



Invitation to Tender

Public-Private Partnership for

Kathu-Patong Expressway Project, Phuket Province

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## 1. Project Outline

### 1.1 Project Background

#### (1) Cabinet Resolution

With reference to the resolution passed on 18 January, 2022, the Cabinet has given an approval for the Expressway Authority of Thailand (EXAT) to implement the Kathu-Patong Expressway, Phuket Province Project (the Project) through Public-Private Partnership (PPP) Net Cost scheme, whereby the public sector is to take care of land acquisition while the private sector is being responsible for the detailed design and construction (including supervision fee), operation and maintenance (O&M) as well as all toll collection services. Based on BTO (Build-Transfer-Operate) model, the private party shall transfer ownerships of all the assets invested to the public sector prior to service commencement. The PPP period covers 35 years in total, starting from the commencement date specified in the Notice to Proceed (NTP) that has been issued by the EXAT.

#### (2) Project Overview

Covering a total of 3.98 km., most of the Project alignments are elevated, with 4 lanes per direction (2 for cars and the others for motorcycles) and tunnels in the middle. The alignment starts where it connects with Phra Metta Road in Patong Subdistrict, Kathu District. Heading eastward, the alignment is elevated, crossing over Pisit Koranee Road for 0.9 km. before it reaches Nak Kerd Hill. From this point, the alignment turns into a tunnel of 1.85 km. distance, passing under the same Hill, and switches back to elevated form for another 1.23 km. until the end of the Project, where it intersects with Highway 4029 (Highway 4029) in Kathu Subdistrict, Kathu District. In this regards, 2 entrance-exit ramps are provided at Phra Metta

Road and Highway 4029 intersection whereas 1 toll plaza is also available on the Kathu side.

According to the study, the Project costs of investment shall include:

- Land Acquisition and Compensation Cost – Approx. 5,792 MB;
- Construction Cost – Approx. 8,662 MB;
- Construction Supervision Cost – Approx. 215 MB; and
- Operation and Maintenance Cost – Approx. 3,142 MB

(3) The Project Governed Rules and Regulations

This Public-Private Partnership Project is implemented under the EXAT's authority, in accordance with the Expressway Authority of Thailand Act, B.E. 2550 (2007) and the Public-Private Partnership Act, B.E. 2562 (2019) (PPP Act 2562), including all the related rules and regulations. In this connection, the Selection Committee under Section 36 of the PPP Act 2562 has been established, to perform the duties relevant to the private partner selection, negotiation as well as all other activities that are related to the Project tender process.

## 1.2 Project Objectives

- (1) To provide both local residents and tourists with an alternative route between Kathu District and Patong Beach. Because Highway 4029 is currently the only route available between the two destinations, traffic congestion seems to be unavoidable, causing the travel capacity to be limited from Phuket city to Patong Beach and vice versa;
- (2) to minimize the road accidents caused by the steep and winding paths of Highway 4029;
- (3) to enhance the carrying capacity for the increasing traffic volume in the relevant road network while improving the highway standard so as to provide more convenience, rapidity and reduce time for travelling;
- (4) to provide local residents and tourists with convenient and rapid transportation, allowing the tourism in Phuket Province to be promoted and encouraging the surrounding areas to be fully developed, to fulfill the tourists' demands; and
- (5) to serve as an evacuation route in case of disasters, such as a tsunami, etc.

### 1.3 Scopes of Work

#### 1.3.1 The EXAT's Obligations

- (1) The land acquisition shall be taken care by the EXAT, to make the areas available for a construction of the Kathu – Patong Expressway Project, Phuket Province.
- (2) All the properties invested by the private party shall be owned by the EXAT, who shall also receive remuneration from the private party.

#### 1.3.2 The Private Party's Obligations

The private party shall design, finance the constructions as well as provide operation and maintenance services for the Project, which shall be divided into 2 phases as follows:

##### (1) Phase 1: Design and Construction

The private party's obligations and responsibilities are to design, finance and construct all the works under the Project as well as carry out commissioning tests for the expressway systems and the related facilities, in order to provide services to general public under the terms and conditions specified in the Request for Proposal (RFP), which comprise:

- Civil works, including roadworks, tunnels, buildings, central control building, toll plazas, utilities, landscape and the works related to safety and environmental mitigation measures;
- System works, including toll collection system, traffic management and control system as well as all facilities of the power and data communication systems;
- Any other works that will complement the operation and maintenance services of the expressway according to the Project objectives, including the cooperation rendered when being assigned by the EXAT to perform any relevant tasks.

##### (2) Phase 2: Operation and Maintenance (O&M)

The private party shall be responsible for the operation and maintenance (O&M) of the Project, including toll collection and operation, provision of convenience and safety to users, traffic management and control, supporting the EXAT's and other agencies' operation in the areas of traffic management and law enforcement, maintenance and improvement of civil works, expressway system works and related facilities, procurement of all the Project-related equipment



and materials, providing sufficient number of personnel with relevant knowledge and expertise to operate the works specified in the EXAT's Requirement throughout the PPP contract periods, as well as any other tasks specified in the RFP. The EXAT shall set up a regular evaluation program for the private party's work performance in order to compare the private party's operation and maintenance capabilities with those required in both the PPP contract and the EXAT's Requirements.

- (3) Throughout the PPP contract period, the private party shall provide technology and knowledge transfer to the EXAT and /or the persons assigned by the EXAT, via knowledge transfer processes, and support the EXAT in terms of data, knowledge and experts for training programs, meetings and seminars, including lecturers in different activities at the private party's expense.
- (4) The private party shall be responsible for payment of all the Project-related taxes as prescribed under the Thai and foreign tax laws, including stamp duties, fees and permits.
- (5) The private party shall be responsible for all other Project-related expenses that are deemed to be taken care by the private party as prescribed in the PPP contract.
- (6) The private party shall be responsible for all the expenses incurred from hiring a project construction supervision consultant and an independent engineer, to see to the compliance, correctness, safety and completion of the design and construction works under the Project.
- (7) The private party shall comply with the State Enterprise Policy Office (SEPO)'s Announcement on guidelines for implementing the Integrity Pact for the PPP projects executed under Public-Private Partnership Act, B.E. 2562 (2019) and B.E. 2564 (2021).

#### **1.4 The Period in Which the Private Party is Legally Bound to Perform the Obligations required by the PPP Project**

The private party is given 35 years' duration for an implementation of the Project, which is divided into 2 following phases, starting from the commencement date specified in the Notice to Proceed (NTP):

- (1) Phase 1: Design and Construction - This will take 4 years as a maximum, starting from the commencement date specified in the NTP. Any delay in the work completion shall be subject to penalty, at the rate pre-determined under the PPP contract.

- (2) Phase 2: Operation and Maintenance - Phase 2 is effective from the Project commercial operation date to the completion date of the 35 years' duration, starting from the commencement date specified in the NTP.

**2. No Special Privilege or Immunity**

The tenderer, including all members of the group tenderer, shall not have a special privilege or immunity which exempts it from being taken to the Thai court. If the tenderer has such privilege or immunity, such privilege or immunity shall be waived through an evidence endorsed by the tenderer's government.

**3. The Tenderer's Qualifications**

The tenderer shall not be, and shall enclose a self-certification letter justifying itself as not being, a private entity or a person with the qualifications stated in the PPP Policy Committee's Notification Prescribing the Private Entities' Characteristics That are Regarded as Being Unsuitable for Investment in Public-Private Partnership Projects, B.E. 2562 (2019) (and Its amendments). The tenderer shall propose all the qualifications specified under the Instructions to Tenderers to prove they are compliant with such requirements.

**3.1 General Qualifications**

- (1) A single juristic tenderer and each member of the group tenderer shall be a juristic person having registered for not less than 3 years on the tender submission date. In case a group tenderer is formed by several juristic persons, there shall be at least one (1) Thai lead member having shareholding of not less than 35% while the total shareholdings of the Thai juristic persons in a group shall not be less than 51%.

Any foreign juristic person intending to participate in the tender shall join with a Thai juristic person to form a group tenderer. In this connection, the shareholding proportion of the foreign juristic member shall not be greater than that of the Thai juristic member who is appointed as a lead party.

For a juristic person merging with another company for less than 3 years, the financial statements of the parties to the merger shall be aggregated and presented as though the merging has been performed over the last 3 years.

During the tender process, the group tenderer shall appoint a Thai juristic person who possesses the above-stated qualifications as a lead member to submit the tender or to contact the EXAT on behalf of the group tenderer.

- (2) In case a single juristic tenderer is awarded as the successful tenderer, such tenderer shall have a paid-up capital of not less than Baht 1,100,000,000 (One Billion and One Hundred Million Baht) on the PPP contract signing date, which shall be increased to at least Baht 2,200,000,000 (Two Billion and Two Hundred Million Baht) before the commercial operation date. An increase of the registered capital shall always be maintained at the maximum of 3.0x Debt to Equity ratio (D/E ratio) throughout the contract period. There is no restriction on such a juristic person establishing a Special Purpose Vehicle (SPV) as long as the related letter of intent has been submitted at the time of tender submission, in compliance with the same criteria and conditions as those required for the group tenderer as stipulated in Clause 3.1 (3).
- (3) The group tenderer who is awarded as the successful tenderer shall establish a Special Purpose Vehicle (SPV) for the purpose of PPP contract awarding, having a paid-up capital of not less than Baht 1,100,000,000 (One Billion and One Hundred Million Baht) on the PPP contract signing date, which shall be increased to at least Baht 2,200,000,000 (Two Billion and Two Hundred Million Baht) before the commercial operation date. An increase of the paid-up capital shall always be maintained at the maximum of 3.0x Debt to Equity ratio (D/E ratio) throughout the contract period. Furthermore, all members of the successful tenderer shall also provide suretyship and/or guarantee for the performance of the newly established SPV whose names, number of members and their shareholding proportions shall be maintained in the same manner as those intended at the time of tender submission.

### 3.2 Financial Qualifications

- (1) The tenderer, either a single juristic person or all members of a group tenderer, shall present an evidence showing its annual Net Worth (Net Worth = Total Assets – Total Liabilities) over the last 3 years, with the average net worth being positive, along with the following:
- A financial statement audited by a certified auditor for the last 3 years; and
  - Evidence of tax payments of each Thai juristic member for the last 3 years.

Calculation of the average net worth for the last 3 years in foreign currencies shall be based on the average selling rate announced by the Bank of Thailand as of the closing date of such company's annual financial statement.



(2) The tenderer shall submit evidence of the high-quality liquid assets, unencumbered assets, credit supports or other financial sources, in the combined amount of Baht 7,000,000,000 (Seven Billion Baht) as a minimum, along with either or both of the following:

- A Letter of Intent expressing a credit support in its favor, issued by a Thai commercial bank or a foreign bank which has a branch in Thailand; and/or
- The evidence justifying unencumbered cash and cash equivalents as shown on the Balance Sheet.

Calculation of the credit support in foreign currencies shall be based on the average selling rate announced by the Bank of Thailand as of the date such document has been issued.

### 3.3 Technical Qualifications, Experiences and Work Achievements

The tenderers shall submit documents and evidence illustrating their technical qualifications, experiences and work achievements, as follows:

#### (1) Experiences in Civil Works Construction

The tenderer shall possess experiences in civil works construction; where the tenderer was a prime contractor in the execution of Thai government contracts, either in one single contract or for several contracts combined, in the following areas:

- a) Construction of the elevated structures of roads, rapid transit or railways, with the minimum construction value of Baht 500,000,000 (Five Hundred Million Baht); and
- b) Design and construction of tunnels for roads, rapid transit, railways or other utilities, using the methods that are universally accepted and meet international standards, such as the New Austrian Tunneling Method (NATM) or Tunneling Boring Machine (TBM), etc., with the minimum construction value(s) of Baht 1,000,000,000 (One Billion Baht),

In case the tenderer does not have the above-stated experience and work achievement, its contractor(s)'s experience and work achievement may be proposed to fulfill such requirements. The contractor whose experience has been proposed by the tenderer shall neither be included on any other tenderer's contractor list nor take part in another tenderer's proposal preparation process.

Calculation of the work values in foreign currencies shall be based on the average selling rates announced by the Bank of Thailand as of the date the project is completed.

(2) Submission of a contractor/supplier list for expressway systems, at least 1 contractor/supplier per system, which comprises:

- a) Toll Collection System, including the Electrical and Communication System-related components; and
- b) Traffic Management and Control System, including the Electrical and Communication System-related components.

(3) Experiences in Operation and Maintenance

The tenderer shall have operation and maintenance experiences of the expressway that has been continually operated for at least 5 years, within the 25 years' period up until the tender submission date.

- 3.4 In case of a group tenderer, the lead member shall have its own experiences or work achievements in civil works construction or expressway systems operation and maintenance as stipulated in Clauses 3.3 (1) or 3.3 (3) respectively.
- 3.5 The tenderer shall neither have any benefit sharing with other tenderer(s) nor act in any way that will obstruct fair competition on the tender submission date. Furthermore, members of the group tenderer (including companies it works with, parent or affiliate companies) shall not be members of any other group tenderer whereby such membership may cause unfair competition in the selection process. Submission of tenders shall be in compliance with the Act Concerning Offences Relating to the Submission of Bids to Government Agencies, B.E. 2542 (1999).
- 3.6 The tenderer, including all members of the group tenderer, shall not be those who have the Thai Court's special privileges or immunity whereby they can refuse to be brought before a Thai court; except in the case where the governments of the tenderers who have such Thai Court's special privileges or immunity express their intention to waive such privileges or immunity in writing.
- 3.7 The tenderer, including all members of the group tenderer, shall provide accurate statements regarding the lawsuits (in court) or disputes (in arbitration) with which they have been involved because of work performance, either contract completed or ongoing, within the last 3 years from the tender submission date. If a consistent history of awards has been found against the tenderers or any members of the juristic person, their tenders may not be considered by the EXAT.
- 3.8 The tenderer shall present a letter certifying that it does not employ a consultant, for the project, who has the qualifications and characteristics stated in the Notification of the Public-Private Partnership Act, B.E. 2562 (2019) (and Its amendments), Prescribing



the Qualifications and Forbidden Characteristics of a Consultant. If it is later found that the consultant with such qualifications and characteristics has been employed by the tenderer, its tender may not be considered by the EXAT.

#### **4. Fees for the Request for Proposal (RFP), Evaluation and PPP Contract Signing**

- 4.1 The EXAT shall sell the first set of RFP at a fee of Baht 200,000 (Two Hundred Thousand Baht), inclusive of VAT. Additional sets may be purchased at a fee of Baht 20,000 (Twenty Thousand Baht), inclusive of VAT, per set; payable either in cash or by a cashier cheque to the “Expressway Authority of Thailand”. The tenderer shall not request or claim a refund of the fee in any case.
- 4.2 Only the juristic persons who purchased the RFP shall be eligible for tender submission, based on the following conditions:
- (1) In case of a single juristic tenderer, the single juristic person who purchased the RFP shall be eligible for tender submission.
  - (2) In case of a group tenderer, all members shall be required to purchase RFPs, to make such group tenderer eligible for tender submission.
- 4.3 On the tender submission date, each tenderer shall pay an evaluation fee to the EXAT in the amount of Baht 300,000 (Three Hundred Thousand Baht), in cash or by a cashier cheque payable to “Expressway Authority of Thailand”. The tenderer shall not request or claim refund of the fee in any case.
- 4.4 On the PPP contract signing date, the successful tenderer shall pay the signing fee to the EXAT in the amount of Baht 1,000,000 (One Million Baht), in cash or by a cashier cheque payable to “Expressway Authority of Thailand”. The tenderer shall not request or claim refund of the fee in any case.

#### **5. RFP Selling Date, Time and Place**

The RFP shall be available for purchase every working day, from 26 December, 2022 to 25 January, 2023, between 9.00 a.m. and 3.00 p.m., at the following address:

Expressway Authority of Thailand  
Expressway Administration Center, Meeting Room# 0306, 3rd Floor,  
111 Rim Khlong Bangkapi Road, Bangkapi,  
Huai Khwang, Bangkok 10310  
Tel.: 66(2) 558 9800, Ext. 24150, 24153, 24156  
Fax: 66(2) 940 1223

**6. Tender Submission Date, Time and Place; Tender Opening**

- 6.1 The tender submission date shall be on 7 April, 2023, from 9.00 a.m. (opening) to 3.00 p.m. (closing), based on the clock time of the tender submission authority (refer to Thailand standard time as advised by the Hydrographic Department, Royal Thai Navy). All tenders shall be submitted to the Tender Acceptance Committee appointed by the Selection Committee under Section 36 of the Public-Private Partnership Act, B.E. 2562 (2019). After the tender submission deadline, no tender or evidence shall be further accepted by the EXAT as prescribed in the RFP. All tenders shall be submitted at:

Expressway Authority of Thailand  
Expressway Administration Center, Meeting Room# 0306, 3rd Floor,  
111 Rim Khlong Bangkapi Road, Bangkapi,  
Huai Khwang, Bangkok 10310  
Tel.: 66(2) 558 9800, Ext. 24150, 24153, 24156  
Fax: 66(2) 940 1223

The EXAT may, at its discretion, extend the period of tender submission via a written notification. In such case, all the rights and obligations of the EXAT and tenderers, under the original tender submission period, shall be further maintained for the amount of time extended.

- 6.2 Tenders shall be opened publicly in the presence of the tenderers or their representatives on 28 April, 2023, at 09:00 a.m., based on the clock time of the tender acceptance authority, at the venue the tenders have been accepted. The tenderers who passed each stage evaluation, or their authorized representatives, are required to be present in the opening of each envelope, at the time to be further advised by the EXAT.

**7. Tender Security**

- 7.1 The tenderer shall provide a tender security in the amount of Baht 300,000,000 (Three Hundred Million Baht) together with its tender submission, which shall be in one of the following forms:

- (1) Domestic Bank Guarantee - In case of a foreign juristic person, a bank guarantee shall be issued by a reputable foreign bank which has a branch in Thailand; or
- (2) Thai Government Bond or Thai State Enterprise Bond

The bank guarantee applied as a tender security shall be valid for 28 days from the day next to the validity date of the tender or the period extended.

- 7.2 The EXAT shall return tender securities to unsuccessful tenderers or guarantors within 10 days from the date the Cabinet has approved the private party selection result, in accordance with Section 42 of the Public-Private Partnership Act, B.E. 2562 (2019), or after 120 days from the date the Selection Committee, under Section 36 of the Public-Private Partnership Act, B.E. 2562 (2019), has resolved to approve a selection of the successful tenderer, whichever happens first.

If the successful tenderer fails to sign the PPP contract or agreement within the time specified by the EXAT, the EXAT shall immediately forfeit its tender security or request for payment from the issuer of such tender security. The EXAT may also claim for other damages (if any) and consider adding such successful tenderer to the official list of work abandoners. In any case, the tender security shall be returned without interest.

- 7.3 The EXAT shall return the tender security to the successful tenderer after such tenderer has entered into the PPP contract with, and furnished the required performance security to, the EXAT.

- 7.4 The tender security may be forfeited in the following cases:

- (1) If the tenderer withdraws its tender during the period of tender validity; or
- (2) If the tenderer does not accept a correction of its tender as specified in the RFP;  
or
- (3) If the successful tenderer fails to proceed with the following steps, within the time specified:
  - a) sign the PPP contract; or
  - b) Furnish to the EXAT the performance security required.

## 8. Performance Security

- 8.1 For the works in phase 1, the successful tenderer (the private party) shall furnish to the EXAT a performance security in the amount of Baht 600,000,000 (Six Hundred Million Baht) on the PPP contract signing date, which shall be returned once the EXAT has issued a commissioning certificate to the private party, and when the private party has furnished to the EXAT a new performance security worth Baht 100,000,000 (One Hundred Million Baht) as a guarantee for the works in phase 2. This second performance security shall be returned to the private party upon expiration of the PPP contract and the private party's relief of the related obligations.

The performance security shall be furnished in one of the following forms:



- (1) Domestic Bank Guarantee - In case of a foreign juristic person, a bank guarantee shall be issued by a reputable foreign bank which has a branch in Thailand; or
- (2) Thai Government Bond or Thai State Enterprise Bond.

8.2 In any case, the performance security shall be returned without interest.

8.3 In any case, the private party's breach of contract shall entitle the EXAT to forfeit its performance security, in the manner prescribed under the PPP contract.

## 9. Tenders Preparation and Basic Criteria for Evaluation

Tenders shall be prepared and submitted completely and accurately in accordance with the forms contained and requirements stipulated in the RFP and shall be arranged in 5 separate envelopes as follows:

- An Unsealed Envelope
- Envelope 1: Qualifications Proposal
- Envelope 2: Technical Proposal
- Envelope 3: Investment and Benefit Sharing Proposal
- Envelope 4: Other Proposals that Shall Benefit the EXAT's Services and Operation

An evaluation shall be performed in the following sequences, from Clauses 9.1 to 9.5:

9.1 Once the proposals have been received, the following documents shall be checked for their correctness and completeness, based on the Instructions to Tenderers:

- (1) Form of Proposal
- (2) Power of Attorney
- (3) Tender Security
- (4) RFP Purchase Evidence

Should it be found that the documents contained in an unsealed envelope are incomplete or incorrect; such tenderer's proposals shall be rejected and returned unopened; in which case, the tenderer shall not be entitled to claim any expenses or damages from the EXAT.

9.2 Evaluation of Envelope 1: Qualifications Proposal

An evaluation of Envelope 1 - Qualifications Proposal - shall be performed based on pass/fail system. This proposal shall contain the correct, complete and accurate information required by the RFP, with all the credibility specified under Clause 3.

### 9.3 Evaluation of Envelope 2: Technical Proposal

An evaluation of Envelope 2 - Technical Proposal - shall be performed based on scoring system, which is divided into:

- |   |    |
|---|----|
| (1) Financial readiness, support and capability   | 15 |
| (2) Past experiences, work achievements and credibility   | 5  |
| (3) Organization structure and personnel's management competency  | 10 |
| (4) Technical approach and methodology for the works in phase 1 and conformance of the proposals compared with the terms stated in the RFP. | 40 |
| (5) Technical approach and methodology for the works in phase 2 and conformance of the proposals compared with the terms stated in the RFP. | 30 |

The tenderer shall obtain at least 85% in each subject; and not less than 90% of the total score. Otherwise, it shall not be qualified for Envelope 2 evaluation, resulting in its Envelopes 3 not being opened.

### 9.4 Evaluation of Envelope 3: Investment and Benefit Sharing Proposal

An evaluation of this Investment and Benefit Sharing Proposal shall be based on the maximum present value (PV) of the benefit sharing offered by the tenderer to the EXAT.

### 9.5 Evaluation of Envelope 4: Other Proposals that Shall Benefit the EXAT's services and operation

The EXAT reserves the right to determine whether the Envelope 4 proposals shall be considered or not. If so, a consideration shall only be made for the tenderer who achieved the highest score.

## 10. Further Clarifications

To facilitate the examination, evaluation and comparison of the proposals, the Selection Committee under Section 36 of the Public-Private Partnership Act, B.E. 2562 (2019) may, at its discretion, request from any tenderer further clarifications of its proposal. However, no change in the substance of the proposal shall be permitted.

## 11. Language

All official correspondences shall be made in Thai, while the tenderers' proposals and other related documents shall be made in Thai and/or English. Any documents in the languages

other than Thai or English shall be accompanied by the related Thai and/or English translations certified by the Thai Embassy or Consulate in that country, which shall ensure compliance with the Ministry of Foreign Affairs' Regulations on Legalization of Documents, B.E. 2539 (1996). In case of any discrepancy between the meanings of the Thai and English versions of any documents, the meaning of the Thai Language version shall prevail.

## 12. Disclaimer

The EXAT reserves the following rights:

- 12.1 The EXAT reserves the right, at its absolute discretion, to change, amend, add or cancel the Invitation to Tender or the RFP, to cancel the tender process without selecting any tenderer, or not to accept the proposal of the tenderer who offered the highest benefit sharing. In any case, the tenderers shall not be entitled to claim any fees, expenses or damages incurred thereby from the EXAT, the Ministry of Transport, the Selection Committee under Section 36 of the Public-Private Partnership Act, B.E. 2562 (2019), Thai Government and the relevant authorities.
- 12.2 The EXAT reserves the right, at its absolute discretion, to make changes, amendments or additions to the draft PPP contract to ensure compliance with the results of the tender evaluation and the negotiation between the Selection Committee under Section 36 the Public-Private Partnership Act, B.E. 2562 (2019) and the successful tenderer, as well as the comments and results of the examination of the draft PPP contract (if any) from the Office of the Attorney General and the Cabinet Resolution.
- 12.3 This Invitation to Tender is made in both Thai and English. In the event of a discrepancy between the 2 versions, the Thai document shall prevail.

Announced as of 19 December, 2022



(Mr. Surachet Laophulsuk)

Governor of the Expressway Authority of Thailand