

**AGREEMENT No. 107  
(of December 15, 2005)**

“Whereby the Panama Canal Authority Contracting Regulations are amended”

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

**WHEREAS:**

Item 5, paragraph c of the Organic Law on the Panama Canal empowers the Board of Directors to approve the regulations applicable to the contracting for works and the procurement of goods and services necessary for the operation of the Canal.

By means of Agreement 24 of October 4, 1999, the Board of Directors of the Panama Canal Authority approved its Contracting Regulations.

Administrative units have experienced difficulties in the application of certain regulations and this warrants their amendment.

The Administrator of the Panama Canal Authority has submitted to the Board of Directors a draft agreement which contains the pertinent amendments, for its consideration.

**AGREES THAT:**

**ARTICLE ONE:** Article 8 of the Regulations is amended to read as follows:

“**Article 8.** Any actions taken during contracting proceedings will be recorded in writing. The administration shall issue a written determination in the following cases:

1. Evaluation reports.
2. Contract award. Purchases that have been awarded to the tenderer offering the lowest price are exempt from this requirement, and may be recorded in electronic files.
3. The declaration of exception to full and open competition.
4. The declaration of the cancellation of a public tender.
5. Others as required by these regulations.”

**ARTICLE TWO:** Article 9 of the Regulations is amended to read as follows:

“**Article 9.** In applying the principle of lawfulness, the following actions shall be subject to a review by the General Counsel to verify compliance with all legal and regulatory requirements:

1. Procurement and disposal of assets of a price or value exceeding B/. 100,000.00.
2. Declaration of exception to full and open competition for contracting actions over B/.100,000.00.
3. Written determinations requiring review, in accordance with these Regulations.
4. Errors in tenders, and the actions to be taken by the Contracting Officer.
5. Formal protests against a contracting process.
6. Contract disputes.
7. Debarment of contractors.
8. Disqualifying action against contractors.
9. Modification of contracts having an effect on price of more than ten percent (10%), and performance times of more than thirty (30) calendar days.
10. Suspension of contract performance.
11. Administrative termination of a contract.
12. Disclosure of contractor information or of information on contractual matters.
13. Recovery of funds.
14. Approval of advance payments.
15. Insurance policies and bonds, except for tender bonds.
16. Assignment of contract payments to financial institutions authorized by the Contractor.”

**ARTICLE THREE:** Section Two, Chapter V, of the Title is amended to read as follows:

**“Section Two  
Contracting Excepted from and Open Competition”**

**ARTICLE FOUR:** Article 33 of the Regulations is amended to read as follows:

**“Article 33.** The contractor selection procedures shall not be required in the following instances:

1. Micro-purchases subject to the provisions of Article 50.
2. Contracts governed or authorized by a special law.
3. Loans with financial institutions, according to law.
4. Contracts entered into by the Panama Canal Authority with other government entities.
5. Duly justified contract extensions and renewals.
6. Contracts for the exchange of personal property.
7. Contracts for the acquisition of specific real property, or for leasing specific real property in cases where the Authority is the leaseholder.
8. The contracting of arbitrators and experts for labor, contract, maritime, administrative, and legal processes in which the Authority is a party.
9. The contracting for legal services and jurisdictional representation.
10. The contracting for catering services for official events of the Authority.
11. The contracting for public, air, maritime, and ground transportation for official travel on established commercial routes.

12. The contracting of catastrophic insurance policy.
13. The contracting for literary, artistic, or historic works or of those a general cultural nature.
14. The contracting for equipment maintenance and repair, when a prior diagnosis is needed to determine the scope of the required maintenance or repair, for which a market analysis to define the best available option at the time shall be made.
15. The contracting for banking services.”

**ARTICLE FIVE:** Article 34 of the Regulations is amended to read as follows:

“**Article 34.** The administrative unit performing the contracting shall justify the exception to full and open competition as follows:

1. For purchases not exceeding B/.10,000.00, made through a written determination prepared by the Contracting Officer making the purchase, which shall be included in the record.
2. For purchases over B/.10,000.00, through a technical report addressed to the Contracting Officer, who shall issue a written determination. Any purchase in an amount exceeding B/.100,000.00, requires the review of the written determination by the General Counsel.”

**ARTICLE SIX:** Article 35 of the Regulations is amended to read as follows:

“**Article 35.** For purchases of B/.1,000.01 to B/.100,000.00, the supervisor of the Contracting Officer who will execute the contract shall approve the above mentioned written determination. For purchases over B/.100,000.00, and up to B/.500,000.00, the Chief, Contracting Office, shall authorize the written determination. For purchases exceeding the latter amount, and up to B/.1,000,000.00, a statement of exception shall be issued by the Administrator, with prior acknowledgment by the Board of Directors; and for purchases over B/.1, 000,000.00; the approval of the Board of Directors is required.”

**ARTICLE SEVEN:** Article 40 is amended to read as follows:

“**Article 40.** Announcements shall be published as follows:

1. The procedures for purchases up to B/.10,000.00 shall be posted on the Internet during periods of not less than (8) business hours. Offers may be known immediately after this period has elapsed.
2. The procedures for simplified purchases over B/.10,000.00, and their offers shall be posted on the Internet for a period of not less than five (5) business days, with the understanding that such period will commence on the business day following the date the announcement is placed. Offers may be made known immediately after this period has elapsed.”

**ARTICLE EIGHT:** Article 43 of the Contracting Regulations of the Panama Canal Authority is hereby revoked.

**ARTICLE NINE:** Article 50 is amended to read as follows:

**“Article 50.** The following rules shall be observed for micro-purchases:

1. Micro-purchases shall be made by means of requests for quotations on the Internet.
2. The Contracting Officer shall notify whoever quotes the lowest price, meets the requirements, is qualified, and whose quotation is not onerous, of the Authority’s intention to award him an order for his quotation.
3. The tenderer thus notified shall have the period established in the quotation request to communicate his acceptance or rejection of the intention to purchase.
4. The acceptance shall result in an award.
5. Once the period elapses without receiving an acceptance, the Contracting Officer shall issue a new notification to the next tenderer with the best price who meets the requirements, is qualified, and whose quotation is not onerous. This provision shall apply to any purchase for an amount not exceeding the corresponding micro-purchase.”

**ARTICLE TEN:** Article 58 is amended to read as follows:

**“Article 58.** Whenever the tender document does not require pre-tender meetings in order to confirm its terms and conditions, any observations to it for the purpose of clarifying its formal or in depth content shall not interrupt the process of contractor selection, unless the Contracting Officer considers that the introduction of changes by means of amendments is warranted.”

**ARTICLE ELEVEN:** Article 59 is amended to read as follows:

**“Article 59.** Based on the complexity of a contract, the Contracting Officer may conduct pre-tender meetings with tenderers in order to confirm the terms and conditions of the tender document. In cases where these meetings are held and discrepancies cannot be resolved, the tender documents shall be adopted unilaterally by the Authority. Any change resulting from a meeting shall be introduced into the tender by way of amendments and there shall be no recourse to protests on the contents of the documents previously confirmed.”

**ARTICLE TWELVE:** Article 68 is amended to read as follows:

**“Article 68.** The Contracting Officer shall declare the contractor selection process to be extinct by way of a written determination in the following cases:

1. Absence of tenderers.
2. All tenders submitted fail to comply with the requirements in the tender document.

3. All tenders submitted are considered onerous. The fact that a tender is considered onerous shall be adequately evidenced on the record.
4. All tenders originate from corporations connected to the same financial group. It is understood that there are corporations related to a single economic group in the following cases:
  - a. When corporations controlled by the same corporation participate in the tendering process.
  - b. When among the participating corporations there is in some way control by one over the other or others.
  - c. When the participating corporations have two or more members in common on its Board of Directors, or the legal representatives are the same.
  - d. When corporations and its branches participate.
  - e. When corporations and its subsidiaries participate, and at least 33% of the assets of the latter are owned by the former.
5. When tenderers have partaken in conduct described under Article 1a.
6. In general, when it is considered that tenders are contrary to the best interests of the Authority.”

**ARTICLE THIRTEEN:** Article 86 of the Regulations is amended to read as follows:

“**Article 86.** The procedure for a negotiated tender based on the best price shall be used to compare tenders and select the one offering the best price/quality ratio.”

**ARTICLE FOURTEEN:** Article 97 of the Regulations is amended to read as follows:

“**Article 97.** Should the Authority, to avoid being injured, not suspend the performance of the contract and the matter is resolved in favor of the affected party, the proven and reasonable expenses incurred in preparing the tender and submitting the protest shall be reimbursed to said party.

In the event it is also determined that the protester should have been favored with the award of the contract, the appropriate authority may, after an analysis of the corresponding expenses, order the termination of the contract for the portion performed, and proceed to take the corresponding corrective actions and award such portion to the protester. In the event the portion not performed is not terminated, the protester shall be entitled to compensation for the proven and reasonable expenses it incurred in preparing the tender.”

**ARTICLE FIFTEEN:** Article 99 of the Regulations shall be amended to read as follows:

“**Article 99.** To be admitted, protests against an award shall be accompanied by a protest bond in favor of the Panama Canal Authority, equivalent to five (5%) per cent of the amount of the tender, but not exceeding B/.100,000.00, to cover the

costs and injury that the process may cause. Purchases not exceeding B/.10,000.00 and those related with the disqualification of the tenderers are exempted from this obligation. In the event the protest is clearly unfounded, the resolution issued by appropriate authority shall order foreclosure of the bond to the Panama Canal Authority.

Protests against an award or disqualification shall be resolved within thirty (30) calendar days from the expiration of the period allowed for placing the notification of award. These resolutions may not be appealed, and all administrative remedies are thereby exhausted.”

**ARTICLE SIXTEEN:** Article 109 of the Regulations is amended to read as follows:

“**Article 109.** The contract performance bond guarantees faithful performance of the contract and the correction of any pertinent deficiencies once it is performed. Coverage shall not be less than fifty (50%) per cent of the contract amount in the case of construction contracts. In the case of acquisition of goods and services, coverage shall be one hundred per cent (100%) of the contract amount, unless the Contracting Officer establishes a lower coverage amount subject to a risk analysis study, a review by the Chief Financial Officer and the General Counsel, and approval of the Administrator of the Authority. The term of such coverage shall correspond to the contract performance period, in addition to one (1) year in the case of real property, in order to respond for any redhibitory vices, with the exception of consumer goods, in which case the coverage shall be of six (6) months; and in the case of construction contracts, a period of three (3) years to respond for construction defects or reconstruction of the work or real property.”

**ARTICLE SEVENTEEN:** Article 167 of the Regulations is amended to read as follows:

“**Article 167.** Contracts for the supply of goods and services shall be for a period not to exceed five years. The Contracting Officer, after prior approval of the Chief, Contracting Office and the General Counsel, shall justify the economic benefits of a multiple year contract.

The Board of Directors may, as an exception, authorize contracts for Canal expansion programs, or when it is shown that the object of the contract cannot be complied within shorter periods. In these cases, the maximum term of the contract may not exceed ten years.”

**ARTICLE EIGHTEEN:** Article 211 of the Regulations is amended to read as follows:

“**Article 211.** The sale shall be cancelled in those cases when there are no tenderers or when the tenders received are under the minimum price established.

- a. If the contracting process is cancelled, a new tender may be announced whereby the Contracting Officer may transfer the property at the highest

price offered, provided this results in the most advantageous alternative to the interests of the Authority and this condition is noted on the award determination document, which shall be approved by the Chief, Contracting Office.

- b. If the new tender is cancelled, the goods in question shall be disposed of in the most advantageous manner for the interests of the Authority, a circumstance that shall be noted on the appropriate resolution, approved by the Chief Financial Officer.”

**ARTICLE NINETEEN:** Article 214 of the Regulations is amended to read as follows:

“**Article 214.** The partial or full termination of contracts may be made for causes attributable to the Contractor, or by a unilateral decision of the Panama Canal Authority.”

**ARTICLE TWENTY:** This agreement shall become effective as of its approval al, with the exception of the provisions of Article 50 of the Regulations, which shall become effective sixty calendar days as of their approval.

Issued in the city of Panama, on December 15, 2005.

TO BE PUBLISHED AND ENFORCED

Ricaurte Vásquez M.

Diógenes de la Rosa

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Chairman, Board of Directors

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Secretary