPC informed of all update work progress and shall promptly notify HPC of any matter that may or will change the scope, cost and/or timing of the Work.
- d) In case that the customs broker considers that the information, documents and/or other particulars made available to it by HPC are not sufficient to enable the customs broker to perform the Work in the manner and to the standard required, it shall promptly advise HPC of the nature of the deficiency. HPC will provide such further information, documents and/or other particulars as are reasonably necessary in the circumstances. When the Work is complete and/or HPC requests for such information or documents, the customs broker shall promptly return to HPC all information received, including any memos and notes and softcopy thereof.
- e) HPC Master List Privilege shall be applied to HPC or the Contractor under Hongsa Mine Mouth Power Plant Project only, not allow to apply or use for another project.
- f) In case that the customs broker breach of obligation in clause 5.3 e, HPC reserves the right to
  - Terminate the service agreement without any notice in advance.
  - Prosecution shall be raised for this issued.

- g). The customs broker must be authorized by HPC to coordinate regarding import-export proceeding with GOL relevant.

## **6 SITE VISIT**

N/A

## **7 CUSTOMS BROKER'S QUALIFICATION**

The customs broker must have experience and qualification as following.

- 7.1 Shall have experience in customs clearance formalities Lao PDR at least 1 year.
- 7.2 Shall have relevant academic qualification in the field of customs laws and regulation in Lao PDR.
- 7.3 Shall have valid license for the activity of the customs broker issued in Lao PDR.
- 7.4 Shall provide sufficient staffs who is adequately qualified to fully perform the scope of work under this TOR.
- 7.5 Shall be a juristic person and be duly and legally incorporated in Lao PDR.
- 7.6 Not being a bankrupt or liquidated.
- 7.7 Never breach of contract or work with HPC or HPC's customs broker.
- 7.8 Not having mutual benefits with other customs brokers submitting proposals to HPC or not being an offender fair competition in this tender.
- 7.9 The customs broker and its assigned experts shall have no business, financial, personal, or other interest in HPC activities, the project or any activities related thereto.
- 7.10 Shall have the field office at Nam Nguen border.
- 7.11 Shall register to be in customs broker list of Ministry of Finance of Lao PDR as per the Lao PDR announcement.
- 7.12 Shall provide the security deposit with amount 500,000,000 Lak to the Bank of Lao PDR and register the certificated of security deposit to the Customs Department, Ministry of Finance of Lao PDR.

## **8 SECURITY AND WARRANTY**

Any and all Security shall be issued from a reliable and reputable bank or financial situation acceptable to HPC in its respective standard form in order to ensure and secure the due execution, proper performance, and fulfillment of obligations under each contract with the minimum conditions and requirements as follows:

### **8.1 BID BOND**

N/A

### **8.2 ADVANCE PAYMENT BOND**

3 Years

### **8.3 PERFORMANCE SECURITY MONEY**

The custom broker shall submit performance bond at the amount of LAK 2,500,0000,000 to warrant their performance among the contract period (3 years) before the contract sign.

### **8.4 INSURANCE**

N/A

## **9 PAYMENT**

### **9.1 The terms of payment will upon on the milestones as below.**

HPC shall pay to the customs broker by actual work done of each service.

## 9.2 Payment condition

- a) If an invoice is submitted to the Employer 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 or the work performed or goods procured is not in compliance with the requirements provided under the Agreement, the customs broker could be entitled to receive the payment on the same due date only on the conditions that such invoice is revised to the Employer'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 the Employer within the date of 15 of such month.

- b) If an invoice is submitted to the Employer 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 or the work performed or goods procured is not in compliance with the requirements provided under the Agreement, the customs broker could be entitled to receive the payment on the same due date only on the conditions that such invoice is revised to the Employer'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 the Employer within the end of such month.

## 10 TOR'S DOCUMENT

- Part I: General and Technical documents
- Part II: Commercial document

The customs broker shall submit the following documents with quotation, but not limited to:

### 10.1 GENERAL AND TECHNICAL PROPOSAL

- 10.1.1 Company profile (experience).
- 10.1.2 Project Organization chart (Position and responsibility) for supporting to this work.
- 10.1.3 Valid license for the activity of the customs broker issued in Laos.
- 10.1.4 Copy of Tax Certificate/ Tax ID Certificate.
- 10.1.5 Copy of company affidavit/ Company Enterprise Registration Certification.
- 10.1.6 Power of Attorney (if any).
- 10.1.7 Safety, Occupational Health and Environmental Practice.

### 10.2 COMMERCIAL PROPOSAL

Shall be broken down based on appropriate assumption and composed with total contract price in LAK. The customs broker shall submit price in Price Table format (Annex I) which provided by HPC.

## 11 SUBMISSION OF PROPOSAL

Customs broker's proposal shall be submitted to HPC in 2 sealed envelopes, each envelope shall contain separately proposal specified as below.

- a) Sealed envelopes 1 - contain of completed filled part 1 General and Technical Proposal
- b) Sealed envelopes 2 - contain of completed filled part 2 Commercial Proposal.

Shall be addressed to HPC's office at the address as specified in clause 25 that no later than 05.00 p.m. local time on the date of 31 May 2025 for further selection is required all expenses would be responsible by own customs broker's Company.

## **12 VALIDITY OF PROPOSAL**

The proposal shall remain valid for a period of 120 days from the date of the submission of the proposal.

## **13 ACCEPTANCE AND REJECTION OF PROPOSAL**

The HPC reserves the right, at its sole discretion, to accept the Proposal which in its judgment is the most responsive and best Proposal, to reject any or all Proposals, and to waive minor irregularities and informalities in any Proposal submitted.

The HPC will reject any Proposal which, in his judgment, is non-responsive. The HPC will not be bound to award a contract to the Supplier who has submitted a Proposal indicating the lowest price but will take into account all evaluating factors and other factors such as compliance with the TOR Documents, technical and financial qualification, and capability of the Supplier to execute the Works promptly and vigorously in such manner as to secure delivery and/or completion within the time specified.

## **14 ACCEPTANCE OF WORK**

The customs broker will complete work after deliver cargo to destination point and HPC's authorized person sign on receiving documents.

## **15 LIQUIDATED DAMAGES:**

### **15.1 DELAY LIQUIDATED DAMAGES:**

Where any part of the Work is not complete within the Scheduled Completion Date, the customs broker hereby agrees to pay HPC the delay liquidated damages in daily rate in an amount of 10 percent of the total contract price for each day of delay from standard time as agreement between HPC and the customs broker.

### **15.2 OTHERS**

- a) In the event of the customs broker does not perform in compliance with rules and/or regulations of the Employer, the Employer is entitled but not obligated to verbally instruct the customs broker to rectify such non-compliance performance. Provided that the customs broker does not 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 customs broker does not perform in compliance with this sub-clause, the customs broker shall be imposed liquidated damages subject to clause 15.1.

## **16 SET-OFF**

HPC shall be entitled to set off against any sum payable by HPC to the customs broker:

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

## **17 TAXES**

- 17.1) Where the customs broker is a corporate or individual of the Lao PDR, HPC shall, in accordance with the applicable taxation law, withhold all applicable taxes at the ruling rate from

all payments to the customs broker, remit the amount withheld to the applicable tax office for the customs broker's account and forward the appropriate receipt to the customs broker.

**17.2)** Where the customs broker is not a corporate or individual of the country of HPC, the following provisions shall apply:

- a) If the customs broker have a permanent establishment in the Lao PDR for the performance of the Work, and can provide a tax certificate of domicile (or like), which is valid at the dates of the duration of the Contract, from the applicable tax office for the purpose for claiming exemption from the applicable withholding tax or reduction of the applicable withholding tax rate based on the prevailing tax treaty, HPC shall, in accordance with the applicable taxation law of the country of HPC, withhold all applicable taxes at the ruling rate from all payments to the customs broker, remit the amount withheld to the applicable tax office for the customs broker's account and forward the appropriate receipt to the customs broker.

If the customs broker claims for either exemption from the withholding tax or reduction of the withholding tax rate based on the prevailing tax treaty, a valid certificate of domicile shall be sent to HPC prior to payment.

- b) The withholding tax may not apply to the customs broker who represents and warrants that it does not have a permanent establishment in Lao PDR for the performance of the Work. Notwithstanding, the customs broker shall indemnify HPC for any damages, penalties, charges, fines, costs, and expenses (including legal fees) suffered by HPC as result of neither deducting nor withholding applicable taxes by HPC in reliance of the customs broker's representation and warranty hereinabove.
- c) The customs broker shall be responsible and liable for the payment of all taxes imposed on it in relation to the performance of Work under the Contract including the withholding tax for the income tax payable to its employees and the customs broker shall indemnify HPC for any claims or loss made from such failure.

## **18 VISA AND WORK PERMIT**

N/A

## **19 IMPORT/EXPORT MATERIALS, VEHICLE AND OTHER EQUIPMENT**

N/A

## **20 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 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.

## **21 CONFIDENTIALITY**

The customs broker 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. Where it is necessary for the customs broker to

provide such items to a third party the customs broker shall, prior to supply of the items, ensure that the third party has entered into a non-disclosure agreement with the customs broker in respect of the items. The customs broker shall not disclose any information or provision in this Contract to any third party without prior written approval of HPC. This condition shall survive the termination or expiration of the Contract.

## **22 INDEMNIFICATION**

Each Party agrees to indemnify and hold harmless the other Party, its officer, agents, sub-customs broker providers, customs brokers, employees, successors and assigns against any and all claims, losses, damages, liabilities, penalties, expenses, legal fees, and costs of any kind or amount whatsoever, which result from or arise out of any act or omission of the indemnifying party, its officer, agents, sub-customs brokers, customs brokers, employees, successors and assigns that occurs in connection with this Contract including bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Work and the remedying of any defects, unless attributable to any negligence, willful act or breach of the Contract by HPC. This condition shall survive the termination of this Contract.

## **23 CLAIM**

Subject to Clause 20 (FORCE MAJEURE), 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. It is expressly stated here that HPC shall have a right to request the Customs broker to provide the complete and thorough details of such claims.

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

## **24 ASSIGNMENT AND SUBCONTRACTING**

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

## **25 AUTHORIZED CONTACT OF HPC**

Ms. Phannipa Kiatbumrung/ Division Manager Procurement

Address 1: Hongsa Power Company Limited  
NNN Building 4th Floor/Room No. D5, Boulchan Road,  
Phonsinouan Village, Sisattanak District, Vientiane Capital, Lao PDR.

Address 2: Hongsa Power Company Limited  
Phonchanh Office, Hongsa Sub-district, Xayabouly District, Lao PDR.

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