The Management of The Public General Cargo Berth Project

Invitation To Tender

Present by

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13 September 2023

The Industrial Estate Authority of Thailand Announcement

Invitation to Tender

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Chapter 1 Introduction of Public Private Partnership Project

1.1 Project Background

The Industrial Estate Authority of Thailand (IEAT) has granted a concession to Thai Connectivity Terminal Company Limited (TCT) to manage a public general cargo berth in the Map Ta Phut Industrial Port area in which the concession expired on the 16th of September 2022. Therefore, the IEAT, as the project-handling agency has prepared this invitation to select private sector for partnership in the management of public general cargo berth. The public general cargo berth means a multi-purpose terminal that provides services for import/export of break bulk cargo, bulk cargo and domestic container cargo, along with providing services connecting to other ports within the country in accordance with the Public Private Partnership Act B.E. 2562 (2019) and the related legislation to present the project to the hierarchical authority for approval.

1.2 Project Aims and Objectives

1.2.1 To select private sector to invest in the management of public general cargo berth. The public general cargo berth means a multi-purpose terminal that provides services for import/export of break bulk cargo, bulk cargo and domestic container cargo, along with providing services connecting to other ports within the country.

1.2.2 To develop the country in accordance with the national policy "The 20 Year National Strategy Act".

1.2.3 To increase the capacity of the general cargo berth to support the demand for public general cargo berth from the expected growth in container volume in the future.

1.2.4 To increase the efficiency of operations and management of public general cargo berth by emphasizing on having the ability to support container loading and unloading with modern cargo handling equipment.

1.2.5 To support as a gateway for Thailand's industrial and trade development that connects with neighbor countries to enhance the country's competitiveness.

1.3 Scope of Work

In order to operate the project to meet the objectives as mentioned in 1.2, the private sector's scope of work shall be performed as follows.

1.3.1 Infrastructure

The private parties have duties and responsibilities to carry out these following tasks in accordance with the engineering standards.

1.3.1.1 Preparing project plan and completing the investment according to the proposed plan within the specified timeframe in which the project plan shall cover as follows.

1) Initial investment to develop the port management to support import/export of break bulk cargo, bulk cargo, and domestic container cargo, along with providing services connecting to other ports within the country by providing the necessary machinery and equipment to operate according to the cargo volume and container volume required, improvement of container yard construction, preparation of Environmental Impact Assessment Report (EIA Report) or Environmental and Health Impact Assessment (EHIA) which shall be conducted as required by the law in order to provide general and bulk cargo handling services on 2 berth with a capacity of 3,679,200 tons per year and container handling services on 1 berth with a capacity of 156,000 TEUs per year or 2,808,000 tons per year, with a total handling capacity of 6,487,200 tons per year with the investment value of no less than 1,221.31 Million Baht.

   The private sector has a duty to complete the initial investment work within 2 years starting from the date specified in Notice to Proceed (NTP).

2) Future investment for the maintenance of new assets, machinery, and lifting equipment that will be replaced over the service life with the present value at a discount rate of 3% with the investment value of no less than 1,036.68 Million Baht.

3) Other investment as the private sector deems appropriate and beneficial to the IEAT.

However, the designed conditions and standards along with the construction process and machinery used in the construction must be specified.

4) Business plan which consist of the following

- LOI/MOU from Shipper
- Crane Productivity Development Plan
- Traffic management plan within the project area
- Periodic Protective Maintenance Plan for main machinery and equipment
- Environmentally friendly port development plan (Green Port)

5) Annual Key Performance Indicator (Annual KPI), consisting of at least 4 main indicators as follows.

- Operation aspects of the business such as operating turnover and etc.
- Monitoring and examining the counter measures to prevent, correct, and reduce environmental impacts
- Environmental and safety management (Green Port)
- Maintenance of equipment and machinery
- Others

The total investment plan of the project must be worth not less than 2,257.99 Million Baht.

1.3.1.2 Preparing a plan to repair existing assets and proceed accordingly to the plan.

1) Building maintenance work within the terminal area of 49 – 3 – 70 Rai (79,880 square meters)
2) Maintenance work for 3 berth with a total length of approximately 480 meters.
3) Maintenance of existing assets consisting of land, buildings, warehouses, tools and equipment to be in accordance with the

standards set by the authority and to be in good condition and can be used to operate general cargo handling operations throughout the concession period including the existing assets mentioned in 1.3.1.2. 4) throughout the concession period.

4) Details of the existing assets are as follows

(1) Terminal Area of 49 – 3 – 70 Rai (79,880 square meters) Including any other area that can be used during the project life such of those located above, on, under, in or through such area, including constructions in the sea that are necessary to carry out the project

(2) Buildings

- Warehouse with an area of approximately 4,080 square meters
- General cargo warehouse with an area of approximately 75,000 square meters
- Berth TPT 1 and 2 (G01) accommodating ships of 60,000 DWT with a total berth length of 330 meters
- Berth TPT 3 (G02) accommodating ships of 25,000 DWT with a total berth length of 150 meters

(3) Equipment

- 26 Fenders
- 22 Bollards

1.3.1.3 Utilities system work

Survey design, analysis, testing, maintenance, and tackling obstacles affecting the project's utilities system. Prepare materials, equipment and perform any other utilities tasks within the project as permitted by the IEAT and the related activities including various demolition works or anything else that obstructs the project's objectives. Road work, water supply system, rainwater drainage system, flood protection system, wastewater collection, wastewater treatment system, solid waste disposal system, hazardous waste management system, electrical system, communication system, fire extinguishing system, and other related testing.

1.3.1.4 Renovation work or other related demolition work

Survey, design, demolish existing utilities in the project area, both temporary and permanent work, and the related tests. This includes coordinating and obtaining permission from relevant government agencies if any party's property is being demolished or moved.

1.3.1.5 Any other actions to meet the objectives of the project in accordance with clause 1.2

1.3.2 Operation system development work within the project area

System change or development of other facilities including software or various modern technologies necessary for general cargo berth operations.

1.3.3 General cargo berth operations

Private sectors have duties and responsibilities in general cargo handling operations, management development, and maintenance work including procurement and installation of the machinery and equipment system to replace deteriorated or damaged originals, including maintaining cleanliness and safety so that it can be used properly, safely, in accordance with international standards and carry out any other works in order to achieve the objectives of the project under clause 1.2 in order to ensure that the general cargo berth operations comply with the industry standards for general cargo berth operations.

1.4 Rights and Responsibilities of IEAT and Private Sector

The IEAT and the private sector agree to co-invest in the project using a joint investment model that requires the private sector to be responsible for the design, construction, financing work, operation tasks and maintenance work (Design-Build-Finance-Operation-Maintenance : DBFOM) under the scope of the project in which can be summarized as follows.

1.4.1 IEAT's rights and responsibilities

1.4.1.1 Responsible for the selection of private sector through bidding method in accordance with the specified project implementation plan in order for the general cargo berth to provide continuous service without causing damages to public services.

1.4.1.2 Have the duty to grant rights to jointly invest with the contracting parties in the project operation.

1.4.1.3 Responsible for preparing and delivering the project area including preparing, procuring and servicing shared utility systems as well as general services within the project along with installation of navigational marking equipment within the project area.

1.4.1.4 Has the right to accept the transfer of ownership of new assets as specified in clause 1.6

1.4.1.5 Obliged to adopt the integrity agreement in private selection for fairness and transparency in the selection process.

1.4.1.6 Obliged to use the best efforts to support the private sectors to coordinate in matters relating to business licenses and other matters with government agencies.

1.4.1.7 Have the right to receive fixed fees and financial benefits stated in the agreement contract.

1.4.1.8 Have a duty to supervise and monitor the contracting parties to comply with environmental impact prevention and mitigation measures.

1.4.1.9 Responsible for submitting Environmental Impact Assessment Report (EIA Report) or an Environmental and Health Impact Assessment (EHIA Report) as required by law and coordinating for any amendments to seek approval from the National Environment Board or relevant licensing agencies.

1.4.1.10 To perform other duties as specified in the Public-Private Partnership Agreement contract and related laws.

1.4.2 Private sector's rights and responsibilities

1.4.2.1 Responsible for the management and operation of the terminal by emphasizing on the ability to support the service as a multi-purpose terminal in accordance to the Public- Private Partnership Agreement contract and to carry out any other tasks as specified in the Public-Private Partnership Agreement to meet the project objectives throughout the concession period or until the investment contract expires before the concession period ends.

1.4.2.2 Responsible for developing the existing area to be suitable for serving as a multi-purposes terminal.

1.4.2.3 Responsible for developing the necessary infrastructure in the project such as tools and general cargo handling equipment and containers, improvement of hinterland area to support container yard, trucks to transport containers, etc. Including procurement of machinery and equipment related to the project in order to continuously provide services to customers according to quantity of products and service level (Service Level Agreement) as agreed.

1.4.2.4 Responsible for developing the project to be an environmentally friendly port (Green Port).

1.4.2.5 Have a duty to pay fixed fee and other financial benefits according to the Public-Private Partnership Agreement to IEAT.

1.4.2.6 Have a duty to raise funds in the amount equal to the amount required for investment and operation in the part of the private sector.

1.4.2.7 Responsible for acquiring licenses to operate various businesses in the project area.

1.4.2.8 Have the right to obtain investment support from the Board of Investment of Thailand (BOI) in cases of additional investment required in general cargo terminal. Terms and condition prescribed by the law of investment promotion.

1.4.2.9 Have a duty to maintain and repair the general cargo terminal including all assets and public utilities in the area within the scope of project in clause 1.3.1.2. 4) to be in good condition throughout the duration of the contract and on the delivery date as specified at the expense of the private sector. The private sector shall pay for maintenance, utilities, service fees, and other expenses according to the rate and schedule announced by the IEAT.

1.4.2.10 Have the duty to carry out the project in accordance to scope of work specified in clause 1.3.

1.4.2.11 Responsible for reviewing the Environmental Impact Assessment document (EIS) of Map Ta Phut Industrial Port project in August 1985 and preparing an Environmental Impact Assessment Report (EIA Report) or an Environmental and Health Impact Assessment Report (EHIA Report) as required by law so that the IEAT follow their rights and responsibilities as specified in clause 1.4.1.10.

1.4.2.12 Have a duty to prevent pollution caused by the operation of private sector in an amount exceeds the IEAT and Thai law has specified or causing damage to the public. The private sector will take immediate action and would be liable to the IEAT and the affected community throughout the contract. Strictly complying with the environmental impact prevention and mitigation measures and monitoring measures as proposed in the environmental impact assessment report.

1.4.2.13 Have the duty to perform all of the duties of the private sector specified in the contract, including technology transfer to IEAT, insurance preparation, and procurement of intellectual property.

1.4.2.14 Have the duty to transfer ownership of new assets as specified in clause 1.6

1.4.2.15 Have a duty to guarantee the damage repair or defects among the properties owned by IEAT, as well as to prepare sufficient spare parts of spare equipment for a period of 1 year after the concession contract has ended.

1.4.2.16 Has the right to operate a general cargo terminal

1.4.2.17 Has the right to collect the private sector's revenue stated in table in clause 1.7

1.4.2.18 Perform other duties as specified in the Public-Private Partnership Agreement contract and the relevant law in order to achieve the project objectives.

1.5 The Period for which the Private Sector is Obligated to Comply with Public Private Partnership

The private sector will be binded to the project once the contract is signed with the private sector in which the duration of the concession contract will be 30 years starting from the date specified in the Notice to Proceed (NTP). The contracting parties must cooperate and not obstruct the selection of the private parties by bidding before and after the concession contract has ended.

1.6 Ownership of Project Assets

Unless specified otherwise in the Public-Private Partnership Agreement contract, IEAT and private sector have rights and obligations in relation to the ownership of the assets used in the project according to the following details.

1.6.1 Existing Assets

Existing assets are all assets in the project area both in real estate, chattel and components of that property which existed prior the signing of the contract.

Ownership of existing assets, replacement of existing building, and the assets component parts belong to the IEAT without any compensation paid by the IEAT to the private sector. The IEAT will grant private parties the right to use the existing assets, existing building and the assets component part to the private sector throughout the project concession period.

1.6.2 New Assets

Except as mentioned in 1.6.1, throughout the concession period as stated in 1.5, the private sector is the owner of the infrastructure in terms of real estate, chattel, and components of that property. The private sector are obligated to transfer the ownership of the assets to the IEAT without having the IEAT to pay the private sector for any expenses in accordance to the criteria set out in the contract.

1.7 Sharing Benefits between the IEAT and Private Sector

Details of the sharing benefits between the IEAT and private sectors under the project are as follows.

Sharing Benefits	The Industrial Estate Authority of Thailand (IEAT)	Private Sector
Revenue	- Waterfront fee - Hinterland rental fee - Fixed Fee - Revenue from Port Dues - Minimum Revenue Sharing from port operation of no less than 5% excluding port dues - Utility fee	- Revenue from operation of the public general cargo berths and container cargo berth
Expense	None	- Investment cost for the development of the public general cargo berths and operation and maintenance cost, including coverage of taxes, property insurance and responsibility to third parties - Waterfront fee - Hinterland rental fee - Fixed Fee - Revenue from Port Dues - Minimum Revenue Sharing from port operation of no less than 5% excluding port dues - Utility fee

1.8 Financial and non-financial support measures

1.8.1 The IEAT does not have financial support measures for this project

1.8.2 Other supporting measures

None

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Chapter 2 Bidder Qualification

2.1 Legal Status of the bidder

2.1.1 A single juristic person or

2.1.2 Multiple juristic persons combined into a consortium or

2.1.3 Multiple juristic persons combined into a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or

2.1.4 Multiple juristic persons combined into a joint venture registered as a new juristic person (Incorporated Joint Venture) or

2.1.5 Merger Entity

2.2 General Qualification

The bidder must have the status as mentioned above and the following qualifications

2.2.1 In the case of a single juristic person, the bidder must have been registered for a period of not less than 3 years from the date of proposal submission.

2.2.2 In the event that several juristic persons are merged into a consortium, there must be at least 1 Thai juristic person with experience in accordance to clause 2.7 as a Lead Firm in the consortium with total shareholding of not less than 25 percent and the combined shareholding of Thai juristic persons must not be less than 51 percent of the total shareholding, where each juristic person must hold shares not less than 5 percent.

In this regard, the consortium must have members with a shareholding proportion or total shareholding of not less than 75 percent of the total being a legal entity that has been registered for a period of not less than 3 years until the proposal submission date.

The consortium must have a number of members, list of members and shareholding percentage of each juristic person remains the same and cannot be changed at all during the private selection period, including the consent of all members to be jointly and severally responsible for all cases in all duties, responsibilities and debts to IEAT in all cases and the consortium must not have government agencies as a member. Otherwise IEAT will not accept the proposal of such a bidder.

2.2.3 In the event that several juristic persons are merged into a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture), there must be at least 1 Thai juristic person with experience in accordance to clause 2.7 as a Lead Firm to join the group with total shareholding of not less than 25 percent and the combined shareholding of Thai juristic persons must not be less than 51 percent of the total shareholding, where each juristic person must hold shares not less than 5 percent.

In this regard, the Unincorporated Joint Venture must have members with a shareholding proportion or total shareholding of not less than 75 percent of the total being a legal entity that has been registered for a period of not less than 3 years until the proposal submission date.

Unincorporated Joint Venture must have a number of members, list of members and shareholding percentage of each juristic person remains the same and cannot be changed at all during the private selection period, including the consent of all members to be jointly and severally responsible for all cases in all duties, responsibilities and debts to IEAT in all cases and the consortium must not have government agencies as a member. Otherwise IEAT will not accept the proposal of that bidder.

2.2.4 In the event of an Incorporated Joint Venture, there must be at least 1 Thai juristic person with experience in accordance to clause 2.7 as a Lead Firm in the consortium with total shareholding of not less than 25 percent and the combined shareholding of Thai juristic persons must not be less than 51 percent of the total shareholding, where each juristic person must hold shares not less than 5 percent.

In this regard, the Incorporated Joint Venture must have members with a shareholding proportion or total shareholding of not less than 75 percent of the total being a legal entity that has been registered for a period of not less than 3 years until the proposal submission date.

Incorporated Joint Venture must have a number of members, list of members and shareholding percentage of each juristic person remains the same and cannot be changed at all during the private selection period, including the consent of all members to be jointly and severally responsible for all cases in all duties, responsibilities and debts to IEAT in all cases and the consortium must not have government agencies as a member. Otherwise IEAT will not accept the proposal of that bidder.

2.2.5 In the case of a merger of juristic persons, there must be at least 1 Thai juristic person shareholder holding shares not less than 25 percent of the total shares and have experience in accordance to clause 2.7 holding shares not less than 15 percent with the combined shareholding of Thai juristic persons must not be less than 51 percent of the total shareholding.

In this regard, the merging juristic person must have shareholders with a shareholding proportion or total shareholding of not less than 75 percent of the total being a juristic person that has been registered for a period of not less than 3 years until the proposal submission date.

2.2.6 Thai juristic person specified in clause 2.2.1 to clause 2.2.5 refer to juristic person registered in Thailand with an individual having Thai nationality holding half or more of the capital shares of such juristic person or investing with a value of half or more of that juristic person. Thai juristic person must not be a foreigner under the Foreign Business Act 1999.

2.2.7 Juristic persons according to clause 2.2.4 – 2.26 must not have government agencies as a member or shareholder that held more than 50 percent of the total shares.

2.3 Prohibited Qualification

2.3.1 The bidder must not have the prohibited characteristic as follows.

2.3.1.1 The bidder must not be a person who is prohibited under the Organic Act on Anti-Corruption B.E. 2561 (2018).

2.3.1.2 The bidder must not be listed on the IEAT or the government job abandonment list or being the person who has been the result of ordering a juristic person or other person to abandon work according to government regulations.

2.3.1.3 The bidder must not be a person who commits an offense under the Offenses Relating to Public Agencies Bidding Act B.E. 2542 (1999)

2.3.1.4 The bidder must not have a mutual interest with other bidders.

The bidder must not be a mutual benefit of other bidders as of the invitation announcement date and must not act in an obstruction to fair price competition.

In the event that two or more government entities owned by the same foreign government make tenders. Each government agencies is required to issue a certificate of its own administrative independence. In addition, such certification must be confirmed by the embassy or government agency of that country as well as confirming that the submission of proposals by individual government agencies is not subject to the influence or control of such foreign government or any government agency of such foreign country. In this case, government agencies owned by the same foreign government and submitting proposals for the project shall not be deemed to have mutual interest or interest among them.

2.3.1.5 The bidder must not be the person submitting a petition for business rehabilitation or was ordered by the court to rehabilitate the business or being placed under receivership by a court order or being bankrupt or used to be bankrupt.

2.3.1.6 The bidder must not have ever been sentenced to imprisonment by a final judgment unless a penalty for an offense committed through negligence or misdemeanor.

2.3.1.7 The bidder must not be terminated by a government agency in accordance with the law containing provisions relating to private investment between the state and private sector due to breach of contract.

2.3.1.8 In the case that the bidder who submits the proposal according to clause 2. 3. 1. 6 is a juristic person, directors or persons with management authority of the juristic person must also not have any prohibited characteristic as specified in clause 2.3.1.6

2.3.1.9 In the case that the bidder is a juristic group, clause 2. 3. 1. 6 and 2.3.1.7 shall be applied to each juristic person under the proposed group.

2.4 Integrity Pact

In accordance to the announcement of the State Enterprise Policy Office on Guidelines for applying Integrity Agreements to Joint Venture Project that operate under the Public Private Partnership Act B.E. 2562 (2019) dated 23rd December 2021 which is effective since 24th of December 2021, requires the project handling agency, observer and the bidder to sign the Integrity Pact. The observer must sign the confidentiality and no interest letter in accordance with the form attached to the Request For Proposal (RFP) documents.

2.5 Technical Qualifications and Experience

Bidders are required to present documentation to show their technical qualifications, experience, and the work that has been certified by the employer of that project for IEAT to assess bidder experience and technical consistency. The bidder must comply with the criteria for demonstrating technical qualifications and experience under clause 2.7

2.6 Financial Qualification

The bidder must have financial qualifications as follows

2.6.1 Net worth

The bidder must have one of the following net worth qualifications as follow.

2.6.1.1 The bidder who is a single juristic person must have an average of their net worth over the past 3 years not less than 565,000,000 Baht (five hundred and sixty five Million).

2.6.1.2 The bidder who is a consortium, a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) ,or a joint venture registered as a new juristic person (Incorporated Joint Venture) must have a weighted average of their net worth over the past 3 years according to the investment proportion of members or shareholders of no less than 565,000,000 Baht (five hundred and sixty five Million). The net worth is calculated from the sum of total assets minus total liabilities.

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2.6.1.3 For the bidder who is a merger entity, each shareholders must have their average net worth over the past 3 years not less than 565,000,000 Baht (five hundred and sixty five Million).

The calculation of net worth must refer to financial statement showing financial evidence. In case of a consolidated financial statements, the net worth would be calculated by using consolidated net worth. However, the entity must present the average net worth that has been audited (Audited Financial Report) from a licensed auditor for the past 3 years of the accounting period ending from the date of submission of the proposal.

To calculate the average net worth over the past 3 years (latest accounting period), for foreign juristic person may use the foreign exchange rate (selling rate) announced by the Bank of Thailand on the closing date of the financial statement for each year of that juristic person.

2.6.2 Letter of Intent or Cash and Cash Equivalent without any encumbrance

2.6.2.1 The bidder must submit one of these following documents

1) The bidder must submit a Letter of Intent from a Thai financial institution or foreign financial institutions to support a credit in a total amount of no less than 1,695,000,000 Baht (one thousand six hundred and ninety-five Million).

2) The bidder must submit evidence of cash and cash equivalents which has no obligation shown in the balance sheet that has been reviewed not more than the past 6 months from the date of proposal submission in an amount of no less than 1,695,000,000 bath (one thousand six hundred and ninety five Million) and must fill in the bidder's cash and cash equivalents form where the details are as follows.

2.1) A single juristic person must submit evidence of unencumbered cash and cash equivalents with an amount not less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million).

2.2) Consortium, joint venture that is not registered as a new juristic person (Unincorporated Joint Venture), or a joint venture registered as a new juristic person (Incorporated Joint Venture) must have any member(s) or shareholder(s) submit unencumbered cash and cash equivalents with a total amount of no less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million).

2.3) The merger must submit evidence of unencumbered cash and cash equivalents with an amount not less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million).

3) The bidder must submit evidence of Letter of Intent from a Thai financial institution or a foreign financial institution that will support the loan and evidence of unencumbered cash and cash equivalents that shows the balance sheet that has been reviewed not more than the past 6 months with a total amount not less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million).

3.1) A single juristic person must submit evidence letter of intent and unencumbered cash and cash equivalents with an amount not less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million)

3.2) Consortium, joint venture that is not registered as a new juristic person (Unincorporated Joint Venture), or a joint venture registered as a new juristic person (Incorporated Joint Venture) must have any member(s) or shareholder(s) submit unencumbered cash and cash equivalents together with the Letter of Intent issued in the name of a joint venture with a total amount of no less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million)

3.3) The merger must submit evidence Letter of Intent and unencumbered cash and cash equivalents from the pro forma statement with an amount not less than 1,695,000,000 Baht (one thousand six hundred and ninety five Million).

2.6.2.2 The bidder must fill in the Letter of Intent and Cash and Cash Equivalents form, the bidder's Cash and Cash Equivalents, or the Total Letter of Intent from financial institution(s) and Cash and Cash Equivalents form.

2.6.2.3 In the event that the bidder submits a Letter of Intent from more than 1 financial institution, the amount can be combined.

2.6.2.4 Letter of Intent document must be issued in the name of the bidder only. The letter must be issued by a financial institution that has credit rating at the following levels:

1) For Long Term Loan, the credit must not be lower than
   (1) Baa3 rating by Moody's
   (2) BBB- rating by Standard & Poor's
   (3) BBB- rating by Fitch

   If rated by another rating agency, the loan must have an equivalent credit rating not less than (1) to (3) above.

2) For Short Term Credit Facility, the credit rating must not be lower than
   (1) P-3 rating by Moody's
   (2) A-3 rating by Standard & Poor's
   (3) F-3 rating by Fitch

   If rated by another rating agency, the loan must have an equivalent credit rating not less than (1) to (3) above.

2.6.2.5 In the event that the bidder submits a Letter of Intent from more than 1 financial institution, the amount can be combined.

2.6.2.6 Letter of Intent that will support the loan must be issued in the name of the bidder only, together with a summary of key terms and Term Sheet for Debt Financing in the amount specified in the Letter of Intent to provide loan support.

2.6.2.7 Foreign financial institutions must conform to the characteristics of foreign commercial banks by the foreign commercial banks must have their credit rated by a credit rating agency established under foreign laws and has been approved and ranked higher than the credit rating of Thailand by the Office of the Securities and Exchange Commission (SEC).

2.6.2.8 Criteria for the calculation of Cash and Cash Equivalent are as follows

1) Based on Thai Financial Reporting Standards: TFRS
2) In an event that Cash and Cash Equivalent declared as specified in clause 2.6.2.1 are not equal to the calculation according to Thai financial standards, the reconcile statement in accordance with Thai financial standards must be shown.
3) The bidder's financial statement that is in form of a Consolidated Financial Statements must calculate Cash and Cash Equivalents from the financial statements.

2.6.3 The bidder must provide evidence of the Audited Financial Report from a licensed auditor, including the auditor's report, balance sheet, income statement, cash flow statement (if any), and notes to financial statements for the past 3 years from the date of proposal submission in a case that the bidder is a legal entity that has been registered for a period of not less than 3 years until the date of proposal submission, or for as much years as the bidder has in a case that the bidder is a legal entity that has been registered for less than 3 years until the date of proposal submission.

In the case of consortium or a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or a joint venture registered as a new juristic person (Incorporated Joint Venture), all member or shareholder must present evidence as specified in the first paragraph.

In the case of merger juristic person, each merger entity must prepare its financial statements as if it had registered or merge as specified in the first paragraph.

2.6.4 The bidder must provide proof of tax payment for the past 3 years (latest ending accounting period) from the proposal submission date in a case that the bidder is a legal entity that has been registered for a period of not less than 3 years until the date of proposal submission, or for as much years as the bidder has in a case that the bidder is a legal entity that has been registered for less than 3 years until the date of proposal submission.

In the case of a consortium or a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or a joint venture registered as a new juristic person (Incorporated Joint Venture), all member or shareholder must present evidence as specified in the first paragraph.

In the case of merger juristic person, each entity must present evidence as specified in the first paragraph.

2.7 Technical Qualifications of the Bidder

The bidder must have experience in managing public berth in one of the following.

2.7.1 Experience in operation and management of public berth under 1 or several contracts combined from the government to be an industrial port service provider not less than 10 years up to the date of submission of the proposal. The contracts may or may not be in the same concession period, and may or may not be continuous.

2.7.2 Must have at least 1 or several contracts combined in the operation and management of public berth with a container volume of at least 150,000 (one hundred fifty thousand) TEU per year and bulk cargo of at least 3,000,000 Million ton per year for a period of 3 years. Each year may or may not be in the same concession period, and may or may not be continuous. Each year must have experience as specified.

The experience of the bidder as specified in clause 2.7 must be in accordance with the following criteria.

(a) A bidder who is a single juristic person may use experience of several contracts together as the bidder's experience.

(b) A bidder who is a consortium, a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture), or a joint venture registered as a new juristic person (Incorporated Joint Venture) can combine experience of each member or shareholders together into the experience of the bidder.

(c) A merger juristic person can combine the experience of each juristic entity into the experience of the bidder.

(d) Submitted works can be domestically or internationally and must be a direct contractor work with government agencies or private sectors by submitting a copy of the work certificate and/ or a copy of the employment contract issued by the government or private contracting agency.

(e) In the case of the bidder used to be a member of a consortium, a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture), shareholder of a joint venture registered as a new juristic person (Incorporated Joint Venture), or the merger juristic person that have work experience that can be submitted, the bidder must specify the proportion of the work responsible in the bidder's work experience form. Along with submitting a copy of the certificate of work and/or a copy of the employment contract that indicates the proportion of work contribution issued by the contracting agencies of the government or private sector. However, copies of certificates of work and all copies of agreement must be certified, which will only allow the use of experience in the proportion that has been jointly invested.

(f) The bidder who does not have experience under clause 2.7 can use experience of its contractors and affiliates, or the experience of its members, shareholders, or affiliates of its members or shareholders. A bidder with some experience can use the experience of its contractor or affiliates or the experience of its members, shareholders, or affiliates of its members or shareholders combine with the experience of the bidder. The bidder who uses the experience of the contractor or its affiliates, the contractor or affiliate may not participate as contractor of any other bidder in which the contractor or an affiliate of the bidder must sign the contract according to the contractor's certificate form and waive the rights. If the bidder who has been selected and is a contractual party with the government, the contractor or an affiliate of the bidder must be the person acting under the contract of employment with the bidder. Moreover, the contract between the contractor and the employer must be in accordance with the conditions, methods, and criteria specified by the selection committee.

(g) If the work is performed outside of Thailand, evidence of the submitted work document must be in Thai. If any document is not in Thai, an official Thai translation must be attached with a certified of the translation from the Ministry of Foreign Affairs or the Thai Embassy in that country

(Notarized). However, the regulation of the Ministry of Foreign Affairs must be followed on the Certification of Document 1996 by using the exchange rate announced by the Bank of Thailand at 30 days prior to the offer acceptance date.

2.8 Not being a privileged or immunized person from the jurisdiction of Thai courts which preventing from going to Thai courts

The bidder must not be a person who has been granted privileges or immunity from the jurisdiction of Thai courts unless the government of the bidder who is granted privileges or immunity has issued a letter of intent to waive the privilege of immunity from the jurisdiction of Thai court.

The bidder which includes all member of a consortium or joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or all shareholders of a joint venture registered as a new juristic person (Incorporated Joint Venture) or individual juristic person of the merged entity must submit documents in writing confirming that its company does not have any privileges or immunities prevent from going to Thai courts. Any member or shareholder has such privileges or immunities shall state that they agree to cancel such privileges or immunities for the purpose of participating in this selection.

2.9 Providing truthful information relating to lawsuits in court or disputes in arbitration

The bidder which includes all member of a consortium or joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or all shareholder of a joint venture registered as a new juristic person (Incorporated Joint Venture) or individual juristic person of the merged entity must provide truthful information relating to lawsuits in court or disputes in arbitration as a result of the work of the bidder that has been completed or in progress within the past 5 years from the date of submission of the proposal of this project. If it appears that the bidder, member, or any shareholder of the juristic group consistently losing lawsuit, the IEAT may not consider to such proposals.

If it is found later that the information given is untruthful, the IEAT will consider disqualify that bidder or result in the contract of being void.

2.10 Any action that may benefits other bidders

The bidder must not have any characteristic or act which is beneficial to other bidders as of the date of submission of the proposal and must not take any action which obstructs fair competition

In addition, any member of consortium or joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) or all shareholder of a joint venture registered as a new juristic person (Incorporated Joint Venture) or individual juristic person of the merged entity including all parent company or affiliated companies must not be a member or shareholders of any juristic person or member or shareholders of any other joint venture which may cause unfair selection.

If not comply with clause 2.10 (acting in any way that benefits other bidders), the IEAT will consider that bidder to be disqualified.

Chapter 3 Preparation of Bidder's Proposals

3.1 The bidder must submit a Power of Attorney, a bid bond, a copy of proof of a purchase of Request for Proposal document and the joint venture contact that is not registered as a new juristic person/joint venture document according to the appendix joint venture contract form that is not registered as a new juristic person/joint venture packed in an unsealed envelope.

3.2 The bidder must submit the proposal documents in 4 sealed envelopes as follows.

3.2.1 Envelope 1 General Qualification

3.2.1.1 General qualification

3.2.1.2 Financial qualification

3.2.1.3 Technical qualification and experience

3.2.2 Envelope 2 Technical and Experience Qualification

The preparation of the technical and experience qualification must be in accordance with the Request For Proposal (RFP). The details of the proposal should cover at least as follows.

3.2.2.1 The bidder's project implementation plan to achieve its objectives within the period of the concession agreement contract.

1) Compliance Matrix

2) Project Executive Plan consisting of Project Execution Team and Project Management Plan

3) Berth development plan as follows

(1) Initial investment to develop the port management to support import/export of break bulk cargo, bulk cargo, and domestic container cargo. Along with providing services connecting to other ports within the country by providing the necessary machinery and equipment to operate according to the cargo volume and container volume required, improvement of container yard construction, preparation of Environmental Impact Assessment Report (EIA Report) or Environmental and Health Impact Assessment (EHIA) which shall be conducted as required by the law in order to provide

general and bulk cargo handling services on 2 berth with a capacity of 3,679,200 tons per year and container handling services on 1 berth with a capacity of 156,000 TEUs per year or 2,808,000 tons per year, with a total handling capacity of 6,487,200 tons per year with the investment value of no less than 1,221.31 million baht. The private sector has a duty to complete the initial investment work within 2 years starting from the date specified in Notice to Proceed (NTP).

(2) Future investment for the maintenance of new assets, machinery and lifting equipment that will be replaced over the service life with the present value at a discount rate of 3% with the investment value of no less than 1,036.68 million baht.

(3) Other investment as the private sector deems appropriate and beneficial to the IEAT.

However, the designed conditions and standards along with the construction process and machinery used in the construction must be specified.

(4) Business plan which consist of the following
   - LOI/MOU from Shipper
   - Crane Productivity Development Plan
   - Traffic management plan within the project area
   - Periodic Protective Maintenance Plan for main machinery and equipment
   - Environmentally friendly port development plan (Green Port)

(5) Annual Key Performance Indicator (Annual KPI), consisting of at least 4 main indicators as follows.
   - Operation aspects of the business such as operating turnover and etc.

- Monitoring and examining the counter measures to prevent, correct and reduce environmental impacts
- Environmental and safety management (Green Port)
- Maintenance of equipment and machinery
- Others

3.2.2.2 The bidder's readiness and ability to operate the project to achieve its objectives within the period of the concession agreement contract.

1) Organizational Chart of General Cargo Berth Operations
2) Line of Command and Responsibility
3) Key Personnel's' profile
4) Key Personnel's Operational Plan
5) Berth development plan as follows

(1) Initial investment to develop the port management to support import/export of break bulk cargo, bulk cargo, and domestic container cargo. Along with providing services connecting to other ports within the country by providing the necessary machinery and equipment to operate according to the cargo volume and container volume required, improvement of container yard construction, preparation of Environmental Impact Assessment Report (EIA Report) or Environmental and Health Impact Assessment (EHIA) which shall be conducted as required by the law in order to provide general and bulk cargo handling services on 2 berth with a capacity of 3,679,200 tons per year and container handling services on 1 berth with a capacity of 156,000 TEUs per year or 2,808,000 tons per year, with a total handling capacity of 6,487,200 tons per year with the investment value of no less than 1,221.31 million baht. The private sector has a duty to complete the initial investment work within 2 years starting from the date specified in Notice to Proceed (NTP).

(2) Future investment for the maintenance of new assets, machinery, and lifting equipment that will be replaced over the service life with the present value at a discount rate of 3% with the investment value of no less than 1,036.68 million baht

(3) Other investment as the private sector deems appropriate and beneficial to the IEAT.

However, the designed conditions and standards along with the construction process and machinery used in the construction must be specified.

(4) Business plan which consist of the following

- LOI/MOU from Shipper
- Crane Productivity Development Plan
- Traffic management plan within the project area
- Periodic Protective Maintenance Plan for main machinery and equipment
- Environmentally friendly port development plan (Green Port)

(5) Annual Key Performance Indicator (Annual KPI), consisting of at least 4 main indicators as follows.

- Operation aspects of the business such as operating turnover and etc.
- Monitoring and examining the counter measures to prevent, correct and reduce environmental impacts
- Environmental and safety management (Green Port)
- Maintenance of equipment and machinery
- Others

3.2.3 Envelope 3 Investment and Financial Returns offer

3.2.3.1 Workload account (including taxes, fees, and expenses)

3.2.3.2 Business plan for project implementation

3.2.3.3 Financial plan

3.2.3.4 Capital funding plan

3.2.3.5 Assets used in project operation and ownership of such assets

3.2.3.6 Calculation of the project's financial return over the life of the concession contract

3.2.3.7 Calculation of IEAT's financial return

3.2.4 Envelope 4 Other Offers

Chapter 4 Evaluation Criteria and Methods for the Private Sector Selection

4.1 An Unsealed Envelope assessment

An unsealed envelope will be assessed based on the completeness and accuracy of documents according to the qualifications specified for each envelope. If the proposal document is incomplete and incorrect, the IEAT will not accept the bidder's proposal envelope and will return it, and the bidder has no right to claim any expenses or damages. If the documents are complete and correct, the bidder will be considered for the next procedure in 4.2

4.2 Envelop 1 General Qualification consideration

Bidder's proposal will be assessed on the complete conformity compared to the Invitation to Tender, Request for Proposal, and the credibility of the bidder's qualification document through a pass/fail assessment as follows

4.2.1 General qualification in 3.2.1 (3.2.1.1)

4.2.2 Financial qualification in 3.2.1 (3.2.1.2)

4.2.3 Technical qualification and experience in 3.2.1 (3.2.1.3)

Bidders who passes the evaluation of Envelope 1 will be considered for Envelope 2 in 4.3

4.3 Envelope 2 Technical and Experience Qualification consideration

Envelope 2 will be assessed on a scoring basis on the following criteria.

4.3.1 Assessment of the bidder's proposal for project implementation whether the bidder will be able to successfully complete the project according to the objectives, targets and within the time of the investment contract through a scoring basis as follows.

4.3.1.1 Structure and competence of personnel in management 10 points

4.3.1.2 Berth Development Plan 40 points as follows

1) Initial investment to develop the port management to support import/export of break bulk cargo, bulk cargo and domestic

container cargo, along with providing services connecting to other ports within the country by providing the necessary machinery and equipment to operate according to the cargo volume and container volume required, improvement of container yard construction, preparation of Environmental Impact Assessment Report (EIA Report) or Environmental and Health Impact Assessment (EHIA) which shall be conducted as required by the law in order to provide general and bulk cargo handling services on 2 berth with a capacity of 3,679,200 tons per year and container handling services on 1 berth with a capacity of 156,000 TEUs per year or 2,808,000 tons per year, with a total handling capacity of 6,487,200 tons per year with the investment value of no less than 1,221.31 million baht.

The private sector has a duty to complete the initial investment work within 2 years starting from the date specified in Notice to Proceed (NTP).

2) Future investment for the maintenance of new assets, machinery and lifting equipment that will be replaced over the service life with the present value at a discount rate of 3% with the investment value of no less than 1,036.68 million baht.
3) Other investment as the private sector deems appropriate and beneficial to the IEAT.

However, the designed conditions and standards along with the construction process and machinery used in the construction must be specified.

4) Business plan consist of the following
   - LOI/MOU from Shipper
   - Crane Productivity Development Plan
   - Traffic management plan within the project area
   - Periodic Protective Maintenance Plan for main machinery and equipment

- Environmentally friendly port development plan (Green Port)

5) Annual Key Performance Indicator (Annual KPI), consisting of at least 4 main indicators as follows.

- Operation aspects of the business such as operating turnover and etc.
- Monitoring and examining the counter measures to prevent, correct and reduce environmental impacts
- Environmental and safety management (Green Port)
- Maintenance of equipment and machinery
- Others

4.3.1.3 Operation Guideline for General Cargo Berth 30 points

1) Guideline for conducting business operation such as providing container port services and general cargo as well as 30 years business performance forecast
2) Guidelines for maintenance of equipment and machinery according to the technical requirement of the project
3) Environmental and safety management guidelines
4) Guidelines for monitoring and mitigation measures to prevent, correct, and reduce environmental impact

4.3.2 The bidder's readiness and ability to successfully operate the project according to the objectives, target within the period of the concession contract under 3.2.1 (3.2.1.2) and 3.2.1 (3.2.1.3) through a scoring basis as follows

4.3.2.1 Readiness, support, and financial capacity 10 points

4.3.2.2 Experience and work performed throughout its credibility 10 points

If the bidder does not submit the proposal for Envelope 2, technical qualification and any experiences under 4.3, it will be considered that the bidder is not qualified, and the selection committee will not consider the rest of the proposal and will return the proposal envelopes to the bidder. The bidder has no right to claim any expenses or damages.

The bidder must present the proposal in accordance with 4.3 with minimum score of 80 percent in 4.3.1 (4.3.1.1), 4.3.1 (4.3.1.2) and 4.3.1 (4.3.1.3). The total score of 4.3 must not be less than 85 percent in order to be considered in 4.4

If the minimum score in 4.3.1 (4.3.1.1), 4.3.1 (4.3.1.2) and 4.3.1 (4.3.1.3) is less than 80 percent or the total score in 4.3 is less than 85 percent, the bidder will be disqualified without considering the rest of the bidder proposal offer, and the envelope will be returned to the bidder without the bidder having the right to claim any fees, expenses, or damages of any kind.

Bidder who passes the evaluation of envelope 2 will be considered for envelope 3 in 4.4

4.4 Envelope 3 Investment and Financial Return Offer consideration

The proposed financial benefits that the IEAT will receive will be assessed under the following criteria.

Investment and financial returns offers must be complete correctly and accurate, otherwise the bidder offer will not be assessed.

The proposed bidder will be considered and proceed to the next stage of negotiation with the criteria for assessment as follows.

4.4.1 The bidder who proposed "Fixed Fee" in the given table form over 30 years in the amount of no less than 510,143,461 baht, and the fixed fee in each year no less than what was required in the given table and

The bidder who proposed "Revenue Sharing from port operations excluding Port Dues" in the given table form no less than 5 percent each year will pass the 4.4.1 assessment.

However, the IEAT will not consider the proposal offers that have fixed fee and revenue sharing from port operation excluding port due less than the required amount.

4.4.2 Those who passes the assessment in 4.4.1 will be assessed on the present value of the total financial return consisting of 2 parts as follows.

4.4.2.1 Present value of fixed fee at a discount rate of 7.2534%

4.4.2.2 Present value of **Minimum** guaranteed revenue sharing as proposed by the bidder in the given table form at a discount rate of 7.2534% However, during the operation of any year, if the actual revenue sharing from port operation excluding port due which is calculated from revenue sharing percentage the bidder offer is higher than the **Minimum** guaranteed revenue sharing, the bidder must pay the actual revenue sharing from port operation excluding port dues.

4.4.3 The bidder with the **highest** present value of total financial return will be the "Bidder who has passed the evaluation of Envelope 3"

4.4.4 In the event that there are more than 1 proposal with the same highest present value of the total financial returns, the procedure will be as follows.

4.4.4.1 The bidder who proposes the **highest** revenue sharing from port operation excluding port due will be the " Bidder who has passed the evaluation of Envelope 3"

4.4.4.2 In the event that there are more than 1 bidder proposing the **highest** revenue sharing from port operation excluding port dues, all bidder who proposed the highest revenue sharing from port operation excluding port due shall propose a new investment and financial return offer within 7 days from the date of notice, and a new investment and financial return offer cannot fall below the previous offer in accordance to the criteria set by the selection committee.

4.4.5 Bidder who passes the consideration of envelope 3 will proceed to the evaluation of envelope 4. However, the selection committee may or may not consider the proposal in envelope 4 as mentioned in 4.5. If the selection committee decided not to consider envelop 4 proposals, the process would be moved to the negotiation process. On the other hand, if the negotiation are not reached, the committee would reserve the right to allow the bidder who propose the next-highest value of the total financial return to enter the negotiation process.

4.5 Consideration of Other Offers Envelope 4

The selection committee reserves the right to consider or not consider the proposal of envelope 4. In the event of considering envelope 4, the selection committee will evaluate the bidder who has passed the evaluation of envelope 3 and will enter the negotiation process.

The bidder who has passed the evaluation of envelope 3 and has reached an agreement will be selected for this bidding.

Representatives of the bidder who observe the meeting where all proposal envelopes are opened must register for the meeting. If the bidder does not attend the meeting on that day, the bidder will not be considered and disqualified.

Chapter 5 Place, Date and Time of Opening and Closing of the Sale of Request for Proposal Documents

The sale of Request for Proposal Documents will begin on the 14th of September 2023 to 16th of October 2023 from 09:00 AM to 16:00 PM (in official time) at the Narai Conference Room, Industrial Estate Authority of Thailand, 618 Nikhom Makkasan Road, Makkasan Subdistrict, Ratchathewi District, Bangkok 10400

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Chapter 6 Location, Date, Time, and Method for Submitting Questions Regarding the Request for Proposal Documents and Clarification

The IEAT will arrange a clarification meeting on 17th of October 2023 from 09:00 AM to 4:00 PM at Rachawadee Room, 3rd floor, Golden Tulip Sovereign Hotel, Rama 9.

The IEAT will open for submission of questions or suggestions about the Request for Proposal Document from 14th of September 2023 to 16th of October 2023 during official hours to the Port Development Division, Operation Department 3, Industrial Estate Authority of Thailand, 618 Nikhom Makkasan Road, Makkasan Subdistrict, Ratchathewi District, Bangkok 10400. The questions and suggestions can be sent via registered mail or send individually or as an authorized person.

The IEAT will clarify the Request for Proposal Document by answering in writing and sending back to the private sector within 14 days before the date of proposal submission.

Chapter 7 Place, Date, Time and Method for Opening Data Room

The IEAT will open for an inspection of information or details related to the project from 14th of September 2023 to 16th of October 2023 during official hours at the Narai Conference Room, Industrial Estate Authority of Thailand, 618 Nikhom Makkasan Road, Makkasan Subdistrict, Ratchathewi District, Bangkok 10400

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Chapter 8 Place, Date, Time of Opening and Closing of Envelope Submission and Opening the Envelopes

The IEAT will start accepting the proposals on 13th of November 2023 at 08:30 AM and stop accepting on 13th of November 2023 at 12:00 PM at official hours (Thailand standard time by the Hydrographic Department, Royal Thai Navy). The bidders have to submit the proposal at

Narai Conference Room

Industrial Estate Authority of Thailand

618 Nikhom Makkasan Road

Makkasan Subdistrict, Ratchathewi District

Bangkok 10400

The IEAT will open the bidders' proposal envelope on 13th of November 2023 at 13:00 PM at meeting room 205, Industrial Estate Authority of Thailand.

Chapter 9 Fees

9.1 Fee for the Request for Proposal Documents

9.1.1 The IEAT will sell the Request for Proposal Document to the interested private sector at a price of 250,000 baht per set including VAT. An additional copies of document will cost 50,000 baht per set including VAT. The payment can be made via cashier cheques to the " Industrial Estate Authority of Thailand". The private sector will not request a claim for refund in any case.

For the bidder who have already purchased the Request for Proposal (RFP) in the first round, the bidder can purchase the RFP at a price of 5,000 baht per set.

9.1.2 The bidder who is a single juristic person, a merger entity, or an Incorporated Joint Venture must be listed as the buyer of the RFP to gain the right to submit the proposal.

9.1.3 In the case where the bidder is a consortium or an Unincorporated Joint Venture, the bidder must comply with the following actions to gain the right to submit the proposal.

9.1.3.1 A consortium or an Unincorporated Joint Venture must be listed as the buyer of the RFP, and

9.1.3.2 All members of the consortium or every shareholder of an Unincorporated Joint Venture must be listed as the buyer of the RFP.

9.2 Proposal Evaluation Fee

The bidder must pay the proposal evaluation fee to the IEAT in the amount of 500,000 baht, including VAT on the submission date of the proposal which can be paid by cashier cheque to the "Industrial Estate Authority of Thailand", and the IEAT will not return such money in all cases.

9.3 Investment Contract Signing Fee

The private sector who have been selected to manage the project must pay a total contract signing fee of 10,000,000 baht, which can be paid by cashier cheque to the "Industrial Estate Authority of Thailand" in the amount of 10,000,000 baht including VAT on the date of signing the concession agreement contract, and the IEAT will not return such money in all cases.

Chapter 10 Bid Bond

10.1 The bidder must submit 35,000,000 baht worth of bid bond when submit the proposal envelope by using one of the following guarantees

10.1.1 Bank Guarantee must be a letter from a Thai financial institution, Thai commercial banks, or foreign commercial banks with branches in Thailand, and the Bank Guarantee must be issued from a branch in Thailand only.

Bank Guarantee from a financial institution or bank used as bid bond must be valid for at least 28 days after the expiration date of the proposal documents.

10.1.2 Thai government bonds or Thai state enterprise bonds

10.2 The bidder who does not submit the bid bond as mentioned in 10.1 will be considered as an unqualified bidder. The selection committee will not open all proposal envelopes and returned the envelopes to the bidder after the project contract has been signed in which the bidder has no right to claim for a refund in any case.

10.3 The unsuccessful bidder will receive the return of the bid bond within 10 days from the date the Cabinet approves the selection results or after 120 days from the date the selection committee has concluded the selection or whichever occurs first.

In the event that the selected bidder fails to enter the contract within the specified period. The selected bidder will have their bid bond forfeit or demanded from bid bond issuer immediately and may consider compensation for other damages (if any) as well as may consider being a job abandonment according to government regulations. However, the return of bid bond in any case will return without interest.

10.4 The selected bidder will receive their bid bond after the bidder has signed the contract and has submitted the project bid bond.

10.5 Bid bond can be forfeited in the following cases

10.5.1 The bidder request to withdraw their proposal document during the period when the proposal document has not expired or

10.5.2 The bidder does not accept the proposed amendment or

10.5.3 In case the bidder is selected but do not proceed as follows

10.5.3.1 Signing the concession agreement contract and

10.5.3.2 Submit bid bond according to 11.1

Chapter 11 Performance Bond and Corporate Guarantee

11.1 Performance Bond

Bidder who passes the proposal evaluation must provide a Performance Bond issued by the bank to the IEAT in the following cases.

11.1.1 Selected bidder must provide a Performance Bond for the IEAT in the amount equal to 130,000,000 baht for guaranteeing the operation of public general cargo berth that the operation will be carried out throughout the concession contract period. The Performance Bond must be provided on the date of signing the Public-Private Partnership Agreement contract, and the IEAT will return the Performance Bond when the contract has ended and when the contracting party is released from the obligation under the contract.

11.1.2 Performance Bond under 11.1.1 must be issued in the form of a Bank Guarantee from a Thai commercial banks, a Thai branch of foreign banks with branches in Thailand, Thai government bonds, or Thai state enterprise bonds.

11.1.3 In the event that the IEAT uses any claim on the Performance Bond under 11.1.1, the contracting party must bring additional Performance Bond to the IEAT or make the amount of money in the performance bond return to the full original amount according to the amount specified in this article within 30 days from the date IEAT uses the claim.

11.1.4 In the process of returning the performance bond, the IEAT will return the performance bond without paying interest to the contracting party in any cases.

11.2 Corporate Guarantee

11.2.1 In the event that a new company is established to operate after the Cabinet has approved the concession agreement. On the date of the signing the contract, the contracting party must delivery all corporate guarantee issued by the shareholders of the contracting party to the IEAT in order to guarantee compensation from not performing duty specified in the concession contract. Each corporate guarantee must state that the shareholder issuing the corporate guarantee shall be liable for no more than the maximum amount specified in the corporate guarantee. However, when including the guarantee amount as specified in every corporate guarantees, the value must be equal to the total investment value of the project as specified in the bidder's proposal.

11.2.2 The corporate guarantee will be effective from the effective date of concession contract until the end of the project period and until the contracting party has completed all duties stated in the concession contract and was released from obligations specified in the concession contract. During the period of operating the public cargo berth, the corporate guarantee will be no longer effective immediately after one of these following cases.

1) In the case of contracting party raise funds in the capital market under the law on securities and exchange or foreign law including listing the contracting party's shares on the stock market in Thailand or abroad or raising funds through an infrastructure fund or an infrastructure trust. However, this does not include funding through a Real Estate Investment Trust (REIT).
2) In the event that all existing shareholders in the contracting party reduce their holdings, causing the total shares in the contracting party to be less than 51% of the total shares.

11.2.3 In case of occurrence of event under 1) or 2) above within the operating period of the public general cargo berth. The contracting party will be required to change the corporate guarantee in accordance with the change in equity or equity stake in contracting party. The corporate guarantee must have the maximum amount guaranteed equal to the total investment value of the project as specified in the contracting party's proposal submitted during the selection process. However, if the IEAT considers that the corporate guarantee that has been changed does not have the maximum guaranteed amount equal to the total investment value of the project as specified in the bidder's proposal or the information is inconsistent with the change of the shareholdings in the contracting party, the IEAT has the right to require the contracting party to change the guarantee letter again.

11.2.4 In the event that the IEAT uses the right to claim from corporate guarantee according to 11.2.1, and the amount is insufficient to pay any debt or compensation, the IEAT has the right to demand the contracting party to be fully responsible in full amount.

Chapter 12 Reservation of Rights

12.1 Reserve the Right to Cancel the Public Private Partnership Selection

The selection committee reserve the right to cancel invitation to tender or the public private partnership selection and/or negotiation with the bidder who passed envelope 3 and/or bidder's proposal with the highest benefit including the event of the Cabinet has a resolution to cancel the project or do not approve the results of the private party selection or the results of negotiations or the draft concession agreement contract of the project. If the Cabinet has a resolution to cancel the selection or in the event the bidder who passed envelope 3 cannot comply with the Thai law, the bidder cannot claim any expenses or damages from the Government of Thailand, Ministry of Industry, the selection committee of the IEAT and other relevant government agencies.

12.2 Reserve the Right to Amend Request for Proposal Document

The selection committee reserves the right to change, amend, shorten, add and any other actions in the content of Request for Proposal Volume 1, Draft of Public Private Partnership Agreement Volume 2 and e-Files Volume 3 (other documents provided by the IEAT). It also includes amendments, changes, cuts, additions and any other actions in the selection documents to comply with the Cabinet resolutions, result of proposal selection, negotiation result between selection committee and the qualified bidders, result of consideration of the draft public private partnership agreement contract, the Office of the Attorney General suggestion letter and opinions of the Cabinet.

Nevertheless, the bidder cannot claim any expenses or damages from the Thai Government, Ministry of Industry, the selection committee of the IEAT project and other related government agencies.

12.3 Reserve the Right to Amend Invitation to Tender Document

The Invitation to Tender document is only a preliminary information for those interested in submitting proposals for the project. The selection committee reserves the right to determine the context of the announced document to be different from the context specified in this invitation.

12.4 Reserve the Right to Inquire or Request Additional Information from the Bidder

The selection committee reserves the right to obtain additional information from the bidder. However, those additional information shall not materially change the content of the bidder's proposal.

12.5 Reserve the Right to Sign the Public Private Partnership Contract

The IEAT will only sign the public private partnership contract after receiving approval from the Cabinet.

12.6 Reserve the Right to Disqualify the Bidder's Proposal

The selection committee reserve the right to not consider the bidder's proposal in any of the following cases.

12.6.1 A consortium and an Unincorporated Joint Venture that has government agencies as their member.

12.6.2 An Incorporated Joint Venture that has the government agencies hold more than 50 percent of the total shareholding.

In this regard, the bidder subjected to clause 12.6.1 and 12.6.2 cannot claim expenses or any damages from the Thai Government, the Ministry of Industry, the IEAT selection committee, and other relevant government agencies.

12.7 Reserve the Right to Not Disqualify the Bidder Who Presents Details Differ From the Conditions in the Request for Proposal Document

In the event that the details of the bidder's proposal are different from the conditions specified in the request for proposal document and the difference does not result in a disadvantages to other bidders or a slight mistake, the selection committee may grant relief to the bidder without disqualifying the bidder in accordance with the criteria set by the IEAT and the selection committee by providing information about the inspection of various documents in writing.

Chapter 13 Other Matters

13.1 Establishment of a New Juristic Person

13.1.1 When the Cabinet has approved the result of the selection, negotiation, and the draft Public-Private Partnership Agreement contact, a consortium and a joint venture that is not registered as a new juristic person (Unincorporated Joint Venture) must register to establish a Special Purpose Vehicle (SPV) by specifying the purpose of the newly established Special Purpose Vehicle to cover the project's objective and to have the ability to develop and operate the public general cargo berth.

In addition, the newly established Special Purpose Vehicle must have a registered capital of at least 565,000,000 baht and paid-up capital of no less than the legal requirement on the day of signing the contract. The Special Purpose Vehicle must pay their registered capital in full before the date of issuing the notice to proceed. After the signing of the contract, the newly established Special Purpose Vehicle has a duty to comply with Thai law.

Throughout the duration of the project, the juristic persons must maintain the debt to equity ratio of no more than 3:1. Except for during the period of rights and benefits under the law on Board of Investment that the debt to equity ratio shall be in accordance with the specified law.

13.1.2 During the period of the concession contract, if the contracting party wants to change the list of shareholders within the Special Purpose Vehicle and their shareholding proportions, the Special Purpose Vehicle must obtain approval in writing from the IEAT only. The shareholder within the Special Purpose Vehicle who replace the original shareholder must have equal or better qualifications.

13.2 Contract Approval

13.2.1 The IEAT will enter the Public-Private Partnership Agreement contract with the selected bidder.

13.2.2 In approving the contract or during the preparation of the contract, the IEAT has the right to allow the selected bidder to clarify the information or any facts related to their proposal. The IEAT has the right to reject the proposal or refuse to enter the Public-Private Partnership Agreement contract with the selected bidder if the evidence presented by the selected bidder is appeared to be untruthful.

13.3 Advisor

13.3.1 The appointment of IEAT advisors to perform duties on behalf of the IEAT in relation to inspection, control, and supervision of the operations of the contracting party in relation to design and construction work will be as specified in the term of the IEAT. The IEAT will notify the contracting party in writing, in which the contracting party will proceed as stated. However, if the case is significant and affects the right and duties of the IEAT under this contract, the performance of IEAT's advisors must be approved by the IEAT first.

13.3.2 The contracting party will be responsible for the fees of IEAT's advisors in relation to the design and construction work, based on actual wages but not more than 2.5% of the construction cost of the project as specified in the contract. The IEAT has the sole right to approve wages related to the work. However, if it is necessary for the IEAT to make payment related to the work of the IEAT's advisors first, the contracting party must agree to pay that wage plus interest back to the IEAT within 15 days from the date of demand letter from the IEAT.

13.4 Force Majeure During Selection

If force majeure occurs during the selection process that the selection committee is unable to perform any of the procedures of this document, the selection committee has the right to cancel the Invitation to Tender, cancel the selection, postpone the timeline, or extend the time for taking any action as appropriated. The selection committee will inform the bidder in writing.

"Force Majeure" means force majeure specified in section 8 of the Civil and Commercial Code.

13.5 The Government Sector does not provide Financial Guarantees

The IEAT or other agencies of the Thai government will not provide loan guarantees or any other liabilities guarantees to the contract party.

13.6 Fines

The IEAT has the right to demand fines from the contracting party in the event that the contracting party fail to comply with the conditions of the Public Private Partnership Agreement contract.

13.7 Opening of Bidder's Proposal

The selection committee and/or the person designated by the selection committee will open the bidders' proposal envelopes in front of all bidders or their representatives at the same time to show transparency in the completeness and accuracy consideration process of the documents as specified in the proposal envelopes.

Announced on 13th of September 2023

(Mr. Veeris Ammarapala)

Governor of the Industrial Estate Authority of Thailand

Selection Committee Chairman

The Management of The Public General Cargo Berth Project

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