

STRICTLY CONFIDENTIAL

EASTERN SEA LAEM CHABANG TERMINAL CO., LTD

INSTRUCTIONS TO TENDERERS

FOR

**SUPPLY, DELIVERY, TESTING AND COMISSIONING OF 2 UNITS
OF NEW LADEN REACH STACKERS AT EASTERN SEA LAEM
CHABANG TERMINAL CO., LTD
TENDER NO : TLKB -04 -2022**

DATED 6th Oct 2022

INVITATION AND INSTRUCTIONS TO TENDERERS

This is dated 6th Oct 2022

1. INTRODUCTION

- 1.1 **Eastern Sea Laem Chabang Terminal Co., Ltd** (the “**Company**”) is issuing this Invitation and Instructions to Tenderers for Supply, Delivery, Testing and Commissioning of 2 units of new laden reach stackers as fully described in the Deliverables Specifications.
- 1.2 This IITT contains instructions and information on the tender process.
- 1.3 Capitalised terms used in this IITT shall have the meanings ascribed to them in the Tender Documents.

2. TENDER DOCUMENTS AND TENDER

- 2.1 The documents (collectively, the “**Tender Documents**”) upon which the Tender shall be based is as follows:
 - A. This IITT;
 - B. Annexure A: Form of Contract containing the following documents;
 - (a) Agreement Document;
 - (b) Schedule 1: Deliverables Specifications;
 - (c) Schedule 2: General Terms and Conditions;
 - (d) Schedule 3: Specific and Local Terms and Conditions;
 - (e) Schedule 4: Schedule of Quotations;
 - (f) Schedule 5: Payment Schedule;
 - (g) Schedule 6: Milestones;
 - (h) Schedule 7: Form of Securities; and
 - (i) Schedule 8: Contractor Insurances;
- 2.2 The Company reserves the right to amend any information or requirements contained in the Tender Documents or otherwise delivered during the tender process. The Company will issue written addenda to the Tenderers to notify the amendments and no amendment, of any kind, to the Tender Documents is effective unless it is contained in a written addendum issued by the Company. All costs associated with each addendum shall be included in the pricing of each Tender.
- 2.3 The Tenderer is expected to examine the Tender Documents carefully. Failure to furnish all information required by the Tender Documents or the submission of a Tender not substantially responsive to the Tender Documents in every respect may result in the rejection of the Tender.
- 2.4 The Tenderer shall satisfy itself as to the nature of the Deliverables required to be undertaken, by examination of the Tender Documents. The Tenderer shall have and be deemed to have fully satisfied itself prior to entering the Contract (including having obtained, verified and interpreted for itself all necessary information and matters) the nature and extent of the Deliverables, the specification requirements, its obligations and liabilities under the Contract, correctness and sufficiency of the Contract Price and the other sums that may become due under the Contract, the

Milestones and all risks, difficulties, contingencies and other matters and circumstances which may affect or influence the Contract Price. In respect of the foregoing, no obligation or liability of the Tenderer under the Contract or otherwise shall be relieved, limited or diminished, and the Company shall have no liability or responsibility whatsoever to the Tenderer for additional payment, extension of time or other compensation or relief.

- 2.5 The Company shall also have no liability or responsibility on the ground of or in connection with any misunderstanding or misapprehension in respect of any of the matters or circumstances regarding which the Tenderer fails to obtain correct or sufficient documents or information or failed to satisfy itself as to any matter, thing or circumstance or that it did not or could not foresee any matter, thing or circumstance.
- 2.6 Tenderers shall note that they shall be deemed to have carried out complete legal, technical, financial, commercial and all other due diligence, and have made themselves fully aware of the Company site, the operation of the port and terminal, site access, security requirements including requirements related to Consents, geotechnical conditions, space for working, distance between the Contractor's site establishment and the Company site, facilities for transportation, handling and storage of materials, availability of labour, materials, equipment and all other matters and conditions whatsoever affecting the execution of the Deliverables.

3. CLARIFICATIONS

- 3.1 Questions regarding the Tender Documents and submission of Tenders are to be directed to the following persons:

Name: Thanawat Supachokjindawat
Email address: thanawat@esco.co.th

And copied to

Name : Vittaya Pattayawat
Email address : vittaya@esco.co.th

Name: Kelvin Lim Chia Siong
Email address: kelvin@esco.co.th

Name: Sompop Yampoo
Email address: sompop@esco.co.th

Name: Chanchai Chanchang
Email address: chanchai@esco.co.th

- 3.2 Tenderers may request that a question be treated in confidence and that the question and answer shall not be circulated to all Tenderers. Upon receipt of such a request and supporting justification, the Company shall assess whether the question is confidential in nature and act as follows:

- (a) if the Company agrees that the question shall be treated in confidence, a confidential answer will be provided to that Tenderer only by email; or
 - (b) if the Company determines that the question is not confidential in nature, the Company shall inform the Tenderer, in writing by email and the Tenderer shall then have the opportunity to indicate that it accepts that the question and answer will be available to all Tenderers, or to withdraw the question.
- 3.3 Notwithstanding Section 3.2 of this IITT, where the Company considers that the matter raised in the Tenderer's query needs clarification to all Tenderers, the Company reserves the right to issue an addendum to the Tender to address the point, without making any reference to the Tenderer's question.
- 3.4 Except for Section 3.2(a) of this IITT on confidential questions, replies to questions will be sent to all Tenderers.
- 3.5 Tenderers finding discrepancies, omissions, ambiguities, or conflicts in the Tender Documents, or having doubts as to the meaning or intent of any provision, shall immediately notify the Company as set out above. The Company will review such submissions and, if the Company determines that an amendment is required to the Tender Documents, the Company will issue an addendum.
- 3.6 The Company may, at its discretion, request clarifications or additional information from a Tenderer with respect to its Tender and may invite a Tenderer to an interview for this purpose. The Company may make such requests to selected Tenderers only and need not make the same request of all Tenderers. The Company may consider such clarifications or additional information when evaluating Tenders. Any written information received by the Company from a Tenderer pursuant to a request for clarification or further information may be considered, at the Company's discretion, an integral part of the applicable Tender.

4. CONTRACT

The Preferred Tenderer will be required to enter into a contract with the Company in accordance and conformity with the form of the contract set out in Annexure A.

5. TENDER PROCESS TIMETABLE¹

5.1 Schedules

Key activities and target dates are set forth below and are indicative /tentative and may be amended by the Company by issuing an addendum to IITT. The Company reserves the right to change these dates at its sole discretion and convenience. Any changes to the timelines will be notified to the Tenderers as soon as practicable.

Events	Dates
IITT issued	06 Oct 2022
Final tenderer questions	10 Oct 2022
Final responses to tenderers' questions	14 Oct 2022
Closing Time for receipt of Tenders	20 Oct 2022
Tender meetings and negotiations	22 – 28 Oct 2022
Notification of tender award decision	30 Oct 2022
Targeted signing date of the Contract	15 Nov 2022
Targeted commencement date of the Contract	90 Days after signing

5.2 Validity of the Tender

The Tender must remain valid for the Company's acceptance for a period of one hundred eighty (180) days from the Closing Time. This period may be extended by a written agreement between the Company and the applicable Tenderer.

6. TENDER SUBMISSION AND COMPLETION INFORMATION

6.1 Formalities²

- (a) The Tenderers shall submit the Tenders to the Company before 1700H (GMT +07:00) on 20th Oct 2022 (the "**Closing Time**").
- (b) Tenders shall be submitted by electronic email only to tender@esco.co.th
- (c) The subject matter of the Tender shall be clearly marked: **Tender for Supply, Delivery, Comissioning and Testing of Reach Stacker**
- (d) Tender delivered after the Closing Time may, in the Company's sole and absolute discretion, be considered, where there are extenuating circumstances for the late delivery.
- (e) The Tenderers shall follow the following formalities for submission of Tender by electronic mail:
 - (i) the complete Tender is to be submitted in a PDF format and an editable soft copy format;
 - (ii) please ensure that your total file size of attachments is below 15MB per electronic mail. In the event that the file size exceeds, please submit in multiple emails (please label in parts A, B, etc);
 - (iii) unless multiple submissions are related to section 6.1(e)(iv), the company shall only accept the latest submission (by the Closing Time);
 - (iv) Tenderers shall ensure that their Tender submissions are virus-free and does not fail the Company's virus and malicious code detections. In the event that the Tender submissions are found to be corrupted, whether in whole or partially, the Company shall forthwith reject such corrupted submission and be deemed invalid for evaluation;

² Drafting Note: Please amend the formalities per the business unit's requirements.

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- (v) the Closing Time indicated in section 6.1 above shall be at point of receipt at the mailbox (email address: set out the email address), not at point of transmission from Tenderer's mailbox.]
 - (f) Please do not send any enquiries as there will be no response. The email address is purely for submission of Tenders.
 - (g) The Company does not undertake any responsibility for the conveyance of the Tender received through electronic mail. Tenderer shall ensure that it is entirely responsible for timely and proper submission of the Tender in accordance with section 6(e) of this IITT.

6.2 Pricing

- (a) All pricing shall be in Thai Baht (THB).
- (b) The Tender shall be shown inclusive of all Taxes, royalties and related charges and levies.
- (c) During negotiation, should the Company elect to have the breakup of pricing showing the details of the various taxes then the same shall be provided by the Tenderer.
- (d) The cost of the stamp duty for the execution of this Contract will be borne by the Company

6.3 Participating Entities and Authority

- (a) Where the Tenderer is a company, the Tender must be signed by a duly authorised representative of that company.
- (b) Where a Tenderer is a consortium, the members of the consortium shall nominate one of the members to be their authorised representative and attorney ("**Lead Member**") who shall have the authority to submit the Tender Documents and do all things necessary in relation thereof including signing and negotiating the Tender for and on behalf of the consortium and to bind each members of the consortium with respect to the same. All communications with the consortium will be made only by/to the Lead Member. The obligations and liabilities of all members of the consortium with respect to the Tender shall be joint and several in favour of the Company.
- (c) In the case of a partnership, all the partners shall sign or, alternatively, only one may sign, in which case the partner must have and shall state that the partner has authority to sign on behalf of the other partner(s). The names of all the partners shall be given in full together with the trading name of the partnership.
- (d) In the case of the sole trader, the sole trader shall sign and give the name in full together with the name under which the sole trader is trading.
- (e) During the tender process, the Tenderers (including the members of a Consortium) shall not enter into a new partnership, joint venture, consortium or other unincorporated grouping with any other company without the prior written consent of the Company.

7. EVALUATION AND SELECTION

7.1 Evaluation

- (a) The Company shall not be limited as to its criteria for the evaluation of Tenders. the Company will select the Tender(s) that represent the best overall value, as determined by the Company.

- (b) The Company may either select a Preferred Tenderer or elect to negotiate further with a reduced number of Tenderers. The Company may conduct parallel negotiations with Tenderers with the aim of identifying a Preferred Tenderer and achieving agreement with the Tenderer on all key issues. Tenderers, by submission of a Tender, agree to negotiate in good faith with a view to executing the Contract.
- (c) Notwithstanding anything stated otherwise in this Tender Documents, the Company may consider, as part of the evaluation criteria, the direct and indirect costs and non-monetary impacts of a Tender on the Company for the purpose of achieving the greatest value based on quality, service and/or price, as may be.
- (d) The Company's evaluation of Tenders will remain confidential and the Company is not obliged to disclose its evaluation of a Tender to any Tenderer.

7.2 Rejection of Tenders and Cancellation of Tender Documents

The Company may at its own will and without assigning any reasons and without any liability:

- (a) reject any or all of the Tenders;
- (b) accept any Tender;
- (c) if only one Tender is received, elect to accept or reject it;
- (d) elect to discontinue the tender process at any time, including after the identification of a Preferred Tenderer;
- (e) alter any aspect of the Tender Documents; and
- (f) cancel this tender process and subsequently advertise or call for new tender or proposals for the same or different subject matter of the Tender Documents.

8. AWARD OF CONTRACT

- 8.1 Subject to the terms set out in this IITT, in its sole discretion, the Company will award the Contract to the Preferred Tenderer whose Tender has been determined to be substantially responsive to the Tender Documents.
- 8.2 The Company will notify the Preferred Tenderer that its Tender has been accepted.
- 8.3 The Preferred Tenderer shall sign and send the Contract within ten (10) days from the date of the notification.
- 8.4 If the Preferred Tenderer seeks to materially negotiate or seeks any material deviations from the final execution draft of the Contract provided by the Company, the Company may, without prejudice to its legal rights, elect to disqualify the Preferred Tenderer and select another Tenderer.

9. GOVERNING LAW AND DISPUTE RESOLUTION

- 9.1 This IITT shall be interpreted, construed and governed by the laws of Kingdom of Thailand.
- 9.2 Any dispute arising between the parties out of or in connection with the IITT, including any question regarding its existence, validity or termination, shall be finally settled by a binding arbitration administered by the Singapore International Arbitration Centre ("SIAC") under the Arbitration Rules of Singapore International Arbitration Centre ("SIAC Rules") for the time being

in force, which rules are deemed to be incorporated by reference in this Section 9.

9.3 The Tribunal shall consist of (1) one arbitrators. The language of the arbitration shall be English.

10. GENERAL

10.1 Working Language

The working language of the IITT and Contract shall be in English.

10.2 Tenderer's Costs and Expenses

A Tenderer is solely responsible for its own costs and expenses in relation to participation in the tender process including the costs and expenses associated with preparing and submitting a Tender, attending interviews, meetings or discussions with the Company, attending site and finalisation and execution of the Contract. For the avoidance of doubt, the Company will not assume any liability whatsoever for any of the foregoing costs and expenses.

10.3 Non-Disclosure / Confidentiality/ Publicity

- (a) The Company operates in a competitive and sensitive business environment and, for that reason, Tenderers must treat the materials and data provided by the Company, including this IITT and all related communications, as confidential. The access to, or provision of, confidential information during the diligence, evaluation and negotiation phases of the Contract and any transition activities carried out prior to signature of the Contract (should the Tenderer be selected as the Preferred Tenderer) shall also be treated by the Tenderers, as confidential.
- (b) No publicity regarding this tender process, specification, Deliverables, award of any contract or otherwise will be permitted unless and until the Company has given express written consent to the relevant communication. For example, no statements may be made to the media regarding the nature of any Tender, its contents, or any proposals relating to it without the prior written consent of the Company.

10.4 Warnings and disclaimers

While the information contained in this IITT is believed to be correct at the time of issue, neither the Company, its advisors, nor any other awarding entities will accept any liability in any circumstances for its accuracy, adequacy or completeness, nor will any express or implied warranty be given. This exclusion extends to liability howsoever arising in relation to any statement, opinion or conclusion contained in, or any omission from, this IITT (including its Annexures and Schedules) and in respect of any other written or oral communication transmitted (or otherwise made available) to any Tenderer. No representations or warranties are made in relation to these statements, opinions or conclusions. This exclusion does not extend to any fraudulent misrepresentation made by, or on behalf of, the Company.

10.5 Non-Exclusive Rights

The rights, powers and remedies of the Company expressly provided in the IITT and the Contract are cumulative and not exclusive or in substitution of any rights, powers or remedies which it

would otherwise have under the IITT and the Contract and applicable laws.

10.6 IP Rights and Ownership of Tenders

- (a) The Company grants permission to the Tenderers to whom the Tender Documents, Drawings, plans, calculations, information, data are given, to use same solely for the purpose of preparing the Tender.
- (b) The Tender Documents, Drawings, plans, calculations, information, data and part thereof shall not be released or disclosed, in whole or in part except for purposes directly related to the preparation of the Tender.
- (c) The Tender Documents, Drawings, plans, calculations, information, data and any part thereof shall not be used by the Contractor for the design, manufacture, production, or sale of any facility (unless such facility is contracted with or through the Company) or for any other purpose other than for a purpose directly connected to the Contract.
- (d) All Tenders submitted to the Company (including any documents submitted by a Tenderer in connection with a Tender or pursuant to this IITT) shall become the property of the Company and will not be returned to Tenderers

10.7 Fraud and Corrupt Practices

- (a) The Tenderer and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the tender process. Notwithstanding anything to the contrary contained herein, the Company may reject any Tender without being liable in any manner whatsoever to the Tenderer if it determines that the Tenderer has, directly or indirectly or through an agent, engaged in corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice in the tender process.
- (b) Without prejudice to the rights of the Company under Section 10.7(a) of this IITT above, if a Tenderer is found by the Company to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the tender process, then the such Tenderer's Tender shall be summarily rejected

11. DEFINITIONS

Closing Time	has the meaning ascribed to it at Section 6.1 of this IITT;
Invitation and Instructions to Tenderers OR IITT	means this letter of the Company to the Tenderers titled inviting and providing instructions to the Tenderers on the Tender Process;
Lead Member	has the meaning ascribed to it at Section 6.4(b) of this IITT;
Preferred Tenderer	means the Tenderer whose Tender is accepted by the Company;
Tender	means the Contractor's offer to execute and complete the Deliverable(s);
Tenderers	means any person to whom the IITT is issued, whether or not they submit a Tender; and
Tender Documents	has the meaning ascribed to it at Section 2.1 of this IITT.