



VIETNAM NATIONAL COAL - MINERAL INDUSTRIES GROUP

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AUCTION № 01 – 2010/VCM

AUCTION INVITATION DOSSIER

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1- INVITATION TO AUCTION

INVITATION TO AUCTION

To: **Whom It May Concern**

Date: March 10, 2010

Auction No. 01-2010/VCM

Dear Sirs and Mesdames,

We - Vietnam National Coal - Mineral Industries Group (Vinacomin) would like to invite foreign entities who deal in coal business to participate in the Auction of Vietnamese anthracite for export on the following terms and conditions:

1. Commodity:
- Hongai Anthracite Fine No.10B2 (Hongai No. 10B2)
 - Hongai Anthracite Fine No.10C (Hongai No. 10C)
 - Hongai Anthracite Fine No.11A (Hongai No. 11A)
 - Vangdanh Anthracite Fine No.11A (Vangdanh No. 11A)
 - Vangdanh Anthracite Fine No.11B (Vangdanh No. 11B)

2. Specifications:

		Hongai No. 10B2	Hongai No.10C	Hongai No.11A
Total moisture	(as received):	8.0% max	8.0% max	8.0% max
Ash	(dry basis):	30.0% max	32.0% max	36.0% max
Volatile matter	(dry basis):	8.0% max	8.0% max	8.0% max
Sulphur	(dry basis):	0.6% max	0.6% max	0.6% max
Calorific value (min-Max)	(dry basis):	5,701-6,000kcal/kg	5,501-5,700kcal/kg	5,201-5,500kcal/kg
Size:		0-15mm	0-15mm	0-15mm
			Vangdanh No.11A	Vangdanh No.11B
Total moisture	(as received):		8.0% max	8.0% max
Ash	(dry basis):		33.0% max	36.5% max
Volatile matter	(dry basis):		5.0% max	5.0% max
Sulphur	(dry basis):		1.1% max	1.1% max
Calorific value (min-Max)	(dry basis):		5,201-5,500kcal/kg	4,901-5,200kcal/kg
Size:			0-15mm	0-15mm

<u>3. Quantity:</u>	- Hongai No.10B2:	200,000 MT +/- 10% (in bulk)
	- Hongai No.10C:	100,000 MT +/- 10% (in bulk)
	- Hongai No.11A:	500,000 MT +/- 10% (in bulk)
	- Vangdanh No.11A:	100,000 MT +/- 10% (in bulk)
	- Vangdanh No.11B:	100,000 MT +/- 10% (in bulk)
	Total:	1,000,000 MT +/- 10% (in bulk)

4. Shipping period: From April 1, 2010 until September 30, 2010
(shipments shall be performed fairly evenly spread during the shipping period).

5. Form of payment:

- Irrevocable L/C opened by a first class bank agreed by the two parties. Payment at sight.
- Payment in advance by TTR

6. Maximum loading rate (on the basis of 4 workable cranes/derricks, fraction pro-rata):

6.1. For cargo size of 15,000MT and below: CQD

6.2. For cargo size of 15,001 - 25,000MT:

- at berth: 8,000 MT per WWD SHEXUU
- at anchorage: 4,000 MT per WWD SHEXUU

6.3. For cargo size of 25,001- 40,000MT:

- at berth: 10,000 MT per WWD SHEXUU
- at anchorage: 6,000 MT per WWD SHEXUU

6.4. Cargo size over 40,000 MT: not acceptable

7. Dem/des rate:

- For the case 6.1: Not applied
- For the case 6.2: 4,000/2,000USD per day
- For the case 6.3: 6,000/3,000USD per day

8. Reserve price (floor price): (for geared vessel)

- For Hongai No.10B2: 86.00USD/MT FOB Campha port, Vietnam
- For Hongai No.10C: 81.00USD/MT FOB Campha port, Vietnam
- For Hongai No.11A: 73.00USD/MT FOB Campha port, Vietnam
- For Vangdanh No.11A: 71.00USD/MT FOB Campha port, Vietnam
- For Vangdanh No.11B: 66.00USD/MT FOB Campha port, Vietnam

Notes:

- FOB Price includes trimming fees.
- The mentioned above prices are applied for workable geared vessels only. In case of gearless vessels, USD 1.0/MT will be added into the above prices. Geared vessels with unworkable gears as per the Buyer's declaration in the vessel nomination will be considered as gearless vessels.

9. Currency used in Auction : United States Dollar (USD)

10. Language used in Auction: English

11. Time and date of Auction holding: 2.00 p.m. March 23, 2010

12. Location of Auction holding: Vinacomin Head Office
226 Le Duan Road, Hanoi, Vietnam
13. Deadline for Bid Submission: 1.45 p.m. March 23, 2010
14. Address of Bid Submission: Vietnam National Coal - Mineral Industries Group (VINACOMIN)
(Import - Export Division No.2)
226 Le Duan Road, Hanoi, Vietnam
Tel: +84 4 35180170, Fax: +84 4 35189111
15. Auction security: To be made by a deposit or a Bank Guarantee in favor of Vinacomin for the amount of 2% of the value of the registered quantity evaluated on floor price.
- 15.1. By a deposit: the deposit amount to be transmitted to the following account:
- Bank Name: Joint Stock Commercial Bank for Foreign Trade of Vietnam
SWIFT Code: BFTVVNVX
 - Bank address: 198 Tran Quang Khai Avenue – Hanoi – Vietnam
 - Beneficiary: Vietnam National Coal – Mineral Industries Group (VINACOMIN)
Account No.: 068 137 000 7669
- 15.2. By Bank Guarantee: Bank Guarantee must be issued by a bank in Vietnam accepted by Vinacomin.
16. Other terms & conditions: as per attached Auction Regulation and Draft Contract.

For further information, please contact:
Vinacomin Import - Export Division No.2
226 Le Duan Road, Hanoi, Vietnam
Tel: +84 4 35180170; Fax: +84 4 35189111
Email: nguyendd@vinacomin.vn

Yours faithfully,



*Do Dinh Nguyen
Vice General Manager
Vinacomin Import - Export Division No.2*

2- FORM OF BIDDING REGISTRATION

BIDDING REGISTRATION

Date:

**TO: VIETNAM NATIONAL COAL MINERAL INDUSTRIES GROUP
(VINACOMIN)
226 LE DUAN ROAD, HANOI, VIETNAM
TEL: +84 4 35180170
FAX: +84 4 35189111**

- Participant (full name with full address, tel., fax and e-mail)

Dear Sir(s),

With thorough acknowledgement of all the information supplied, we hereby voluntarily register for participating in the Auction No.01-2010/VCM opened by VINACOMIN and shall comply with the Regulation of Auction and other Auction Invitation Documents.

Bidding volume:

Hongai Anthracite Fine No. 10B2:MT +/- 10%
Hongai Anthracite Fine No. 10C:MT +/- 10%
Hongai Anthracite Fine No. 11A:MT +/- 10%
Vangdanh Anthracite Fine No. 11A:MT +/- 10%
Vangdanh Anthracite Fine No. 11B:MT +/- 10%
Total:MT +/- 10%

For the evidence of our Auction security, we enclose herewith *copy of bank slip of our deposit/ Auction Bank Guarantee/ Counter Guarantee* for the amount of USD
..... (in words: United States Dollars.....)
.....) equaling
2% of the value of the registered quantity evaluated on floor price.

Authorized signatory (with name)

3- FORM OF BIDDING NOTE

BIDDING NOTE

Date:

- Participant (full name with full address, tel., fax and email)

To: **VIETNAM NATIONAL COAL-MINERAL INDUSTRIES GROUP
(VINACOMIN)
226 LE DUAN ROAD, HANOI, VIETNAM
TEL: +84 4 35180170 FAX: +84 4 35189111**

Dear Sir(s)

After studying and agreeing with all terms and conditions stipulated in Auction documents provided by VINACOMIN, we hereby voluntarily participate in the Auction No.01-2010/VCM-CN opened by VINACOMIN on the following terms and conditions:

1. Commodity: Hongai Anthracite Fine No.10B2 (Hongai No. 10B2)
.....
 Vangdanh Anthracite Fine No. 11B (Vangdanh No.11B)
2. Specifications: as per Invitation to Auction
3. Quantity:
 Hongai No.10B2: MT +/- 10% (in bulk)

 Vangdanh No.11B: MT +/- 10% (in bulk)
 Total: **MT +/- 10% (in bulk)**
4. Cargo size:.....
5. Number of shipments:.....
6. Shipping period: April 2010 – September 2010
 *(shipments shall be performed fairly evenly spread
 during the shipping period)*
7. Destination:.....
8. Loading rate:
 + at berth: ... MT per WWD SHEXUU
 + at anchorage: ... MT per WWD SHEXUU
9. Demurrage/Despatch rate:..... USD/Day
10. Bidding price: (for geared vessel)

Hongai No.10B2: USD/MT FOB Campha port, Vietnam

Vangdanh No.11B: USD/MT FOB Campha port, Vietnam

The mentioned above prices are applied for workable geared vessels only. In case of gearless vessels, USD 1.0/MT will be added into the above prices. Geared vessels with unworkable gears as per the Buyer's declaration in the vessel nomination will be considered as gearless vessels.

11. Form of payment: (please mark "x" on below boxes for your form of payment)

- Irrevocable L/C opened by a first class bank agreed by the two parties. Payment at sight.
- L/C opened for whole Contract Value
- L/C opened not for whole Contract Value
- Payment in advance by TTR

12. Validity of the Bid:.....

13. Other preferential conditions reserved for Vinacomin:

.....
.....

We hereby acknowledge that we will fulfill all obligations and responsibilities of Auction winner stipulated in Regulation of Auction and Draft Contract included in the Auction documents provided by VINACOMIN.

Authorized signatory (with name)

4- REGULATION OF AUCTION

REGULATION OF AUCTION OF VIETNAMESE ANTHRACITE FOR EXPORT

Article 1. Legal Basis

The present Regulation of Auction of Vietnamese anthracite for export is conducted by the 2005 Commercial Law of the Socialist Republic of Vietnam, the implementing legal documents of the 2005 Commercial Law and the other related regulations of Vietnam and Vietnam National Coal-Mineral Industries Group.

Article 2. Interpretation of Terms

In the present Regulation, the following terms shall be construed as follows:

2.1. *Auction or Auction of Vietnamese anthracite for export* means a form of selling Vietnamese anthracite for supplying and using outside the territory of Vietnam, in which participants bid for Vietnamese anthracite pursuant to the principles and procedures stipulated in the present Regulation in order to select the purchaser offering the highest price.

2.2. *Vinacomin* means Vietnam National Coal-Mineral Industries Group.

2.3. *Participants or Auction participants* mean foreign entities who meet all requirements stipulated in the present Regulation and participate in the Auction as Bidders.

2.4. *Floor or reserve price* means the lowest valid price of Auctioned Goods determined and advised by Vinacomin in the Invitation to Auction.

2.5. *Auction invitation dossier* mean documents provided by Vinacomin to participants as stipulated in the present Regulation.

2.6. *Invitation to Auction* means a letter provided by Vinacomin to invite participants to participate in the Auction showing detailed terms and conditions of the Auction.

2.7. *Bidding Note* means an offer made and submitted by the Participant to Auction pursuant to the form provided by Vinacomin.

2.8. *Scheduled time of Auction* means time of opening Auction which is stipulated in the Invitation to Auction (Hanoi Standard Time).

2.9. *Scheduled date of Auction* means date of opening Auction which is stipulated in the Invitation to Auction.

2.10. *Deadline for Bid submission* means the latest time the Participants must submit the Bid.

Article 3. Principles and Method of Auction

3.1. The Auction is to be conducted on the principles of publicity, truthfulness and protection of the lawful rights and interests of all Auction participants.

3.1. Auction shall be performed by upward bidding method by which the Bidders offering the highest price compared with the reserve price shall have the right to purchase the Auctioned goods.

Article 4. Forms of Auction Holding and Auction Participants

4.1. Base on the actual situation of coal production and sales, as well as annual export plan of anthracite, Vinacomin will periodically or non-periodically hold Auction of Vietnamese anthracite for exporting to a particular market or numerous markets.

4.2. Auction participants are foreign entities who have been invited to participate in Auction for importing and using Vietnamese anthracite outside the territory of Vietnam. Depending on the quantity and grade of auctioned goods, Vinacomin will decide to invite all or restricted participants.

4.3. Participants must have fully legal status set by law, not to be forbidden in coal trading by any authority, have healthy financial status, not to be bankrupt or insolvent or in the progress of separation, mergence and dissolution.

Article 5. Auctioned Goods

5.1. Auctioned goods are Vietnamese anthracite in bulk. Quantity, grades and specifications of the Auctioned goods will be clearly specified in the Invitation to Auction.

5.2. Participant can bid for one, some or all grades of Auctioned goods provided that bidding quantity of each grade does not exceed auctioned quantity of this grade.

Article 6. Currency used in Auction

Currency used in the Auction and Contract performance is to be only United States Dollar (USD).

Article 7. Language used in Auction

Language used in Auction and all related documents is English.

Article 8. Announcement of Auction:

8.1. Not later than 7 (seven) working days prior to Scheduled date of Auction, Vinacomin will publicly announce the Auction of Vietnamese anthracite for export inviting customers to participate in the Auction via mass media, the Vinacomin's website or by email/ fax sent directly to customers.

8.2. Customers who are invited by Vinacomin in accordance with the Announcement of Auction and interested in participating in the Auction will receive

Auction invitation dossier as per instructions specified in the Announcement of Auction.

Article 9. Location and Time of Auction

Location, scheduled time and date of holding (opening) Auction are specified in details in the Announcement of Auction.

Article 10. Auction Invitation Dossier:

A full set of Auction invitation dossier comprises following 7 (seven) documents to be issued and provided by Vinacomin to participants:

- 1- Invitation to Auction;
- 2- Form of Bidding Registration;
- 3- Form of Bidding Note;
- 4- Regulation of Auction;
- 5- Draft Contract;
- 6- Sample of Auction Guarantee;
- 7- Sample of Contract Performance Guarantee.

Announcement of Auction is considered as an integral part of the Auction invitation dossier.

Article 11. Bidding Note:

11.1. Bidding Note performance:

All foreign entities who are invited and interested in participating in the Auction, after studying and agreeing with all conditions stipulated in Auction invitation dossier and fulfilling all the procedures in accordance with the present Regulation are requested to fill in all information required in the Form of Bidding Note.

- (1) Bidding Note must be fully and clearly filled in with required information;
- (2) Bidding Note must not be erased or ragged;
- (3) Participants can only bid a price which is not lower than reserve (floor) price of this a grade;
- (4) Bidding price can be expressed in maximum two decimal USD;
- (5) Bidding quantity of each grade does not exceed auctioned quantity of this grade;
- (6) Bidding Note must be duly signed by the Participant's legal representative.

11.2. Validity Period of Bid: Bidding Note shall remain its validity period for at least 30 (thirty) days from the scheduled date of Auction.

11.3. Valid Bidding Note: A Bidding Note shall be valid if strictly performed and submitted to Vinacomin pursuant to the present Regulation.

Article 12. Submission of Auction Documents

12.1. Participants attend the Auction by submitting Auction documents;

12.2. Auction documents consist of Auction registration documents, Auction security and Bidding Note. Auction registration documents include following 3 (three) documents:

(1) Bidding registration;

(2) Evidence to prove that participant has fulfilled the Auction security, such as copy of Bank slip (in case Auction security is effected by a deposit) or copy of Counter Guarantee and/or Bank Guarantee.

(3) Copy of Company Establishment Decision or Certificate of Business Registration or other documents to prove that during the period of the Contract execute, the participants are entitled to deal in coal business or not forbidden in coal business.

12.3. Submission of Auction registration documents: Not later than 2 (two) days prior to Scheduled date of Auction, participants must send Auction registration documents directly or by post/ fax or email to Vinacomin.

12.4. Submission of Auction security: Auction security should reach Vinacomin on or before the submission deadline of Bidding Note.

Auction security is considered to reach Vinacomin when the deposit for auction has been accomplished or when the original of the Auction Bank guarantee has been received by Vinacomin.

12.5. Submission of Bidding Note:

(1) Participant submits Bidding Note to Vinacomin directly or by express postal service. Bidding Note must be submitted in a sealed envelope, which clearly mentions name, address, telephone, fax or email of the participant.

Each participant can submit only one Bidding Note.

(2) Time to submit Bidding Note will be determined by the time participant hands over the Bidding Note to Vinacomin or the time when the Note has been delivered to Vinacomin by post.

(3) Deadline for Bidding Note submission is 15 (fifteen) minutes prior to the Scheduled time of Auction. Vinacomin may at its discretion extend the Scheduled time of Auction and the deadline for Bidding Note submission by supplementary announcement(s).

Any Bidding Note received by Vinacomin after the deadline for Bidding Note submission, will be rejected and preserved to send back to the Bidder.

Article 13. Auction and Contract Performance Securities:

13.1. Auction Security: All participants must furnish the Auction security in favor of Vinacomin for the amount of 2% of the value of the registered quantity of goods evaluated on reserve (floor) prices.

(1) Period of validity of the Auction security should not be less than 15 (fifteen) days from the expired date of the Bidding Note.

(2) Auction security will be refunded to non-winning participants within 7 (seven) working days from the date of Auction. Auction security of the Auction winners will be refunded to such participants after provision of a contract performance security pursuant to the Contract and present Regulation.

(3) The Auction security may be forfeited if the participant:

a) withdraws its Bidding Note during the validity period of Bid specified in the Bidding Note.

b) is an Auction winner but violate one of the followings:

- Fails or refuses to sign/enter into the Contract;

- Fails or refuses to furnish the contract performance security.

13.2. Contract Performance Security: All auction winners, after signing contract with Vinacomin, must fulfill the contract performance security in favor of Vinacomin for the amount of 5% (five percent) of the Contract's value.

Detailed information and requirements concerning the Contract performance security are specified in the sample of Contract Performance Guarantee and Draft Contract.

13.3. Both the Auction and contract performance securities may be effected in one of the following forms:

(1) a deposit at an account nominated by Vinacomin to be effected by TTR from a bank outside of Vietnam. Deposit is considered to be accomplished when Vinacomin receives full deposit amount at its nominated account.

All related cost such as bank charges and other fees, if any, is to be borne by the Bidder/ the Buyer.

(2) a Bank Guarantee issued by a bank in Vietnam to be accepted by Vinacomin. The Bank in Vietnam may issue the Bank Guarantee itself or under an irrevocable Counter Guarantee of a Participant's/ Buyer's bank to and accepted by the bank in Vietnam.

The Bank Guarantee and Counter Guarantee are subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, Paris (URDG 458) or to the International Standby Practices, ICC Publication No. 590, Paris (ISP 98).

All the fees relating to performing the Bank Guarantee and Counter Guarantee shall be for the Bidder's/ Buyer's account.

Article 14. Conducting of Auction:

14.1. To conduct auctions, Vinacomin will appoint a Committee for auction evaluation. The committee consists of a chairman, a permanent member and other members. Committee chairman will nominate a secretary of the Auction.

14.2. By the time announced in the Invitation to Auction, Vinacomin shall publicly hold the Auction. At the auction, Vinacomin will announce the result of reviewing participants' Auction registration documents and the list of participants who are eligible to participate in the auction.

14.3. Submitted Bidding Notes will be evaluated at the auction. Vinacomin will evaluate only valid Bidding Notes submitted by participants who are eligible to participate in the auction and have submitted Auction security.

14.4. Auction winner is determined on the following principles:

(1) Base on bidding price, from top to bottom. Auction winners will be able to buy auctioned goods at their bidding price.

(2) Participant who bids the highest price will have the right to purchase full of his bidding quantity at his bidding price. The balance of auctioned quantity will be given to participants who bid the successive price until the last auctioned quantity.

(3) In case participants bid same price, determination of the winner will be based on the following priority order:

- Participant who accepts the form of payment in advance by TTR;
- Participant who bids lower loading rate;
- Participant who accepts form of payment by documentary credit and commits that a letter of credit (L/C) will be opened for whole contract's value;
- Participant who has other proposals in favor of Vinacomin and accepted by Vinacomin.

(4) In case participants bid same price and all bidding conditions and terms are the same but the total bidding quantity of each grade is in excess of the auctioned quantity of this grade, winning quantity of each participant shall be determined as follows:

$$\text{Winning quantity} = \text{Balance of auctioned quantity} \times \frac{\text{Bidding quantity of each participant who bids same price}}{\text{Total bidding quantity of participants who bid same price}}$$

(5) Winning quantity is rounded off to the unit of 1,000 MT on the principle of rounding down the quantity less than 500 MT and rounding up the quantity of 500 MT or more;

(6) In case winning quantity is less than 5,000 MT (five thousand), auction winner of such winning quantity is entitled to refuse to enter into a contract, and in this case, Auction security will not be forfeited.

14.5. Auction evaluating process and Auction results will be reported in writing and signed by Vinacomin and participants' representative (if any). Base on Auction report, Vinacomin will announce the Auction results at the Auction.

14.6. Not later than 2 (two) working days from the date of Auction, Vinacomin will advise the Auction winner of auction results in writing.

Article 15. Signing Sales Contract:

15.1. Not later than 7 (seven) working days from the date of advising the Auction winner of Auction results, Sales Contracts will be signed between Vinacomin and Auction winners in accordance with the Draft Contract.

15.5. Not later than 5 (five) working days from the date of furnishing the contract performance security by the Buyer as per signed Contract, Auction security shall be refunded as per instruction of the Auction winner. For participant who furnish Auction security by a deposit, deposit money can be considered as a part of the contract performance security and/or advanced payment for goods provided that the participant has a proposal in writing

Article 16. Unsuccessful Auctions

An Auction shall be deemed unsuccessful in the following circumstances:

- (1) There is no participant or no bidding price;
- (2) The highest price offered is lower than the reserve (floor) price.

Article 17. Other Provisions:

17.1. All amendments and supplements related to an Auction which has been published will be timely informed participants by Vinacomin. In case of necessity, Vinacomin will extend the deadline for submission Auction documents.

17.2. All queries, complains of Auction participants, if any, will be raised and settled during the Auction. In case it is impossible to be solved during the Auction, Vinacomin will make final decision and advise participant(s) within 03 (three) working days from the Auction date.

5- DRAFT CONTRACT

CONTRACT No. .../2010/...-VCM

This Contract is made in Hanoi, Vietnam, on this day of, 2010 by and between:

**VIETNAM NATIONAL COAL - MINERAL INDUSTRIES GROUP
(VINACOMIN)**

Address: 226 Le Duan Rd., Hanoi, Vietnam

Tel.:

Fax.:

Cable address: "VINACOMIN"

Hereinafter referred to as the Seller

And:

Address:

Tel.:

Fax.:

Hereinafter referred to as the Buyer

The Seller agrees to sell and the Buyer agrees to buy Vietnamese Anthracite on terms and conditions as follows:

Article 1: COMMODITY

- 1.1. Name of Commodity: Hongai Anthracite Fine No.10B2 (Hongai No. 10B2)
Hongai Anthracite Fine No.10C (Hongai No. 10C)
Hongai Anthracite Fine No.11A (Hongai No. 11A)
Vangdanh Anthracite Fine No. 11A (Vangdanh No.11A)
Vangdanh Anthracite Fine No. 11B (Vangdanh No.11B)

- 1.2. Specification: as below:

		Hongai No. 10B2	Hongai No.10C	Hongai No.11A
Total moisture	(as received):	8.0% max	8.0% max	8.0% max
Ash	(dry basis):	30.0% max	32.0% max	36.0% max
Volatile matter	(dry basis):	8.0% max	8.0% max	8.0% max
Sulphur	(dry basis):	0.6% max	0.6% max	0.6% max
Calorific value (min-Max)	(dry basis):	5,701-6,000kcal/kg	5,501-5,700kcal/kg	5,201-5,500kcal/kg
Size		0-15mm	0-15mm	0-15mm
			Vangdanh No.11A	Vangdanh No.11B
Total moisture	(as received):		8.0% max	8.0% max
Ash	(dry basis):		33.0% max	36.5% max
Volatile matter	(dry basis):		5.0% max	5.0% max
Sulphur	(dry basis):		1.1% max	1.1% max
Calorific value (min-Max)	(dry basis):		5,201-5,500kcal/kg	4,901-5,200kcal/kg
Size			0-15mm	0-15mm

Article 2: QUANTITY, PRICE AND VALUE

Grade	Shipments by September 30, 2010		
	Q-ty (MT)	FOB Campha port, Vietnam (USD)	
		Price	Value
Hongai No. 10B2			
Hongai No. 10C			
Hongai No. 11A			
Vangdanh No. 11A			
Vangdanh No. 11B			
Total:			

Contract value: USD ... (In words: United States Dollars)

Notes:

- (1) FOB Price and Value include trimming fees.
- (2) Quantity of each shipment is not over 40,000 MT plus 10%.
- (3) Tolerance of Quantity and Value is +/- 10%

- (4) The mentioned above prices are applied for workable geared vessels only. In case of gearless vessels, USD 1.0/MT will be added into the above prices. Geared vessels with unworkable gears as per the Buyer's declaration in the vessel nomination will be considered as gearless vessels.

Quantity adjustment due to total moisture (only for invoicing purpose): In case the actual moisture content mentioned in the Certificate of Quality issued by QUACONTROL exceeds 8.0 pct, the Invoiced quantity shall be determined as below:

$$\text{Invoiced Quantity} = \text{B/L weight} - \text{B/L weight} \times (\text{Actual moisture} - 8.0 \text{ pct})$$

Price adjustment due to calorific value: If according to the Certificate of Quality issued by QUACONTROL the actual Calorific value on a dry basis is lower than the minimum Calorific Value as per the Specifications, the Invoice's price to be adjusted as below:

$$\text{Invoice's price} = \frac{\text{FOB price} \times \text{actual Calorific value}}{\text{Minimum Calorific value}}$$

Article 3: TERMS OF DELIVERY.

- 3.1. Terms of delivery: FOB Campha port, Vietnam as per INCOTERMS 2000.
- 3.2. Loading Port: one safe berth and/or anchorage area of Campha port, the minimum sailing draft of which is 9.0 m
- 3.3. Destination port:
- 3.4. Shipment period: Cargoes shall be shipped in bulk fairly evenly spread from [April 1, 2010](#) until [September 30, 2010](#). Shipment schedule shall be agreed by both Parties.

Article 4: LOADING CONDITIONS AND LOADING RATE

- 4.1. Loading procedure: Both parties agreed the loading procedure as below:
 - (1) The Buyer shall make vessel nomination for the Seller's confirmation by fax or e-mail at least seven (7) days prior the estimated time of arrival (ETA) of vessel at loading port, stating clearly: name, the nationality, and particulars of nominated vessel and her laydays (maximum - 5 days).

The Seller shall inform his vessel acceptance non-acceptance by fax or e-mail within 1 working day to the above said nomination. In case of non-acceptance of vessel, the reasons need to be provided.
 - (2) The Buyer shall definitely and officially book the vessel right after the Seller's vessel acceptance. If the Buyer intends to change the accepted vessel, he must advise by fax or e-mail to have the Seller's confirmation in according of point 4.1, item (1) mentioned above.

- (3) Five (5) days prior to ETA of the accepted vessel at loading port, the Buyer or the Shipmaster shall cable to the Seller indicating the date of presentation of the vessel.
- (4) Three (3) days prior to the date of presentation of the vessel, a telegraphic notice on precise date of arrival and quantity to be shipped should be sent to the Seller or Seller's representative at the loading port.
- (5) For fulfilling necessary entry formalities of the vessel into the loading port with owner's paying agency disbursement fees prior to the vessel's arrival, the owner/ shipmaster to get in touch with the shipping agent:
 - Vinacomin Shipping Agency Joint Stock Company (VICOSA)
 - Add: 55A Le Thanh Tong Street, Halong City, Quangninh, S.R.Vietnam
 - Tel. No. 84 - 33 - 3821 981/3866 112
 - Fax. No. 84 - 33 - 3821 980/3866 137
- (6) On arrival at the loading port, which means on arrival at a position within or near the loading port where waiting vessels usually lie, after free pratique and in all respects vessel is ready to load, whether the vessel in berth or not, the shipmaster is to hand over during working time to Seller's representative at the loading port a written Notice of Readiness (NOR) indicating time at which vessel is ready to load cargo.
- (7) Working time starts from 8:00 to 12:00 in the morning and from 13:00 to 16:30 in the afternoon from Monday through Saturday (Hanoi Standard Time).
- (8) Laytime for loading shall commence at 13:00 if NOR is given before 12:00 and at 8:00 next working day if NOR is given during afternoon office hours, whether vessel in berth or not, unless sooner commenced, in such case time actually used before commencement of laytime to count as laytime.
- (9) Time for loading shall not count between 16:30 on Saturday and 8:00 on Monday nor between 16:30 on the last working day proceeding a Holiday of S.R of Vietnam and 8:00 on the first working day thereafter, unless used, in such case time actually used to count as laytime.
- (10) Should the vessel arrive at loading port earlier than agreed laydays, waiting time for laydays commencement is for the Buyer's account unless sooner loading commenced, in such case time for actual use to count.
- (11) Should the vessel arrive at loading port later than canceling date of laydays, waiting time for loading of the vessel is for the Buyer's account unless used, in such case laytime commencement shall be counted at the time when the vessel starts loading.
- (12) Time for shifting as well as for drafting shall not account as laytime unless vessel is already on the demurrage.

4.2. Harbour dues, port charges, pilotage and other charges appertaining to vessel or all cost with reference to vessel (shares, victual, etc.) at the loading port to be for the vessel's account.

4.3. Loading Rate:

Seller guarantees the average loading rates mentioned below per weather working day of 24 consecutive hours, Sundays and Holidays excluded, unless used (PWWD SHEX UU). The loading rate at anchorage to be counted on the basis 4 workable derricks/cranes that vessel is equipped. (correlative 4 gangs). In case of loading at anchorage, if there are less than 4 workable derricks/ cranes on the vessel, the loading rate will be adjusted accordingly fraction pro-rata.

- Cargo size over 40,000: not allowed

- For cargo size of 25,001 - 40,000MT:

+ at berth: 10,000 MT per WWD SHEXUU

+ at anchorage: 6,000 MT per WWD SHEXUU

- For cargo size of 15,001- 25,000 MT:

+ at berth: 8,000 MT per WWD SHEXUU

+ at anchorage: 4,000 MT per WWD SHEXUU

- For cargo size of 15,000 MT and lower: CQD should be applied unless otherwise agreed.

4.4. Demurrage/ Despatch:

The rate of demurrage shall be 6,000 USD per a lost day for vessel with cargo size of 25,001-40,000 MT and 4,000 USD for vessel with cargo size of 15,001-25,000MT respectively.

The rate of despatch shall be fixed at half rate of demurrage for laytime saved.

Demurrage or despatch money for each vessel shall be settled between the Seller and Buyer's representative by mutual confirmation after the last shipment and shall be paid by telegraphic transfer remittance (TTR) within thirty (30) days from the date of the said mutual confirmation.

4.5. Requirements for vessel(s):

(1) Carrying vessel(s) must be seaworthy, single deck, bulk carrier and maximum 33 years of age.

(2) In case of gearless vessels the cost for floating cranes should be at the Seller's account. This cost is included in the cost of the commodity.

(3) In case of geared vessels, cranes/derricks must be suitable for grabs operation, in good working condition with minimum capacity of 15 MT for vessel with cargo size of 25,001 – 40,000 MT and 10 MT for vessel with cargo size of 15,001 – 25,000 MT. If gear(s) of the vessel is not workable during loading time at anchorage, the cost for floating cranes, if any, should be at the Buyer's account separately from cost of goods.

Article 5: ANALYSIS AND SURVEY

- 5.1. Quality of each shipment shall be determined at loading port by QUACONTROL through appropriate sampling, analyses and methods in accordance with ISO standards in force. Basing on such results, QUACONTROL shall issue "Certificate of Quality" for the cargo accordingly.
- 5.2. Weight of each shipment will be determined at loading port by QUACONTROL by vessel's draft survey (draft survey method). Basing on such results, QUACONTROL shall issue "Certificate of Quantity by Draft Survey" for the cargo accordingly
- 5.3. However, in case QUACONTROL certifies that the carrying vessel does not has enough conditions and/or documents for determining the weight by draft survey method, and this is conceded by ship's representative, weight of cargo will be determined by barge draft survey or by scale. In this case, QUACONTROL shall issue "Certificate of Quantity by Weight".
- 5.4. Cost of the above-mentioned determination of quality & weight shall be for the Seller's account.
- 5.5. For the witness, umpire samples to be kept for 60 (sixty) days at loading port after the date of B/L for claim resolve purpose, if such claim may occur.
- 5.6. Results of determination of quality & weight of commodity at loading port shall be final for invoicing purpose.
- 5.7. With the acceptance of the Seller, the Buyer at his cost and risk may invite other independent inspection organization to determine quality and weight of the cargo. The Buyer should coordinate with the Seller in issuing respective certificates in accordance with the requirements of opened L/C.

Article 6: PAYMENT

- 6.1. Payment shall be made in US Dollars. Payment by Documentary Credits (D/Cs) or payment in advance are acceptable as per the Buyer's option in accordance with points 6.2., 6.3. below:
- 6.2. Payment by Documentary Credits:
 1. An Irrevocable Letter of Credit (L/C) shall be opened by a first class bank agreed by the two parties, covering 100% shipment(s) value in favor of the Vietnam National Coal-Mineral Industries Group (VINACOMIN). Such L/C shall be opened with full details by telex and must be reached the Seller not later than 7 days prior to the estimated time of arrival (ETA) of the vessel at loading port.
 2. L/C is to be advised through Citibank Hanoi branch or any other bank agreed by the two parties.

3. Payment at sight shall be made by telegraphic transfer remittance (TTR) for 100% the Invoice value upon presentation of following shipping documents to any bank in Vietnam:
 - (a) Full set of clean on board Ocean Bill of Lading (B/L) made out to order and blank endorsed or made out to order of issuing bank; marked “Freight collect’ or “Freight payable as charter party”, notifying the applicant.
 - (b) Three (3) originals of Commercial Invoice signed by the Seller, indicating Contract number, L/C number, the Applicant and showing the vessel is geared or gearless.
 - (c) Three (3) originals of Certificate of Quantity by draft survey or by weight
 - (d) Three (3) originals of Certificate of Quality, showing actual results of goods inspection:
 - + Total moisture (as received), pct.
 - + Ash (dry basis), pct.
 - + Volatile matter (dry basis), pct.
 - + Sulfur (dry basis), pct
 - + Calorific value (dry basis), kcal/kg
 - + Size, mm
 - (e) Three (3) originals of Certificate of Origin issued by the Beneficiary showing the goods are of Vietnamese origin.
 - (f) Beneficiary’s Certificate confirming his acceptance or non-acceptance of any amendment made under the L/C quoting the relevant amendment number. If the L/C is not amended, this Certificate is not required.
 4. Additional conditions:
 - (a) Charter Party B/L is acceptable
 - (b) Transferable L/C is not acceptable.
 - (c) Partial shipment is allowed.
 - (d) The tolerance of quantity of goods to be shipped and L/C amount is +/- 10%.
 5. The validity of the L/C: 30 days after the latest shipment date.
 6. All the banking charges outside the country of L/C issuing bank are for Seller’s account, inside the country of L/C issuing bank – for the Buyer’s account.
 7. The Letter of Credit shall be subject to the Uniform Customs and Practice for Documentary Credit, 2007 revision, ICC Publication No. 600, Paris (UCP 600).
- 6.3. Payment in advance:

1. Payment in advance shall be effected by the Buyer for 100% shipment(s)’ value by telegraphic transfer remittance (TTR) from any bank outside Vietnam to the Seller’s nominated account and bank as below:

- Bank: Joint Stock Commercial Bank for Foreign Trade of Vietnam (VIETCOMBANK)
Address: 198 Tran Quang Khai Avenue, Hanoi, Vietnam.
SWIFT: BFTVVNVX
 - Beneficiary: Vietnam National Coal - Mineral Industries Group (VINACOMIN)
Account No.: 068 137 000 7669
2. Such payment in advance must be received and confirmed by the Seller's nominated bank not later than 3 working days prior to the ETA of vessel at loading port. Only after receipt a bank slip of payment in advance from the said bank, the Seller can load cargo.
 3. After loading completion, the Seller shall fax to the Buyer one set of copies of shipping documents including Commercial Invoice, B/L, Certificate of Quality, Certificate of Quantity.
 4. Within 07 (seven) days from B/L date, the Seller shall courier to the Buyer full set of shipping documents as below:
 - (a) Full set of clean on board Ocean Bill of Lading and/or Charter party Bill of Lading.
 - (b) Three (03) signed originals of the Seller's signed Commercial Invoice.
 - (c) Three (03) originals of Certificate of Quantity by draft survey or by weight.
 - (d) Three (03) originals of Certificate of Quality .
 5. The Buyer can not withdraw the sum paid in advance.
 6. In case the sum paid in advance for each shipment is not completely used, the remained amount shall be reserved for the next shipment(s).
 7. Upon the completion of the last shipment under the contract, the remaining amount paid in advance, if any, shall be refunded to the Buyer within 15 working days after the mutual agreement. The Buyer shall provide the Seller in written details of the amount to be refunded, beneficiary's account number and the bank's SWIFT code. This document must be signed and stamped by the Buyer.

Article 7: PERFORMANCE SECURITY

- 7.1. Within ten (10) working days from the date of signing this Contract, the Buyer shall establish in favor of the Seller a Performance Security for the amount of 5% of Contract Value. If Performance Security is not duly made, the contract will be automatically terminated.
- 7.2. Expiry date of Performance Security is 30 days later from the latest date of shipment period mentioned [in Article 3, point 3.4](#).

- 7.3. The Performance Security shall be effected in one of the following forms:
- (1) a deposit at an account nominated by the Seller to be effected by TTR.
 - (2) a Bank Guarantee of a bank in Vietnam to be accepted by the Seller. The Bank in Vietnam may issue the Bank Guarantee itself or under an irrevocable Counter Guarantee of a Buyer's bank to and accepted by the bank in Vietnam.
 - The Bank Guarantee and Counter Guarantee are subject to the Uniform Rules for Demand Guarantees, ICC Publication No. 458, Paris (URDG 458) or to the International Standby Practices, ICC Publication No. 590, Paris (ISP 98).
 - All the fees relating to performing the Bank Guarantee and Counter Guarantee shall be for the Buyer's account.
- 7.4. If the Buyer fails to take delivery of total committed quantities of anthracite to be supplied under the Contract, the Seller is entitled to take the whole value of the Performance Security and no further claim on this matter is referred by any party.
- 7.5. Within 15 days from the expiry date of Performance Security mentioned above, the deposit sum of the Performance Security if is not withdrawn, shall be refunded to the Buyer or used as the Performance Security for the next deliveries in accordance of the respective agreement between the Parties.
- 7.6. The Seller only commences to deliver commodities on receipt of the Performance Security.

Article 8: CLAIM

In case, any claims for damage such as mixed impurities, differences in quality and quantity etc. recognized at discharging port, the Buyer shall inform the Seller of that fact with relative documents within thirty (30) days after discharging completed. In such case the Seller shall reply the result of checking with the Buyer (within sixty (60) days for quality and thirty (30) days for quantity claim) after receipt of the Buyer's information.

Article 9: FORCE MAJEURE

- 9.1 The parties are released from responsibility for partial or complete non-fulfillment of their obligations under the present Contract, if this non-fulfillment was caused by circumstances of force majeure, namely: fire, flood, earth-quake, other acts of God, war, blockade, export or import prohibitions issued after the date of the Contract or other circumstances beyond the control of the parties, provided that these circumstances have directly affected the execution of the present Contract.

Market disturbance, such as economical, financial crisis etc., is not considered as circumstances of force majeure.

- 9.2 In case of force majeure circumstances each party shall make its best efforts to continue performing the contract. If it is impossible, the party seeking relief has to notify in writing (fax, e-mail or cable) the other party of the beginning and substance of the above circumstances immediately but in any case not later than 10 days from their beginning. The written evidence issued by respective competent organ or organization notifying the existence and duration of the above indicated circumstances should be enclosed herewith. Untimely notification of force majeure circumstances made after 10 days deprives the corresponding party of the right to refer to such circumstances in future.
- 9.3 In case of the failure to perform the obligations under the present contract caused by force majeure circumstances, the time of fulfillment of the Contract obligations will be extended for the period equal to that during which such circumstances last but not more than two (02) months.
- 9.4 If these circumstances last longer than two (02) months, each party will cancel the Contract totally, and in this case neither party will have the right to demand any compensation of eventual losses based on force majeure from the other party.

Article 10: ARBITRATION

- 10.1. All disputes in case the two parties not to reach an amicable arrangement is to be settled by the Vietnam International Arbitration Centre (VIAC) at the Vietnam Chamber of Commerce and Industry.
- Law of Vietnam is applicable.
- Language for arbitration proceeding is English.
- 10.2. Awards by arbitration to be final and binding the parties, the fees for arbitration to be borne by the losing party, unless otherwise agreed.

Article 11: GENERAL CONDITIONS

- 11.1. The Present Contract will come into effect from the signing date.
- 11.2. After signing the Present Contract, all previous correspondence and negotiations connected herewith shall become null and void.
- 11.3. Any amendment and/or additional clause to the Present Contract shall be valid only if made in writing and duly confirmed by both parties.
- 11.4. The Present Contract is made in English in 04 originals, 02 of which retained by each party.

For and on behalf of the Seller

For and on behalf of the Buyer

Mr. Tran Xuan Hoa
President & C.E.O of VINACOMIN

6- SAMPLE OF AUCTION BANK GUARANTEE

Name of BANK IN VIETNAM

Address:xxxxxxx

GUARANTEE No.xxxxx

<Location of Bank in Vietnam>, <day of month> <month> <year>

AUCTION GUARANTEE

To: VIETNAM NATIONAL COAL - MINERAL INDUSTRIES GROUP
(VINACOMIN),
226 Le Duan Rd., Hanoi, Vietnam

AUCTION GUARANTEE NO.xxxxx DATED xxxxx FOR USD xxxxxxx UNDER
COUNTER GUARANTEE No. XXXXX DATED XXXXX OF <the Bidder's Bank:
name and address>

Whereas <Name & Address of the Bidder> (hereinafter called “the Bidder”) has submitted its Bid to Auction of Vietnamese anthracite for export (hereinafter called “the Auction”) in response to Invitation to Auction No. <Reference No. of Invitation to Auction> dated <date of Invitation to Auction> issued by VIETNAM NATIONAL COAL - MINERAL INDUSTRIES GROUP, 226 LE DUAN ROAD, HANOI, VIETNAM (hereinafter called “VINACOMIN”).

By this Auction guarantee We, the Bank <Name of Bank in Vietnam>, having our registered office at <Location of Bank in Vietnam>,Vietnam (hereinafter called “the Bank”), are irrevocably, unconditionally bound unto VINACOMIN in the sum of <guarantee currency> <guarantee amount in figures> (in words: <guarantee currency & amount in words>) for which payment well and truly to be made to the VINACOMIN, the Bank binds itself, its successors and assigns by these presents. Sealed with the common seal of the said bank this <day of month> <month> <year>.

We undertake to pay to you any sum or sums within 7 (seven) banking days up to the above-mentioned amount without any objection whatsoever upon our receipt of your first demand in writing and a written statement that the Bidder:

1. Withdraws its Bid during the Validity Period of Bid specified in the Bidding Note,
2. Is Auction winner but
 - (a) Fails or refuses to sign/enter into the Contract within 7 (seven) working days from the date of advising the Auction winner,

or

(b) Fails or refuses to furnish the Performance security of 5 percent of the Contract value in accordance with the terms and conditions of the signed Contract.

This Guarantee shall expire at our counters in Vietnam on <day of month> <month> <year>. Any demand for payment under this Guarantee must be received by us at this office on or before that date. This Guarantee shall automatically become null and void after the said expiry, whether the original is returned to us or not.

This Guarantee is not transferable or assignable.

This Guarantee is subject to the Uniform Rules for Demand Guarantees (ICC Publication No. 458).

Yours faithfully,

For issuing bank

Name of BANK IN VIETNAM

7- SAMPLE OF CONTRACT PERFORMANCE GUARANTEE

Name of BANK IN VIETNAM

Address:xxxxxxx

GUARANTEE No.xxxxx

<Location of Bank in Vietnam>, <day of month> <month> <year>

PERFORMANCE GUARANTEE

To: Vietnam National Coal - Mineral Industries Group (VINACOMIN),
226 Le Duan Rd., Hanoi, Vietnam

PERFORMANCE GUARANTEE No.xxxxx DATED xxxxx FOR USD
xxxxxxxxxxxxx UNDER COUNTER GUARANTEE No. XXXXX DATED XXXXX
OF <the Buyer's bank: name and address>

We have been informed that <Name and Address of the Buyer> (hereinafter called "The Buyer" has entered into Contract No. <Number and Date of Contract> with you for the supply of Vietnamese anthracite by September 30, 2010 to <Name of destination country> as below:

- Hongai Anthracite Fine No.10B2: xxxxxx MT +/- 10 pct
- : xxxxxx MT +/- 10 pct
- Vangdanh Anthracite Fine No.11B: xxxxxx MT +/- 10 pct
- Total committed quantity: xxxxxx MT +/- 10 pct

Furthermore, we understand that, according to the conditions of the Contract a performance guarantee is required.

At the request of <Name and Address of the Buyer's bank> and by order of the Buyer, we, <Name and Address of Bank in Vietnam>, irrespective of the validity and the legal effects of the above-mentioned Contract and waiving all rights of objection and defense arising from said Contract, hereby irrevocably undertake to pay to you within 7 (seven) working days, upon your first demand, any sum or sums not exceeding in total the maximum amount of USD _____ (in words: US Dollar _____).

Upon receipt by us of your duly signed demand for payment in writing indicating the amount claim by you and stating that The Buyer fails to take delivery of committed total quantity of Vietnamese Anthracite to be supplied under the Contract.

This Guarantee shall expire at our counters in Vietnam on **October 30, 2010**. Any demand for payment under this Guarantee must be received by us at this office on or before that date. This Guarantee shall automatically become null and void after the

said expiry, whether the original is returned to us or not.

This Guarantee is not transferable or assignable.

This Guarantee is subject to the Uniform Rules for Demand Guarantees (ICC Publication No. 458).

Yours faithfully,

For issuing bank

Name of BANK IN VIETNAM