

**AGREEMENT No. 153
(of December 20, 2007)**

“Whereby the Acquisition Regulation of the Panama Canal Authority is amended”

**THE BOARD OF DIRECTORS
OF THE PANAMA CANAL AUTHORITY**

WHEREAS:

Article 18.5c of Law 19 of June 11, 1997, which constituted the Panama Canal Authority, confers to the Board of Directors the authority to approve the regulations governing the contracting and acquisition of works, goods, and services necessary for the operation of the Canal;

Pursuant to Agreement No. 24 of October 4, 1999, the Board of Directors of the Panama Canal Authority approved the Acquisition Regulation;

It is deemed necessary to modify the Acquisition Regulations in order to adapt their content to the present requirements of the Canal, by:

1. Adding a new Article 5A to implement the “Value Engineering” process, which allows the consideration of contractors’ offers to reduce the costs of or the time required to carry out contracts;
2. Adding a new Article 6A to allow the revision of budgeted amounts for tenders in the event that the original offers are onerous;
3. Adding a new Article 6B which permits the Authority to include limited liability in its contracts;
4. Modifying Article 10 to include the definitions of “allocated amount” and of “best-value tender”, and to modify the definition of “onerous offer”;
5. Repealing Article 27 in order to establish tender documents with different structures, while abiding by the provisions of Article 28;
6. Adding a new paragraph 12 to the end of Article 47B, establishing that qualified tenderers shall maintain that status, even when the tender subject to the qualification process is declared cancelled because no bids have been received until the authorities decide to desist from contracting;
7. Amending Article 33.15 to insert classification of credit risk services and to insert a new number 16 which includes contracting security and protection advisers for the installations of the Authority and the Panama Canal;
8. Adding a new Article 69B to regulate the appointment of Technical Evaluation Boards, and the possibility of these being advised by professional experts from the Authority or being hired by the same.
9. Adding as a new tender process the Non-Negotiable Best-Value Tender.

The Administrator of the Authority has submitted to the Board of Directors for its consideration the draft Agreement containing the relevant modifications.

HEREBY AGREES:

ARTICLE ONE: A new Article 5A is added to the Acquisition Regulations of the Panama Canal Authority, which shall read as follows:

“**Article 5A.** The Authority may consider offers from contractors to reduce the costs or the time required to carry out contracts and, if accepted, may share the resulting savings with the contractors. Under no circumstances will offers be accepted which may impair the degree of quality required by the contract.

In order to put this procedure into force, Authority contracts must include clauses to this effect, which shall specify the terms and conditions for the submission and acceptance of the offers, and the percentage of the savings to be assigned to the contractor in exchange for the offer, which shall not exceed 50% of the savings achieved.”

ARTICLE TWO: A new Article 6A is added to the Acquisition Regulations of the Panama Canal Authority, which shall read as follows:

“**Article 6A.** In those cases where offers received for a process of selection of contractors exceed the amount allocated to award the contract, the contracting officer may request, from the unit which estimated the allocated amount, an analysis to decide whether there is justification for a modification of the same.

In those cases in which the allocated amount is modified, the decision to declare the cancellation of a public tender because of onerous offers shall be based on the amended amount as established in this Article.”

ARTICLE THREE: A new Article 6B is added to the Panama Canal Authority Acquisition Regulations, which shall read as follows:

“**Article 6B.** The Authority may include in its contracts clauses which place limits on the contractor’s liability, except in cases of fraud, fault or gross negligence.”

ARTICLE FOUR: A new Article 6C is added to the Panama Canal Authority Acquisition Regulations, which shall read as follows:

“**Article 6C.** Notwithstanding the provisions of this Regulation relating to the cancellation of contracts, the Authority may include in its contracts, exceptional clauses enabling unilateral cancellation of the contract, provided that these are necessary due to the nature of a specific contract.”

ARTICLE FIVE: In Article 10 of the Panama Canal Authority Acquisition Regulations, the definitions of allocated amount and of best-value tender are added, and the definition of “onerous offer” is modified to read as follows:

“Allocated Amount: This is the top figure set by the Administration in each contractor selection process, above which the contracting officer will consider the offers received to be onerous. This amount may not exceed the amount established in the Panama Canal Authority Budget, approved by Law.”

Onerous offer: One which exceeds the original or amended budgeted amount for a contract action.

Best-Value Tender: Best-value tender is a bid, whether negotiated or not, in which the choice of the successful tenderer is based on the assignment of relative weights to the technical and economic offers for the contracting and acquisition of an asset, works or a service to select the bid having the best combined score for both aspects.

ARTICLE SIX: Article 27 of the Panama Canal Authority Acquisition Regulations is hereby repealed.

ARTICLE SEVEN: Article 33 of the Panama Canal Authority Acquisition Regulations is amended to modify number 15 and to add number 16 to read the following:

“Article 33. It shall not be necessary to conduct contractor selection proceedings in the following cases:

1. Micro-purchases subject to the provisions of Article 50.
2. Contracts governed or authorized by special law.
3. Loans or other types of credit-related obligations, according to law.
4. Contracts entered into by the Authority with other government agencies.
5. Duly justified contract extensions and renewals.
6. Contracts for the exchange of movable property.
7. Contracts for the purchase of specific real estate; or for the leasing of certain real estate in cases where the Authority is the leaseholder.
8. The contracting of arbitrators and experts for labor-related, contract, maritime, administrative and legal proceedings in which the Authority is a party.
9. The contracting of legal services and jurisdictional representation.
10. The contracting of catering services for official Authority events.

11. Contracts of public, air, sea, and land transportation services for official travel over established commercial routes.
12. Contracts for catastrophic insurance policies.
13. Contracts for literary, artistic or historical works, or, in general, those of a cultural nature.
14. Contracts for equipment maintenance and repair services when a prior diagnosis is required to determine the scope of the required maintenance or repair, for which a market analysis to determine the best available option at the time shall be made.
15. Contracts for banking and credit risk rating services.
16. Contracts with advisers on the security and protection of Authority installations and the Panama Canal.”

ARTICLE EIGHT: A new number 12 is added to Article 47B of the Panama Canal Authority Acquisition Regulations, which shall read as follows:

“**Article 47B**. The prequalification process shall be the following:

1. The Prequalification Documents and their amendments shall be published in the Panama Canal Authority Tender Online System and in other media that the Authority may deem advisable.
2. The interested parties shall submit the papers listed in the Prequalification Documents to the contracting officer at the place, date and time established in the Prequalification Document.
3. The contracting officer shall appoint a Technical Evaluation Board composed of Authority personnel to assess the documents submitted by the interested parties. This Board shall evaluate the offers based only on the criteria established in the Prequalification Documents and shall not make recommendations.
4. The contracting officer may, at any time during the prequalification process, on his own initiative or at the request of the Technical Evaluation Board, require the interested parties to provide whatever explanatory information he may deem necessary for the revision of the prequalification documents.
5. The Technical Evaluation Board, whenever it deems necessary due to the complexity of the material and in order to widen its knowledge of specific subjects, may request advice from the Authority’s professional experts or from others under contract to it.
6. The Technical Evaluation Board shall verify compliance with the minimum prerequisites called for in the Prequalification Documents. Once compliance with the prerequisites has been established, the Board shall evaluate the papers

submitted by the interested parties pursuant to the weighted criteria contained in the document.

7. After reviewing the prequalification documents, the Technical Evaluation Board shall submit a detailed report to the contracting officer indicating the results of the evaluation of all the proponents.

8. Upon receiving the evaluation report, the contracting officer shall confirm that the evaluation was conducted in accordance with the prerequisites established in the prequalification document. If, in the contracting officer's opinion, the evaluation does not meet the requirements of the document, he shall return the report to the Technical Evaluation Board with his observations. The Technical Board shall analyze these observations and shall send its final report to the contracting officer.

9. The contracting officer, via a reasoned resolution, will determine which tenderers have prequalified to participate in the respective tender process, according to the report of the Technical Evaluation Board and the requirements established in the prequalification document.

10. The contracting officer's decision shall be published as a notice on the Panama Canal Authority's Tender Online System for three business days. At the conclusion of this period, the decision shall be deemed to have been notified.

11. Interested parties who have submitted the correct documentation and have not prequalified may appeal the contracting officer's decision within a period of seven business days from announcement of the notice. In this regard, the applicable procedure shall be that prescribed for the submission of appeals against the disqualification of proponents as established in the Section Two of Chapter X of these Regulations.

12. Prequalified status is not lost by reason of a decision to declare the bid void. Such status is only extinguished if the Authority cancels the particular tender process."

ARTICLE NINE: Article 56 of the Panama Canal Authority Acquisition Regulations is amended to read as follows:

Article 56. The tender processes are the following:

1. Public tender based on the lowest price.
2. Negotiated tender, of three types:
 - a. Negotiated tender based on the lowest price.
 - b. Negotiated tender based on best value.
 - c. Reverse negotiated solicitation at the price of the lowest bidder.
3. Non-negotiated tender based on best value.
4. Two-step public tender.

ARTICLE TEN: Article 69B is added to the Panama Canal Authority Acquisition Regulations and shall read as follows:

“Article 69B. The contracting officer may appoint a Technical Board composed of Authority personnel to assess the offers, whenever it deems it necessary, by reason of the complexity of the tender. This Board shall review the offers applying only the criteria established on the tender documents and shall not issue recommendations.

The Technical Evaluation Board, whenever it deems necessary due to the complexity of the material and in order to widen its knowledge of specific subjects, may request the contracting officer to provide advice of professional experts of the Authority or from others under contract to it.”

ARTICLE ELEVEN: Section Eight, Non-Negotiated Tender on Best Value, is added to Chapter IX of the Panama Canal Authority Acquisition Regulations, which shall read as follows:

**“Section Eight
Non-Negotiated Tender on Best Value**

Article 89C. The features of the best-value tender process are the following:

1. The tender documents shall be published in accordance with the provisions of these Regulations.
2. The tender documents shall include the procedure for Non-Negotiated Best-Value Tender.
3. The offers shall be received in a public act, with the technical and economic offers submitted in separate sealed envelopes.
4. Only persons named in the tender documents shall participate in the act of opening of the technical offers. Minutes shall be drawn up showing the details of the opening formalities and the contracting officer shall hand the technical offers to the Technical Board for their review.
5. The contracting officer shall appoint a Technical Evaluation Board and a Price Verification Board consisting of specialized professionals of the highest level in order to ensure an objective assessment of the technical offers and a separate evaluation of the price offers. These Boards shall review the offers applying only the criteria and scores established in the tender documents and shall not issue recommendations.
6. The Technical Evaluation Board, when it deems necessary in view of the complexity of the material, and in order to expand its knowledge with respect to specific subjects, may request the contracting officer, in coordination with the

Administration, to provide advice from professional experts of the Authority or from others contracted by it.

7. The Technical Evaluation Board shall confirm compliance with the minimum prerequisites required in the tender documents and shall verify the technical offers submitted in accordance with the score assigned to this aspect in the tender documents. The price offers shall be assessed by the Price Verification Board pursuant to the criteria established in the tender documents for this effect.

8. The contracting officer may, at any time during the technical evaluation process, on his own initiative, or at the request of the Technical Evaluation Board, ask the proponents to provide whatever clarifications or additional information he may deem necessary for the evaluation of the technical offers, in order to provide the tenderers the opportunity, if in his opinion it is necessary, to revise or improve their technical offers.

9. The Authority may make changes in the requirements contained in the tender documents subsequent to the date and time fixed for the receipt of offers, and prior to the opening of the price offers, provided that such modifications are due to changes in Authority requirements and do not affect the purpose of the contract. In these cases, the contracting officer may request the submission of new technical and price offers from those who proposed offers originally and shall return the sealed price offers originally submitted.

10. Upon receipt of the technical evaluation report, the contracting officer shall verify that the evaluation was conducted as established in the tender documents. If, in the contracting officer's opinion, the evaluation does not meet the requirements established in the tender documents, he shall return the report to the Technical Evaluation Board with his observations. The Technical Evaluation Board shall analyze those observations and shall send its final report to the contracting officer.

11. The contracting officer, together with the Technical Price Verification Board, shall open and verify the price offers.

12. The scores resulting from the evaluations of the price and technical criteria shall be recorded in a summary table with their respective weights, and the contracting officer shall award the contract to the tenderer submitting the best-value offer.

13. Notwithstanding the provisions of Article 6A, for the processes of Non-Negotiated Best-Value Tender, if the proposal offering the best value exceeds the allocated amount for the award, the contracting officer, before declaring the tender cancelled because no bids have been received, shall advise the Administration, in order that it may decide if an increase in the allocated amount

is justified. The Administration's decision shall take into account the profitability of the project and any other factors which would constitute grounds for the respective amendment.

If the Administration decides that such increase is not warranted, the contracting officer shall be advised so that he may declare the tender process cancelled because no bids have been received. Otherwise, the Administration shall amend the allocated amount, with the prior approval of the Board of Directors. Once the allocated amount has been increased, the contracting officer shall proceed to award the contract to the tenderer who submitted the best-value offer, provided it does not exceed the allocated amount, as amended.

14. If the price of the best-value offer exceeds the duly amended allocated amount as established in the preceding paragraph, the contracting officer may request all tenderers to submit new price offers.

15. The award decision shall include a detailed description of the development of the tender process.”

ARTICLE TWELVE: This Agreement shall come into force upon its publication in the Canal Record.

Issued in Panama City, on the twentieth day of December of the year two thousand seven.

TO BE PUBLISHED AND EXECUTED.

Dani Kuzniecky

Diogenes de la Rosa

Chairman of the Board

Secretary