

ANNEX 4 - SINGLE TENDER DOCUMENTATION – REQUEST FOR QUOTATION, INVITATION TO TENDER, CONTRACT FOR THE PROCUREMENT OF GOODS, SERVICES AND CONSTRUCTION, FOR THE PANAMA CANAL AUTHORITY.

4.28.1 MINIMUM WAGE. (For construction and service contracts in the Canal area). This contract for services is subject to the minimum wage of U.S. \$2.90 per hour for those workers of the contractor rendering direct services on the premises of the “Autoridad” in the Canal area. Compliance with the minimum wage shall be subject to auditing of payrolls, stubs, Social Security payment statements of the employees and other documents that prove the payment of the above-mentioned wage.

4.28.2. DUTIES, TAXES, RIGHTS, FEES, CHARGES OR CONTRIBUTIONS FROM THE COUNTRY OF ORIGIN. The tenderer or contractor certifies that the proposed price includes all duties, taxes, rights, fees, charges or contributions, of a national, state or municipal nature from the country of origin. By virtue of this certification no claim applies.

4.28.3. ¹TAX WITHHOLDINGS FROM CONTRACTORS DOMICILED OUTSIDE THE REPUBLIC OF PANAMA. Autoridad del Canal de Panamá contractors, domiciled outside the Republic of Panama, whose contracts are for the rendering of a service, are obliged to pay income tax to the National Treasury of Panama. When the contractor is an individual domiciled outside the national territory, is also obliged to pay, in addition, education tax.

1. Taxes shall be paid through withholding by the Autoridad del Canal de Panamá, as prescribed by the Fiscal Code.
2. When the contract is for supplies and services, partially executed in Panama, the income tax shall be withheld from the total amount of the portion that corresponds to the rendering of services.
3. The income tax rate to be withheld from payments due to corporations or organizations that partially execute the contract in Panama shall be 15% of the total contract price.
4. The income tax rate to be withheld from individuals who perform part of the contract inside the national territory shall be 15% of the contract price, and in addition to the income tax, a 2.75% of the contract price shall be withheld from payments as education tax.

4.28.4. ²DEROGATED.

4.28.5. ³REQUIREMENT FOR CERTIFICATES OF NATIONAL TAX AND SOCIAL SECURITY CLEARANCES FOR CONTRACTORS

¹ Modified by article one of Resolution No. ACP-AD-RM05-28 (1 July 2005), effective 1 July 2005.

² Derogated by article three of Resolution No. ACP-RM05-17 (12 April 2005), effective 15 April 2005. **4.28.4. TAX WITHHOLDINGS FROM CONTRACTORS DOMICILED OUTSIDE THE REPUBLIC OF PANAMA (For Construction and Services Contracts above \$10,000.00).**

³ Modified by article six of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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**DOMICILED IN THE REPUBLIC OF PANAMA FOR THE PAYMENT
OF CONTRACTS IN EXCESS OF U.S. \$500.00.**

Contractors, individuals, organizations or corporations, domiciled in the Republic of Panama shall submit an original and a copy of valid national tax clearance and the Social Security clearance certificates at the time the invoice is submitted for payment. The originals will be returned, once they are compared to the copies. Submittal of the certificates is a requirement to start the payment process, pursuant to article 170 of the “Autoridad del Canal de Panamá” Acquisition Regulation. Purchase orders and contracts not exceeding U.S. \$500.00 shall be exempted from this requirement.

4.28.6. ⁴IMPORT DUTIES AND SALES TAX EXEMPTIONS.

1. By virtue of article 43 of the “Autoridad del Canal de Panamá” Organic Law, all the goods covered by the Contract, that are consigned to the ACP, and identified as such in the Contract, and services are exempt from payment of any national or municipal levies, taxes, duties, fees, charges, or contributions.
2. The contractor shall be responsible for processing and filing the Simplified Customs document as part of the delivery of consigned goods covered by the Contract.
3. The “Autoridad” will prepare the corresponding customs clearance documents.
4. When the goods are not accepted, the Contractor shall be responsible for the withdrawal of goods not accepted and for the corresponding customs processing; consequently, if in sixty days upon the notification of non-acceptance, the contract fails to withdraw the goods from “Autoridad” premises, with the corresponding customs documents, the “Autoridad” may dispose of the goods in any manner, without precluding the use, sale, donation or destruction of same, without recourse from the Contractor.
5. Noncompliance with the requirements herein established may delay the delivery of e goods and payments to the contractor for causes not attributable to the “Autoridad del Canal de Panamá”.
6. According to the delivery terms, the contractor is responsible for the following:
 - a) Terms of Delivery DDU Panama (goods consigned to the ACP coming from foreign countries or from free zones):
 1. Goods. Pack, mark and accompany the goods with copy of the shipping documents, packing lists, certified copy of the invoice of origin and copy of the contract.

⁴ Modified by article 54 of Resolution No. ACP-AD-RM08-11 (18 April 2008), effective 18 May 2008. Modified by article 11 of Resolution No. ACP-AD-RM09-03 (9 Feb 2009), effective 11 March 2009.

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2. Delivery of Documents. Deliver to the “Autoridad del Canal de Panamá”, Office of Exoneration, Building 710, Balboa, Republic of Panama, the original of the invoice of origin, copy of the order or contract and the original shipping documents.
3. Simplified Customs Document. Obtain at the “Autoridad del Canal de Panamá”, Office of Exoneration, Building 710, Balboa, Republic of Panama, the Simplified Customs document to withdraw the goods at the customs area.
4. Withdrawal and delivery of the goods. Submit the Simplified Customs document in original and copy along with the original shipping documents and the original of the invoice of origin at the corresponding customs area, transport and deliver the goods as described in the purchase order or Contract.
5. Submission of the complete invoice. See paragraph 7 of this clause.
- b) Other Terms of Delivery (goods consigned to the ACP originating in foreign countries or free zones):
 1. Goods. Pack, identify, and accompany the goods with a copy of the purchase order or contract and the original invoice of origin.
 2. Submission of the complete invoice. See paragraph 7 of this clause.
- c) Goods originating from the local market with Terms of Delivery DDP Panama:
 1. Goods: Pack, mark and accompany the goods with copy of the purchase order or contract.
 2. Submission of the complete invoice. See paragraph 7 of this clause.
7. Submission of complete invoice. In order to start the payment process following the delivery of the goods or services, the interested party shall submit the corresponding documentation, as the case may be, as follows:
 - a) Term of Delivery DDU Panama.
 1. If the interested party is domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee the original of the sales invoice, accompanied with the originals and copies of the national tax clearance and the Social Security clearance certificates, The originals of these certificates will be returned, once they are compared to the copies. In addition, it shall submit at the Office of Exoneration, Building 710, Balboa, Republic of Panama, the Simplified Customs document, dully stamped by the “Dirección General de Aduanas”, the original of the invoice of origin and the shipping documents so the ACP may process the customs clearance.
 2. If the interested party is domiciled in the Republic

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of Panama: it shall submit to the contracting officer or his designee the original of the sale invoice. In addition, it shall submit at the Office of Exoneration, Building 710, Balboa, Republic of Panama, the Simplified Customs document, dully stamped by the “Dirección General de Aduanas”, the original of the invoice of origin and the shipping documents so the ACP may process the customs clearance.

b) Other Terms of Delivery DDP Panama.

1. If the interested party is domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee the original of the sales invoice, accompanied with the originals and copies of the national tax clearance and the Social Security clearance certificates. The originals of these certificates will be returned, once they are compared to the copies.

2. If the interested party is not domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee a certified copy of the sales invoice.

4.28.7 OFFICIAL LANGUAGE: The proposals, correspondence, and documents required by the purchase order or contract, shall be submitted in Spanish, except for descriptive commercial literature requested as part of the proposal or contract, which may be submitted in English or in the authorized language.

4.28.8 OFFICE HOURS: The office hours for the contracting system shall be from 8:00 a.m. to 3:30 p.m., Monday through Friday during business days observed by the “Autoridad del Canal de Panamá.”

4.28.9. ⁵FOR MICRO-PURCHASES UP TO U.S. \$1,000.00. The following articles of the “Autoridad del Canal de Panama” Acquisition Regulation shall be applicable: 10, 11, 12, 17, 18, 19, 33, 44, 45, 46, 47, 50, 64, 66, 67, 68, 69, 76, 77, 78, 82, 83, 84, 85, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 123, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 161, 162, 164, 165, 166, 169, 170, 171, 172, 175, 176, 187, 214, 217, 218, 219, 220, 221, 222, 223, 225, and 226, which may be accessed on the Internet at: www.pancanal.com under the Procurement and Sales, Administrative and Legal Section.

4.28.10. ⁶FOR SIMPLIFIED PURCHASES AND CONTRACTS OVER U.S. \$1,000.00. All the articles of the “Autoridad del Canal de Panamá.”

⁵ Modified by article thirty three of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

⁶ Modified by article thirty four of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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Acquisition Regulation are applicable, specifically articles 10, 11, 12, 17, 18, 19, 42, 44, 45, 46, 47, 48, 49, 61, 64, 66, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 123, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 161, 162, 164, 165, 166, 167, 169, 170, 171, 172, 175, 176, 187, 214, 217, 218, 219, 220, 221, 222, 223, 225, 226, and 226 a.; which may be accessed on the Internet at: www.pancanal.com under the Procurement and Sales, Administrative and Legal Section.

4.28.11. CONTRACT INTERPRETATION. Contracts entered into by the “Autoridad” are subject to the provisions of the “Autoridad” Acquisition Regulation, as well as to the terms and conditions the Contract. The interpretation of the provisions of the Acquisition Regulation and of this Contract shall always recognize the fundamental purpose of the legal functions bestowed upon the “Autoridad”, and abide by the principle of equity in its relationship with the Contractors.

4.28.12 CONTRACTING OFFICER’S REPRESENTATIVES (COR).

The Contracting Officer may designate, by way of an administrative modification to the contract, contracting officer’s representatives for the technical, financial or general administration of the contract.

4.28.13 ⁷ADMINISTRATIVE PROCEDURES FOR CLAIMS.

1. Claim as used in this contract means a written request by the contractor to the “Autoridad” indicating as a matter of right, the payment of certain sum of money, the adjustment or interpretation of contract terms, or other relief related to the contract. The request shall include the claimed sum certain that can be updated as costs continue to be accrued in the performance of the contract, the contractual clauses on which the claim is based and all evidence necessary to support the claim.
2. The contractor shall file any claim in writing to the contracting officer, as soon as he considers that there is a basis for such claim, but in no case, a claim submitted should be considered after 90 calendar days from the date on which the act that motivates the claim occurred.
3. The submission of a claim shall contain, as a minimum: the contract number, all the details and basis of the claim, including the support of the reasons why the contractor considers that the claim is attributable to the Panama Canal Authority, the certain and

⁷ Modified by article thirty five of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 55 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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definitive sum of the claim, which could be adjusted if the claimed expenses continue to accrue in the performance of the contract, the contractual clauses and regulations on which it is based, all the evidence that supports it and a declaration that shall state that the claim is made in good faith, that the supporting data are accurate and complete, that the amount requested accurately reflects the contract adjustment for which the contractor believes the Panama Canal Authority is liable. The submission of a claim that does not contain, at least, the elements previously established, will give rise to the return of the request for claim and the request thus returned shall not suspend the time period for the presentation of the claim.

4. Within the period of sixty (60) calendar days after receipt of any claim, the contracting officer shall render a resolution disposing the claim. The resolution shall include the sum certain and the rationale for sums of money claimed accepted and rejected and shall resolve claims of contract interpretation or other relief.
5. The contracting officer's resolution is only subject to the administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The appeal shall be submitted to the Executive Manager of the Purchasing, Warehousing and Inventories Division, within five (5) office days of notification of the contracting officer's resolution to contractor by faxing a copy of the corresponding contracting officer's resolution, and shall include any new evidence that the appellant pretends to introduce at the second stage. For the appeal to be admitted, it shall be timely submitted.
6. The Executive Manager of the Purchasing, Warehousing and Inventories Division, shall notify, in writing by fax or email, the appellant of the admission or rejection of the appeal. The appeal decision shall be rendered by the Executive Manager of the Purchasing, Warehousing and Inventories Division, not later than thirty (30) calendar days counted from the date in which the respectively appeal was admitted. Copy of the resolution will be sent to the appellant by fax or email.
7. Claims presented to the contractor by the Panama Canal Authority shall be rendered by a contracting officer's resolution; the claims shall be notified to the contractor by sending a copy of the resolution by fax or email, and shall be subject to the administrative appeal recourse established in the preceding paragraphs. The period for submission the appeal to Panama Canal Authority claim resolution shall be five (5) office days counted from the notification to the contractor. These claims will be documented as contract modifications, for bookkeeping purposes.
8. The resolution of the appeal by the Executive Manager of the Purchasing, Warehousing and Inventories Division exhausts the administrative proceeding.
9. As an exception and when deemed in the best interest of the Panama Canal Authority, the contracting officer may include

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expressly in the contract or in the tender documentation, an arbitration clause as means for the resolution of all disputes or claims under the contract in the interpretation, execution or termination of the present contract. In case the contracting officer decides to include such clause, the text shall be: “Exhausted the administrative proceeding, detailed in this clause, the contractor may present, within 60 calendar days following the date in which the administrative proceeding was exhausted, a request for arbitration for the same claim that was examined in the administrative proceeding. The arbitration shall be in law and the contract shall indicate the corresponding arbitral tribunal.

4.28.14. ⁸DELAYS IN THE COMMENCEMENT OF CONTRACT PERFORMANCE.

1. When the Contractor cannot commence performance of the contract for causes attributable to the “Autoridad”, and the contractor concomitantly, the contractor shall have the right only to an extension in the contract performance or delivery term for a period not less than those of the delays.
2. When the contractor cannot commence performance of the contract for causes attributable to the “Autoridad”:
 - a) The contractor shall have the right to be reimbursed for the direct costs that necessarily and reasonably have been incurred during the proven delay period.
 - b) The Contractor may also be compensated for his administrative expenses, up to a maximum of ten percent (10%) of the direct costs that have been recognized by the “Autoridad” as being related to the period of delay; the “Autoridad” shall not compensate additional administrative expenses for any other circumstances nor use any other means to estimate this expense.
 - c) Profits shall not be paid on expenses related to the delay.
 - d) The Contractor shall have the right to an extension of the contract performance time, for a period not less than the delay.
 - e) Cost increases and time extensions granted to the Contractor shall be documented in writing through amendments to the Contract.

4.28.15. ⁹SUSPENSION OR INTERRUPTION OF CONTRACT PERFORMANCE .

1. The Contracting Officer may order the total or partial suspension or interruption of the performance of the contract for the period

⁸ Modified by article nine of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

⁹ Modified by article ten of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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deemed appropriate and convenient to the interests of the Authority.

2. When the Contracting Officer suspends the performance of the contract for reasons attributable to the “Autoridad”, the Contractor shall be entitled to be reimbursed for all direct costs that necessarily and reasonably have been incurred during the period counted from the suspension of the performance of the Contract up to its resumption.
3. The Contractor may also be compensated for its administrative expenses, up to a maximum of ten percent (10%) of the direct costs that may have been recognized by the “Autoridad” as being related to the suspension period.
4. The “Autoridad” shall not compensate additional administrative expenses for any other circumstance nor use any other method to estimate these expenses.
5. Profits shall not be paid on expenses related to the suspension period.
6. The Contractor is entitled to receive a time extension for performance of the Contract, for a period of time not less than that of the suspension.
7. Cost increases and time extensions approved for the Contractor shall be documented in writing by amendments to the Contract.
8. The “Autoridad” shall not recognize any adjustment in the price or time of the contract if the suspension or interruption was due to causes attributable to the contractor, or if it is shown that the suspension or interruption has not affected the performance of the Contract or work.
9. When the interruption in the performance of the contract is due to causes attributable to the Autoridad and the contractor concomitantly, the contractor shall only have the right to a time extension in the performance of the contract for a period equal to the concomitant delays.

4.28.16. RENEWAL. (For contracts with renewal clauses.)

1. The renewal of a Contract is a unilateral right of the “Autoridad”, by which it may, if it so elects, acquire additional goods and services within the established time limit, or renew the period of the Contract for the periods stipulated in it.
2. When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “CONTRACT PERIODS SUBJECT TO RENEWAL” are included and identified in the Contract, the “Autoridad” may exercise its right to acquire these goods and services or to renew the Contract within the term and the prices established in the Contract, after notifying the Contractor, 30 calendar days prior to expiration of: (a) the period of time established in the contract for ordering additional goods and services subject to renewal, or (b)

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the contract. The Contracting Officer shall amend the Contract to reflect the exercise of this right.

3. Prior to exercising the renewal, the Contracting Officer shall perform a market analysis to insure that the exercise of the renewal is the best alternative and benefits the “Autoridad”. To achieve this, it shall consider the administrative cost of the selection process that the “Autoridad” will have to incur as an element of the market analysis, prior to the exercise of the renewal. On purchases up to U.S. \$100,000.00, the administrative cost to be applied shall be U.S. \$4,000.00, and on those higher than U.S.\$100,000.00, the cost shall be U.S.\$9,000.00.

4.28.17 ¹⁰DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED.

1. Having delivered and received acceptance of the goods or services that are the object of the contract, and the complete invoice, the contractor may offer a discount for prompt payment and request in the corresponding invoice or by means of a written request addressed to the Accounts Receivable and Payable Section, Accounting and Cost Division, that payment be made before 30 calendar days. The “Autoridad” may approve the request provided it considers that the offered discount is advantageous.
2. For contractors domiciled in the Republic of Panama, the complete invoice shall comply with the legal dispositions of the Republic of Panama in effect that require the following:
 - a. Contractor’s name,
 - b. RUC number,
 - c. DV number,
 - d. Contractor’s address,
 - e. Sequential numbering,
 - f. Flowchart of original and copies, preprinted,
 - g. Invoice date,
 - h. Contract number,
 - i. Payment terms,
 - j. Quantity and description of goods sold and services rendered, unit price and total,
 - k. The invoices and other documents authorized by DGI shall contained preprinted the name and RUC of the printing plant, date printed and numbers contained in each pad.

4.28.18 ¹¹FORM OF PAYMENT. The “Autoridad del Canal de Panamá” shall pay Contractors monies due under the Contract according to instructions received from the Contractor as follows:

¹⁰ Modified by article thirty six of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 56 of Resolution No. AC´-AD-RM08-11 (18 April 2008) effective 18 May 2008.

¹¹ Modified 10 February 2006. Modified by article 57 of Resolution No. AC´-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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1. Check forwarded by mail. In the case of local contractors, it is most important that the individual or corporate name that appears on the contract or purchase order be registered or authorized to receive mail at the post office box or postal address described. Checks lost in the mail shall be reported to the Accounts Receivable and Payable Section, Accounting and Cost Division, of the “Autoridad.”
2. Checks delivered through teller’s window. (Citibank, Balboa or Cristobal Branches.) To receive checks at the teller’s window, the contractor must make the request to the Accounts Receivable and Payable Section, Accounting and Cost Division. The request shall be written on the contractor’s letterhead stationery, shall be signed by the general manager or legal representative and include a copy of the corresponding identification card. The request shall include the names and ID card number of those individuals authorized to withdraw the checks. Lost checks, delivered through the teller’s window, shall be reported to the Accounts Receivable and Payable Section, Accounting and Cost Division, of the “Autoridad.”
3. Electronic transfer of funds. In order to receive payment using this method, the contractor shall notify the Accounts Receivable and Payable Section, Accounting and Cost Division, of the “Autoridad” by providing the supplier’s bank ID number (ABA number), the location of the bank (city, state, country) and the Contractor’s account number.

4.28.19 ¹²ASSIGNMENT OF PAYMENTS

1. An assignment of payments is a proceeding by which the “Autoridad” accepts the contractor’s request to assign payments due him for the performance of a contract to a financial or government institution.
2. The assignment of payments shall only be made for the total of all payments to be issued under the respective contract.
3. This procedure cedes to the financial or government institution all future payments under a contract, and is independent of the amount stated in the assignment contract.
4. The “Autoridad” will make the assigned payments only to one financial or government institution.
5. The financial institution, as the interested party for the payment shall submit its valid national tax and Social Security clearance certificates for the processing of its payments.
6. After acceptance of the assignment documentation, the contractor or interested party shall note on the face of all invoices submitted the

¹² Modified by article thirty seven of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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following phrase: “Invoice corresponds contract subject to an Assignment of Payments.”

7. For the assignment of payments to be accepted by the “Autoridad”, the contractor shall submit the following documents for approval by the “Autoridad”:
 - a. The Assignment of Payments Contract between the contractor (assignor), and the financial institution (assignee). The Assignment Contract must contain the following information:
 - i. The number of the contract wherein the payments are being assigned.
 - ii. A statement to the effect that the assignment covers all the payments to be issued under the contract or of the remaining funds if payments have already been made.
 - iii. A statement to the effect that the parties to the Assignment Contract (assignor and assignee) release the “Autoridad del Canal de Panamá” of any liability arising from such assignment.
 - b. Authorization by the assignor’s Board of Directors to make the assignment.
 - c. A letter to the Contracting Officer requesting the assignment. The assignor’s authorized representative must sign the letter.
 - d. Certificates from the Public Registry (or equivalent in the case of foreign companies) of the assignor and assignee.
 - e. Authorization from the surety or guarantor of the contract.
 - f. Copies of the identification cards of the legal representatives or individuals authorized to sign for the assignor and assignee. In case these persons are not local residents, copies of any other personal identification documents acceptable to the parties.
 - g. Valid national tax and Social Security clearance certificates of the financial institution and assignor.
8. The following requirements apply to assignment of payments to a government institution:
 - a. A letter, signed by the legal representative of the contractor requesting that payments be made to a respective government institution, with acceptance of payments from the government institution.
 - b. Authorization by the assignor’s Board of Directors to make the assignment.
 - c. Certificates from the Public Registry of the assignor.
 - d. Authorization from the surety or guarantor of the contract.
 - e. Copy of the identification card of the legal representative of the assignor.

**4.28.20 ¹³ADMINISTRATIVE TERMINATION OF THE CONTRACT BY
UNILATERAL DECISION OF THE “AUTORIDAD.”**

¹³ Modified by article twelve of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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1. The “Autoridad” reserves the unilateral right to partially or totally terminate the performance of the contract. The Contracting Officer shall notify the Contractor in writing of the Contract termination, specifying the reasons, the dates and extent of the termination.
2. Upon being notified of termination of the Contract, the Contractor shall:
 - a. Immediately stop all the work that he or his subcontractors are performing;
 - b. Continue to perform any portion of the contract that has not been terminated.
 - c. Secure and protect all property of the “Autoridad”;
 - d. Remove from the work site all temporary installations and equipment that are his property and that have not been incorporated to the work, as long as such removal does not cause, in the “Autoridad” ’s judgment, any damage to “Autoridad” ’s property, or to the work and/or the installations already built;
 - e. Transfer title and deliver to the “Autoridad” any manufactured articles, supplies, material, drawings, designs, and any other information that, had the contract been completed, would become property of the “Autoridad”;
 - f. Make attempts to sell any manufactured article, supplies, material, or product of the contract that is not required by the “Autoridad”, as long as the Contracting Officer provides his approval.
 - g. Submit, at the latest 60 calendar days after termination of the contract, his claim for the amount, which he considers, is due him as a result of Contract termination.
3. In case of termination of the Contract due to the unilateral decision of the “Autoridad”, the Contractor shall have the right to be reimbursed those direct costs related to the work which was accomplished, and for preparatory work performed on the uncompleted portion of work, as long as these costs were necessary and reasonably incurred.
4. The contractor may also be compensated for indirect costs, up to a maximum of ten (10) percent of the direct costs of the work accomplished.
5. The “Autoridad” will not compensate any additional administrative expenses for any other reason nor use any other method to estimate that expense.
6. A profit rate of five (5) percent will be recognized on direct and indirect expenses incurred on the completed work.
7. No profit shall be recognized if it is estimated that the Contractor would have suffered losses, had the Contract been completed.
8. The amount that the “Autoridad” shall pay the Contractor as a result of termination of the Contract shall not be more than the total amount of the Contract.

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9. In case of discrepancies regarding the termination of the Contract, these may be resolved using the resolution of claims clause.

4.28.21 ¹⁴PENALTY FOR CONTRACT DEFAULT. (For purchases up to U.S. \$100,000.00)

1. The contractor whose contract has been terminated for causes attributable to the contractor shall not be able to receive awards as penalty for defaulting on a contract for a period of:
 - a. Twelve months, when the contract amount is greater than \$100,000.00.
 - b. Three months, when the contract amount is \$100,000.00 or less.
2. The term of suspension will be counted from the date of the suspension is notified in Internet.
3. If the contractor, upon being sanctioned, is already serving a previous sanction period, the new period shall start at the end of the previous one.
4. The sanction is subject to the administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The appeal shall be filed within five office days counted from the date of notification in Internet.
5. For the appeal to be admitted the appellant shall be legally able to appeal, the resolution shall be susceptible to appeal recourse and shall be timely submitted.
6. If the appeal is admitted, the Executive Manager of the Purchasing, Warehousing and Inventories Division will notify in writing the appellant of the admission, whom will have five (5) office days, counted from the notification, to substantiate its pretension and present the evidence.
7. The appeal decision shall be rendered by the Executive Manager of the Purchasing, Warehousing and Inventories Division not later than fifteen (15) office days counted from the date in which the appeal file was completed with the appellant's pretension and evidence.
8. The resolution of the appeal by the Manager, Contracting Division exhausts the administrative proceeding.

4.28.22. ESTIMATED QUANTITY CONTRACTS.

1. Contracts for estimated quantities may be used for purchase, delivery or service orders. When the "Autoridad" requires supply of goods and services in estimated quantities that are shown on the price list on the first part of the contract, it is committed to purchasing these from the contractor during the term of the contract. The amounts indicated on the price list are estimated and do not bind the "Autoridad" to order these, unless the contrary is stated or the price list identifies a

¹⁴ Modified by article thirty eight of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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minimum quantity, which the “Autoridad” would be obligated to purchase.

2. The goods and services required by the contract shall be acquired by purchase, delivery or service orders issued by the administrative unit responsible for the acquisition. These orders are subject to the terms, conditions and clauses of the contract. In case of discrepancies between the order and the contract, the last shall prevail.
3. The prices agreed to may not be increased during the period of the contract, unless the contract expressly allows this. The contractor agrees to deliver the goods ordered at the price and within the period agreed to.
4. If the “Autoridad” requires urgent delivery of goods and services within a different or shorter period than stated on the contract, and the contractor is unable to accept the order according to the terms, conditions and delivery requirements of said order, the “Autoridad” may purchase the goods and services by any other tendering procedures..
5. Orders issued during the term of the contract and not completed during said term, shall be completed according to the time limit expressed in the order. The rights and obligations of the parties arising from the contract shall extend up to the date of delivery shown on the order.
6. The place of delivery of the goods or services shall be stated on the order, if different from that stated in the contract, as well as the employee of the “Autoridad” responsible for the inspection and acceptance.
7. The contractor shall submit the corresponding invoice at the time of delivery of the goods and services to the employee of the “Autoridad” identified in the previous paragraph so that he may verify that the delivery and quality of these goods or services conform to the conditions agreed to in the contract and he shall issue his consent so that payment may follow.
8. Once the requirements stated in the previous paragraph have been complied with, the contractor shall submit his invoice, together with the verification and document of consent, to the Accounts Receivable and Payable Section of the “Autoridad”.

4.28.23. AGREEMENTS BASED ON PRICE LISTS. The parties to an agreement based on price lists are the “Autoridad del Canal de Panamá” (“AUTORIDAD”) and the subscriber shown on the first part of the agreement (SUBSCRIBER). There may be more than one SUBSCRIBER. The parties agree to the following:

1. When the “AUTORIDAD” requires the supply of goods and services shown on the price list on the first part of this agreement, the “AUTORIDAD” binds itself to purchasing these from the SUBSCRIBER or SUBSCRIBERS during the period of the agreement, base periods and renewal periods, if any.

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2. The quantities indicated on the price list are estimated and do not obligate the “AUTORIDAD” to order these from the SUBSCRIBER or SUBSCRIBERS..
3. The existing agreement based on price lists is not a contract. The contractual relationship is established with the issuance of the purchase order by the “AUTORIDAD”, and acceptance of it by the SUBSCRIBER, who shall have a period of three (3) office days, counted from the date on which the purchase order is sent, to inform of its acceptance or rejection.
4. If there is more than one SUBSCRIBER for the same item, the “AUTORIDAD” will choose the SUBSCRIBER, after having verified the information on the ORACLE system, that it is the one with the least amount ordered.
5. When the SUBSCRIBERS are not able to accept the purchase order in accordance with the terms and conditions of delivery, the “AUTORIDAD” may obtain the goods and services using any other means of tendering procedures.
6. The prices agreed to shall not be increased during the term of the agreement, unless the agreement expressly states the opposite. The SUBSCRIBER agrees to deliver the goods ordered at the prices and within the term agreed to.
7. Goods and services under the existing agreement will be acquired by the issuance of purchase by the administrative unit responsible for the purchase. Purchase orders are subject to the terms, conditions and clauses of the agreement. In case of discrepancies between the purchase order and the agreement, the agreement shall govern.
8. Purchase orders issued during the term of the agreement and not completed during said term shall be completed in accordance with the date of delivery shown on the order. The rights and obligations of the parties identified on the agreement shall extend up to the date of completion indicated on the order.
9. The purchase order shall describe the place of delivery of goods and services, and the employee of the “AUTORIDAD” responsible for the inspection and acceptance of these.
10. The Contractor shall submit the corresponding invoice at the time of delivery of the goods and services to the employee identified in the previous paragraph, so that he may verify that the delivery and quality of these conform to the terms agreed to in the contract, and issue his consent so that payment may follow.
11. Once he has complied with the requirement stated in the previous paragraph, the Contractor shall submit the invoice, together with the verification and consent document, to the Accounts Receivable and Payable Section of the “AUTORIDAD”.

4.28.24. COPYRIGHTS AND PROPRIETARY INDUSTRIAL RIGHTS.
(Applicability shall be described in the purchase order or contract.) The Contractor transfers exclusively to the “Autoridad del Canal de Panamá” all copyrights and proprietary industrial rights over

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drawings, designs, models, manuals, reports, and other documents specified in the tender document, that have been produced by the Contractor, in the performance of this Contract. The “Autoridad” shall have the exclusive right to carry out or authorize modifications, arrangements, and transformations on these; to publicly divulge them; to reproduce them; to register them as its own; to promote or market them; and use them in any manner.

4.28.25. CONTRACT WITH A FOREIGN PUBLIC ENTITY. A contract for technical services with a foreign public entity, with which an agreement exists for this purpose, shall incorporate the terms and conditions of said agreement.

4.28.26. PRICE ADJUSTMENT.

(For construction contracts in the Canal area).

All prices included in the Bid Schedule shall be fixed and shall not be subject adjustments for any reason.

4.28.27. CONTRACT PRICE BREAKDOWN.

(For construction contracts in the Canal area).

Within the first ten (10) calendar days after perfecting of the contract and/or as required by the Contracting Officer, the Contractor shall submit, for his approval, a detailed price breakdown of his proposal. Any partial or total supplementary price breakdowns shall be delivered to the Contracting Officer upon request. Payments to the Contractor shall be based on the price breakdowns approved by the Contracting Officer.

4.28.28. PHYSICAL CONDITIONS DIFFERENT FROM THOSE CONTRACTED.

(For construction contracts in the Canal area).

1. The Contractor shall immediately notify the Contracting Officer in writing when he finds any of the following conditions at the work site, before such conditions are disturbed:
 - a. Subsurface conditions that differ considerably from those indicated in the contract; or
 - b. Unknown or unusual conditions at the work site that differ considerably from those generally found on work of the type contracted.
2. The Contracting Officer shall immediately investigate the condition reported upon notification from the Contractor. If the condition differs considerably from that contracted and causes an increase or decrease in the price offered or in the length of time established for completing any portion of the work, a modification or a

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supplemental contract shall be negotiated under conditions of compelling urgency.

3. No adjustment to the contract shall be made if the Contractor does not provide the required written notice.
4. No adjustment to the contract shall be made for physical conditions differing from those contracted after final payment has been made on the contract.

4.28.29. MATERIALS AND LABOR.

(For construction contracts in the Canal area).

1. The equipment, materials, and articles to be incorporated into the work shall be new, of the best quality, and adequate for their intended use, unless otherwise specified in the contract. Any reference in the specifications concerning equipment, materials, items, or patented processes by trade name, manufacturer, or catalog number is for the purpose of establishing a standard of quality and shall not be construed as restricting full and open competition. The Contractor may use any equipment, material, article, or process that, in the opinion of the Contracting Officer, is equal to that specified.
2. The Contractor shall obtain the approval of the Contracting Officer for machinery, mechanical equipment, or any other type of equipment to be incorporated into the work. When requesting approval, the Contractor shall submit to the Contracting Officer the manufacturer's name, model number, and other information concerning performance, capacity, nature, and category of the equipment in question. When so required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval for the material and articles that the Contractor plans to incorporate into the work. When requesting approval, the Contractor shall provide complete information concerning the material or article in question. When required, the Contractor shall submit samples for approval. The Contractor shall cover all costs related to the submission of such samples. All machinery, equipment, materials, and articles not duly approved and installed or used by the Contractor are under risk of a later rejection.
3. All work under this contract shall be performed in the best possible manner, using high quality standards and qualified personnel for each of the different phases of the work. The Contracting Officer may require, in writing, that the Contractor remove from the work site any employee the Contracting Officer considers incompetent, careless, or otherwise objectionable.

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4.28.30. SUPERVISION OF THE PROJECT.

(For construction contracts in the Canal area).

1. During the performance of this contract and until completion and acceptance, the Contractor shall designate a competent superintendent at the work site, approved by the Contracting Officer, and with authority to act on behalf of the Contractor.
2. As a minimum, the designated superintendent shall be a qualified professional licensed by the Technical Board of Engineering and Architecture, and shall have prior experience, preferably in the type of work specified in the contract. The superintendent shall be present at the work site during all working hours.
3. The superintendent shall have an adequate number of assistants or foremen for the different phases to be accomplished simultaneously at the site. The work superintendent, as well as his assistants and foremen, shall follow the instructions of the inspector related to compliance with contract specifications and drawings. The Contracting Officer may require, and the Contractor shall comply with, the change or removal of a foreman or supervisor found to be evidently incompetent or negligent.
4. The Contractor shall not remove from the site the superintendent and foremen approved by the Contracting Officer, without prior notification in writing of such a measure and provided a substitute has been approved.

4.28.31. OTHER CONTRACTS.

(For construction contracts in the Canal area).

The Authority may perform, using its own personnel or third parties, work near or at the work site of this contract. The Contractor shall cooperate with other contractors or Authority employees and shall comply with all contractual obligations, adjusting his work schedule to accommodate the performance of other work according to the instructions that the Contracting Officer has given for such purposes. The Contractor shall not accept or permit any action that may interfere with the performance of the project by other contractors or Authority employees.

**4.28.32. PROTECTION OF THE VEGETATION, STRUCTURES, EQUIPMENT,
AND EXISTING UTILITIES.**

(For construction contracts in the Canal area).

1. The Contractor shall protect and preserve all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not interfere with the work required under this contract. The Contractor shall only remove trees when specifically told to do so and shall avoid causing damage to surrounding vegetation. If any

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limb or branch of a tree is broken during the execution of this contract due to the careless operation of equipment or by workmen, the Contractor shall trim the limb or branch with a clean cut and will paint the cut with a tree-pruning compound, as directed by the Contracting Officer.

2. The Contractor shall protect from damage all existing improvements and utilities in the area of the project or adjacent to it, as well as third-party property adjacent to the project area of which he has been notified or should have known about. The Contractor shall repair any damage caused to these structures or installations, including third-party property, resulting from negligence or from failure to comply with the requirements of this contract, or from failure to exercise proper care when performing the work.
3. In the event of damage to Authority property, installations, and equipment attributable to the contractor, the procedures established in the Financial Systems Manual (MFS) 5.110, Registry and Recovery of Costs for the Repair of Damages Caused by ACP Contractors to Proceed with the Investigations, Repair, and Compensation of Said Damages, shall be applied.

4.28.33. WORK SITE, SHOPS, STORAGE AREAS, AND FIELD OFFICES.

(For construction contracts in the Canal area).

1. The term “work site” includes all areas where the Contractor shall perform operations for the purpose of executing this contract, without exclusion of Authority work areas, shops, offices, roads, streets, and other facilities.
2. The Contractor shall limit his operations (including the storage of materials) to areas assigned in the solicitation document or to those approved by the Contracting Officer.
3. The Contractor is responsible for any work performed during the execution of the contract and releases the Authority (including its officers and agents) of any public liability regardless of the type of liability that may result from his actions.
4. Prior to starting the work, the Contractor shall submit for the approval of the Contracting Officer a blueprint, in triplicate, showing the location and dimensions of the facilities he intends to build on a temporary basis such as: offices, shops, storage areas, sanitary facilities, and other installations deemed necessary for the performance of the contract.
5. These temporary structures shall be built with labor and material supplied by the Contractor at no cost to the Authority. These temporary structures shall be the property of the Contractor and shall be removed, restoring the area to its original conditions, at no cost to the Authority, upon completion of the project and before final payment is made.

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6. Only equipment and materials required by the contract shall be stored in the areas approved for such purposes for the Contractor's use.
7. If, during the execution of the contract, areas assigned for the Contractor's use are not being utilized by the Contractor or it is proven that they are not essential for the future development of the project as determined by the Contracting Officer, the Contractor shall immediately and when so instructed by the Contracting Officer, evacuate and clean the areas at no additional cost to the Authority.

4.28.34. CLEANING OF WORK AREA.

(For construction contracts in the Canal area).

The Contractor shall, at all times, keep the work area, including storage areas, clean and free of accumulated waste materials. Before completing daily work, the Contractor shall remove from the work site and its surrounding areas any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completion of the project, the Contractor shall leave the work area in a clean, neat, and orderly fashion to the satisfaction of the Contracting Officer.

4.28.35. CONTRACT SPECIFICATIONS AND DRAWINGS.

(For construction contracts in the Canal area).

1. The Contractor shall keep a copy of the contract specifications and drawings at the work site and shall allow the Contracting Officer or his representative to use them at anytime. Any information, data, or detail shown on the contract drawings, but not mentioned in the specifications or vice versa, shall be understood as having been specifically shown and mentioned in both. In cases where there are differences between the information shown on the drawings and the specifications, the specifications shall prevail. In case of discrepancies in the dimensions shown in the drawings or specifications, they shall be submitted, in writing, to the Contracting Officer who shall send his final interpretation to the Contractor in writing. In case of a discrepancy between the numerical dimensions and the scales shown on the drawings, the numerical dimensions shall prevail. Any erroneous interpretation by the Contractor, as well as any expenses resulting from such interpretation, shall be the sole responsibility of the Contractor.
2. Workshop drawings are drawings submitted to the Authority by the Contractor or Subcontractor for the purpose of showing the proposed detailed methods of manufacture and assembly of structural parts and details of the installation of systems, materials, and equipment. These shop drawings shall include drawings,

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diagrams, sketches, listing, and descriptive explanation of the equipment, illustrations, test results and all the necessary information that allows the Contractor to explain in detail how he will perform the different aspects of the work in accordance with contract requirements.

3. The Authority reserves itself the right to duplicate, use, and dispose of all shop drawings, equipment, and complementary information submitted for approval under this contract, as it may deem necessary for its interests.
4. If this contract requires the submittal of shop drawings, the Contractor shall be responsible for coordinating the preparation of these documents and insuring that they contain correct information and comply with contract requirements.
5. Prior to the submittal of shop drawings to the Authority, these must be approved by the Contractor, and as evidence of their review and approval, the drawings must be signed or sealed as such by the Contractor. If evidence of approval by the Contractor is lacking, the Contracting Officer shall return the drawings for subsequent submittal and approval.
6. The Contracting Officer shall approve or reject any shop drawings. Should the shop drawings be rejected, the Contractor shall be told the reasons for it. Any work done without the approval of the Contracting Officer based on the shop drawings, shall be at Contractor's risk and expense. The Contracting Officer's approval does not exempt the Contractor from any responsibility in the event of errors or omissions in the shop drawings, or from any responsibility in complying with contract requirements, with the exception of variations expressly approved by the Contracting Officer. Should the shop drawings show variations from contract requirements, the Contractor shall indicate such variations, in writing, to the Contracting Officer in a separate note when he submits the shop drawings for approval. In the event the Contracting Officer were to approve the variations, this action shall be formalized through a contract modification.
7. The Contractor shall submit to the Contracting Officer for review four (4) copies of the shop drawings (unless otherwise indicated elsewhere in the specifications) as required in the technical specifications. The Contracting Officer retains three (3) copies and returns one to the Contractor.

4.28.36. SCOPE OF WORK.

(For construction contracts in the Canal area).

1. The Contractor shall furnish all labor, materials, equipment, tools, instruments, transportation, fuel, power, water (except for any material, equipment, or services which the solicitation document establishes as being furnished by the Authority), and the necessary

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supervision to execute and complete the project strictly adhering to contract terms.

2. The main Contractor shall perform, with his own personnel, equipment, and material, the work equivalent to a minimum of fifty-five percent (55%) of the total work contracted. This percentage may be reduced during the execution of the work, if the Contractor so requests and the Contracting Officer considers that such reduction proves beneficial to the Authority.

4.28.37. ¹⁵ACCIDENT PREVENTION.

(For construction contracts in the Canal area).

1. The Contractor shall provide and maintain work conditions and procedures that safeguard the lives of the general public and those of Authority personnel, as well as its property, materials, supplies, and equipment exposed to the work carried out by the Contractor. The Contractor shall also provide and maintain working conditions and procedures that prevent the interruption of Authority operations and delays in project completion dates, and that control costs during work performance.
2. For such purposes and for construction, demolition, removal, or improvement contracts, the Contractor shall –
 - a. Provide appropriate safety barricades, signs, and signal lights.
 - b. Comply with the regulations, safety manuals, and safety and occupational health and environmental protection provisions of the Panama Canal Authority, Code of Federal Regulation standards (29 CFR Part 1926 and 29 CFR Part 1910) and standards of the National Fire Protection Association (NFPA) of the United States of America.
 - c. Adopt any safety measure that the Contracting Officer indicates as being necessary for the performance of work.
3. Should the Contracting Officer become aware of any deviation in these requirements or any condition posing imminent threat or risk to the health and safety of Authority personnel or the public in general, he shall notify the Contractor verbally, followed by a written note asking the Contractor for immediate action to correct the situation. This notification, when delivered to the Contractor or his representative at the work site, shall be considered an official notice of noncompliance with the contract that calls for corrective action. If the Contractor does not take corrective action or refuses to do so, the Contracting Officer may suspend the work totally or partially until such time when the Contractor takes proper measures. The Contractor shall not be entitled to submit a claim for an extension to the contract or for additional costs based on this order for suspension.

¹⁵ Modified by article 59 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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4. The Contractor shall notify the Contracting Officer or his representative of any dangerous condition that is not his responsibility but that can be corrected by others.
5. When the Contractor is performing electrical work or when the work is being done near electrical equipment or circuits, the Contractor shall take the following measures:
 - a. The Contractor shall be responsible for insuring that the supply of electric current to the structure is de-energized, isolated, and identified with appropriate markings. The Authority will de-energize the electrical supply or isolate the cable, conductor, bus, circuit breaker, or line on which the Contractor desires to work. The Authority will re-energize the cable, conductor, bus, circuit breaker, or line once the Contractor has completed work and certifies that they are ready to be put back in service.
 - b. When performing paint jobs, roofing, or making improvements to buildings in close proximity to electrical lines, such work shall be programmed so that the lines are de-energized while personnel work in the area. The Contractor shall make the necessary arrangements with the Contracting Officer's representative and with the Authority's Energy Division for the necessary power outages.
 - c. Paintwork, alterations, and additions to Authority buildings usually require working in close proximity to electrical equipment and circuits within the buildings. When the Contracting Officer considers it necessary to de-energize such circuits, the Contracting Officer will schedule such outages.
 - d. Power outages, when necessary, shall be scheduled in such a manner as to avoid prolonged interruptions of energy services.
6. The Contractor shall also be responsible for:
 - a. Submitting for approval his safety program within thirty (30) calendar days after contract award. The safety plan shall include safety training sessions and safety inspections on a frequent and appropriate manner, as a normal and integral part of contractual activities.
 - b. Submitting for approval a listing of personal protective equipment, by type and manufacturer, to be used by employees whose work involves any amount of risk.
 - c. Consult with Contracting Officer's representatives in order to develop a mutual understanding regarding the administration of the accident prevention program (analysis and control of risks, certifications and testing of material-handling equipment, and competent personnel and training of Contractor workers and supervisors, as well as the handling of coordination and authorizations in industrial areas and offices and contingency plans).
7. The Contractor shall include this clause in all of his subcontracts, making pertinent changes in relation to the parties involved.

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8. The Contractor shall disregard any portions of this clause that does not specifically apply to the work required by this contract.

4.28.38. PROJECT SIGN.

(For construction contracts in the Canal area).

The Contractor shall make and install a sign at the work site at the location designated by the Contracting Officer. The sign shall be 1.20 meters high and 1.80 meters wide and shall comply with the requirements of the sketch attached at the end of this section of the solicitation document. The sign shall be installed no later than ten (10) calendar days after the Contractor receives notice to proceed. No separate payment shall be made for installing and maintaining the project sign.

4.28.39. PROTECTION OF MATERIALS AND PROJECT.

(For construction contracts in the Canal area).

1. The Contractor shall be responsible for the protection, preservation, and maintenance of all materials, supplies, or equipment (including any Authority supplies or property), as well as the work performed or in process of performance, against deterioration, damage, or loss during the period of performance until the date of acceptance of the work.
2. The Contractor shall heed to any requests from the Contracting Officer concerning the protection of materials and the integrity of the project.
3. If, in the opinion of the Contracting Officer, the Contractor fails to take the necessary steps to protect materials, supplies, equipment and the work performed, they shall be protected by the Authority and the cost for such protection shall be charged to the Contractor or deducted from payments due to him.

4.28.40. SANITARY FACILITIES.

(For construction contracts in the Canal area).

The Contractor shall provide and maintain toilet facilities for the use of his personnel at the work site. The type, quantity, and location of these facilities shall be approved by the Contracting Officer. The Contractor shall maintain the toilet facilities in a clean and sanitary condition at all times. Upon completion of the work at the site, the Contractor shall remove the toilet facilities at his own expense.

4.28.41. DRINKING WATER.

(For construction contracts in the Canal area).

Unless otherwise indicated, the Contractor shall provide drinking water for his employees.

4.28.42. DESCRIPTIVE DATA AND CORRESPONDENCE.

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1. All catalogues, operation instructions, descriptive literature, references, specifications, drawings, and notes relevant to the equipment and/or materials provided in accordance with the specifications, as well as all correspondence, shall be written in Spanish, with the exception of those documents referring to equipment and/or materials that are only available in English.
2. All blueprints and drawings shall be prepared in accordance with the requirements of the *American National Standard Institute* (ANSI) using the metric system of measurement. However, the use of the English system of measurement shall be allowed when the conditions so require and subject to the approval of the Contacting Officer.
3. When required by the specifications or by the Contracting Officer, the Contractor shall submit seven (7) copies (unless otherwise specified) of the following documents for approval:
 - a. List of Materials: Before any material, accessory, or equipment to be incorporated into the project may be purchased, the Contractor shall submit a complete list of such materials, accessories, or equipment, together with the manufacturers' names and addresses and their catalogue numbers and trade names. A complete and separate list shall be submitted for the materials, accessories and/or equipment required under each section of the specifications.
 - b. Descriptive Data: The Contractor shall furnish detailed information and descriptive data for the different materials, accessories, and equipment to be incorporated into the work, for the purpose of determining quality and compliance with the requirements of the specifications. Any material, accessories or equipment that, in the judgment of the Contracting Officer does not comply with the specifications, shall be rejected. The products of any recognized manufacturer, regularly engaged in his commercial production, shall not be excluded on the basis of minor differences, as long as he is in compliance with specification requirements concerning materials, capacity, and performance.
4. Samples:
 - a. The Contractor shall submit all the samples of materials required in the specifications within a reasonable period of time prior to their use, to allow for their inspection and testing thereof. Those samples of materials that require laboratory testing shall need, in general, a minimum of twenty (20) calendar days for testing once they are received by the Contracting Officer. However, a longer period of time may be needed depending on the nature of the required testing or the capacity of the testing laboratory to perform the tests.
 - b. All samples, in the sizes and quantities required by the Contracting Officer or by the specifications, shall be submitted

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(unless otherwise stated by the Contracting Officer) properly identified with the contract number, the clause corresponding to the specifications, the name of the material, trade name, name of manufacturer, place of origin, name and location of the project where the material will be used and the name of the Contractor furnishing the sample.

- c. The samples shall be packed in such a way as to guarantee that they arrive at their destination in good conditions, and all transportation and handling costs shall be prepaid by the sender.
 - d. Upon approval, those material samples not subject to destructive tests shall be filed at the office of the Contracting Officer until the project has been completed, with the exception of samples of accessories or other items approved by the Contracting Officer, which may be marked for identification and installation at the site of the project. Should the Contractor desire to keep an approved sample for his files, he shall submit sufficient additional samples to permit the required distribution. Any approved or rejected samples shall be returned only at the request of the Contractor, and any cost associated with returning the samples shall be paid by the Contractor.
 - e. The samples selected shall be subject to testing in accordance with the requirements of applicable specifications. If a sample fails to meet the specification requirements, the cost of the testing shall be at the Contractor's expense. The Authority reserves itself the right to reject samples of materials from any manufacturer whose previous samples failed to pass the tests required by the specifications.
5. Submittals of Materials, Accessories, and/or Equipment:
- a. Each submittal of material, accessories, and/or equipment shall be accompanied by its respective form (Panama Canal Authority Form 1528), completed in full and certified by the Contractor. To the extent possible, only one form shall be submitted with all the information relative to each section of the specification, but under no circumstances shall one form be submitted providing information on more than one section of the specifications. Each copy of the information submitted for approval shall be properly identified with the number and name of the section of the specifications, the corresponding material or equipment, and the contract number under which the submittal is made. Should there be any differences between the equipment or material proposed and those specified, these shall be clearly shown on the materials, accessories, and/or equipment submittal. Fabrication of material or equipment, or construction related thereto shall not start until approval has been given.
 - b. As soon as the materials, accessories, and/or equipment submittals have been approved, each copy of the submittal

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shall be identified with a stamped seal indicating “Approved” or “Approved with Notes” and a set of copies shall be returned to the Contractor. The submittal of materials, accessories, and/or equipment that have been approved in this manner shall not require re-submittal. However, if a copy received by the Contractor has been stamped “Rejected”, these materials, accessories, and/or equipment shall be re-submitted as soon as possible with the necessary corrections and/or adjustments required by the Contracting Officer. If the Contractor desires to have more than one (1) copy returned to him, he shall increase the number of copies submitted in equal proportion, indicating his request in writing on the submittal form.

- c. The approval of materials, accessories, and/or equipment submittals by the Contracting Officer does not represent, under any circumstances, a complete review of the items, but only indicates that, in general, the materials, equipment, system, arrangements, details, and/or methods of construction are satisfactory. Such approval does not relieve the Contractor from responsibility for any error or omission, which may exist, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, proper construction, installation, and operation of all the work according to specifications. The approval shall be subject to a final inspection prior to acceptance of the project.

4.28.43. AS-BUILT DRAWINGS.

(For construction contracts in the Canal area).

1. During the progress of work, the Contractor shall keep a complete set of contract drawings on which he shall record all changes and corrections made to the information shown on the drawings initially furnished by the Contractor.
2. This set of updated drawings shall be available at the work site at all times. Should the Contracting Officer determine that the drawings are not up to date, the Contracting Officer may suspend the performance of those segments of the work where the changes or corrections have not been incorporated into the set of drawings. Any costs or delays resulting from the Contracting Officer’s decision shall be borne by the Contractor.
3. Upon completion of work, the Contractor shall provide the Contracting Officer one set of contract drawings with all changes or corrections recorded or marked so that the work may reflect the “as-built” condition. This set of drawings marked “as-built” shall be submitted to the Contracting Officer prior to the acceptance of work. All revisions and changes made shall be made in such a manner that they stand out when viewed against the information originally provided.

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4.28.44. RESTRICTED AREAS.

(For construction contracts in the Canal area).

1. Contractor employees shall need special installation clearances for access to restricted areas (such as locks, electrical power stations, water purification plants, pumping stations, and industrial areas). The Authority will process these clearances at no additional cost to the Contractor. The Contractor shall furnish a list of employees to the Contracting Officer at least fifteen (15) calendar days prior to the initiation of work. This list shall have the complete names, in alphabetical order, of employees together with their cedula or identification card number.
2. Contractor employees shall carry their cedulas or identification cards at all times and show them when requested by authorized Authority personnel. The Contractor shall insure that employees stay within the work areas and do not wander indiscriminately about in other places within restricted areas.

4.28.45. SUBCONTRACTORS.

(For construction contracts in the Canal area).

1. If the main Contractor has awarded subcontracts for the performance of the contract work within this contract, he shall fill out the Subcontractor form and submit it for approval to the Contracting Officer within fifteen (15) calendar days after award of the contract to the main Contractor. The form shall contain the name and address of the subcontractor, a brief description of the work to be performed under the subcontract, and an outline of the subcontractor's experience in the type of work subcontracted. In case the Contracting Officer considers that the experience described is inadequate for the work to be performed, the Contracting Officer shall notify the main Contractor so that the subcontract may be rescinded. Subcontractors who in turn subcontract out work shall be subject to this regulation and approval procedure.
2. Under no circumstances shall a contractual relationship exist between subcontractors and the Authority. The Contractor shall be responsible for all the activities of the subcontractors and for the fulfillment of the obligations derived from his work and from the subcontracts. The Contractor shall be responsible to the Authority for work performed by his subcontractors, as if he had performed the work himself.
3. The Authority shall maintain no direct relations with the subcontractors. The Authority shall issue all orders and correspondence directly to the Contractor, who shall insure their immediate transmission to the subcontractors. The Contractor shall avoid delays in relaying the information to his subcontractors,

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as the Authority will only be concerned with the date when the order was given to the Contractor as the effective date of the order.

4.28.46. SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK.

(For construction contracts in the Canal area).

1. The Contractor acknowledges that he has taken all reasonable measures necessary to ascertain the nature and location of the work, and to have investigated to his entire satisfaction the general and local conditions that may affect the work or the cost of contract performance, including but not limited to:
 - a. Conditions relating to transportation, disposal, handling, and storage of materials;
 - b. Availability of labor, water, electric power, and accessibility;
 - c. Uncertainties concerning weather, bodies of water, or any other similar physical conditions at the work site;
 - d. The conformation and conditions of the terrain; and
 - e. The type of equipment and facilities required before and during the execution of the work.
2. The Contractor also accepts the conditions with respect to the type, quality, and quantity of surface and subsurface material or obstacles to be found, which have been verified through an inspection of the site, including all exploratory information supplied by the Authority, as well as information shown on the drawings and the specifications that are a part of this contract. Any failure on the Contractor's part to take the actions described and accepted in this clause shall not relieve the Contractor of any responsibility to properly estimate the difficulty and cost involved to successfully complete the project at no additional cost to the Authority.
3. The Authority assumes no responsibility for any conclusion or interpretation made by the Contractor based on the information furnished by the Authority, nor does it assume any responsibility for any comment, statement, or interpretation of the same, made before the start of the project, by any of its officers or agents concerning the conditions that may affect the work, unless such comment, statement, or interpretation was expressly included in the contract.

4.28.47. ¹⁶PROTECTION OF CULTURAL AND PALEONTOLOGIC RESOURCES

(For construction contracts in the Canal area).

1. Definition:

¹⁶ Modified by article 60 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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Cultural and paleontologic resources: Human remains or graves; artifacts; structures, food, bone, vegetal charcoal remains or other deposits; pavements, walls or other construction; any indication of agricultural or human activity.

2. If during contract performance the Contractor discovers or encounters cultural or paleontologic resources, the Contractor shall immediately stop all work in the area of the finding and notify the Contracting Officer. The Contractor shall take necessary measures to record, report, preserve, and protect the site and the cultural or paleontologic resources found.
3. The Contracting Officer shall immediately notify the findings to the Panama Canal Authority Protection and Emergency Response Division, through the Executive Manager of the Purchasing, Warehousing and Inventories Division and the Executive Vice-president of the Administration and Finance Department, so that the Administrator may place the cultural or paleontologic resources at the disposal of the pertinent authorities according to legal procedures.
4. The Contracting Officer shall modify the contract in accordance with the contractual clause entitled "Suspension of Work."

4.28.48. ¹⁷**DISPUTES AND CLAIMS.** *(For construction, services, and related contracts.)*

4.28.49. **REQUIREMENT FOR THE SUBMITTAL OF CERTIFICATION DOCUMENT OR LICENSE.**

(For construction, services, and related contracts.)

Within 10 working days after the execution of the contract, the Contractor shall submit to the Contracting Officer a certificate or license issued by the Engineering and Architecture Technical Board accrediting him to render the specific service required by the contract, so that he can be given the order to proceed with any services, project, construction, or other related contracts.

4.28.50. ¹⁸**PERFORMANCE AND PAYMENT BONDS.**
(For construction contracts in the Canal area).

1. The Contractor shall submit the performance and payment bonds within a period of ten (10) working days following the notice of the perfection of the contract.

¹⁷ Derogated by article fourteen of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

¹⁸ Modified by article sixteen of Agreement No. 107 (15 December 2005).

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2. The performance bond guarantees the performance of the contract or the obligation to perform the contract objective faithfully. Once the contract is fulfilled, it guarantees that any defects that may be found shall be corrected. The penalty sum for the bond shall be _____ (___ %) of the contract amount. The penal sum shall not be less than fifty percent (50 %) of the contract amount, unless the contracting officer indicates a lesser amount in accordance with a study of risk dully revised by the financial and legal offices and approved by the Canal Administrator. Its validity period shall be the period of execution of the main contract, plus a period of one (1) year for movable property to cover latent defects, such as labor, defective material, or any other deficiency or defect in the object of the contract, except for consumable goods that have no special regulation, whose term of coverage shall be six (6) months, and a period of three (3) years to cover construction defects or the reconstruction of the work or of real estate property.
3. The payment bond shall guarantee payment to third parties for labor services rendered and supplies used in the execution of the main contract. The penalty sum shall be fifty percent (50%) of the contract amount, when the contract is less than B/.1,000,000.00; forty percent (40%) of the contract amount, when the contract is more than B/.1,000,000.00, but less than B/.5,000,000.00, and B/. 2,500,000.00 when the contract amount exceeds B/. 5,000,000.00. Its validity period shall be the same as the contract's execution period, plus a period of one hundred and eighty (180) days counted from the date of the last publication of the ad announcing the completion of the project, and its satisfactory acceptance on the part of the Authority. Such publication shall be made in a newspaper with nationwide circulation.
4. For purposes of the ad mentioned in the previous article, the Contractor shall publish this ad within a period of thirty (30) days following the date of the issuance of a resolution indicating final acceptance of the object of the contract. The ad on the completion of the project shall be published for three (3) consecutive days in a newspaper with nationwide coverage.

4.28.51. PROJECT GUARANTEE.

(For construction contracts in the Canal area).

1. The guarantee period to correct any defects that might exist shall be for one (1) additional year, after completion of the project, if it pertains to equipment and materials that were supplied, and to respond to redhibitory defects, such as labor, material, or defective equipment, or any other deficiency or defect on the object of the

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contract. The guarantee period to cover any defects in the construction or reconstruction of the project or real estate property shall be three (3) years.

2. The Contractor shall correct, within the terms of the guarantee, all defects or deficiencies discovered within the guarantee period. The Contracting Officer shall notify the Contractor, in writing, immediately after the discovery of the defect or deficiency.
3. The Contractor shall begin corrective work within thirty (30) calendar days after notification of the defect or deficiency by the Authority and shall proceed diligently with such work until its completion. Such corrective work shall include the re-delivery of equipment and/or materials and, in no case, shall the corrective work last more than three (3) months after the notification date. The Contracting Officer may, however, postpone the start of the corrective work until such time the defective materials or equipment can be removed from service without harm to the Authority but, under no circumstance, shall the corrective work be postponed for more than three (3) months from the date of discovery of the defects or deficiencies requiring correction.
4. Replacement parts and repairs shall be subject to the Contracting Officer's approval. The Contractor shall bear the costs of all corrective work, which should include the disassembly, transportation, re-assembly, and re-testing required, as well as the repair or replacement of defective materials and/or equipment and any disassembly or re-assembly of adjacent materials and/or equipment, as long as the Authority, at its own cost, performs the disassembly or re-assembly of adjacent materials and/or equipment, not supplied by the Contractor, wherever necessary to provide access to the defective materials and/or equipment.
5. Should the Contractor not perform the corrective work in the manner and within the specified time, the Authority may have such work performed at the Contractor's expense, and the Contractor shall acknowledge and pay for such costs when demanded of him and his sureties shall be responsible for such payment.
6. The provisions of this clause are in addition to any guarantee or insurance condition established by the manufacturer. The guarantee or insurance conditions established by the manufacturer, covering a period longer than the guarantee period herein specified, shall not be modified or annulled due to any requirement of this clause.

4.28.52. ¹⁹ INSURANCE.

(For construction contracts).

1. The Contractor shall submit to the Contracting Officer the insurance policies that are indicated in this clause within a period of

¹⁹ Modified by article 61 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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ten (10) office days before the start of work at the site of the project.

- a. Vehicular insurance for damages to property and / or personal injuries, including death, caused to the Panama Canal Authority (PCA) and / or its employees, or to third parties, caused by the operation of any vehicle, be it the property of, rented by, or used by the contractor, its subcontractors or any other contracted directly or indirectly by the contractor or subcontractor.

(i) Coverage Limits: The Contractor shall maintain enough insurance to cover for damages, with limits not less than:

(1) Personal injuries: U.S.D. \$100,000.00 per person and U.S.D. \$300,000.00 per accident.

(2) Property damages: U.S.D. \$1300,000.00 per accident.

(ii) Other insurance terms and conditions: It should indicate that the policy cannot be cancelled or modified without a written notification to the Contracting Officer responsible for the administration of the contract, at the following address:

AUTORIDAD DEL CANAL DE PANAMÁ
Civil Work Contract Administration Division
Contracting Officer

- b. Public liability insurance: To cover damages to property, personal injuries including death, in addition to damages to PCA and / or its employees or any other third party, by activities carried out by the Contractor, sub-contractor, or any other contracted directly or indirectly by the Contractor or subcontractor during contract execution. This coverage shall include, in addition, the following risks:

- Damages to cables, ducts y other subterranean installations.
- Crossed public liability.
- Damages caused by the use of mobile equipment, including elevator hoist, for the execution of its operations, when utilized in the contract. A mobile equipment is defined a vehicle including any machinery or gear connected to, with proper propulsion or not:
 - That does not require registration as a motor vehicle, or
 - That remains for the exclusive use on the grounds of the property of or rented to the insured, including the adjacent ways, or
 - Designed for use, principally, outside highways and public roads, or

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- Designed and maintained for the sole purpose to provide mobility to certain equipment, that form an integral part and is permanently connected to such vehicle.
 - (i) Coverage Limits: The Contractor shall maintain enough insurance to cover property damages, personal injuries and damages including death, with limits not less than U.S.D. \$300,000.00 single combined limit in the annual aggregate.
 - (ii) Other terms and conditions: The policy shall indicate the following:
 - (1) PCA is an additional insured party and the insurer renounces its rights to subrogate against the PCA for any claim in relation to this project.
 - (2) PCA and its employees shall maintain the right to claim as third parties. Therefore, the designation of PCA as additional insured, does not impede that PCA or its employees may claim against this policy, for damages, injuries and / or damages caused by the Contractor, subcontractor or any other contracted directly or indirectly by the contractor or subcontractor.
 - (3) The policy cannot be cancelled or modified without a written notification to the Contracting Officer responsible for the administration of the contract, at the following address:
AUTORIDAD DEL CANAL DE PANAMÁ
Civil Work Contract Administration Division
Contracting Officer

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2. The coverage of the insurance policy shall be from the date of beginning of work indicated in the notice to proceed until the finishing of the work, without limitation of obligations and responsibilities.

4.28.53. LIQUIDATED DAMAGES (PENALTIES).

(For construction contracts in the Canal area).

1. The Contractor shall pay to the Authority the sum of B/(USD) 000.00 for each calendar day of delay in the completion of the project after the specified period for total or partial delivery of the work, as the case may be, has expired.
2. Should the Authority cancel the contract for causes attributable to the Contractor after the completion date has expired (including any

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extensions that were granted), the damages payable by the Contractor shall consist of the daily rate amount mentioned above until the date of the termination notice. Once the contract is cancelled, the Contracting Officer shall notify the surety and shall enforce the contract's performance bond.

3. If the contract is not cancelled administratively and the Contractor is allowed to continue its execution after the deadline for its completion (including any extensions that were granted), the damages to be paid by the Contractor shall consist of the established daily rate until the work is completed and accepted by the Authority.

4.28.54. ²⁰MODIFICATIONS.

(For construction contracts in the Canal area).

1. The contracting officer is the only person authorized to make modifications to the contract without this invalidating the contract and without the need to notify the surety. These modifications must be within the scope of the contract and must be, in the Contracting Officer's judgment, necessary or convenient to achieve full compliance with the object of the contract and may include, but are not limited to:
 - a. Modifications to the specifications, including drawings and designs;
 - b. Modifications to the work method;
 - c. Modifications to the facilities, equipment, materials, and/or services that the Authority provides in the contract; and
 - d. Acceleration orders to the working method.
2. Modifications to the contract shall be made in writing. Similarly, no additional work shall be performed without the written authorization of the Contracting Officer.
3. The contractor shall notify the Contracting Officer immediately and in writing when he considers that the Authority has made or is about to make a change not contemplated in the contract, or when he has received an order, instruction, interpretation, or determination from the Contracting Officer which he considers to be a change to the contract.
4. No modification shall be made for the purpose of avoiding the competitive process. Modifications shall be limited to changes within the scope established by the contract.
5. The Contracting Officer may unilaterally modify the contract, whose compliance is of an obligatory nature, without this limiting the Contractor's right to appeal the modification under the clause 4.28.13 "ADMINISTRATIVE PROCEDURES FOR CLAIMS".
6. Changes to the contract which cause an increase or decrease in the value or period of execution shall be compensated at a

²⁰ Modified by article 62 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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reasonable price based on the market conditions and shall become effective by means of a written modification. The contract amount shall not be increased by more than fifteen (15%) percent of the original contract value, except in the case of work contracts for estimated amounts. In such cases, the may only be increased by more than fifteen (15%) percent with prior approval from the Board of Directors.

7. In case of variations in the work that cause an increase in the value of the contract, the Contractor shall submit the necessary endorsements to the performance and payment bonds.

4.28.55. SUBMISSION OF PROPOSALS – MODIFICATIONS TO THE CONTRACT.

(For construction contracts in the Canal area).

1. For proposals concerning modifications to the contract, the Contractor shall deliver, together with his proposal, a detailed price breakdown per request from the Contracting Officer. The breakdown shall be detailed in such a manner so as to allow for an analysis of the cost of materials, labor, equipment, subcontractors, cost overruns, and profit margins, and shall cover all aspects of the modification work including any eliminations, additions, or changes to the original project. Any quantity indicated as a subcontract shall also be broken down. Similarly, any request for an extension shall be substantiated. The proposals, together with the price breakdowns and the justification for additional time extensions, shall be delivered on the dates requested by the Contracting Officer.
2. For the purposes of additional work or modifications to the contract, whether the work is to be performed by the Contractor or subcontractors, the Authority shall recognize fifteen percent (15%) for general expenses and a profit on the total direct costs agreed upon.
3. In the event that the modification agreed to include an extension or reduction to the period established in the contract, the Authority shall not recognize any additional compensation for indirect costs resulting from such extension.

4.28.56. QUALITY CONTROL AND CONTRACT INSPECTION.

(For construction contracts in the Canal area).

1. The Contractor shall maintain an adequate inspection and quality control system to guarantee that the work performed is in accordance with the contract. The Contractor shall maintain complete records of inspection and quality control, and these must be available at all times for review by the Authority. Nevertheless, the Authority may maintain its own quality control system for purposes of supervisory control. All work shall be subject to inspection and testing on the part of the Authority, at all places and

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at all times before acceptance, for the purpose of guaranteeing strict compliance with the terms and conditions of the contract.

2. Technical inspections by the Authority on work contracts are a requirement for acceptance and payment of such projects. Contract work shall be inspected by the contract work inspection unit of the Authority. The Contracting Officer may designate one or several Inspectors to insure faithful compliance of the obligations on the part of the Contractor. The Inspectors shall have the authority to inspect all work done on the site of the project, as well as all works that are supplied. These inspections shall cover the entire project or part of it and will include preliminary work or the manufacture of materials to be supplied. The Contractor shall provide the Contracting Officer all inventories on quantities and costs, work schedules, reports, invoices, receipt forms, records, and other data that the Authority may require concerning the performed work and the materials supplied or to be supplied under this contract. Said Inspectors shall inform the Contracting Officer on the progress of the work, the manner in which it is carried out, and the quality of materials provided by the Contractor performing the work, as well as also draw attention to any failure or violation observed. The fact that the Inspector does not bring on time to the attention of the Contractor any defect in the work shall not constitute grounds for the acceptance or approval of such defect by the Authority. The Inspector may require any tests considered necessary to confirm that the work has been properly performed.
3. The inspection or lack thereof on the part of the Authority shall not relieve the Contractor from his obligation to execute the work in strict conformance with the specification requirements, nor shall this constitute or imply in itself the acceptance of the work, and shall not affect the rights of the Authority once the work is accepted. Additionally, the inspection on the part of the Authority shall not relieve the Contractor from providing adequate means for quality control, or from the responsibility for damage or loss of materials prior to the acceptance by the Authority.
4. The Inspector is not authorized to change any of the terms and conditions of the contract without written authorization from the Contracting Officer. Therefore, any observations to the Contractor from the Inspector that specifications are not being complied with does not, in any manner, constitute an obligation on the part of the Contracting Officer or the Authority, and does not exempt the Contractor from faithfully complying with this contract.
5. The Contractor shall supply all materials and/or equipment necessary to perform the work, which is the object of the contract, with the exception of that which is described in the specifications to be furnished by the Authority. The quality of the materials, equipment and labor must be in accordance with the requirements of the contract. The materials and equipment to be incorporated to the work shall be new and of recent and proven manufacture.

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6. The Contractor shall provide all installations, labor, equipment, and materials required to perform all inspections and testing reasonably indicated by the Contracting Officer and that may be accomplished in a timely, safe, and convenient manner for both parties, without it implying an additional cost to the Authority. The Contractor shall notify the Contracting Officer as to the place, date, and time of the operations that require inspections or testing, in accordance with the specifications, within a period of no less than ten (10) working days if the event is to be performed in the Republic of Panama, or thirty (30) working days if it is to take place abroad. The Authority may charge the Contractor any additional cost for inspection or testing incurred in cases where the Contractor is not ready at the time indicated for the inspection or testing, or when such inspections or tests have to be repeated due to a previous rejection caused by failures on the part of the Contractor. The Contractor shall not be entitled to any form of compensation as a result of the performance and/or failure of such tests, or because of the rejection of materials and/or equipment resulting from the failure of any tests. The Authority shall perform all inspections and testing in such manner that the work will not be delayed unnecessarily. All tests shall be performed exactly as described in the specifications. The Authority's absence from the testing or inspections shall not relieve the Contractor from his responsibility to supply the materials and/or equipment in accordance with contract requirements.
7. The Contractor shall replace or correct, without additional cost to the Authority, any work that it considers in disagreement with contract requirements, even after having approved it.
8. If the Contractor does not replace or correct the rejected work diligently, the Authority may –
 - a. Replace or correct the work by its own means or using a third party at the Contractor's expense.
 - b. Terminate the contract for causes attributable to the Contractor.
9. Should the Authority decide to investigate the work already completed and finds that such work was performed according to the drawings and specifications of this contract, the expenses incurred by the Contractor for such investigation shall be covered by the Authority through an adjustment to the contract value. Similarly, the Authority shall recognize an extension in the time of the contract if it is so merited.
10. Unless otherwise determined in the contract, the Authority may accept all the work required under this contract or that portion of the work that the Contracting Officer determines may be accepted separately, as soon as possible once all work has been completed and inspected. The acceptance shall be final and conclusive, except for redhibitory defects, fraud, and/or the rights of the Authority under any guarantee. The time transpired to perform corrective work on defects shall be counted as a delay in the

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completion of the project. The Authority shall not allow an extension for the completion of the work due to such delay.

4.28.57. WORK ACCEPTANCE.

(For construction contracts in the Canal area).

1. The Authority shall only accept work that conforms to the specifications, terms, and conditions of the contract.
2. The Contracting Officer may partially accept the work if the extent of completion permits the satisfactory use thereof by the Authority, notwithstanding the existence of pending details that do not hinder its usefulness, and the application of liquidated damages shall cease.

4.28.58. USE AND POSSESSION PRIOR TO COMPLETION OF THE PROJECT.

(For construction contracts in the Canal area).

1. The Authority shall have the power to take possession of or use any portion of the work that is totally or partially completed. Before taking possession or use any portion of the work, the Contracting Officer shall submit to the Contractor a list of pending items of work remaining to complete the contract or the portions of the work that the Authority intends to take possession of or use.
2. The fact that any pending work item is not shown on the list prepared by the Contracting Officer shall not relieve the Contractor of his responsibility for complying with the terms and conditions of the contract. The Authority's possession or use shall not be deemed an acceptance of any work under the contract.
3. The Contractor shall not be responsible for damages or loss to the work portions while the Authority exercises possession or use.

4.28.59. ²¹PAYMENT TO CONTRACTORS.

(For construction contracts in the Canal area).

1. The Authority agrees to pay the contract price for projects, goods, and services received and accepted in accordance with the terms and conditions of the contract. The payments shall be made in "Balboas" or US Dollars.
2. Monthly partial payments may be made in conformity with the progress of the project: To this effect, the Contractor shall submit to the Contracting Officer, within the first ten (10) days of each month, a report of the work performed, and the Inspector shall have five (5) working days to review and approve or reject such report. Once the report is approved, the Contractor shall submit to the Contracting Officer an invoice for the monthly progress in the

²¹ Modified by article thirty nine of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 63 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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amount agreed. The invoice shall be delivered to the Contracting Officer in an original and a duplicate copy. In turn, the Contracting Officer shall forward it to the inspection section for acknowledgement of receipt. The Inspector assigned to the project shall acknowledge receipt of the good or service.

3. With the invoice, the Contractor shall include:
 - a. A list of the work performed, indicating the quantity performed (if applicable), and the overall total;
 - b. A list of the work performed by sub-contractors, indicating quantity performed;
 - c. A list of the work (indicating quantity performed) already paid under the contract;
 - d. Any other information requested by the Contracting Officer.
4. For Contractors domiciled in the Republic of Panama the complete invoice shall comply with the terms of paragraph 2 of contract clause 4.28.17 "DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED."
5. Should any discrepancies be found in the invoice, the Contracting Officer shall inform the Contractor, so that he can take corrective actions.
6. Should no discrepancies be found in the invoice, the Authority shall prepare the necessary documents to process payment and shall forward these documents to the: "Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority."
7. The Authority may also make payments for partial delivery of any portion of the contract with a separate price in the Bid Schedule, as long as it has been accepted by the Authority and meets the requirements of the contract.
8. Should the Contracting Officer determine that the progress of the work is not satisfactory, he may withhold up to ten percent (10 %) of each approved invoice. The amount withheld shall be returned once the project (or a portion thereof) has been concluded to the Authority's satisfaction. The quantities withheld shall draw no interest. If the project is substantially completed, the Contracting Officer may withhold any quantity he may deem adequate to protect the Authority. If the work is contracted in phases, the amount withheld shall affect each phase, and shall be returned once the work has been concluded to the Authority's satisfaction.
9. From each approved invoice, the Contracting Officer may subtract any sum that the Contractor must pay to the Authority in penalties, as specified in the contract.
10. The cost of the performance and payment bonds may be reimbursed to the Contractor once he shows evidence of payment to the Contracting Officer. This payment does not entail an addition in the contract price and will be deducted from the amount owed the Contractor as the contract price.

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11. The partial payment certifications are not to be construed as approval or acceptance of the work done so far, or exempt the Contractor from his contractual responsibilities.
12. Partial payments shall be made thirty (30) calendar days after the Contractor submits the Invoice Document and the original invoice of the monthly advance to the Accounts Receivable and Payable Section, Accounting and Cost Division indicated. Upon expiration of the deadline, the Contractor shall have the right to the payment of interests, should the delay be attributable to the Authority.
13. The Authority shall pay interest due calculated on the basis of the LIBOR rate at three months up to the date when the check is drawn to the Contractor or the electronic transfer of funds to the Contractor's account is made.

4.28.60. ²²PAYMENT TO CONTRACTORS - FOR SUPPLIES AND RATE OF PROGRESS OF THE PROJECT.

(For construction contracts in the Canal area).

1. The Authority agrees to pay the contract price for projects, goods, and services received and accepted in accordance with the terms and conditions of the contract. The payments shall be made in "Balboas" or US Dollars.
2. Supplies: For the purposes of this clause, they are the materials and equipment specifically mentioned in the Bid Schedule.
3. Form of Payment for Supplies: The Authority shall make partial payments for the supply of materials and/or equipment specifically mentioned in the Bid Schedule and in accordance with the Solicitation Document. The Contracting Officer may pay up to a maximum of 80% of the value of the materials and/or equipment, in conformity with that which is indicated in the entry in the Bid Schedule or the corresponding commercial invoice, whichever has the lesser value. Payment shall be made once the Authority has inspected and accepted the materials placed at the site of the project. Of the remaining quantity of the entry in the Bid Schedule, 50% shall be paid when the materials and/or equipment are installed and accepted, and the final 50% after final acceptance of the project by the Authority. To request payment for supplies, the Contractor shall submit to the Contracting Officer a copy of the corresponding commercial invoice.
4. Form of Payment for Rate of Progress of the Project: Monthly partial payments may be made according to the rate of progress of the project. To this effect, the Contractor shall submit to the Contracting Officer, within the first ten (10) days of each month, a

²² Modified by article forty of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 64 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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report of the work performed, and the Inspector shall have five (5) working days to review and approve or reject such report. Once the report is approved, the Contractor shall submit to the Contracting Officer an invoice for the monthly progress in the amount agreed. The invoice must be delivered to the Contracting Officer in an original and a copy. In turn, the Contracting Officer shall forward it to the inspection section for acknowledgement of receipt. The Inspector assigned to the project shall acknowledge receipt of the good or service.

5. Any material and/or equipment the Authority has paid for becomes the property of the Authority, even if they remain in the hands of the Contractor. The Contractor shall be directly and fully responsible for their preservation and maintenance and may not use them for any purpose other than that established in the contract. It is agreed that the Contractor assumes all the risks of loss, corrosion, damage, or deterioration of the materials and/or equipment that were supplied, whether they have been paid for by the Authority or not, until final delivery and acceptance of the project.
6. With the invoice, the Contractor shall include:
 - a. A list of the materials and or equipment that were supplied;
 - b. The original of the commercial invoice for the materials and/or equipment;
 - c. A list of the work performed, indicating quantity performed (if applicable) and the overall figure;
 - d. A list of the work performed by sub-contractors, indicating quantity performed;
 - e. A list of the work (indicating quantity performed) already paid under the contract;
 - f. Any other information requested by the Contracting Officer.
7. For Contractors domiciled in the Republic of Panama the complete invoice shall comply with the terms of paragraph 2 of contract clause 4.28.17 "DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED".
8. If any discrepancies are found in the invoice, the Contracting Officer shall inform the Contractor so that he can take the pertinent corrective measures.
9. If no discrepancies are found in the invoice, the Authority shall prepare the necessary documents to process payment and shall forward these documents to the: "Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority."
10. The Authority may also make payments for partial delivery of any portion of the contract with a separate price in the Bid Schedule, as long as it has been accepted by the Authority and meets the requirements of the contract.
11. Should the Contracting Officer determine that the progress of the work is not satisfactory, he may withhold up to ten percent (10 %)

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of each approved invoice. The amount withheld shall be returned once the project (or a portion of it) has been concluded to the Authority's satisfaction. The quantities withheld shall draw no interest. If the work is contracted in phases, the amount withheld will affect each phase, and shall be returned once the work has been concluded to the Authority's satisfaction.

12. From each approved invoice, the Contracting Officer may subtract any sum that the Contractor must pay to the Authority in penalties, as specified in the contract.
13. The cost of the performance and payment bonds may be reimbursed to the Contractor once he shows evidence of payment to the Contracting Officer. This payment does not entail an addition in the contract price and will be deducted from the amount owed to the Contractor as the contract price.
14. The partial payment certifications are not to be construed as approval or acceptance of the work done so far or exempt the Contractor from his contractual responsibilities.
15. Partial payments shall be made thirty (30) calendar days after the Contractor submits the invoice duly approved by the Authority. Upon expiration of the deadline, the Contractor shall have the right to the payment of interest, if the delay were attributable to the Authority. The Authority shall pay interest due calculated on the basis of the LIBOR rate at three months up to the date when the check is drawn to the Contractor or the electronic transfer of funds to the Contractor's account is made.

4.28.61. ²³FINAL PAYMENT.

(For construction contracts in the Canal area).

1. Final payment constitutes full and complete payment for the performance of the contract work, including any additional work performed. After insuring compliance with all contract requirements, the Authority shall issue a statement of final acceptance certifying the date on which the work specified in the contract was accepted. Once this final acceptance statement is issued, the Contractor shall proceed to submit the following: final invoice; the details of any claim, if there were any, or in its absence, the waiver of any right to claims; and evidence of publication of completion of work announcement for three (3) consecutive days in a newspaper of nationwide coverage.
2. If there are discrepancies in the final invoice, the Contracting Officer shall inform the Contractor so that the pertinent corrective measures may be taken.

²³ Modified by article 65 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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3. If there are no discrepancies in the final invoice, the Authority shall prepare the necessary documentation to process the final payment and shall send the package to the Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority.
4. Final payment shall be made within a period of thirty (30) days after the presentation of the final invoice and the Invoice Document at the Accounts Receivable and Payable Section, Accounting and Cost Division. After said period, the Contractor has the right to be paid interest, if the delay were attributable to the Authority. The Authority shall pay any interest due at the Libor rate at three months until the date when the check is drawn payable to the Contractor or the electronic transfer of funds to the Contractor's bank account is made. Final payment shall include all amounts withheld from the Contractor and any other outstanding balance.

4.28.62. AMOUNTS OWED TO THE AUTHORITY.

(For construction contracts in the Canal area).

The Authority may deduct from partial payments or the final payment any outstanding debt that the Contractor may have with the Authority. The Contracting Officer may offset amounts owed to the Contractor with amounts owed to the Authority.

4.28.63. ²⁴ADMINISTRATIVE TERMINATION OF THE CONTRACT DUE TO CAUSES ATTRIBUTABLE TO THE CONTRACTOR.

1. The Authority may partially or totally terminate the execution of the contract for causes attributable to the Contractor.
2. The following are causes for an administrative termination:
 - a. Non compliance with contractual obligations;
 - b. The Contractor's death, the Contractor's permanent physical disability, or the dissolution of the Contractor's firm when it is a corporation and such a dissolution results in the extinction of the contractual relationship according to the terms that, in this regard, are established in the contract;
 - c. The Contractor's bankruptcy or existence of creditors' liens, or when the Contractor's payments have been suspended or stopped, without the Contractor having filed for bankruptcy;
 - d. Any obvious indication that there will be noncompliance with the contract terms.
3. Prior to the notice of cancellation, the Contracting Officer shall notify the Contractor and his surety, (when a performance bond was required), and assignee of payments (when an assignment of

²⁴ Modified by article 66 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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payments agreement has been approved in accordance with clause 4.28.19), in writing, of the intent to terminate the contract, explaining the reasons for the termination and providing a deadline to the Contractor to correct the deficiencies that have led to the default, delay, or the failure to comply with instructions given. If the Contractor disagrees with the Authority with regard to the measures to correct, repair, remedy, amend, or resolve the situation in a satisfactory manner, or does not comply with the agreed to thereof, the contracting officer may terminate the contract.

4. The contracting officer's resolution by which the contract is terminated for cause attributable to the contractor shall be notified by fax or email by sending a copy of such resolution the contractor, the surety, (when a performance bond was required), and assignee of payments (when an assignment of payments agreement has been approved in accordance with clause 4.28.19).
5. Once notified of the resolution of contract termination, the Contractor shall:
 - a. Suspend all work that either he or his subcontractors are performing;
 - b. Continue performing any portion of the work that was not terminated;
 - c. Guarantee and protect the property of the Authority.
6. The contracting officer shall immediately notify the surety (when a performance bond was required) of the contract termination and it shall be allowed a period of thirty (30) calendar days from the date of the default notice to pay the performance bond or substitute the contractor in all of his rights and obligations.
7. If the contracting officer terminates the contract, the Authority shall not have the responsibility to pay the Contractor any monies on account of the contract termination until the end of the guarantee period specified in the contract, and after such period until the completion costs and all other costs incurred by the Authority have been determined. The Contractor shall then have the right to receive only those sums of money, if any, remaining after deducting the amounts previously mentioned. However, if this amount exceeds the sum that would have been payable to the Contractor at the completion of work, then the Contractor shall pay the Authority the excess amount and this shall be considered a debt owed to the Authority and accordingly, it shall be demandable and recoverable.
8. Against the contracting officer's resolution, the Contractor may submit an administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The recourse of appeal shall be submitted and will be resolved in accordance with the proceedings established in numeral 5 and subsequent of clause 4.28.13 Administrative Procedures for Claims.

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4.28.64. ²⁵FORTUITOUS CAUSES.

The contract shall not be cancelled for causes attributable to the Contractor and penalties shall not be charged in cases of “force majeure” or fortuitous events, an event that could not be prevented, that excuses compliance of the obligations. Examples of these causes, as long as they are not attributable to the Contractor, are fires, floods, epidemics, strikes, quarantine restrictions, embargoes, unusual weather conditions, any act of the Authority in its contractual capacity, and acts of another contractor under another contract with the Authority. The Contractor shall immediately notify the Contracting Officer in writing when he is affected by any force majeure or fortuitous event. If justified, the Contractor may obtain an extension of time for completion of the contract, but cannot claim additional costs resulting from such events.

4.28.65. WORK SCHEDULE.

(For construction contracts in the Canal area).

1. Within a period of ten (10) working days from the award date, the Contractor shall prepare and submit three (3) copies of his work schedule for approval by the Contracting Officer. The schedule shall include the type, duration, order, and critical path of every activity inherent to the contract (including the acquisition of materials, plant, and equipment) and the initiation and completion dates. The schedule shall be submitted in the form of a bar chart that allows for an adequate indication of the percentage of progress on any given date during the contract execution period. The Contractor shall consult the details of activities for the work schedule with the Contracting Officer. If the Contractor does not submit the work schedule within the established deadline or if such schedule is not submitted in the manner described and with the required details, the Contracting Officer may retain progress payments until the Contractor submits the required work schedule.
2. The Contractor shall record in the work schedule the actual progress made at the end of each month, and shall keep a copy of the schedule in a visible place at the worksite. Additionally, he shall submit to the Contracting Officer three (3) copies of the updated work schedule at the end of each month.
3. The Contracting Officer shall use the approved work schedule as an aid to determine if the Contractor is accomplishing the work with the required speed to assure completion by the time specified in the contract. If, in the Contracting Officer’s judgment, the Contractor falls behind the approved work schedule, the Contractor shall take the necessary steps to recover lost time, including those

²⁵ Modified by article 67 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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measures, which the Contracting Officer may require, at no additional cost to the Authority. Under these circumstances, the Contracting Officer may demand that the Contractor increase his workforce, working hours, overtime, and equipment, and/or take any other corrective action needed to guarantee timely completion of the contract. The Contractor shall submit a supplementary work schedule to show how he intends to recover the rate of progress that was previously approved.

4.28.66. WORK LAYOUT.

(For construction contracts in the Canal area).

1. The Contractor shall be responsible for the accurate layout of work from bench marks, base lines, and elevation points provided by the Authority on the contract drawings or during the performance of the work.
2. The Contractor shall furnish, at his own expense, all instruments, tools, material, stakes, templates, platforms, transportation, and labor required for an accurate work layout. The Contractor is responsible for performing the work to the lines and grades indicated on the drawings or those indicated in writing by the Contracting Officer. The Contractor is also responsible for maintaining and preserving all stakes and other marks established by the Authority, until the Contracting Officer authorizes their removal.
3. The Contracting Officer may deduct from the Contractor's payment, the cost to replace the stakes or marks given as reference points by the Authority, if destroyed, damaged, or removed due to the Contractor's negligence before the Authority authorizes their removal.

4.28.67. IMPORT DUTIES AND TAX FOR THE TRANSFER OF GOODS AND CHATTEL (ITBM).

(For construction contracts in the Canal area).

The price offered shall include all import duties and the tax for the transfer of goods and chattel (ITBM -5%) that must be paid at the Ministry of Treasury and Finance for all materials and/or equipment that are incorporated into or utilized in this contract, except for the supply of specific materials and/or equipment noted in the solicitation document.

4.28.68. ADDITIONAL INFORMATION.

(For construction contracts in the Canal area).

1. Prior to awarding a contract, the Contracting Officer shall determine that the bidder and any subcontractors are qualified to do the work as required by the Panama Canal Authority Procurement Regulations. To reach such determination, the bidder

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shall provide the following information within five (5) calendar days after the bid opening date:

- a. **Financial Information.** To prove that he has the financial resources to carry out the work, the bidder shall submit a letter from a financial institution promising financial support for the work. The letter shall be issued by a financial company(ies) registered to operate locally. Along with the letter from the financial company, the bidder shall include a copy of his company's Public Registry document (or the equivalent for foreign companies), issued within thirty (30) calendar days prior to the bid opening date.
 - b. **Satisfactory History.** The bidder shall submit a list of projects carried out during the past five (5) years. The list shall include the contract number, title, a brief description of the work accomplished, and the names and telephone numbers of the owners in order to verify the references. The bidder shall also deliver letters of reference from companies or persons for which he has worked.
2. In addition to the aforementioned requirements, the bidder shall also submit a list of his company's supervisory personnel and any other pertinent documents for the evaluation of the company's capabilities pursuant to the provisions of Article 45 of the Regulation.

4.28.69. COPIES OF BLUEPRINTS.

(For construction contracts in the Canal area).

At their own expense, offerors may obtain normal size copies of the project's blueprints at _____.

4.28.70. BID PROPOSAL.

(For construction contracts in the Canal area).

1. The offerors shall submit their price proposals in the form that is included in Part I of this solicitation document.
2. The price proposal, adjusted to the solicitation document, shall be submitted in one (1) sealed envelope, which shall contain, in addition to the Bid Bond, any other information expressly requested in the solicitation document.
3. The offeror shall complete the information requested in boxes 20, 21, and 22 of the bid proposal form in three (3) sets, two of which shall be originals, and one a copy. All the sets shall be duly signed manually by the legal representative of the firm or the person formally authorized by the Board of Directors of the company or corporation.
4. The sealed envelope that contains the proposal shall be submitted with the following information:
Panama Canal Authority.

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Solicitation No.

Date and Time (a.m./p.m.): *Established for Submittal
of Proposals*

Place: *Established for Submittal of Proposals*

4.28.71. AMENDMENTS.

(For construction contracts in the Canal area).

1. Should any amendments be made to the solicitation document, all terms and conditions of the solicitation document that have not been modified or changed shall remain unaltered and in effect.
2. Offerors shall acknowledge receipt of the amendments to the solicitation document prior to the time, date, and place established for the bid opening by one of the following methods:
 - a. By filling out the amendment form, signing it, and including it in the bid envelope; or
 - b. By identifying the number and date of the amendment in the spaces provided in the bid form (see box No. 20 of the form); or
 - c. By letter identifying the solicitation document and the number of amendments.

4.28.72. CONSULTATIONS.

(For construction contracts in the Canal area).

1. Offerors requesting explanations or information on the solicitation documents, drawings, specifications, etc., shall prepare written requests with sufficient time so that the answers may be distributed to all participants. Verbal explanations or instructions given prior to the award of the contract shall not be considered valid.
2. Offerors may send their written questions regarding the solicitation document, specifications, and drawings to the following address:

(Hand-carried correspondence)

(Mailed correspondence)

Panama Canal Authority
Administration of Civil Works
Contract Division
Administration of Civil Works
Projects
Contracting Officer
Building 710, Balboa
Republic of Panama

Panama Canal Authority
Administration of Civil Works
Contract Division
Administration of Civil Works
Projects
Contracting Officer (PCA-IAP)
P.O. Box No. 025532
Miami, FL 33102-5532

3. Offerors may send their bid proposals to the following address:

(Hand-carried correspondence)

(Mailed correspondence)

Panama Canal Authority
Administration of Civil Works
Contract Division
Administration of Civil Works

Panama Canal Authority
Administration of Civil Works
Contract Division
Administration of Civil Works

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Projects
Contracting Officer
Building 710, Balboa
Republic of Panama

Projects
Contracting Officer (PCA-IAP)
P.O. Box No. 025532
Miami, FL 33102-5532

4.28.73. BID BOND.

(For construction contracts in the Canal area).

1. The offerors at the public bidding ceremony shall submit, together with their bid proposal, a bid bond, which should amount to no less than 10% (ten per cent) of the total amount of the bid proposal.
2. This bond shall be in effect for a maximum of ninety (90) calendar days after the date on which the public bidding ceremony takes place.

4.28.74. ²⁶BONDS.

(For construction contracts in the Canal area).

1. The Panama Canal Authority shall only accept and approve bonds issued in favor of the Panama Canal Authority when these are either submitted in cash or have been issued by insurance companies, guarantors, or banks, or are submitted with certified checks.
2. Only insurance companies (sureties) or banks registered for local operations, recognized by the Insurance Superintendency or the Banks' Superintendency, whichever the case may be, may issue bonds.
3. The Authority shall establish the criteria or applicable limits for issuance of bonds. The limits or criteria shall be defined by the Administration and Finance Department. In the case of co-insurers, the same requirements, rights, and obligations as those relevant to sureties shall apply.
4. Sureties may only issue bonds up to a limit of ten percent (10%) of their adjusted technical net worth as established by the Insurance Superintendency in the quarterly index published during the period when the bond is to be issued. If sureties decide to reinsure the bonds subject to this limit, partially or in their entirety, they may do so with re-insurers that have as a minimum an evaluation of A+ of A Best or equivalent, and that have been previously accepted by the Authority for this purpose.
5. Any surety that may wish to issue bonds beyond the limits established in this regulation, may do so as long as they reinsure that portion of the bond that is beyond the limits, with re-insurers that will also be subject to the same conditions established in the previous paragraph.

²⁶ Modified by article 69 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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6. Banks may only issue guarantees or bonds for up to a limit of ten percent (10%) of the capital fund established by the Banks' Superintendency in the monthly index published during the period when the bond is to be provided.
7. In order to allow for greater flexibility in the issue of bonds, a maximum of five (5) co-insurers per bond may be established.
8. In the event that a bond is issued with several co-insurers, they shall only be responsible for the amounts established for each of them in the bond document.
9. A list of sureties, indicating the limits of their bonding capacity and the bonding criteria acceptable to the Authority, shall be published and periodically updated by the Administration and Finance Department.
10. The Authority reserves itself the right to reject any surety or bank that, in its judgment, does not provide adequate guaranty. Surety companies wishing to issue bonds shall sign a guaranty agreement with the Panama Canal Authority whereby they make a guaranty deposit in legal investments with a market value of no less than one hundred fifty thousand balboas (B/.150,000.00).

4.28.75. OFFICIAL CURRENCY. Only prices offered in Balboas (B/.) or United States Dollars (US\$) shall be considered for award.

4.28.76. FINANCIAL INFORMATION ON THE “AUTORIDAD DEL CANAL DE PANAMÁ”. The “Autoridad del Canal de Panamá” is included on the Dun & Bradstreet list under the number D&B D-U-N-S: 85-367-3143. The information is available only to those subscribers of D&B. See the following electronic address for D&B at: <http://www.dnbcom>.

4.28.77. SPECIFIC INSTRUCTIONS FOR THE SUBMISSION OF TENDERS. (As described on the tender document or format, basic elements and others.)

4.28.78. EVALUATION CRITERIA. (To be included only on public tender documents.)

1. Price.
2. Other price-related factors.

4.28.79. EVALUATION CRITERIA. (To be included only on negotiated tenders based on the lowest price.)

1. Price.
2. Other price-related factors.
3. Minimum criteria for quality evaluation.

4.28.80. EVALUATION CRITERIA. (Only to be included on negotiated tenders based on best value.)

1. Price.

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2. Other price-related factors.
3. Criteria for evaluation of quality and weight factors.
4. Criteria for best value.

4.28.81. PRICE. (For tender documents, public and negotiated tenders that include renewals the following text shall be used.) When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “EFFECTIVE CONTRACT TERMS SUBJECT TO RENEWAL” are included or identified in the Contract, the “Autoridad” will determine the lowest price based on the sum of initial prices of goods and services, and those subject to renewal.

4.28.82. PRICE. (For tender documents on agreements based on price lists that include renewals, the following text shall be used.) When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “EFFECTIVE CONTRACT PERIODS SUBJECT TO RENEWAL” are included or identified in the tender document for agreements based on price lists, the “Autoridad” will determine the official price based on the lowest price for each item within the effective period of renewal established, as long as these comply with the terms of the tender document..

4.28.83. IDENTICAL TENDERS. When identical tenders are received, the Contracting Officer shall select the one with local representation or presence. In other cases, he shall select the tender based on a random choice in the presence of two witnesses and this event shall be registered in the abstract of tenders.

4.28.84. ²⁷ADMINISTRATIVE COST OF CONTRACTING BY LINE ITEM OR COMBINATION OF LINE ITEMS. The Contracting Officer shall consider as an evaluation criterion the administrative cost incurred by the “Autoridad” for the administration of each Contract and shall apply this amount to the lowest price of each line item if award will be by line item or to the combination of items if award will be by combination of items in order to select the tender providing the lowest price. For purchases up to U.S. \$10,000.00, the administrative cost is \$200.00, except for those made by the Inventory Management Section of the Purchasing, Warehousing and Inventories Division, from \$10,000.01 to \$100,000.00, the cost is \$500.00 and for those made by the Inventory Management Section of the Purchasing, Warehousing and Inventories Division, and higher than \$100,000.00, the cost is \$1,500.00, unless another amount is specified.

²⁷ Modified by article forty one of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 70 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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- 4.28.85. PRE-TENDER MEETINGS.** Considering the complexity of certain Contracts, the Contracting Officer may hold pre-tender meetings for the purpose of homologating the tender document. *(The Contracting Officer shall announce the method: in writing, orally, by electronic means, or with the physical presence of the interested parties, and date and time of the meetings.)*
- 4.28.86. ²⁸VERIFICATION OF COMPLIANCE WITH THE REQUIREMENTS OF THE TENDER DOCUMENT.** When the tender opening is being held by electronic means on solicitations based on the lowest price, compliance with the requirements of the tender document shall be verified prior to award using one of the following methods:
1. Requiring that the tenderer submits its technical proposal, hand carried, by fax or e-mail before the date and time set forth for the tendering proceeding.
 2. Requiring that the tenderer indicates in its technical proposal the trademark, model and, if applicable, the part number of the proposed good or an Internet address, that shall directly conduct to the information relative to the good or service proposed.
 3. Not requiring a technical proposal. The submission of the price tender in itself demonstrates compliance with all the requirements stated in the tendering documents.
- 4.28.87. ²⁹PERIOD OF VALID TENDERS.** In compliance with the tendering procedure, the tenderer agrees, if his tender is accepted within the period of acceptance counted from the date set forth for the tender opening, to submit the items on which he tendered prices, at the prices he has tendered, at the established place of delivery, and in the stipulated time for delivery. The tenders shall remain valid for a minimum of 30 calendar days for Contracts of up to U.S. \$10,000.00; 60 calendar days for Contracts between \$10,000.01 and \$100,000.00, and 90 days for Contracts of more than \$100,000.00, or a different time period as specified on the tender document
- 4.28.88. ³⁰PROTESTS RELATED TO TENDERING PROCEDURES.** Protests are objections, based upon legal requirements, within a tenderer selection process, against the tender document, contracts awards, disqualification of a tenderer, or the denial of prequalification request.
1. To be admitted, the protest shall be received at Building 710, Balboa, Republic of Panama, and addressed to the Executive Manager, Purchasing, Warehousing and Inventories Division, within

²⁸ Modified by article forty two of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

²⁹ Modified by article forty three of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

³⁰ Modified by article 71 of Resolution ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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- the established terms and accordance with the Acquisition Regulation. Protests shall be accompanied with preconstituted proofs and will be resolve by the chief of the contracting office within a period of thirty (30) calendar days, counted from the date of its receipt.
2. The protest shall clearly state that it is a protest, objection or claim against the tender document, contracts awards, the disqualification of the tenderer, or the denial of prequalification request; it shall include general information on the protester; the tender or Contract number; the action which is being protested; the effect or damage caused the protester; a request for correction and copies of the pertinent documents.
 3. The protest against the tender document does not require a monetary protest bond and shall be presented before the date and time established for the receipt of tenders, except when a different date and time have been expressly established in the tender document, in which case, the protest shall be presented in accordance with and within the term established in the tender document. When a prequalification process has taken place prior to a tenderer selection process, only the prequalified tenderers may present a protest against the tender documents.
 4. Protests against contract awards and disqualification of a tenderer shall be presented within three (3) office days counted from the last day of the announcement of the notification of award on the Internet. After this term has ended, no protest shall be admitted. The term of the award notification in Internet is five (5) office days. The term shall start after the next office day following the date of the award notification.
 5. The protest against contract awards above U.S.\$10,000.00 shall, in order to be admitted, be submitted together with a monetary bond (certified check) payable to the “Autoridad del Canal de Panamá” equivalent to five per cent (5%) of the amount of the tender, but not more than U.S.\$100,000.00, to compensate for any damages and losses resulting from its processing. In cases where the protest is determined clearly to be without merit, on the written determination, issued by the Executive Manager, Purchasing, Warehousing and Inventories Division, shall be ordered that payment on the bond be made effective in favor of the “Autoridad”.
 6. The protest against the disqualification of a tenderer does not require a protest bond.
 7. An admitted protest will suspend the tendering procedure or the performance of the Contract until it has been resolved, except in those cases in which the suspension would prove damaging to the “Autoridad”.
 8. The resolution of the protest issued by the Executive Manager, Purchasing, Warehousing and Inventories Division concludes the administrative recourse.

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4.28.89. REQUIREMENT FOR A LOCAL PRESENCE ON CONTRACTS FOR THE SUPPLY OF EXPLOSIVES, MUNITIONS, AND SIMILAR MATERIAL.

In order to participate in Contracts for the supply of explosives, munitions, and similar material, the tenderer must certify that he has a local presence and shall submit together with his tender, a certificate providing evidence that he possesses all permits required by the Ministry of Government and Justice authorizing him to engage in the importation, sale, use, preparation, fabrication and transportation of explosive material, as the case may require, and that he complies with all other requirements specified in the tender document. The following certifications are required to be submitted with the tender: *(the Contracting Officer shall indicate them.)* Tenderers are exempt from this requirement when the place of delivery is located at Gatun Lake.

4.28.90. ³¹PROPOSED TERM, CONDITION, AND PLACE OF DELIVERY.

1. When the tender document authorizes the tenderer to choose the term of delivery, he shall indicate on his tender the delivery term proposed (Incoterms 2000), CIP Miami, CIP Panama, DDU Panama or DDP Panama. Additionally, for CIP Miami he shall specify the volume and weight of the shipment in cubic feet and pounds unless this information is requested by line item.
Weight of Shipment _____pounds.

- **CIP MIAMI:** (Carriage and Insurance Paid To). The seller must deliver the goods to the contracted carrier, or, if there are successive carriers, to the first carrier, to be transported to the agreed point, in the agreed place, on the agreed date. Agreed place: 8619 NW 68 Street, Miami, FL 33166-2667, P.O. Box 526725, Miami FL 33152-6725, limited to bulks of a maximum of 70 lbs., and 108 inches (longest girth).
- **CIP PANAMA:** (Carriage and Insurance Paid To). The seller must deliver the goods to the contracted carrier, or, if there are successive carriers, to the first carrier, to be transported to the agreed point, in the agreed place, on the agreed date, or within the agreed period of time. Agreed place: as established in the solicitation document, at the installations of the “Autoridad del Canal de Panamá” administrative unit, Republic of Panama.
- **DDU PANAMA:** (Delivered Duty Unpaid). The seller make the good available to the buyer, or to his designee, on the carrier used, and without unloading the goods, when they arrive at the agreed point of destiny, on the agreed date, or within the agreed period of delivery. Designated destination point: as established in the solicitation document, at the installations of

³¹ Modified by article forty four of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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the “Autoridad del Canal de Panamá” administrative unit, Republic of Panama. The Contractor shall be responsible for processing the Simplified Customs Declaration and paying customs costs.

- **DDP PANAMA:** (Delivered Duty Paid). The seller must make the goods available to the buyer, or to his designee, on the carrier used, and without unloading the goods, when they arrive at the agreed point of destiny, on the agreed date, or within the agreed period of delivery agreed to. Designated destination point: as established in the solicitation document, at the installations of the installations of the “Autoridad del Canal de Panamá” administrative unit, in the Republic of Panama.
- 2. Regardless of the delivery terms selected by the ACP in the purchase order or contract award, the process for payment of invoices shall be initiated after the goods have been received and accepted in the installations of the “Autoridad del Canal de Panamá” administrative unit, in the Republic of Panama. CIP Miami transit time to Panama is 2 days.
- 3. In the tendering proceeding on the basis of the lowest price contractor, the presiding official shall flatly reject, during the tender opening, those tenders that did not contain the information required under paragraph 1, for delivery terms CIP Miami.
- 4. In the tendering proceeding, the Contracting Officer shall award the Contract based on the lowest price that results after application of the mathematical formulas that consider costs relative to the different points of delivery proposed by the tenderers and the equivalent price for delivery at the installations of the administrative unit of the “Autoridad” in the Republic of Panama. For comparison purposes, the terms CIP Panama and DDU Panama are equivalent.
 - **CIP MIAMI to DDU PANAMA:** To convert CIP Miami price to DDU Panama price, the following formula shall be used:
$$\text{DDU} = [\text{CIPM} + (\text{I} \times \text{CIPM})] + (\text{FH} \times \text{WPB})$$
$$\text{DDU} = 1.01\text{CIPM} + 1.29\text{WPB}$$
Where:
DDU = DDU Panama Price
I = Insurance = 1% of CIPM
CIPM = CIP Miami Price
FH = Freight and handling to the installations of the administrative unit = \$1.00 per pound.
WPB = Weight in pounds of the bulk

4.28.91 ASSIGNMENT OF CONTRACTS

1. By the assignment of a contract, the contractor (assignor) transfers to a third party (assignee) the rights and obligations proceeding from the contract, requiring prior expressed approval of the Panama Canal Authority, after having fully complied with the requirements established in the Acquisition

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Regulation, the contract and the conditions contained in the tender document.

2. To request the assignment of contract, the following documents shall be submitted:
 - a. A letter, signed by the legal representative or by a person authorized by the assignor, requesting to the contracting officer the assignment of contract, that shall include the contract description, (number, amount, object and award date), and the name of the assignee.
 - b. The Assignment of Contract Agreement, signed by the legal representative or by a person authorized by the assignor and assignee, with the corresponding notarization of the signatures. This Agreement shall indicate that the assignee accepts all responsibilities for the execution of the contract in accordance with the terms and conditions required in the contract.
 - c. Authorizations by the assignor's and assignee's Board of Directors to make and accept, respectively, the Assignment.
 - d. Certificates from the Public Registry of the assignor and assignee (or its equivalency in case of foreign entities).
 - e. Authorization and indorsement from the surety or guarantor of the contract and any insurance policies required in the contract.
 - f. Copy of the identification card or passport of the legal representative or person authorized to sign for the assignor and assignee.
 - g. In case the assignor and assignee are foreign entities, all documentation shall be notarized, and translated to the English or Spanish language, in the language in which the contract was made.

4.28.92 RULES OF CONDUCT

In order to avoid conflicts of interests, real or apparent, with respect to former officials and employees of the Panama Canal Authority, the following rules of conduct shall apply:

1. In accordance with article 32 of Agreement 11 (6 May 1999) and corresponding modifications, by thereof the Ethic and Conduct Regulation of the Panama Canal Authority, the following rules of conduct are established:
 - a. Former employees shall not represent another person, entity, group, or organization, at the Panama Canal Authority, in relation to any contract or particular

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business in which the former employee participated in a personal and substantial manner while employed by the PCA. This prohibition forbids the former employee to communicate, present itself, participate in meetings, act or represent, in any manner, another person or entity, corporation, organization of any nature or group at PCA, in relation to any contract or particular business in which the former employee participated in a personal and substantial manner, by reasons of its duties while employed by the PCA.

For these purposes, it shall be understood that “direct, personal and substantial participation” means that participation of the former employee that took place while employed by PCA and in which he / she made a decision with respect to the contract or particular business; made an approval, disapproval, recommendation, or advisory in relation to a contract or particular business; or made an investigation with respect to the contract or particular business; or made contacts with firms, tenderers, providers, contractors, and received and evaluated documentation, proposals, tenders, programs, getting involve in such a manner in interactions that gave him / her knowledge of the business before or after the contract.

- b. For a period of two years after leaving employment with PCA, the former employee shall not represent another person at PCA, in relation to any business that was pending under his / her responsibility during the last year of service. It shall be understood that “any business that was pending under his / her responsibility” means any theme that was assigned to the former employee or to any person supervised by the former employee, including projects or contracts that were being in process under his / her responsibility during the last year of employment with PCA.
 - c. During the period of two years after leaving employment with the PCA, the Administrator, the Sub-Administrator, Inspector General, and the chiefs of principal offices shall not represent any person with the intention to influence in PCA, in relation to any pending issue or of substantial interest to PCA.
2. In accordance with article 18 of Agreement 24 (4 October 1999) and later modifications, by which the Acquisition Regulation of the Panama Canal Authority was created, the following rules of conduct are established:
- a. Former PCA employees whose principal duty was the participation in PCA’s acquisition processes, shall not act in any tenderer selection process for the period of

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two (2) years from the last day of employment with PCA. This prohibition is for those former employees that had as a main duty to recommend, evaluate or select in the contracting process, or performed duties as purchasing agents, contract specialists, contract specialist supervisors, and contracting managers.

- b. Former PCA employees, which have participated in a specific acquisition process, shall not represent the contractor at PCA in any business related to this process, for a period of three (3) years from the last day of employment with PCA. The former employee shall not participate, process, act nor represent the contractor at the PCA, in any business related to the contract in which he / her participated, until the stated period of three (3) years has concluded.
3. PCA officials and employees that have to deal with former PCA officials or employees in situations as described above, shall inform the former PCA official or employee, and the persons, firms, organizations or groups that he / her represents, that in accordance with this contractual clause it is not possible or viable to realize any type of interaction or activity with such former official or employee. The official or employee that experience or has knowledge of any incident that involves the noncompliance with any of the rules of conduct mentioned in this clause, shall immediately inform his / her direct supervisor, manager or hierarchical superior.
4. The noncompliance with any of the rules of conduct included in this clause shall be construed as an intentionally noncompliance with a contractual obligation with the PCA, for the former PCA official or employee and to the firm represented by these former PCA officials or employees, and in addition to any penal and civil actions, may constitute grounds to initiate the debarment proceeding against the former PCA official or employee and to the firm, established in Chapter XVI of the Acquisition Regulation of PCA.

³²**4.28.93.**

FLOATING EQUIPMENT PURCHASE AND SALE CONTRACT

The contractor shall submit to the Panama Canal Authority (PCA) all documents relative to the transfer of title of the floating equipment under this contract and complete and submit form 1056 (AJ) PURCHASE AND SALE CONTRACT (PANAMA), within 30 calendar days, counted from the day the contractor receives the final payment.

All documents originating in a foreign country shall be dully authenticated with affixed seals or through consular services, with charges to the contractor.

³² Incorporated by article 11 of Resolution ACP-AD-RM09-03 (9 February 2009), effective 11 March 2009.

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³³4.28.94. COMPLIANCE THE GLOBAL COMPACT OF THE UNITED NATIONS ORGANIZATION

The Panama Canal Authority as signer of The Global Pact of the United Nations Organization, and in recognition of this initiative of ethic compromise, adopts as an integral part of its strategy and its operation to watch and promote the Compact Principles among its suppliers and contractors, as detailed herein:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Make sure that they are not complicit in human rights abuses.

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

Principle 5: The effective abolition of child labour; and

Principle 6: The elimination of discrimination in respect of employment and occupation.

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

³³ Incorporated by article 12 of Resolution No. ACP-AD-RM09-03 (9 Feb 2009) effective 11 March 2009.