

Rules of Participation for HCT BID

These Rules of Participation for HCT BID (hereinafter referred to as these "Rules") stipulate the rules with respect to parade, tender, internet and internet tender auctions held by Hitachi Construction Machinery Japan Co., Ltd., (hereinafter referred to as "HCMJ"). The parade, tender and internet auctions held by HCMJ are hereinafter referred to as "HCT BID."

By registering with HCT BID, the participants agree to comply with the following rules.

1. Qualification

Each participant of HCT BID is required to register for membership with HCMJ and have a registration number assigned in advance.

2. Bidding Schedule

Bidding schedules will be announced to the members of HCT BID by e-mail, fax, postings on HCMJ's website or other means considered appropriate by HCMJ.

3. General Bidding Procedures of HCT BID

(1) A submission of a bid shall be deemed an offer to HCM for the purchase of auctioned equipment (hereinafter referred to as the "Equipment").

(2) Under no circumstances may the bidding price be changed after the submission thereof.

(3) The highest bidder (hereinafter referred to as the "Successful Bidder") is entitled to purchase the Equipment. Upon the Successful Bidder's winning the auction, the contract for purchase and sale of the awarded Equipment (hereinafter referred to as the "Subject Equipment") shall be formed between the Successful Bidder and HCMJ (hereinafter referred to as the "Contract") and the risks associated with the Subject Equipment, including the risk of loss, damage or wear and tear to the Subject Equipment, shall transfer to the Successful Bidder immediately.

(4) In the event the Contract is terminated pursuant to Article 7(4) or Article 9, HCMJ shall not be obligated to award the second highest bidder with a contract to purchase the Subject Equipment, and may dispose of the Subject Equipment to any person or entity at its sole discretion.

4. Bidding Procedures of Tender Auction

(1) The bids for tender auction must be submitted in the amount greater than the reserve price, which HCMJ designates for each unit of the Equipment.

(2) Each participant may submit multiple bids for any Equipment during the tender period designated by HCMJ. In the event a participant submits multiple bids for the same unit, the bid with the highest price shall be considered as such participant's bid for such unit.

(3) HCMJ shall open the bids after the closing of the tender period and determine the bidder who has submitted the highest bid amongst all valid bids as the successful bidder who is awarded with the Contract (hereinafter referred to as the "Successful Bidder"). Should there be more than one bidder who has submitted the highest bid for the same unit, the Successful Bidder shall be determined by a lottery held by HCMJ.

5. Bidding Procedures of Parade Auction

(1) For parade auctions, the bidders shall bid by raising their auction paddles, which shall be provided at the onsite reception, at the price announced by HCMJ.

(2) HCMJ shall determine the bidder who has raised the auction paddle at the highest price during each auction as the Successful Bidder. Should there be no bidder raising the auction paddle at or above the reserve price assigned to the Equipment, the auction for such Equipment shall be deemed closed and no sale shall take place.

6. Bidding Procedures of Internet and Internet Tender Auctions

(1) For internet and internet tender auctions, the participants shall bid through the internet for the Equipment posted on HCMJ's auction website.

(2) HCMJ shall determine the participant who has submitted the highest bidding price during the bidding period as the Successful Bidder. Should there be no bidder submitting a price at or exceeding the reserve price assigned to the Equipment, the auction for such Equipment shall be deemed closed and no sale shall take place.

(3) The bidders will receive a list of bidding results by e-mail, which shall serve and be recognized as the notice of award to the Successful Bidders.

7. Sale Price and Payment

(1) For HCT BID, the Equipment auctioned from Japan shall be priced in Japanese yen, excluding both consumption tax and local consumption tax, and the Equipment auctioned from outside Japan shall be priced in a currency designated by HCMJ.

Subject to 8(1), the delivery of Subject Equipment shall be as below:

(i) for tender and parade auctions - EXW Exhibition Site (as defined in INCOTERMS 2010, as the same may be amended from time to time (hereinafter referred to as "INCOTERMS")).

(ii) for internet auctions and internet tender auctions - EXW Place Designated by HCMJ.

(2) HCMJ shall invoice the Successful Bidder for the aggregate amount of the sale price and the associated charges including consumption tax. The Successful Bidder shall pay HCMJ the invoiced amount in full by wire transfer of immediately available funds to a bank account designated by HCMJ within ten (10) business days of HCMJ's acceptance of bid.

(3) In the event the Successful Bidder fails to make payment within the period stated in Article 7(2), the Successful Bidder shall pay to HCMJ six percent (6%) annum of the unpaid amount as the late payment charge from the eleventh (11th) business days after the date payment becomes due until the date payment is made.

(4) In the event the Successful Bidder fails to make payment pursuant to Article 7(2) within ten (10) business days of HCMJ's acceptance of the bid, HCMJ may terminate the Contract and dispose of the Subject Equipment to any person or entity at its sole discretion.

(5) The Successful Bidder shall bear all of the costs required for the removal from auction site, transportation and storage of the Subject Equipment. HCMJ shall not be held responsible for any of such costs.

8. Delivery of Subject Equipment

(1) Notwithstanding anything to the contrary contained in these Rules, the title to the Subject Equipment shall not pass to the Successful Bidder until and unless the Successful Bidder completes its payment pursuant to Articles 7(2) and (3). Upon such payment, the Successful Bidder may receive delivery of the Subject Equipment.

(2) The Successful Bidder must arrange for and take delivery of the Subject Equipment within one (1) month of the date of HCMJ's acceptance of the bid.

(3) The Successful Bidder who does not take delivery of the Subject Equipment within the period stipulated in Article 8(3) shall pay HCMJ one thousand Japanese yen (JPY 1,000) per day for the storage of Subject Equipment, which shall become due after three (3) business days from the issue date of HCMJ's invoice, until the date the Subject Equipment is removed. The late payment charge stipulated in Article 7(3) shall also apply to delays in the payment pursuant to this Article 8(3).

(4) HCMJ shall not be held responsible for any deterioration of the Subject Equipment or any damage or loss to the Subject Equipment incurred due to the cause which is not attribute to HCMJ including, but not limited to the passage of time, weather conditions, acts of God, acts or omissions by any third party.

(5) The Successful Bidder shall provide a prior notice at least three (3) business days to HCMJ in order to receive delivery of the Subject Equipment by submitting a form designated by HCMJ. HCMJ reserves the right to refuse delivery of the Subject Equipment in the event the Successful Bidders fails to submit such prior notice.

(6) HCMJ may charge the Success Bidder for a reasonable delivery handling fee, in addition to the sale price, at its sole and absolute discretion with respect to the Equipment auctioned from outside Japan.

9. Cancellation of Acceptance of Bids

In addition to the remedy provided under Article 7(4) in case of a failure to make timely payment, HCMJ may cancel its acceptance of the bid and terminate the Contract without any prior notice, and charge twenty-five percent (25%) of the sale price as the cancellation fee in the event the Successful Bidder engages in any of the following activities:

(1) Delay of payment;

(2) Any act which violates or may violate the intellectual property right or any other right of HCMJ, other members or third party(s);

(3) Any act which damages or may damage the property or privacy of HCMJ, other bidders or third party(s);

(4) Any act which imposes or may impose damage or disadvantage to HCMJ, other bidders or third party(s);

(5) Any act which fails to comply with or may fail to comply with any of the terms and conditions of these Rules;

(6) Any commercial or for-profit activity or preparation thereof conducted through HCT BID without the prior consent of HCMJ;

(7) Any act which interferes with the operations of HCT BID;

(8) Any act which harms the reputation of HCT BID;

(9) Any act which uses registration numbers or HCT BID Members card in an improper manner;

(10) Any act which uses or provides detrimental programs such as a computer virus through HCT BID;

(11) Cancellation or withdrawal of the membership;

- (12) Any other act which violates or may violate applicable laws and regulations; and
- (13) Any other act which HCMJ considers inappropriate.

10. Deposits

(1) The deposits which HCMJ receives pursuant to Article 6 (3) of HCT BID Membership Rules (hereinafter referred to as the "Membership Rules") shall be held by HCMJ until the participant who has placed the deposit resigns from or lose his membership qualifications of HCT BID. No interest shall accrue with respect to such deposit.

(2) The Depositors who is responsible to pay compensation to HCMJ pursuant to Article 13(4) or Article 19 of the Membership Rules shall have the sum of their deposits applied in whole or in part toward such compensation. The balance of such deposits, if any, shall be returned to the Depositors subject to deduction of applicable charges including bank handling fees.

11. Guarantees and Indemnity

(1) THE SUCCESSFUL BIDDERS ACKNOWLEDGE AND AGREE THAT THEY SHALL PURCHASE EQUIPMENT FROM HCMJ ON AN AS IS BASIS. HCMJ EXPRESSLY DISCLAIMS ANY REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. HCMJ SHALL NOT BE LIABLE TO SUCCESSFUL BIDDERS OR ANY OTHER PARTY FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SUBJECT EQUIPMENT. EACH HCT BID PARTICIPANT ACKNOWLEDGES AND AGREES THAT ANY INFORMATION WITH RESPECT TO THE SUBJECT EQUIPMENT, INCLUDING, WITHOUT LIMITATION, HOURS OF USE AND PERFORMANCE CAPABILITIES, MADE AVAILABLE TO SUCH PARTICIPANT SHALL NOT BE DEEMED A REPRESENTATION OR WARRANTY OF HCMJ AS TO THE ACCURACY AND RELIABILITY THEREOF. EACH HCT BID PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT, IF SUCCESSFUL AT HCT BID, IT SHALL PURCHASE THE SUBJECT EQUIPMENT SOLELY ON THE BASIS OF ITS OWN INDEPENDENT VALUATION AND JUDGMENT.

(2) In the event the Subject Equipment has any latent defect, HCMJ shall not be held responsible for such defect and the Successful Bidder may not cancel its purchase based upon any failure or underperformance of the Subject Equipment arising therefrom.

(3) HCMJ shall not be held responsible for any loss or damages incurred by the Successful Bidder arising from or in connection with the Subject Equipment.

(4) HCMJ shall not be responsible for any personal injury, death or property loss which the participants may incur at the auction site.

(5) HCMJ shall in no event be responsible for suspension of service, delayed delivery of information or any other interference to the operations of HCT BID which may arise from an act of God or a man-made disaster.

(6) Without limiting the generality of Sections 11(1) through 11(5), HCMJ shall not be held liable for any loss or damage exceeding 500,000 Japanese Yen in aggregate incurred by each member arising from or in connection with HCT BID.

(7) The member who fails to comply with any of these Rules or participates in HCT BID in an undue or unlawful manner shall indemnify HCMJ for any damages incurred therefrom, including attorneys' fees.

12. Shipment and Costs

The bidders acknowledge and agree that the costs associated with the transportation from the port specified in Article 7(1), loading, equipment washing and other related activities required for the delivery of Subject Equipment shall not be included in the bidding price. The Successful Bidder shall bear all such costs apart from the purchase price with respect to the Equipment auctioned from Japan. HCMJ shall not be responsible for any arrangement for or adjustment to transportation, loading, washing or other related activities with respect to the Equipment auctioned from outside Japan unless HCMJ advises the Successful Bidder otherwise.

13. Maintenance of Order

(1) HCT BID participants shall observe the instructions of HCMJ with respect to maintenance of order of HCT BID. Any bid rigging, business negotiations or sales and purchases among the participants and intimidation or sabotage against the bidders are strictly prohibited.

(2) In the event HCMJ determines that a participant has failed to comply with Article 13(1), HCMJ may cancel the registrations of such participant and eject such participant from HCT BID at its sole discretion.

(3) The participants who have engaged in any of the activities stipulated in the second sentence of Article 13(1) are excluded from any and all of the bids and auctions and shall promptly leave HCT BID. Any submission of a bid or display of auction paddle by such participants shall be void and invalid.

(4) The bidders who fail to comply with this Article 13 shall indemnify HCMJ for any damages incurred by such breach.

14. Cancellation of HCT BID

HCMJ retains the right to cancel or suspend HCT BID at any time upon the occurrence of natural disaster, incident, telecommunication failure or any other exigent event, or a reasonable possibility of any such event, or upon its discretionary judgment that the circumstances, including, without limitation, weather, noise and other environmental factors and conditions, at the auction site or the surrounding areas are inappropriate for HCT BID. All bids shall be rendered invalid in the event of such cancellation or suspension except with respect to the Equipment which has been awarded to a bidder at the time of the cancellation or suspension. HCMJ shall not be responsible for any loss or damage caused by such cancellation or suspension.

15. Prohibition of Unlawful Resale and Diversion

(1) The Successful Bidders shall not, nor shall they permit any third party to, use the Subject Equipment, including, without limitation, any software and/or software related technology, for purposes which disturb the international peace and security, including, without limitation, (i) the design, development, production, storage or any use of nuclear, chemical or biological weapons or missiles or any other weapons of mass destruction and (ii) other military activities.

(2) The Successful Bidders shall not, nor shall they permit any third party to, sell, assign, export, lease, transfer, license or otherwise make available the Subject Equipment to any third party who has any of the purposes set forth in Section 15(1).

(3) The Successful Bidders shall export, sell, transfer or otherwise dispose of the Subject Equipment in compliance with the applicable laws and regulations, including, without limitation, the Foreign Exchange and Foreign Trade laws of Japan or any other applicable export control laws and regulations promulgated and administered by the governments of the countries asserting jurisdiction over the parties or transactions.

(4) The Successful Bidders agree to indemnify and hold harmless HCMJ against any and all losses, costs or expenses (including attorneys' fees) which may arise from the Successful Bidders' failure to comply with this Article 15.

16. Subject Equipment Equipped with Satellite Communication Terminals

The Successful Bidders acknowledge and agree that the Subject Equipment may be a model which is equipped with satellite communication terminals to qualify for Global e-Service provided by Hitachi Construction Machinery Co., Ltd. (hereinafter referred to as "HCM"), the exportation of which from the country where the Subject Equipment is located may be (i) subject to special procedures in accordance with applicable laws, including, without limitation, laws of Japan, United States or country of destination, or (ii) prohibited by such applicable law. The Successful Bidders further acknowledge and agree that the Successful Bidders shall bear all of the responsibilities and costs with respect to undertaking of any such procedures, implementation or cancellation of the attempted importation and exportation, and neither HCMJ nor HCM shall be responsible or liable for any such matters. The Successful Bidders shall indemnify and hold HCT and HCM harmless from any and all expenses, liabilities, damages and administrative and/or criminal sanctions which HCMJ and/or HCM may incur as a result of the Successful Bidders' failure to abide by any legal requirements in a timely manner, or their failure to prevent exportation or importation of the Subject Equipment.

17. Governing Law

These Rules shall be governed and construed in accordance with the laws of Japan.

18. Jurisdiction

Any dispute relating to these Rules shall be submitted to and settled by the Tokyo Summary Court or Tokyo District Court as the first jurisdictional court.

19. Effective Date

These Rules shall become effective on April 1, 2016.