ACQUISITION REGULATION
OF THE PANAMA CANAL AUTHORITY [1]

CHAPTER I
General Provisions and Definitions
Section One
General Provisions

Article 1. [2] This regulation establishes uniform rules and procedures applicable to the contracting or acquisition of construction, goods, and services required for the operation, maintenance, conservation, modernization and expansion of the Panama Canal; the disposition and sale of Panama Canal Authority property; and award of concessions and contracting of special services.

The contracting system shall guarantee sufficient or superior quality, more favorable prices, and more suitable delivery or compliance with work performance, acquisition of goods, or provision of services, as well as the disposition and sale of Authority property, and award of concessions and contracting of special services, in the most favorable terms.

Article 1a. [3] Panama Canal Authority contracting processes prohibit the making of agreements, contracts, understandings, or the collusive financial and legal connection among all or several tenderers, for the purpose of affecting or restricting the principles of concurrence, competition, and equality among participants, in such manner that may cause injury to the administration in its attempts to obtain goods and services of sufficient or optimum quality, better prices, and other conditions favorable to the interest of the Authority.

Article 2. The contracting system shall be based on the following:
1. Efficient and expeditious acquisition of goods and services.
2. Decentralized delegation of contracting authority.
3. Promotion of full and open competition on purchases and contracts.
4. Reasonable flexibility in designs and specifications, to promote contractor participation, without adversely affecting the quality of the work.
5. Impartial decisions.
6. Equity in the relations with contractors.
7. Post auditing of all expenses.
8. Reasonable flexibility within adequate parameters to decide emergency situations.

Article 3[4]**.** Except for the provisions in the following Article, the Authority may contract obligations derived solely from contracts provided the Chief Financial Officer certifies that appropriate funds to meet the contract have been allocated in the budget.

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[1] Agreement No. 24 of October 4, 1999.
[2] Modified by article one of Agreement No. 142 of July 30, 2007.
[3] Included by article one of Agreement No. 48 of August 7, 2001.
[4] Modified by article one of Agreement No. 133 of April 24, 2007.

Article 4[5]**.** With the prior authorization of its Board of Directors, the Authority may make contracts and undertake, under the terms of such contracts, the obligation of making payments which, as agreed therein, shall be charged to the budget of one or more fiscal periods subsequent to the date on which the contract is awarded, provided:

a) The Authority undertakes in such contracts to allocate the pertinent funds in the budgets of the years in which the respective payments shall be made; and,
b) When entering into any such contract, the Authority obtains a certification signed by the Chief Financial Officer of the Authority issued in accordance with the provisions of Article 27-A of the Finance Regulations, stating that, in the years in which the pertinent payments are to be made, the Authority will have the necessary resources to meet the above mentioned contractual obligations.

Paragraph[6]**:** The authorization of the Board of Directors to which this article refers shall only be required when the total amount of the contractual obligations to be charged and paid from future budgets exceeds two hundred fifty thousand balboas (B/.250.000.00) or when the total funds necessary to perform contract payments are allocated in approved budgets.

Article 5. Price adjustment clauses based upon cost variations may be included in the tendering documents and in the contracts, preferably by means of mathematical formulas approved by the head of the contracting office.

Article 5A. [7]The Authority may consider offers from contractors to reduce the costs or the time required to carry out contracts and, if accepted, may share the resulting savings with the contractors. Under no circumstances will offers be accepted which may impair the degree of quality required by the contract.

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

Article 6[8]**.** If it becomes necessary to incur in an unexpected expenditure not allocated in the annual budget, which is urgent and necessary to maintain the uninterrupted operation of the international public service provided by the Panama Canal, the Administrator shall make the necessary disbursements by charging them to the budget item which has funds available at the time, and shall recommend the corresponding budgetary adjustments to the Board of Directors.

Article 6A. [9]In those cases where offers received for a process of selection of contractors exceed the amount allocated to award the contract, the contracting officer may request, from the unit which estimated the allocated amount, an analysis to decide whether there is justification for a modification of the same.

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[5] Modified by article one of Agreement No. 133 of April 24, 2007.
[6] Paragraph modified by Article two of Agreement 142 of July 30, 2007.
[7] Introduced by article one of Agreement No. 153 of December 20, 2007.
[8] Modified by article one of Agreement No. 133 of April 24, 2007.
[9] Introduced by article two of Agreement No. 153 of December 20, 2007.

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

Article 6B[10]. In contracts whose celebration was preceded by the prequalification process established in Section Two of CHAPTER VII of this Regulation, the Authority may negotiate stipulations that limit the contractor's liability; as long as those agreements are common in international contracts. In no case shall limited liability be stipulated for fraud, fault, or serious negligence of the contractor.

Article 6C. [11]Notwithstanding the provisions of this Regulation relating to the cancellation of contracts, the Authority may include in its contracts, exceptional clauses enabling unilateral cancellation of the contract, provided that these are necessary due to the nature of a specific contract.

Section Two
Modification and Implementation of the Regulation

Article 7. The Board of Directors shall, on its own accord or as proposed by the Administrator, make any revisions and modifications to the Regulation that it considers necessary. The Administrator, in accordance with the policies of the Board of Directors and the provisions of this Regulation, shall issue the instructions and adopt the internal procedures that will implement the provisions herein, as well as the pertinent provisions and contractual clauses.

Section Three
Formal and Legal Control

Article 8.[12] Any actions taken during contracting proceedings will be recorded in writing. The administration shall issue a written determination in the following cases:

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

Article 9.[13] In applying the principle of lawfulness, the following actions shall be subject to a review by the General Counsel to verify compliance with all legal and regulatory requirements:
1. Procurement and disposal of assets of a price or value exceeding B/.100,000.00.

[10] Introduced by article one of Agreement 157 of March 25, 2008.
[11] Introduced by article four of Agreement No. 153 of December 20, 2007.
[12] Modified by article one of Agreement No. 107 of December 15, 2005.
[13] Modified by article two of Agreement No. 107 of December 15, 2005.

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

Section Four
Definitions

Article 10.[14] For the purposes of this Regulation, the words and terms contained in this article shall have the following meaning:

Agreement based on price lists. Agreements entered into with tenderers following a public announcement of contractors' selection, for the acquisition of goods and services at the official unit price.

Award. Action whereby the contracting officer determines and accepts pursuant to the law, regulations, and the tender document, the tender that is in the best interests of the Authority and perfects the contract, thus ending the pre-contractual process.

Contracting[15]**.** Acquisition, by means of a contract, construction, goods, and services required for the operation, maintenance, preservation, and modernization and expansion of the Panama Canal; of the Panama Canal; and disposition and sale of Panama Canal Authority property. Depending on the contracting office, contracting is classified as follows:
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1. **Centralized Contracting.** This type of contracting is carried out by the Authority Contracting Office.
2. **Decentralized Contracting.** This type of contracting is carried out by other offices of the Authority.

[14] Modified by article two of Agreement No. 61 of October 17, 2002. It is worth mentioning that in this modification the definition of the terms contracting of service and contracting of special services were included in the text of the regulation, which was introduced by Agreement No. 30 of December 16, 1999. Similarly, the definition of the terms contracting and tender document were modified by article two of Agreement No. 34 of May 30, 2000.
[15] Definition modified by article three of Agreement No. 142 of July 30, 2007.

Contractor. An individual or corporation, joint venture or temporary association, domestic or foreign, domiciled within or outside the territory of the Republic, having full legal capacity, which has entered into a contract with the Authority.

Service Contracts. Those entered into by the Authority to install, repair, maintain, rehabilitate, modify, operate, or modernize its personal or real property, or to train its human resources, pursuant to the technical specifications described in the tender document.

Special Services Contracts. Those entered into by the Authority to perform such activities as consulting, analysis, studies and evaluation, as well as those related to the Authority's financial and risk management, in compliance with the specifications described in the tender document.

Controversy. A dispute in relation to the performance, interpretation, or termination of a contract.

Quotation. Solicitation document used for micro-purchases.

Bonds. Guarantees required of the tenderer or contractor to insure full compliance with his obligations.

Pre-tender Conferences. A meeting whereby the participants in a tender proceeding for an acquisition or material disposal express their agreement and acceptance, with no reserves, of the tendering document.

Head of the Contracting Office. The individual who heads, coordinates, and is responsible for the operation of the contracting office.

Best-Value Tender: [16]Best-value tender is a bid, whether negotiated or not, in which the choice of the successful tenderer is based on the assignment of relative weights to the technical and economic offers for the contracting and acquisition of an asset, works or a service to select the bid having the best combined score for both aspects.

Micro-purchases. Purchases in amounts not exceeding B/.1,000.00.

Contracting officer. A Panama Canal Authority employee authorized to contract on behalf of the Authority.

Purchase Order. A document whereby the contractual relationship of an acquisition is formalized.

Allocated Amount: [17]This is the top figure set by the Administration in each contractor selection process, above which the contracting officer will consider the offers received to be

[16] Definition introduced by article five of Agreement No. 153 of December 20, 2007.
[17] Definition introduced by article five of Agreement No. 153 of December 20, 2007.

onerous. This amount may not exceed the amount established in the Panama Canal Authority Budget, approved by Law.

Tender Document: All requirements unilaterally prescribed by the Authority to enter into a contract. This includes all documents that specify the supply of goods, construction of public works, the contracting of services, and the disposition or sale of property; including the terms and conditions, the rights and obligations of the tenderers and the contractor, and the mechanism to follow in formalizing and performance of the contract.

Contractor Selection Procedure. Administrative procedure whereby the Authority, having held a public tender announcement, selects, among several individuals or corporations, under equal opportunity, the tender that meets the requirements of law, regulations, and the tender document. The following are the procedures for selecting contractors:
1. **Tendering:** Contractor selection procedure used when the amount of the contract exceeds B/.100,000.00.
2. **Simplified Purchases:** Contractor selection procedures used when the amount ranges between B/.1,000.01 and B/.100,000.00.

Qualified Tenderer or Contractor: Tenderer or contractor with the capacity to perform the contract.

Onerous offer[18]: One which exceeds the original or amended budgeted amount for a contract action.

Protest[19]. Claim of juridical nature related to contractor selection according to the stipulations of Section Two, "Protests", of Chapter X of this Regulation.

Written Determination. Document listing the facts in detail and whereby a decision or conclusion is reached.

Review by the Office of General Counsel. Verification that all legal and regulatory requirements are complied with.

Administrative Unit. Other offices authorized to enter into contracts, pursuant to this Regulation.

CHAPTER II
The Contracting Authority and its Delegation

Article 11. Pursuant to the rules prescribed by this Regulation, the Administrator has the authority to enter into and award contracts. This authority may be delegated in a sufficiently broad manner so that the person to whom the authority is delegated may, in turn, delegate it to the contracting officers, who may bind the Authority within the expressly authorized limits of their contracting authority.

[18] Definition modified by article five of Agreement No. 153 of December 20, 2007.
[19] Definition modified by article two of Agreement 157 of March 25, 2008.

Article 12. Delegations of authority contemplated in the above article shall be in writing and shall include necessary instructions and limitations. This information shall be accessible to the general public.

Article 13. Contracting officers are responsible for ensuring compliance with the purpose of the contracting activity, monitoring the proper performance of the contracts awarded, and safeguarding the rights of the Authority, without prejudice to the legitimate interests of contractors and third parties. They shall be administratively liable for any illegal actions and omissions, in addition to any criminal or civil liability that may be derived there from.

Article 14.[20] The centralized Contracting Office of the Authority and the administrative units specifically authorized by the Administrator pursuant to the provisions of Article 11 of this Regulation, shall carry out micro-purchases, simplified purchases and tenders. The rest of the administrative units of the Authority shall carry out micro-purchases and simplified purchases up to a maximum amount of B/.10,000.00.

Article 15. The matter or object of a contract shall not be divided in parts or groups, to cause its amount to become lower than required in order to avoid following the process that would be applicable should said division not exist.

CHAPTER III
Conflicts of Interests and Improper Practices
Section One
Rules of Conduct

Article 16. Authority personnel participating in contract tendering openings and in the award of contracts shall declare the condition of their personal finances as provided in the Ethics and Conduct Regulation.

Article 17[21]. With the purpose of avoiding conflicts of interest, employees and officials of the Panama Canal Authority shall not celebrate any contract or initiate negotiations with the Authority. This prohibition is extended to legal entities in which the employees and officials possess more than five percent (5%) of participation or administrative control or the representation of the same.

Article 18. Former employees of the Authority whose main duty has been the participation in the contracting processes thereof, may not take part in any contractor selection action for a period of two (2) years starting from the date on which they ceased working with the Authority.

Former employees of the Authority that have participated in a specific contracting process, may not represent the contractor before the Authority in any matter related with such process, for a period of three (3) years commencing from the date on which they ceased work with the institution.

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[20] Modified by article four of Agreement No. 142 of July 30, 2007.
[21] Modified by article one of Agreement 163 of May 20, 2008.

Section Two
Improper Practices

Article 19. Employees participating in contracting processes are prohibited from accepting favors or gifts by reason of the performance of their duties, except for the situations expressed in the Code of Ethics and Conduct, under penalty of administrative discipline. Additionally, any contractor who offers a favor to an employee shall be subject to administrative termination of the contract, and shall be debarred from contracting with the Authority for a period not to exceed ten (10) years.

Employees of the Authority shall be subject to the provisions of paragraph 12 of Article 133 of this Regulation.

CHAPTER IV
Preparation for Contracting
Section One
The Administrative Unit

Article 20. In the case of decentralized contracting, the acquisition process commences from the moment in which the administrative unit expresses its need to acquire goods or services through a requisition delivered to the contracting officer within the administrative unit. In the case of centralized contracting, the requisition shall be issued by the administrative unit and received by the Contracting Office of the Authority.

Article 21. The administrative unit shall
1. Develop the acquisition plan.
2. Make a market study.
3. Prepare the technical specifications.
4. Form part of the Technical Evaluation Committee, when so determined by the contracting officer.
5. Verify that the delivery and quality of the goods and services contracted comply with the terms of the contract, and give its approval to proceed with payment.

Section Two
Acquisition Planning

Article 22.[22] All acquisitions by the Authority shall be planned as soon as the need thereof is known. It is understood that the efforts of personnel responsible for the coordination and performance of a purchase shall be integrated, to ensure that the Authority satisfies its needs in the most efficient and economical manner. In the case of purchases over B/.100,000, planning shall be documented.

[22] Modified by article one of Agreement No. 44 of April 24, 2001

In exceptional circumstances and when necessary for the operation, expansion, or protection of the Canal, the Authority may, for purposes of comparison, enter into one or more contracts for the same object. In these cases, prior approval of the Board of Directors shall be obtained.

Article 23. The administrative unit shall submit to the contracting office its plans for acquisition of goods and services with an estimated value of more than B/.100,000 to be contracted in the following fiscal year, no later than the third quarter of the current fiscal year. Additionally, a plan shall be prepared for those acquisitions that have not been included in the annual plan, and that will be executed when the need for such acquisition is determined.

Article 24. When several administrative units of the Authority, in order to satisfy their needs, require entering into contracts for the supply of the same goods or services, the contracting office shall group or integrate these needs in order to carry out one single tendering process, that may be awarded to one or several contractors. The contracting office shall carry out these tendering procedures, regardless of their amount.

Article 25. The acquisition plan shall include:
1. The Authority's needs, including a description of the goods or services and the quality thereof.
2. Special conditions or characteristics that affect the purchase, such as compatibility requirements or budget limitations.
3. The total cost of the contract, considering its real cost, including the point of delivery, the operational, maintenance, service, yield, and replacement costs; administrative cost to the Authority; performance or productivity; and the location of technical support and warranties.
4. Comparison of the cost of local service versus foreign service.
5. Delivery deadlines.
6. Risks for the Authority in the performance of the purchase and proposals for reducing risks.
7. Evaluation criteria.
8. Special contractual considerations.
9. Inspection procedures.
10. Resources or information provided by the Authority.
11. Environmental and safety requirements.

Section Three
Market Study

Article 26.[23] Prior to the preparation of the tender document or as part of the acquisition plan, the administrative unit may conduct a market study for any contracting. This study shall be carried out for the purpose of determining:
1. Possible suppliers, in order to promote competition.
2. Market practices in connection with warranties, terms and means of delivery, and financing.
3. Availability of the good or service in the market.

[23] Modified by article three of Agreement No. 34 of May 30, 2000.

Section Four
The Tender Document

Article 27[24]. Repealed:

When the notice and the tender document are integrated, this format shall be maintained.

Article 28.[25] The tender document shall include:
1. Minimum qualification requirements to be met by the tenderer. All tender documents shall require qualification of the tenderer on the basis of the qualification criteria provided in Chapter VII.
2. Description of the object of the contract. They shall be described in terms that promote competition and the acquisition of the goods or services available on the market.
3. Detailed description of the time and place of delivery. The time frame indicated in the tender document shall be based on reasonable deadlines, in accordance with the information resulting from the market studies, without limiting it in such manner that may increase costs or reduce competitiveness. Goods shall be delivered at the installations of the administrative unit, unless otherwise justified in writing by the contracting officer.
4. Applicable penalties for non-compliance with the terms of delivery, as well as the causes that exempt responsibility for delays.
5. Criteria for the evaluation of tenders and the importance that each of these shall have in the evaluation process should there exist additional parameters other than price.
6. Contractual terms, basic among which would be the following: conditions of inspection and acceptance, the mechanism to effect changes to the terms of the contract, the mechanism for the resolution of disputes or conflicts between the parties, the procedure for submitting bills and payments, the causes for termination of the contract, transfer of title, and conditions of the warranties.
7. Indication of whether a local representative or local presence is required to participate in the contracting process. A local representative or presence shall be considered an additional benefit for the Authority when, as a result of this presence, there can be immediate foreclosure of the warranty, immediate deliveries, availability of maintenance and repair services, availability of spare parts, specialized technical personnel, or other benefits, that could only be obtained through contracting with local suppliers, foreign suppliers acting through local representatives, or foreign suppliers who intend to establish themselves in the territory of the Republic.
8. The tender document shall be written in Spanish. The administration is authorized to issue tender documents in another language if necessary for certain tenders.

[24] Repealed by article six of Agreement No. 153 of December 20, 2007.
[25] Modified by article one of Agreement No. 54 of January 29, 2002.

CHAPTER V
Competition Requirements
Section One
Promotion of Full and Open Competition

Article 29.[26] To obtain full and open competition, all information that enables tenderers to be adequately informed and to participate in public tenders of the Authority shall be published and disclosed through different communication media, and specifications and designs shall be prepared with reasonable flexibility to permit and promote participation, without adversely affecting quality. In the case that these requirements have been complied with, and at least one qualified tenderer submits a tender, the contracting officer may determine, by a written determination, whether the offer submitted is convenient, fair, and not onerous, in which case it is understood that it has complied with the requirement of promoting full and open competition.

Article 30.[27] The contractor selection procedures to be used to promote full and open competition are the following:
1. Simplified Purchases.
2. Tender based on price.
3. Negotiated tender.
4. Two-Step tender.
5. Sale of Authority Property.

Section Two[28]
Contracting Excepted from and Open Competition

Article 31. When a specified brand, manufacturer, or supplier is required, because, according to a well-founded technical report, there is no adequate substitute, the contracting officer shall approve the use of such method, by means of a written determination, stating the reasons for such decision. Contracts of this type shall be made through public tenders.

Article 32. Whenever a clear and compelling emergency arises that does not allow the necessary time to conduct a public tenders for the selection of contractors, the contracting officer shall, based on the circumstances, invite as many tenderers as possible, and the procedure for the selection of contractors may be waived. In this case, the written determination and its review by the Office of General Counsel may be made after award of the contract.

Article 33[29]**.** It shall not be necessary to conduct contractor selection proceedings in the following cases:
1. Micro-purchases subject to the provisions of Article 50.

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[26] Modified by article four of Agreement No. 61 of October 17, 2002.
[27] Modified by article four of Agreement No. 34 of May 30, 2000.
[28] The title of this section was modified by article three of Agreement No. 107 of December 15, 2005.
[29] Modified by article four of Agreement No. 107 of December 15, 2005.

2. Contracts governed or authorized by special law.
3. [30]Loans or other types of credit-related obligations, according to law.
4. Contracts entered into by the Authority with other government agencies.
5. Duly justified contract extensions and renewals.
6. Contracts for the exchange of movable property.
7. Contracts for the purchase of specific real estate; or for the leasing of certain real estate in cases where the Authority is the leaseholder.
8. The contracting of arbitrators and experts for labor-related, contract, maritime, administrative and legal proceedings in which the Authority is a party.
9. The contracting of legal services and jurisdictional representation.
10. The contracting of catering services for official Authority events.
11. Contracts of public, air, sea, and land transportation services for official travel over established commercial routes.
12. Contracts for catastrophic insurance policies.
13. Contracts for literary, artistic or historical works, or, in general, those of a cultural nature.
14. Contracts for equipment maintenance and repair services when a prior diagnosis is required to determine the scope of the required maintenance or repair, for which a market analysis to determine the best available option at the time shall be made.
15. [31]Contracts for banking and credit risk rating services.
16. [32]Contracts with advisers on the security and protection of Authority installations and the Panama Canal.

Article 34.[33] The administrative unit performing the contracting shall justify the exception to full and open competition as follows:
1. For purchases not exceeding B/.10,000.00, made through a written determination prepared by the Contracting Officer making the purchase, which shall be included in the record.
2. For purchases over B/.10,000.00, through a technical report addressed to the Contracting Officer, who shall issue a written determination. Any purchase in an amount exceeding B/.100,000.00, requires the review of the written determination by the General Counsel.

Article 35.[34] For purchases of B/.1,000.01 to B/.100,000.00, the supervisor of the Contracting Officer who will execute the contract shall approve the above mentioned written determination. For purchases over B/.100,000.00, and up to B/.500,000.00, the Chief, Contracting Office, shall authorize the written determination. For purchases exceeding the latter amount, and up to B/.1,000,000.00, a statement of exception shall be issued by the Administrator, with prior

[30] Modified by article seven of Agreement No. 153 of December 20, 2007.
[31] Modified by article seven o Agreement No. 153 of December 20, 2007.
[32] Modified by article seven o Agreement No. 153 of December 20, 2007.
[33] Modified by article five of Agreement 107 of December 15, 2005.
[34] Modified by article six of Agreement 107 of December 15, 2005.

acknowledgment by the Board of Directors; and for purchases over B/.1, 000,000.00; the approval of the Board of Directors is required.

CHAPTER VI
Announcements and Publications
Section One
Disclosure of Programs

Article 36. In order to guarantee the transparency of the contractor selection processes, the Authority shall disclose information pertaining to the activities it is to perform. The disclosure of this information shall be made in an impartial manner, insuring that confidential information is not disclosed.

Article 37. When deemed convenient, the Administrator may publish the amounts estimated for the programs on activities referred to in the foregoing Article. This information shall be disclosed simultaneously to the communication media and to the public in general, through the public relations office of the Authority.

Section Two
Notice and Publication of Contractors Selection

Article 38. The administrative unit that intends to contract shall publish and announce the corresponding information in a timely manner, through the Authority's internal publicity mechanisms, and the written and electronic media.

Article 39. The announcements of contractors' selection shall indicate the office where the tender document may be requested, as well as the place and estimated date and time for the receipt of tenders.

Article 40.[35] Announcements shall be published as follows:

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

Article 41.[36] Contracting officers shall make tender documents available to interested parties via Internet. The contracting officer may, based on the nature of the contract action, issue the solicitation document through other means. The Administration may, in exceptional cases, charge for the access to solicitation documents.

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[35] Modified by article seven of Agreement 107 of December 15, 2005.
[36] Modified by article seven of Agreement No. 107 of December 15, 2005.

Article 42.[37] Amendments to tenders shall be made available to the public through the same means used for publishing and distributing tender documents. The amendments shall be published so that participants are afforded enough time to submit or modify their offers.

Section Three
Integrated Announcements and Tender Documents

Article 43[38]. Revoked.

CHAPTER VII
Qualification and Prequalification[39]

Section One, Qualification[40]

Article 44. Authority contracts shall be awarded only to qualified tenderers.

Article 45.[41] A tenderer is considered qualified when it has been determined that he has the capacity to perform the contract. The contracting officer may obtain and take into consideration for qualification all information that permits him to confirm the following:

1. That the tenderer has the resources to perform the contract or the ability to obtain them.
2. That the tenderer has a satisfactory record of performance of its obligations.
3. That the tenderer is not debarred from contracting with the government.
4. That the tenderer has not incurred in conduct depicted under Article 1.a.

Article 46.[42] If from the analysis of the information gathered it is determined that the tenderer does not meet the qualification requirements, his disqualification shall be noted on the determination of award, prior review by the Office of General Counsel, unless the contracting officer considers that the circumstances that would result in his disqualification have been resolved or corrected.

Article 47. [43] Disqualification of the proponent may be appealed through a protest, which shall be presented and defended within the term of three (3) working days counted from the expiration of the award notice posting of the contract, as established in Article 69. Once this term expires, no protest shall be admitted.

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[37] Modified by article eight of Agreement No. 61 of October 176, 2002.
[38] Revoked by article eight of Agreement No. 107 of December 15, 2005.
[39] Chapter title modified by article five of Agreement 142 of July 30, 2007.
[40] Section title included by article five of Agreement 142 of July 30, 2007.
[41] Modified by article four of Agreement No. 48 of August 7, 2001.
[42] Modified by article five of Agreement No. 48 of August 7, 2001.
[43] Modified by article three of Agreement No. 157 of March 25, 2008.

Section Two[44]
Pre-qualification

Article 47A. The Authority may, exceptionally and with previous authorization from the Board of Directors, use the pre-qualification procedure to determine the tenderers who may participate in the corresponding tendering process. The prequalification process will have the following characteristics:

1. The Prequalification Document shall contain the minimum requirements and weighted evaluation criteria to be applied in the prequalification.

2. The Prequalification Document shall establish the purpose of the contract for which the tenderers will be prequalified.

3. The Authority may establish in the Prequalification Document the maximum number of tenderers suitable to participate in the corresponding tender. The Prequalification document shall indicate the criteria that will be applied to select such tenderers.

4. The Authority shall summon one or more public meetings with the purpose of clarifying or reviewing the terms and conditions of the Prequalification Document.

5. Any changes to the Prequalification Document shall be communicated in an amendment.

6. [45]In the event that, after the prequalification has been performed, any of the prequalified tenderers proposes to change, if the tenderer was a consortium, the composition of it's members or if it was a corporation, the composition of its shareholders or partners or their share percentage in the company, the pre-qualified tenderer shall, within the established time frames specified in the pre-qualification document, submit a written proposal to the Authority, in compliance with the conditions and observing all prohibitions within said document concerning said changes, and subject in addition to the provisions herein:

   a. The Authority has the discretionary authority to authorize or not all changes proposed and may, before making any decision, request any additional information from the petitioner which may be deemed convenient; and,

   b. In no event will the Authority authorize the replacement of any one member of the consortium if the new member does not match or exceed the minimum requirements and each one of the criteria considered for evaluation that were taken into consideration for prequalifying the member of the consortium that would be replaced, nor shall it authorize changes in the composition or in the partners or shareholders share of the prequalified corporation if said change diminishes the result of the corporation's evaluation.

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[44] Section introduced by article five of Agreement 142 of July 30, 2007.
[45] Numerals 6 and 7 were added by Agreement 143 of August 20, 2007.

7. The Prequalification Document shall be subject to the provisions in the Second Section of Chapter X of this Regulation for the presentation of any protest against the solicitation documents.

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

1. The Prequalification Documents and their amendments shall be published in the Panama Canal Authority Tender Online System and in other media that the Authority may deem advisable.

2. The interested parties shall submit the papers listed in the Prequalification Documents to the contracting officer at the place, date and time established in the Prequalification Document.

3. The contracting officer shall appoint a Technical Evaluation Board composed of Authority personnel to assess the documents submitted by the interested parties. This Board shall evaluate the offers based only on the criteria established in the Prequalification Documents and shall not make recommendations.

4. The contracting officer may, at any time during the prequalification process, on his own initiative or at the request of the Technical Evaluation Board, require the interested parties to provide whatever explanatory information he may deem necessary for the revision of the prequalification documents.

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

6. The Technical Evaluation Board shall verify compliance with the minimum prerequisites called for in the Prequalification Documents. Once compliance with the prerequisites has been established, the Board shall evaluate the papers submitted by the interested parties pursuant to the weighted criteria contained in the document.

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

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

9. The contracting officer, via a reasoned resolution, will determine which tenderers have prequalified to participate in the respective tender process, according to the

report of the Technical Evaluation Board and the requirements established in the prequalification document.

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

11. [46]The interested parties that have presented the corresponding documents and have not prequalified may appeal the contracting officer's decision within the term of seven working days counted from the announcement of the resolution.

12. [47]Prequalified status is not lost by reason of a decision to declare the bid void. Such status is only extinguished if the Authority cancels the particular tender process.

CHAPTER VIII
Purchasing Procedures
Section One
General Considerations

Article 48. Goods and services for amounts not exceeding B/.100,000.00 are acquired through purchasing procedures. They are formalized through purchase orders.

Section Two
Procedure

Article 49.[48] Purchases shall be made through the tendering procedures described in Chapter IX.

Article 50.[49] The following rules shall be observed for micro-purchases:
1. Micro-purchases shall be made by means of requests for quotations on the Internet.
2. The Contracting Officer shall notify whoever quotes the lowest price, meets the requirements, is qualified, and whose quotation is not onerous, of the Authority's intention to award him an order for his quotation.
3. The tenderer thus notified shall have the period established in the quotation request to communicate his acceptance or rejection of the intention to purchase.
4. The acceptance shall result in an award.
5. Once the period elapses without receiving an acceptance, the Contracting Officer shall issue a new notification to the next tenderer with the best price who meets the requirements, is qualified, and whose quotation is not onerous. This provision shall apply to any purchase for an amount not exceeding the corresponding micro-purchase.

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[46] Modified by article four of Agreement No. 157 of March 25, 2008.
[47] Introduced by article eight of Agreement No. 153 of December 20, 2007.
[48] Modified by article nine of Agreement No. 61 of October 17, 2002.
[49] Modified by article nine of Agreement No. 107 of December 15, 2005.

Section Three
Agreements Based on Price Lists

Article 51. Administrative units may acquire goods and services by the issuance of purchase orders for amounts per order that shall not exceed B/.10,000.00, based on the price lists agreements. When an order exceeds B/.10,000.00, it shall be issued by the Contracting Office.

Article 52. Price agreements shall be made by the contracting office based on the tendering procedures provided in the following chapter. These agreements shall contain official unit price lists, and shall be effective for a period not to exceed one year. The contractual relationship shall be established upon acceptance of the purchase order.

Article 53.[50] Price lists may be established for the same goods or services with more than one tenderer. The lowest price provided by the tenderer who meets the requirements stated in the tender document shall be considered to be the official unit price. Once the official price has been fixed, all tenderers who complied with the requirements of the purchasing process may assume these prices. The contracting officer shall reject tenders from corporations connected to the same financial group, in order to maintain fairness in the distribution of purchase orders.

It is understood that corporations are connected to the same financial group in the following cases:
a. When corporations controlled by the same corporation participate in the tendering procedure.
b. When among the participating corporations in some way there is control by one over the other or others.
c. When the participating corporations have two or more members in common on the board of directors or the legal representatives are the same.
d. When corporations and its branches participate.
e. When corporations and its subsidiaries participate, and at least 33% of the net assets of the latter are owned by the former.

Article 54. The administrative offices shall issue purchase orders to all who have signed the agreement in the most equitable manner possible.

CHAPTER IX
Tendering Processes
Section One
General Considerations

Article 55.[51] The following actions are subject to the tendering process established in this Regulation:
1. The acquisition of construction, goods, and services, when the contract action exceeds B/.100,000.00.
2. The sale of retired Authority property.

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[50] Modified by article seven of Agreement No. 48 of August 7, 2001.
[51] Modified by article seven of Agreement No. 34 of May 30, 2000.

Article 56[52]**.** The tender processes are the following:
1. Public tender based on the lowest price.
2. Negotiated tender, of three types:
a. Negotiated tender based on the lowest price.
b. Negotiated tender based on best value.
c. Reverse negotiated solicitation at the price of the lowest bidder.
3. Non-negotiated tender based on best value.
4. Two-step public tender.

Article 57. Tenders shall be announced and published pursuant to the provisions of this Regulation.

Article 58[53]**.** In attention to the complexity of the objective of the contract, the contracting officer shall carry out prior meeting with the bidders to standardize terms and conditions of the invitation for bids. In cases where these meetings are held and discrepancies cannot be resolved, the bidding documents shall be adopted, with or without changes, unilaterally by the Authority, through an amendment to the invitation for bids. If the contracting officer deems there is merit to effect changes, the changes may be incorporated through amendments to the invitation for bids, including, if the changes warrant it, the extension of the time limit for the presentation of proposals.

Article 59[54]**.** Notwithstanding the statements of the previous article, all of the interested parties in a contractor selection process may make observations to the invitation for bids with the purpose of clarifying its formal or basic content. Such observations shall not interrupt the selection process.

Article 60. The contracting officer shall establish in the tender document the date and time provided for the submission of tenders. Tenders received after the set date and time shall be registered in the tender abstract form for the record, but envelopes shall not be opened and shall be returned to the respective tenderers.

Article 61. The submission of tenders by participants to the tendering process shall be equivalent to the acceptance, without reservation or conditions, of the documents, terms and conditions of the tender.

Article 62. The contracting officer shall retain one copy of the tender, the list of participants, and the tender abstract form for the record.

Article 63. The distribution of the tender document and the receipt of tenders may be made by electronic means, via facsimile and in writing, as may be authorized by the tender document.

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[52] Modified by article nine of Agreement No. 153 of December 20, 2007.
[53] Modified by article five of Agreement No. 157 of March 25, 2008.
[54] Modified by article six of Agreement No. 157 of March 25, 2008.

Article 64. Tenders submitted may not be withdrawn, unless amendments to the tender document are made, in which case withdrawal may be allowed in order to make the necessary modifications. The request for withdrawal of a tender shall only be allowed in writing by the tenderer or by the person that he may expressly authorize.

Article 65. Tenders and its modifications submitted before the date and time established shall be deposited in a locked box until the time indicated.

Article 66. Prior to the date and time provided for the submission of tenders, tendering procedures may be cancelled by the contracting officer with the prior approval of the head of the contracting office, and this shall be communicated by way of an amendment. In the event tenders have already been received, these shall be returned unopened to the tenderers, along with a copy of the amendment. The following are valid reasons for canceling a tendering procedure:
1. Change of requirements by the Authority.
2. When the need for the object of the contract ceases.
3. When amendments to the tender document require the issuance of a new tender document.

Article 67. The contracting officer may postpone the submission of tenders when no tenders have been received by the time required. The postponement shall be notified by way of an amendment.

Article 68.[55] The Contracting Officer shall declare the contractor selection process to be extinct by way of a written determination in the following cases:
1. Absence of tenderers.
2. All tenders submitted fail to comply with the requirements in the tender document.
3. All tenders submitted are considered onerous. The fact that a tender is considered onerous shall be adequately evidenced on the record.
4. All tenders originate from corporations connected to the same financial group. It is understood that there are corporations related to a single economic group in the following cases:
    a. When corporations controlled by the same corporation participate in the tendering process.
    b. When among the participating corporations there is in some way control by one over the other or others.
    c. When the participating corporations have two or more members in common on its Board of Directors, or the legal representatives are the same.
    d. When corporations and its branches participate.
    e. When corporations and its subsidiaries participate, and at least 33% of the assets of the latter are owned by the former.
5. When tenderers have partaken in conduct described under Article 1a.
6. In general, when it is considered that tenders are contrary to the best interests of the Authority.

Article 69.[56] Contract awards shall be notified by placing a notice in the Internet, for a period of five (5) business days. The time shall start to count from the business day following the date the notice is posted.

[55] Modified by article twelve of Agreement No. 107 of December 15, 2005.

Article 69A[57]**.** The tender documents may include clauses that authorize:

a. the payment of incentive compensation in case of anticipated compliance with the performance term of the contract; and,
b. the payment of a fee in the design-build contracts to compensate, in part, for the direct design costs incurred in preparing the proposals by the tenderers who were not awarded the contracts. The amount of the fee shall be a fixed amount determined by the Authority.

In these cases, the Board of Directors shall previously approve the corresponding clauses and respective amounts.

Article 69B. [58]The contracting officer may appoint a Technical Board composed of Authority personnel to assess the offers, whenever it deems it necessary, by reason of the complexity of the tender. This Board shall review the offers applying only the criteria established on the tender documents and shall not issue recommendations.

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

Section Two
Public Tenders Based on the Lowest Price

Article 70.[59] The use of public tenders based on the lowest price shall be preferred over other tendering procedures.

When due to the complexity, nature or object of the contract the use of public tender based on the lowest price is not considered the most appropriate, the contracting officer may, by way of written determination, use any other method provided in this chapter, with the prior approval of the head of the contracting office and notice to the Administrator.

Article 71.[60] Public tenders based on the lowest price have the following characteristics:
1. Opening of tenders at a public tender opening. This requirement is complied with in a virtual manner by means of the electronic opening of tenders on the Internet, when such method is the form adopted for contracting.
2. This method does not admit clarification, negotiation or discussion of proposals.

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[56] Modified by article twelve of Agreement No. 61 of October 17, 2002.
[57] Introduced by article six of Agreement 142 of July 30, 2007.
[58] Introduced by article ten of Agreement N. 153 of December 20, 2007.
[59] Modified by article thirteen of Agreement No. 61 of October 17, 2002.
[60] Modified by article fourteen of Agreement No. 61 of October 17, 2002.

3. The contracting officer may, after having issued a written determination and obtained legal review, request in advance the extension of the acceptance period of the tenders when it is anticipated that the award may not be made within the time provided.
4. Award of the contract to the qualified tenderer who submitted the lowest price and who complies with the terms and conditions of the tender document, as long as his proposal is not onerous.

Article 72. When the tender document so provides, the contracting officer shall consider other elements affecting the price, such as the point of delivery and acceptance, maintenance and repairs costs, replacement costs, administrative costs, performance costs, shelf life cost, cost of locating technical support and warranties.

Article 73.[61] Tenders shall be submitted as required by the tender document and shall comply with the conditions thereof and with the submission of a tender bond, when so required. Tenders not complying with the foregoing requirements shall not be considered for award.

Article 74. Obvious mistakes in tenders resulting from clerical errors shall be corrected by the contracting officer, with prior verification from the tenderer, taking the unit price indicated in the tender as basis; unless the tenderer does not accept the correction, in which case he shall not be considered for award of the contract.

Article 75.[62] The following rules shall be followed for tender openings:
1. The tender opening shall be held on the date, time and place stated in the tender document.
2. At the time established above, no more tenders shall be received and the contracting officer shall start opening tenders, one at a time, and these shall be read aloud.
3. The contracting officer presiding over the tender opening shall reject outright at the time of the opening, any tenders that are not accompanied by the tender bond, when this is a requirement of the tender document. There shall be no recourse against the rejection.
4. After tenders have been read, the person presiding over the tender opening shall prepare a tender abstract form, which shall be signed by all participants and which shall provide evidence of the order in which tenders were read, the prices offered, the name of the tenderers and the name and title or position of the participants at the tender opening. Whenever a tenderer refuses to sign or has left without signing, reference thereof shall be made on the abstract form.
5. Once the tender opening has concluded, the tenders and bonds submitted shall be attached to the file. The tender bonds submitted by the unsuccessful tenderers shall be returned.
6. The contracting officer shall not consider for award any tender, which imposes conditions for its acceptance.
7. Once the rules established in this regulation have been complied with, and there exists a written determination from the contracting officer, the contract shall be awarded to that qualified tenderer who submitted the lowest price and who complies with all the terms and conditions of the tender document, provided that his proposal is not onerous. Should a tender be determined to be onerous, such circumstance shall be noted on the file.

[61] Modified by article eleven of Agreement No. 48 of August 7, 2001.
[62] Modified by article fifteen of Agreement No. 61 of October 17, 2002.

Contract actions accomplished by using electronic procedures on the Internet, are considered to comply with the requirements of paragraphs 2 and 4, when the tender opening procedure and the preparation of the tender abstract form are conducted through virtual means on the internet.

Section Three
Negotiated Tenders

Article 76.[63] Negotiated tenders have the following characteristics:
1. Tenders are made known in a private setting, and participation in the event is limited only to authorized employees of the Authority.
2. Tenders are evaluated on the basis of the criteria established in the tender document, in which price is not necessarily the determining factor.
3. Clarification of tenders is permitted to determine whether these comply with the requirements of the solicitation document, and discussion of tenders is allowed with tenderers whose tenders present technical and financial deficiencies, in order to provide an opportunity for correction. Tenders failing to comply with basic requirements of the tender document, according to the listing shown on the tender document, shall be rejected outright.

Article 77. The strictest confidentiality shall be kept during the negotiated tendering process. Any information concerning the process shall only be made public after award of the contract, pursuant to the provisions of this regulation. Any violation of this rule shall be penalized pursuant to the Ethics and Conduct Regulations.

Article 78. In negotiated tenders, in addition to price and price related factors, the contracting officer may, at his option, include other criteria in the tender document to permit the technical evaluation of tenders. These other factors shall be used to evaluate the quality of the products or services, therefore the weighted effect these have on the evaluation shall be explained in the tender document.

Article 79. Tenders shall be submitted in sealed envelopes, and shall comply with the requirements of the tender document and with the submission of the tender bond, when required.

Article 80. The contracting officer shall appoint a technical board composed of qualified personnel to guarantee an impartial evaluation of tenders. This board has an evaluative rather than an advisory function, and must therefore evaluate tenders applying only the criteria stated in the tender document.

Article 81.[64] The following rules must be observed in the negotiated tendering process:
1. Tenders shall be opened at the time, date and place provided in the tender document.
2. No tenders shall be received after the time referred to above. Opening of tenders shall be conducted with attendance limited to authorized employees of the Authority. All tenders received shall be registered on the tender abstract form, on which shall be stated the price proposed, the name of the tenderer, and the name and signature of the contracting officer and of at least two witnesses designated by the supervisor of the contracting officer.

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[63] Modified by article thirteen of Agreement No. 48 of August 7, 2001.
[64] Modified by article fourteen of Agreement No. 48 of August 7, 2001.

3. Once the opening of tenders event has concluded, the tenders and bonds submitted shall be attached to the file.
4. On the day following the opening, the file shall be forwarded for a technical and financial analysis. The technical evaluation board designated by the contracting officer shall only analyze the technical aspects of tenders. Financial aspects shall be independently analyzed by the contracting officer or by whomever he may designate.
5. The contracting officer, if necessary, shall request clarification or conduct negotiations with the tenderers in accordance with the criteria provided in the tender document.
6. The Authority may make changes in the requirements on negotiated tenders after the opening of tenders has been held, as long as these changes are caused by a variation in the needs of the Authority and do not modify the contract objective. In these cases the contracting officer may amend the solicitation document, with the prior approval of the head of the contracting office and after having sent the matter for legal review. The amendment approved shall be distributed as provided under Article 42 of this Regulation, so that the process is recommenced and the participation allowed of all those who originally withdrew solicitation documents or expressed an interest in participating in the negotiation.
7. The determination of award must contain a detailed explanation of the entire proceedings involving clarification and negotiation.

Article 82. Once the procedural requirements established in the regulation have been complied with and there existing a prior written determination by the contracting officer, he shall award the contract to the qualified tenderer who submitted the most advantageous proposal in accordance with the evaluation factors described in the tender document.

Section Four
Negotiated Tenders Based on the Lowest Price

Article 83. This process will be used to select the qualified tender having the lowest price that meets the requirements stated in the tender document, with negotiations being allowed if so needed.

Article 84[65]. The Contracting Officer shall do the following during the process of evaluation of the proposals:

1. Submit to the Technical Evaluation Board the proposal with the lowest price for its objective evaluation.

2. If required, request clarifications of the proposal with the lowest price to determine if it fulfills the requirements of the invitation for bids.

3. Award the contract to the proposal with the lowest price presented by a qualified offeror, that fulfills all of the requirements of the invitation for bids, and that is not onerous. The fact that a proposal is onerous shall be properly accounted for in the file.

[65] Modified by article one of Agreement No. 159 of April 22, 2008.

4. In the event that the contract cannot be awarded according to the previous numeral, the Contracting Officer may decide to end the bidding process, declaring its cancellation for lack of bidders, or continue to the next stage of the process. In this last case, the Contracting Officer shall submit all of the proposals received to the Technical Evaluation Board for its objective evaluation.

5. If the process is not declared cancelled, according to the abovementioned numeral, individual negotiations shall be conducted with each of the offerors to inform them of the technical and economic deficiencies of their proposals and to give them the opportunity to correct, revise, or improve them. Once the corrected or improved proposals are received, the Contracting Officer shall convene the Technical Evaluation Board to repeat the evaluation process.

6. Once it is determined that the proposals fulfill the requirements, the contract shall be awarded among them to the qualified bidder offering the lowest price, as long as the proposal is not onerous.

7. The negotiation process shall be repeated until a proposal is obtained from a qualified offeror, that fulfills the requirements of the invitation for bids, and is not onerous, unless the bidding process has been declared cancelled because no bids were received.

8. The award resolution shall contain a detailed account of all the evolution of the clarification and negotiation process.

Article 85.[66] The contracting officer may, by way of written determination, declare a tendering process extinct in those cases described in Article 68.

Section Five
Negotiated Tenders Based on Best Value

Article 86.[67] The procedure for a negotiated tender based on the best price shall be used to compare tenders and select the one offering the best price/quality ratio.

Article 87.[68] During evaluation of tenders the contracting officer shall:
1. Submit all tenders to the technical evaluation board for an impartial evaluation.
2. Request clarification of tenders as may be necessary, in order to determine whether they comply with the requirements of the tender document.
3. If the tender having the best technical evaluation complies with all of the requirements of the tender document, was submitted by a qualified tenderer, contains the lowest price and is not onerous, the contracting officer shall award the contract. Should a tender be determined to be onerous, such a circumstance shall be appropriately registered on the file record.
4. If award cannot be made according to the above paragraph, separate negotiations shall be held with all tenderers to identify deficiencies and provide them the opportunity for correcting tenders, or revising or improving them. This process may be repeated as many times as

[66] Modified by article seventeen of Agreement No. 61 of October 17, 2002.
[67] Modified by article thirteen of Agreement No. 107 of December 15, 2005.
[68] Modified by article eighteen of Agreement No. 61 of October 17, 2002.

necessary for the benefit of the Authority, notwithstanding the fact that a determination declaring the tendering process extinct may be forthcoming.
5. After having received the corrected and improved tenders, the contracting officer shall reconvene the technical evaluation board to repeat the evaluation process.
6. Once the evaluation referred to above has been concluded, tenders will be compared in order to determine which one offers the best relationship between quality and price. The contracting officer shall, by means of a written determination, describe in detail the relationship between quality and price that results in the award of the contract.
7. The determination of award shall contain a detailed description of the entire proceedings involving clarification and negotiation.

Section Six
Two-Step Tender

Article 88.[69] The two-step tender shall be conducted as follows:
1. First step: tenderers shall only submit technical tenders, which shall be clarified and negotiated as provided in the tender document. Tenderers whose tenders have been selected in this first step, maintain this condition for a period of one year from the date of selection.
2. Second step: Tenderers selected in the first step shall be asked for price tenders and the lowest price offer shall receive award. This second step may be repeated for contracts having the same objective, taking into account only the price tenders of those tenderers whose tenders were selected during the first step.

Article 89. For the first step the provisions established in this regulation for negotiated tenders based on the lowest price shall be followed. For the second step, the provisions established in this Regulation for public tenders based on the lowest price shall be followed.

Section Seven[70]
Reverse Negotiated Solicitation at the Price of the Lowest Bidder

Article 89 A. The reverse negotiated solicitation at the price of the lowest bidder will be distinguished by the following features:

1. The bid solicitation is a process of bidding and counter bidding for the purpose of obtaining the best price for the Authority for goods, services, or works, within a specified period of time.
2. The contracting official determines the object to be subjected to the bidding process and the maximum price of the same.
3. Bidders compete by bidding and counter bidding prices in real time on the Internet, to determine the best price in a predetermined period of time.
4. The rules applicable to negotiated solicitations of the Authority shall be applicable to the processes of reverse solicitation as long as they are not inconsistent with this contractor selection process.

Article 89 B. The reverse solicitation includes the following:

[69] Modified by article nineteen of Agreement No. 61 of October 17, 2002
[70] Section added by Agreement No. 104 of November 8, 2005.

1. Selection of Bidders in the Auction: Is the stage of the bid process in which bidders who may participate live are selected, based on their ability to execute the contract in terms of providing the goods required, delivery time, and other criteria established in the solicitation package. The solicitation package shall be published pursuant to the guidelines in article 40 of this regulation and shall indicate the object of the contract, the base price, time, date, and deadline established for the bidding and counter bidding.

2. Invitation to the Live Auction: The Authority invites the bidders selected in the previous stage to participate in the live auction, confirms their participation, and assigns a password to each bidder.

3. Configuration of the Auction: Once the participation of the selected bidders has been confirmed, the Authority configures the auction on the Internet, inputting the description of the goods, the duration of the bidding and counter bidding, the base price, and the minimum decrease of the counter bid, and all other required information of the bidders that will participate in the live auction. The identity of the configured bidders will not be available to the other bidders.

4. Live Auction: At the scheduled date and time, the Authority shall conduct the on-line auction on the Internet and the configured bidders shall compete in real time for the award of the contract by bidding and counter bidding, decreasing their prices, until the auction ends. The lowest price bid shall be visible on the Internet to allow counter bidding at lower prices.

5. Awarding the Contract: Upon conclusion of the auction process, the Authority shall award the contract to the lowest bidder. Should only one bidder confirm participation in the live auction, the contracting official may request this bidder to submit a price bid and then proceed to the awarding or declare the selection void pursuant to article 68 of this regulation.

Section Eight[71]
Non-Negotiated Tender on Best Value

Article 89C[72]. The characteristics of the best-value bidding process are the following:

1. The invitation for bids shall be published according to what is stipulated in this Regulation.

2. The invitation for bids shall contain the procedure for the non-negotiated best-value bidding process.

3. The technical and pricing proposals shall be presented and received in public act in separate, closed, and sealed envelopes. The proposal bond, whenever it is required in the invitation for bids, shall be included in the technical proposal.

4. The envelopes with the pricing proposals shall be kept closed, sealed and duly safeguarded until the technical proposals have been evaluated.

[71] Section introduced by article eleven of Agreement No. 153 of December 20, 2007.
[72] Modified by article two of Agreement No. 159 of April 22, 2008.

5. The opening of the technical proposals shall be performed in an act limited to the participation of the persons indicated in the invitation for bids. Detailed minutes of the opening proceedings shall be prepared, and the Contracting Officer shall submit the technical proposals to the Technical Board for its evaluation.

6. The Contracting Officer shall appoint a Technical Evaluation Board and a Price Verification Board, with qualified personnel of the highest level of specialization, to guarantee the objective evaluation of the technical proposals, and to evaluate, separately, the price proposals. These boards shall evaluate the proposals applying only the criteria and score established in the invitation for bids and shall abstain from making recommendations.

7. The Technical Evaluation Board, whenever it deems it necessary due to the complexity of the subject and to broaden its knowledge of specific topics, may request to the Contracting Officer professional counseling from experts of the ACP or contracted by it, in coordination with the Administration.

8. The Technical Evaluation Board shall verify the fulfillment of the minimum requirements stipulated in the invitation for bids, and shall verify the technical proposals submitted according to the score assigned to this aspect in the invitation for bids. The price proposals shall be evaluated by the Price Verification Board according to the criteria established for that purpose in the invitation for bids.

9. The Contracting Officer may request from the offerors at any time during the technical evaluation process, by own initiative or at the Technical Evaluation Board's request, clarifications and additional information deemed necessary to evaluate the technical proposals, in order to, if there is merit in his opinion, give the offerors the opportunity to review or improve their technical proposals.

10. The Authority may change the requirements of the invitation for bids after the date and time established for the submittal of proposals, and before the opening of the price proposals as long as such changes respond to variations in the needs of the Authority and do not modify the object of the contract. In such cases, the Contracting Officer may request the submittal of new technical and price proposals to whomever presented the proposals originally, and shall return the original price proposals presented inside their sealed envelopes.

11. As soon as the technical evaluation report is received, the Contracting Officer shall verify that the evaluation has been made according to what was stipulated in the invitation for bids. In case the Contracting Officer considers that the evaluation did not fulfill the stipulations of the invitation, he shall return the report to the Technical Evaluation Board along with his observations. The Technical Evaluation Board shall analyze those observations and shall send its final report to the Contracting Officer.

12. Once the final report from the Technical Evaluation Board is received, the Contracting Officer shall communicate, through an amendment, the date, time, and place for the celebration of the public act for the reading of the price proposals.

13. In such public act, the Contracting Officer, together with the Price Verification Board, shall announce to those present the amount allocated for the effects of numeral 15 of this Article; shall disclose the scores from the technical evaluation; and shall open and verify the price proposals.

14. The scores from the evaluations of the pricing and technical criteria shall be reflected on a summary table with their respective values, and the Contracting Officer shall award the contract to the offeror that submitted the best-value proposal.

15. Notwithstanding the stipulations of Article 6A about non-negotiated best-value bidding processes, if the proposal that represents the best value exceeds the amount allocated for this contract, the Contracting Officer, before declaring the cancellation of the process, will communicate this fact to the Administration, in order for the latter to determine if an increase of the allocated amount is justified. The Administration's decision shall consider project profitability and any other factors that may be grounds for the corresponding amendment.

If the Administration considers that such an increase is not justified, it shall communicate this to the Contracting Officer so that he may declare the cancellation of the bidding process. In the opposite case, the Administration shall amend the allocated amount, following a favorable opinion by the Board of Directors. Once the amount allocated has been augmented, the Contracting Officer shall award the contract to the offeror that had made the best-value proposal, as long as it does not exceed the amount allocated, as amended.

16. If the price of the best-value proposal exceeds the allocated amount as duly amended according to the paragraph above, the Contracting Officer may request all offerors to submit new price proposals.

17. The award resolution shall contain a detailed account of the development of the bidding process.

CHAPTER X
Resolution of Conflicts
Section One
Interpretation of Contracts

Article 90. Contracts entered into by the Authority shall be subject to the provisions in this regulation, as well as to the terms and conditions provided in each contract in particular.

The interpretation of the rules of this regulation and of the contract shall always be directed towards satisfying the fundamental purpose of the legal responsibilities inherent to the Authority and the principle of equity in its dealings with the contractors.

Section Two

Protests [73]

Article 91[74]**.** Protests are impugnations of juridical nature, within the contractor selection process, which are made against:
1. The invitation for bids
2. Award acts
3. Disqualification of bidders
4. Denial of the prequalification request

The protests shall be accompanied by documentation presented by the petitioner, which shall be reviewed according to the rules of healthy criticism. The Chief of the Office of Contracts may dictate measures to better provide and, prior consultation with the Office of General Counsel, shall resolve the protest.

Article 92[75]. Protests against the invitation for bids shall be presented before the date and hour limit for the receipt of proposals, except when the invitation for bids includes specifically a different date and hour limit, in which case only those protests subject to and within the established term of the invitation for bids may be presented.

Whenever a prequalification process for contractor selection has taken place, only the prequalified bidders may present protests against the respective invitation for bids.

Article 93[76]. Once the protest is submitted according to the stipulations of the previous article, the contracting officer shall not open the envelopes with the proposals until the corresponding instance resolves the protest, unless the opening of proposals and the corresponding award are necessary to prevent serious damage to the Authority, in which case the contracting officer may decide to open the proposals and award the contract, with prior opinion of the Office of General Counsel and approval of the Chief of the Contracting Office.

Article 94[77]**.** Once the validity of the protest against the invitation for bids is proven, the objected action shall be corrected and the process shall resume in the stage immediately following, unless, according to what was established in the previous article, the determination to open the proposals and award the contracts occurred, in which case the petitioner's reasonable and proven costs and expenses, incurred during the preparation of the proposal and the presentation of the protest, shall be reimbursed.

Article 94A [78]. In cases in which, according to the stipulations of Article 92 of this Regulation, the invitation for bids establishes that the protests against the same shall be presented within the term indicated in its text, the contracting officer shall not, in any case, order the opening of the envelopes until the petitioner has been notified of the decision that resolves the protest.

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[73] Title modified by article seventeen of Agreement No. 48 of August 7, 2001.
[74] Modified by article seven of Agreement No. 157 of March 25, 2008.
[75] Modified by article eight of Agreement No. 157 of March 25, 2008.
[76] Modified by article nine of Agreement No. 157 of March 25, 2008.
[77] Modified by article ten of Agreement No. 157 of March 25, 2008.
[78] Introduced by article eleven of Agreement No. 157 of March 25, 2008.

Article 95[79]**.** Protests against award acts shall be presented within the term of three (3) working days, counted from the expiration of the posting time limit of the award notice, as established in Article 69. Once this term expires no protest shall be admitted.

The protest presented within the term mentioned shall suspend the execution of the contract until the Chief of the Office of Contracts resolves it, unless the suspension represents damage to the Authority. In this situation, the contracting officer, with the prior opinion of the Office of General Counsel, shall document the decision to not suspend the execution of the contract by filing a resolution stating the reasons and the actions taken, for the effects considered in the following articles.

Article 96[80]**.** If by effect of the protest presented in conformity with the previous article, the execution of the contract is suspended and a resolution is made in favor of the petitioner, the contracting officer shall terminate the contract unduly awarded and shall adopt the necessary measures. In such case, the contractor selection process shall resume in the stage following the corrected action.

Article 97[81]. If the contracting officer, with the objective of preventing damage, does not suspend the execution of the contract and the Chief of the Office of Contracts resolves in favor of the petitioner, the reasonable and proven expenses in which the petitioner incurred during the presentation of the protest shall be reimbursed.

If, in addition, it is determined that the petitioner should have been awarded the contract, the Chief of the Office of Contracts may order, following a study of the respective expenses, the termination of the unfinished portion of the contract, proceed to take corrective measures and award this portion to the petitioner, if that is a convenient and viable option due to the nature of the contract.

In the event that the termination of the unfinished portion is not ordered, the petitioner shall have the right to be compensated for reasonable and proven expenses incurred in the preparation of the proposal.

Article 98. When, after having accomplished the process stated in the above paragraphs it is proven that the tenderer favored with the award committed fraud to obtain award, the Authority shall terminate the contract and the contractor shall be obligated to reimburse to the Authority all expenses incurred as a result of the complaint, without waiver of any penal, civil and administrative penalties which may ensue.

Article 99[82]**.** In order to be admitted, protests against award acts shall be accompanied of a monetary bond in favor of the Authority equivalent to five percent (5%) of the amount of the proposal, not to exceed $100,000.00, to cover expenses and costs incurred in the procedure. Contracts that do not exceed $10,000.00 are not subject to this obligation. In case the protest is

[79] Modified by article twelve of Agreement No. 157 of March 25, 2008
[80] Modified by article thirteen of Agreement No. 157 of March 25, 2008
[81] Modified by article fourteen of Agreement No. 157 of March 25, 2008.
[82] Modified by article fifteen of Agreement No. 157 of March 25, 2008.

declared clearly groundless, in the resolution issued by the Chief of the Office of Contracts the execution of the bond in favor of the Authority shall be ordered.

Article 99A[83]. Protests against disqualification shall be presented within the term established in Article 47 of this Regulation.

Article 99B[84]. Protests against the denial of a prequalification request shall be presented within the term established in clause 11 of Article 47B of this Regulation.

Article 99C[85]. Protests against the invitation for bids, award, disqualification, or denial of prequalification request shall be resolved within the term of thirty (30) calendar days, counted from the interposition of the protest.

Article 99D[86]**.** Against resolutions that settle protests no appeal is available, thus administrative channels are no longer an option. Once the 30-calendar-days term, counted from the first working day after the presentation of a protest, expires without a resolution having been issued, it shall be considered denied.

Section Three
Controversies Related to Contracts

Article 100. When a controversy arises due to the performance, interpretation or termination of a contract, the contractor and the contracting officer shall try to reach an agreement.

Article 101. Should the parties fail to agree, the contracting officer shall document the fact regarding the results of this attempt and the parties shall submit the matter to an administrative process for the resolution of controversies as agreed to at the time the contract was formalized. This process shall not cause the suspension or delay of obligations arising from the contract.

Article 102. [87]The solicitation document may establish the right to arbitration as the legal means for the resolution of conflicts arising from a contract.

CHAPTER XI
Guarantees and Bonds
Section One
Tender Bonds

Article 103. In order to guarantee a firm offer and the formalization of the contract, and when the obligation to submit payment and performance bonds has been established, tenderers shall submit a tender bond together with their tender, which shall not be less than ten (10%) of the

[83] Added by article sixteen of Agreement No. 157 of March 25, 2008.
[84] Added by article seventeen of Agreement No. 157 of March 25, 2008.
[85] Added by article eighteen of Agreement No. 157 of March 25, 2008.
[86] Added by article nineteen of Agreement No. 157 of March 25, 2008.
[87] Modified by Agreement 136 of May 31, 2007.

total amount of the tender. This bond shall have a maximum expiration period of ninety (90) days, except for those cases in which, by reason of the amount or complexity of the contract action, the contracting officer establishes a different period.

Article 104. When the contractor selection process involves leasing of Authority property, the tender bond shall be equivalent to two (2) months of the rental fee of the property.

Article 105. When the contractor selection process involves the sale of Authority property, the tender bond shall be equivalent to ten per cent (10%) of the assessed value of the property.

Article 106. When the goods or services to be contracted are for variable quantities, the amount of the tender bond shall be determined by the head of the contracting office.

Article 107. Failure to submit tender bonds when required shall cause the immediate rejection of tenders.

Article 108. The contracting officer shall immediately reject tenders offering bonds that do not conform to the requirements of the tender document.

Section Two
Performance and Payment Bonds

Article 109.[88] The contract performance bond guarantees faithful performance of the contract and the correction of any pertinent deficiencies once it is performed. Coverage shall not be less than fifty (50%) per cent of the contract amount in the case of construction contracts. In the case of acquisition of goods and services, coverage shall be one hundred per cent (100%) of the contract amount, unless the Contracting Officer establishes a lower coverage amount subject to a risk analysis study, a review by the Chief Financial Officer and the General Counsel, and approval of the Administrator of the Authority. The term of such coverage shall correspond to the contract performance period, in addition to one (1) year in the case of real property, in order to respond for any redhibitory vices, with the exception of consumer goods, in which case the coverage shall be of six (6) months; and in the case of construction contracts, a period of three (3) years to respond for construction defects or reconstruction of the work or real property.

Article 110. The payment bond guarantees payment to third parties for labor services and goods provided during performance of the principal contract. Its amount shall be fifty per cent (50%) of the contract amount, when the amount of the contract is less than B/.1,000,000.00; forty percent (40%) when the contract amount is over B/.1,000,000.00 and less than B/.5,000,000.00; and B/.2,500,000.00 when the amount of the contract is over B/.5,000,000.00. The payment bond shall be effective for the contract performance period plus one hundred and eighty (180) calendar days from the date of the last publication of the notice of completion of the work in a newspaper of national coverage, and its satisfactory acceptance by the Authority. Third parties shall file any pending claims against the contractor within this time limit.

[88] Modified by Agreement No. 107 of December 15, 2005.

Article 111. The requirement of performance and payment bonds is optional in construction contracts under B/.25,000.00. For contracts involving acquisition of goods and services, bonds may be required by written determination from the contracting officer, after prior authorization by the head of the contracting office.

Article 112.[89] Revoked.

Article 113. When the amount of the contract is variable, the head of the contracting office, shall determine the amount of the performance bond.

Article 114. A successful tenderer shall submit a performance bond and a payment bond within ten (10) working days following the formalization of the contract.

Article 115. The contracting officer is authorized to reject a bond that does not adequately guarantee contract performance, and to require an increase or substitution of guarantee. Performance of the contract shall not be authorized until such time the bonds have been approved by the contracting officer, prior to review by the Office of General Counsel.

Article 116. For purpose of the notice referred to in Article 110, the contractor shall publish the notice within thirty (30) days following the date of written final acceptance of the goods, construction work, or services required by the contract.

The notice of completion of the work shall be published three (3) consecutive times, in a newspaper of national coverage.

Section Three [90]
Bonds for Advance Payments

Article 117. Bonds for advance payments guarantee the reimbursement of a specific amount paid in advance to a contractor for the timely and proper execution of a contract. The penal sum of this bond shall not be less than one hundred percent (100%) of the amount advanced, and shall have an effective period similar to the contract, plus an additional time of thirty (30) days. The contractor's responsibility ceases after the amount advanced is reimbursed.

Article 118. The contracting officer shall require from the contractor the submission of a bond for advance payments within ten (10) working days following the signing of the contract. No order to proceed shall be issued until the bond has been approved by the contracting officer, prior review by the Office of General Counsel.

Section Four
Types of Guarantees

Article 119. Guarantees shall be constituted in cash or in bonds issued by insurance companies, sureties, or through bank guarantees or certified checks issued in favor of the Authority.

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[89] Revoked by article one of Agreement No. 48 of August 7, 2001.
[90] Section modified by article twenty-two of Agreement No. 48 of August 7, 2001.

Article 120. The solvency of the insurance companies and banks referred to above shall be recognized by the Insurance Superintendence or Banking Superintendence, as the case may be. The Authority shall establish the criteria or limits applicable to such entities for the issuance of guarantees, and may reject any insurance companies or banks that, in its opinion, do not constitute appropriate guarantees.

Section Five
Effecting and Voiding Guarantees

Article 121. In the event the selected tenderer does not submit the required guarantee within the allotted time, the tender guarantee shall be foreclosed in favor of the Authority. In the event of default, the contractor's performance bond shall be foreclosed in all cases, and shall become part of the Authority's estate. If the bond is issued by a surety, an insurance company, or a bank, the surety may, within thirty (30) calendar days following the notice of default, elect to pay the amount of the bond or substitute the contractor in all of his rights and obligations under the contract, provided that the party continuing performance at the surety's account and risk, has the technical and financial capacity to do so, in the opinion of the contracting officer. After having satisfied all terms and conditions of the contract, and there being no further responsibilities to meet, the bond shall be voided.

Section Six
Other Guarantees and Insurance

Article 122. When the object of the contract is the construction of works or rendering services within the areas of the Authority, the contracting officer may include contract clauses in the tender document to provide coverage for civil liability and damages to third parties.

Section Seven[91]
Particular Risks

Article 122A. Notwithstanding the provisions of this regulation regarding the terms and conditions of the guarantees, bonds and insurance, coverage, terms and conditions different to these may be established, provided that they are necessary to cover the particular risks of a specific project.

These guarantees, bonds and insurance may be issued locally or internationally. In as much as the coverage, terms and conditions of these bonds, guarantees and insurance differ from those established in previous articles, they will require a risk evaluation study, a revision by the Chief of the Finance Office and General Counsel, and the approval of the Panama Canal Authority Administrator.

[91] Section introduced by article seven of Agreement 142 of July 30, 2007.

CHAPTER XII
Delays and Defaults
Section One
Performance of the Contract

Article 123. After the contract has been signed, performance shall be started immediately, unless an order to proceed from the contracting officer is required, in which case performance shall start on the date determined by the notice

Article 124. When the contractor is unable to start performance of the contract for any reason attributable to the Authority, it shall have the right to be reimbursed for cost increases proven to have occurred by the delay. Costs increases approved to a contractor shall be documented in writing by additions or modifications to the contract. The contractor shall file its claim within ninety (90) days following the receipt of the order to proceed.

Section Two
Delays by the Authority

Article 125. When the contracting officer suspends or stops the performance of the contract, for reasons not attributable to the contractor, the contractor shall have the right to an extension of time for contract performance, for a period not less than that of the delay. In addition, the contractor shall have the right to be reimbursed for proven cost increases incurred during the period counted from the suspension of performance until its resumption. Nevertheless, the extensions shall proportionately modify the performance periods established, and shall be documented in writing by modifications to the contract. The contractor shall file his claim within ninety (90) days following receipt of the order to resume work.

Section Three
Default and Delay by the Contractor

Article 126.[92] When for reasons attributable to the contractor the performance of a contract for goods or services is delayed, the contracting officer may impose penalties for delays up to ten per cent (10%), each time, of the amount of the delivery due or the service not rendered, and the contractor shall have the right to a time extension. The penalties and extensions shall be evidenced as modifications to the contract and the contracting officer shall provide written evidence on said document of the time extension granted due to the postponement of the delivery or rendering of the service.

Article 127. The above provision does not limit the rights of the Authority to terminate the contract for reasons attributable to the contractor.

Article 128. In contracts for construction work, penalty clauses shall be based on the principle of cost restitution and damages arising from delays in the delivery of the work or its different stages.

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[92] Modified by article twenty of Agreement No. 61 of October 17, 2002.

Article 129. Notwithstanding the foregoing, penal clauses may be incorporated in the solicitation document that best suit the nature of the contract.

CHAPTER XIII
Contract Administration
Section One
General Principles

Article 130. Contracts are entered into and formalized primarily because this allows for a closer concerted effort between the parties and permits greater administrative efficiency. Notwithstanding the preceding purpose, the contract shall also strive to guarantee the rights and interests of the parties. All actions taken by those persons who participate in the procurement shall be based upon principles of transparency, economy and responsibility, in accordance with the rules that govern administrative functions, as well as the rules of ethics and conduct that apply to the Authority, the rules of contract interpretation, and those general principles of law and specific provisions contained in administrative regulations.

Article 131[93]. Contracts entered into by the Panama Canal Authority shall be subject to and performed pursuant to Panama Canal Authority regulations and supplemented by the provisions of Panamanian law.

In the cases in which Authority contracts establish international commercial arbitration as the legal means for controversy resolution, the arbitral tribunal shall decide according to the law designated in the respective contract clause.

Article 131A[94]. Notwithstanding the stipulations of previous articles, the Authority may subject to the law and regular foreign jurisdiction the government or private loans, or other credit obligations, prior or preparatory acts of such contracts, as well as the resolution of controversies that arise in relation to them.

In such contracts, the Authority may include stipulations that authorize the referred courts to take precautionary measures and to seize and sell property of the Authority located outside of the Republic of Panama.

Article 132. The responsibility for directing and handling the selection process and the contractual activity shall remain with the contracting officer.

Section Two
Rights and Responsibilities of the Parties

Article 133. The following shall be the responsibilities of the Authority:
1. To obtain the greatest benefit for the State or the public interest, complying with the provisions of this regulation and the contracts.

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[93] Introduced by article eight of Agreement No. 142 of July 30, 2008.
[94] Introduced by article twenty of Agreement No. 157 of March 25, 2008.

2. Demand from the contractor quality and timely performance of the contract. A similar demand may be made to the guarantor of the obligation.
3. Periodically review the work performed, services rendered or goods supplied, in order to verify that they meet the conditions of quality offered by contractors, and taking responsible action against them and their guarantors when such conditions are not complied with as required by the contract.
4. Demand that the quality of the goods, works contracted and services acquired by the Authority conform to the requirements provided in the specified technical standards.
5. Adopt measures to maintain, during the prosecution and performance of the contract, the original technical, economic and financial conditions, existing at the moment of the contract formalization and to make the required modifications as authorized by law or by the contract.
6. Proceed in a timely manner, so that the actions attributable to the Authority do not create a burden for the contractor in complying with the contract; correct in the least possible time any disruptions that may occur, and agree on the pertinent mechanisms and procedures to prevent or to immediately and accurately solve any differences or disputes that may arise, in accordance with the contract.
7. [95]Make timely payments as provided in the contract and acknowledge and pay interests in case of delays attributable to the Authority. Interests shall be estimated using the provisions established in Chapter XIV of this regulation.
8. Request the update or revision of prices and performance periods, when extraordinary and unexpected conditions arise which substantially affect the contract, in accordance with the procedure provided. On long-term contracts, clauses and conditions may be agreed to for the purpose of maintaining, during the life of the contract, the contractual balance existing at the time of the contract formalization.
9. Anticipate actions intended to obtain indemnification for damages suffered by the Authority during the execution of or as a result of a contract, exercising its right to take action and become part of the proceedings related with the compliance, interpretation, performance or termination of the contract.
10. Without prejudicing its right to execute the guarantee, take legal action against the employees of the Authority, against the contractor or third parties that may be responsible, as the case may be, for compensations to be paid as a result of the contractual activity.
11. Take steps towards the acknowledgement and collection of monetary penalties and guarantees that may be due.
12. Not act with devious or abusive use of power, nor carry out improper practices. Employees of the Authority shall be administratively responsible for their actions and omissions, without limitation of the criminal or civil responsibilities that may apply. Any improper practice shall be considered a serious administrative fault.

Article 134. The contractor shall have the following rights and responsibilities:
1. Timely receive payments due.
2. Cooperate with the Authority, as necessary, to insure that the purpose of the contract is accomplished and is of the best quality. Accept the orders that may be given during the prosecution of the contract, and in general, act with loyalty and good faith during all contractual phases, avoiding delays.

[95] Modified by article nine of Agreement 142 of July 30, 2007.

3. Guarantee the quality of the work performed, and goods and services provided, taking appropriate responsibility for such as agreed in the contract.
4. The Authority shall not condition participation in contract selection proceedings, nor the award, addition or modification of contracts, nor the cancellation of any amounts owed the contractor, on the waiver, dismissal or renunciation of any petitions, actions, demands or claims on the part of the contractor.
5. The contractor shall be legally liable for submitting proposals with artificially under-valued financial and contracting conditions, in order to obtain the award of the contract.
6. The contractor shall be lawfully liable for having concealed at the time of contracting, any incapacities, incompatibilities or prohibitions, or for having supplied wrong information.
7. The contractor shall be responsible for and the Authority must insure the proper quality of the object of the contract.
8. A foreign national who is party to a contract with the Authority shall expressly waive diplomatic protest channels, except in the case of refusal to apply the law. It is understood that refusal to apply the law may not be alleged when the contractor has all the means and resources for action, in accordance with the provisions in effect, and makes no use of them. This provision also applies to corporations owned or controlled by foreign nationals, and in the case of assignment of contracts to foreigner nationals, under the same circumstances.
9. The Authority shall not be responsible for the actions of the contractor's agents.

Section Three
Perfection of the Contract

Article 135. The contracting officer is authorized to sign contracts on behalf of the Authority, according to the limits of authority granted.

Article 136. When the contractor is an individual, he (she) shall sign the contract. When the contractor is a joint venture, corporation or company, the legal representative or the person duly authorized by the company shall sign the contract. In the case of joint ventures and temporary associations, the legal representatives or the persons authorized from each of them shall sign the contract.

Article 137. Two or more individuals or corporations may submit one proposal jointly for the award, execution or performance of a contract, being jointly and severally responsible for each and every one of the obligations derived from the proposal and the contract. Therefore, the actions, acts and omissions arising during the course of the proposal and the contract, shall affect all members of the joint venture or association. The assignment of rights and obligations by one or more of the parties forming the consortium shall be authorized by the contracting officer, who shall prepare a written determination, prior review by the Office of General Counsel.

Article 138. Any individual or corporation, Panamanian or foreign, that is not debarred from contracting, may participate in contractor selection processes and enter into contracts with the Authority after being qualified on the basis of this Regulation.

Article 139. The individuals or corporations that have been administratively or legally debarred are not qualified to participate in contractor selection proceedings nor enter into contracts, while this measure is in force.

Section Four
Auditing of Contractor and His Contract-Related Documents

Article 140. Contractors who have been party to contracts with the Authority must retain all contract documentation on paper or on electronic files for 5 years after having received final payment. All documentation related to the contract, as well as spread sheets, accounting records and accounting practices used in negotiations after the award of the contract, shall be made available to the Office of the Inspector General of the Authority.

Section Five
Contract Records

Article 141. The contracting officer must keep a record of all transactions related to contracts. The documentation must be sufficient to constitute by itself a complete record of the transactions carried out to support the decisions taken at each phase of the purchasing process, and must contain the information needed to perform audits and investigations, and support the facts in cases of litigation.

Article 142. Once the Authority accepts as completed the object of the contract and the contractor receives the corresponding payment, the contracting officer shall insure that all pertinent documentation is included in the record, and shall proceed to seal it by affixing the completed stamp, signing and dating it, unless a guarantee is still in force, in which case the record shall be sealed once the guarantee has expired.

Article 143. Once the record of the contract is closed based on the above article, it shall be retained for a period of five years.

Section Six
Assignment of Contracts

Article 144[96]**.** Contractors shall not cede the rights and obligations that originate from the contract, unless the Authority authorizes such cession specifically, with prior compliance of the formalities established in this regulation, in the contract and in the conditions stated in the invitation for bids. It is mandatory that the cessionary meets the conditions and provides the guarantees required to the ceding contractor.

[96] Modified by article twenty-one of Agreement No. 157 of March 25, 2008.

Article 145[97]**.** If the Authority does not approve the cession, the contractor is obligated to fulfill the contract. Unauthorized cession shall be motive to terminate the contract for cause attributable to the contractor.

Article 145A[98]. In the contracting process of government or private loans, and other credit obligations, the Authority may negotiate conditions that enable creditors to cede their rights or obligations, totally or partially, with or without prior and specific authorization of the Authority.

Section Seven
Nullity of Contract Actions and Contracts

Article 146. In administrative procedures for contractor selection, only contract actions that have specific causes defined under this regulation may be nullified. The nullification of contract actions is separable from the nullification of the contract.

Article 147. The following are causes for nullification of contractor selection actions:
1. Causes described under the Constitution or the law.
2. Actions that contain impossible elements or that constitute a crime.
3. Actions taken after a decision is made by an authority that lacks jurisdiction to award a contract.
4. Actions taken with absolute absence of procedures established in this regulation.

Article 148. Causes for nullity may be alleged at any time, and by any person.

Article 149. Nullity shall be decreed when absolutely necessary to avoid defenselessness, to avoid affecting the rights of third parties, or to establish the normal course of the selection procedures.

Article 150. The contracting officer who decrees the nullity of any actions shall always insure that those actions and processes whose substance is not affected by the nullity remain unchanged.

Article 151. The Contracting officer has the authority to resolve or correct minor faults that may be found on the documents.

Article 152. The following are causes for nullity of the contracts:
1. Contracts entered into by persons debarred from contracting in the cases cited by this regulation.
2. Contracts entered into by Authority personnel that lack the capacity to contract.
3. Nullity of a contract award by jurisdictional decree.

Article 153. The nullity of any or all clauses does not invalidate the rest of the contract, unless it cannot be performed without such clauses.

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[97] Modified by article twenty-two of Agreement No. 157 of March 25, 2008.
[98] Introduced by article twenty-three of Agreement No. 157 of March 25, 2008.

Section Eight
Modifications

Article 154. The contracting officer is the only person authorized to make modifications to contracts**.**

Article 155. Modifications shall be made as follows:
1. Bilateral modification: The one that requires the consent of the contractor and the contracting officer.
2. Unilateral modification: The one that only requires the signature of the contracting officer. These shall be made to reflect administrative changes, make authorized changes for clauses incorporated to the contract, or to issue orders for partial administrative termination of the contract or for any other cause.

Article 156. The contractor shall immediately notify the contracting officer when he considers that the Authority has made or is ready to make a change that has not been ratified in writing in a modification.

Article 157. The contracting officer shall not subscribe nor effect a change that may result in an increase in the price of the contract, without the certification of the authority responsible for the budgetary control indicating that funds are available.

Article 158. The contractor shall accept and comply with unilateral modifications to the contract issued by the contracting officer, when these are permitted under the contract.

Article 159. The price or cost of any modification, even unilateral ones, shall be determined before issuing them, unless the interests of the Authority are affected by determining the price prior to issuing the modification, in which case the prior authorization of the higher level supervisor shall be obtained.

Article 160. No modifications shall be made with the purpose of avoiding the competitive process. Modifications shall be limited to changes that are within the scope of the contract.

Article 161[99]**.** The increments in units or amounts of the contract shall be made only with a prior market study that demonstrates that this is the alternative that best benefits the Authority, considering the price and other evaluation criteria that were contemplated in the invitation for bids. Units or amounts in contracts of goods, services, or works cannot be augmented by more than fifteen percent (15%) of the quantity, except for contracts of supplies and services for estimated amounts.

Article 161 A[100]**.** Notwithstanding what was stated in the previous article, in contracts for works, an increase of the total price may exceed fifteen percent (15%), with prior approval of the Board of Directors.

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[99] Modified by article twenty-four of Agreement No. 157 of March 25, 2008.
[100] Added by article twenty-five of Agreement No. 157 of March 25, 2008.

Article 162. In order to avoid serious effects to the interests of the Authority, after having failed to reach an agreement with the contractor, the contracting officer may unilaterally modify the contract, making compliance mandatory, regardless of the fact that the contractor may protest the issuance of the modification before the corresponding authority, as provided for in this Regulation.

Section Nine
Quality Control and Contract Inspection

Article 163. The administration of contracts requires that the compliance controls be established to permit technical inspection, quality control and auditing.

Article 164. Technical inspections by the Authority upon receipt of goods and services are a requirement for acceptance and payment. These inspections shall be the responsibility of the administrative unit. The contract for construction shall be inspected by the construction inspection unit of the Authority.

Article 165. Quality control of all contracting performed by the Authority shall be the responsibility of the contractor, based on the terms of the contract. However, the Authority may keep its own quality control system for purposes of inspection.

Article 166. The Authority shall only accept goods and services that conform to the specifications, terms and conditions of the contract.

Section Ten
Duration of Contracts

Article 167[101]**.** The time limit of contracts for goods and services shall not exceed five years. The Contracting Officer, with prior approval of the Chief, Office of Contracting and Legal Counsel, shall defend the economic benefits of a multiannual contract.

The Board of Directors may, exceptionally, authorize, in Canal expansion programs or whenever it is demonstrated that the object of the contract cannot be completed in shorter periods, contracts that exceed the maximum term of five years.

Article 168. In contracts for the supply of goods that need to be manufactured, assembled, designed or modified, and in the contracts for construction, the life of the contract shall be established based on the conditions provided in the solicitation document.

[101] Modified by article three of Agreement No. 159 of April 22, 2008.

CHAPTER XIV
Payments
Section One
Payment to Contractors

Article 169.[102] The Authority undertakes to pay for the works, goods and services received and accepted that are in conformance with the terms of the contract. Contracts may authorize partial payments based on progress made, payments for the partial delivery of supplies and services and advance payments. In the latter case prior submission of a bond for advance payments will be requested, except when, based on the nature or risk involved in the contract this is not required by commercial practice, but this will have to be determined in a written determination approved by the higher level supervisor of the contracting officer responsible for the contract and will need the review of legal counsel.

The administration is authorized to make advance payments when advantageous price discounts can be obtained for the Authority.

Article 170.[103] The Authority shall make payment within thirty (30) calendar days after the submission of the completed invoice and delivery of the object of the contract. Within this period, the Authority shall perform technical inspections to determine if acceptance is proper as provided under Article 164, unless the contract establishes another period of time for inspection and acceptance, in which case payment shall be made after the expiration of such period.

The contractor shall be advised in writing of any non-acceptance by the Authority within the inspection period, and this shall cause the interruption of the payment process. The inspection period shall not be reinitiated until the contractor has corrected the deficiencies stated and the Authority accepts the contract. This shall not limit the right of the Authority to terminate the contract for causes attributable to the contractor.

When a delay occurs in the inspection or the payment process attributable to the Authority, interest estimated at the LIBOR rate at three (3) months shall be recognized and paid automatically for the delay period.

Article 171. No interests shall be acknowledged nor paid in those cases of delay on advance payments.

Article 172. The Authority shall receive the invoices submitted by the contractor. If it is necessary to return them for correction or completion, the contractor shall be offered an explanation in writing of the reasons. The time the invoice remains in possession of the Authority without there being a notification of the mistake in the invoice shall be considered as time elapsed within the payment period.

Article 173. Payments on construction contracts shall be made in the form provided in the contract. Partial payments may be made as work progresses, for which the contractor shall remit

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[102] Modified by article one of Agreement No. 31 of February 25, 2000.
[103] Modified by article twenty-four of Agreement No. 48 of August 7, 2001.

progress reports to the contracting officer, who will verify these against the progress reports submitted by the contract inspector, and the corresponding contractor invoice. These payments shall conform to the following rules:

1. The solicitation document and the contract shall provide, when necessary, the Authority's obligation to withhold a percentage of the payment to guarantee compliance with the contract.
2. Payments shall be made within thirty (30) days, counted from the date of submission of the respective invoice, together with all documentation required by the contract. Upon the expiration of this period, the contractor shall be entitled to payment of interests, if the delay is attributable to the Authority.
3. If the work is contracted by phases, the withholding will affect each phase, but this withholding will be returned once the work has been concluded to the satisfaction of the Authority.
4. The Authority shall, within a period of thirty (30) days following the definitive delivery of work, the submission of the final invoice and the descriptive detail of any claim, if any, or the submission of the release of claims document instead, pay to the contractor the amounts withheld and any other outstanding balance.

Article 174. On those contracts for the acquisition of goods and services where payments in advance are authorized, these may be made in cash, by means of letters of credit or other financial instruments, with the prior approval of the administrative unit responsible for handling the financial matters of the Authority. Financing contracts, letters of credit, or financial instruments shall be negotiated and subscribed by the contracting officer as a supplement to the contract when payment in advance was authorized.

Article 175.[104] The Authority shall suspend all payments due contractors when the contract work is delayed or they are debtors of the Authority. The contracting officer may offset amounts due the contractor against amounts due the Authority, through a written determination, reviewed by legal counsel.

Article 176A[105]. Notwithstanding the stipulations of this Section, the terms, conditions, and interests for delays related to payments may be changed, as long as the complex nature of the goods or services received does not allow inspection within the terms contemplated in the previous articles. In these cases, the terms, conditions and applicable interests shall be established in the respective invitation for bids. The term for payment by the Authority shall not exceed ninety (90) days.

In addition to what is established in the previous paragraph, in contracts of government loans, private loans, or other credit obligations, the Authority may negotiate interests for late payment through a surcharge over the interest rate agreed upon in the respective contract.

[104] Modified by article six of Agreement No. 54 of January 29, 2002.
[105] Modified by twenty-seven of Agreement 157 of March 25, 2008.

CHAPTER XV
Availability of Information

Article 177. Any information resulting from the contracting process shall be available to the public in general, but for the exceptions provided in this chapter. Information will be disclosed to interested parties, upon written request to the contracting officer. The contracting officer shall indicate the cost that the investigation and reproduction of the documents requested will have to the applicant.

Article 178. It is forbidden to request and publish the following information prior to the award of the contract:
1. The Balboa amount of the tenders prior to the opening of tender envelops.
2. Any information generated during the negotiated tendering process.

Article 179. The following information shall be considered restricted and therefore may not be published:
1. Information identified by the tenderer or contractor as having a restricted or confidential nature and considered as such by the Authority, due to the fact that publication thereof would cause damage to the parties.
2. Documents recording deliberative processes or those made prior to decision-making.
3. Information that the Administration classifies as restricted in terms of contracts.

Article 180. The tenderer must clearly indicate in its tender the information that constitutes commercial or industrial secrets of the company, and which disclosure would result in serious injury or damage.

CHAPTER XVI
Debarment of Contractors
Section One
General

Article 181. A debarment is the mechanism whereby the Administrator excludes, after complying with the procedures established in this regulation, individuals or corporations from participating in contracts with the Authority as contractors or sub-contractors, for a specific period of time that shall not exceed ten (10) years.

Article 182.[106] The following shall be considered causes for debarment:
1. Sentencing for fraud, misappropriation, theft, forgery, bribe, destruction of documents, false testimony, or tax evasion.
2. Commitment of any act that evidences business misdeeds or lack of honesty in its relations with the Authority.
3. Conduct described under Part 1a.
4. Intentional non-compliance with contractual obligations, history of non-compliance or deficient performance on one or more contracts.

[106] Modified by article twenty-five of Agreement No. 48 of August 7, 2001.

5. Use of any employee of the Authority or member of the Board of Directors as agent or intermediary in order to obtain a contract with the Authority.
6. A firm decision of debarment by the corresponding authority of the National Government, in connection with the participation in contracts with the nation.

Article 183. It is the responsibility of all employees, officers and members of the Board of Directors, to notify of any information suggesting that a contractor or tenderer has incurred in any of the above causes for debarment.

Article 184. Except for the case described in paragraph 5, Article 182, it is the responsibility of head of the Contracting Office to investigate the facts and gather the information concerning the possible debarment of a tenderer or contractor of the Authority. Once the facts have been investigated, the results shall be forwarded to the Administrator, who shall be responsible, based on the recommendations submitted by legal counsel, to determine whether the debarment process should be started.

Article 185.[107] The Administrator's decision to initiate the debarment process will be notified to the tenderer or contractor through a written notice posted on the bulletin board used for announcing awards at the Contracting Office and will also be published on the Internet for a period of five (5) business days. The notice will indicate the facts on which the tenderer's debarment is based, as well as the consequences arising from such action. The tenderer or contractor will be granted a period of fifteen (15) calendar days counted from the last date of the posting of the notice or publication of the decision to initiate the debarment process, to submit his response to the proposed action. After this time limit has elapsed no claim or request shall be admitted.

The Administrator may, based on the response received, determine that the debarment process is ended if he considers that the facts have been satisfactorily clarified to the extent that there exists no cause for proceeding with the debarment action.

Article 186.[108] Failure to respond to the debarment notice within the period of time stipulated in Article 185, or if a response was made, if the Administrator determines that there if sufficient cause to impose penalties, a debarment decision will be issued, explaining the causes and extent of the action taken, and no claim or demand against such action shall be admitted. This decision shall be notified to the tenderer or contractor by a written notice posted on the bulletin board used for announcing awards at the Contracting Office for a period of five (5) working days, and shall be published on the Internet for the duration of the debarment period.

Article 187. From the moment that the tenderer or contractor is notified of the intent to debar, he shall not be awarded any contract with the Authority, and the Authority may suspend payments to the Contractor as a precautionary measure, until such time when the Administrator issues his final decision.

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[107] Modified by article seven of Agreement No. 54 of January 29, 2002.
[108] Modified by article eight of Agreement No. 54 of January 29, 2002.

Article 188. After issuance of the debarment decision, the tenderer or contractor will be excluded from contracting with the Authority in accordance with the terms stated. If a contractual relationship is presently ongoing, the contract shall be terminated, unless the interests of the Authority are adversely affected by said decision.

Article 189. The Administrator may at any time suspend the debarment process, to allow the tenderer or contractor to implement the required corrective measures, as long as this proves to be in the best interest of the Authority and the tenderer or contractor agrees to implement such corrective measures. No such agreements may be made however when the cause for debarment arises from a court decision or sentence, or a binding resolution issued by the National Government. Failure to implement corrective measures will result in an immediate debarment.

Chapter XVII
Concessions and Special Services
Section One

Article 190.[109] The Board of Directors shall grant concessions and approve contracting for special services. This authority may be delegated to the Administration on a case-by- case basis depending on the nature of the activity and the contract amount.

In every case that the Board of Directors grants a concession or approves the contracting of special services, it shall authorize the Administrator to execute the contract and corresponding documentation.

Article 191.[110] For purposes of the foregoing paragraph, the Board of Directors shall determine, as proposed by the Administration, those activities that are the subject of concessions and those services that are to be considered special.

Article 192. All concessions or contracting actions for special services must clearly specify the general outline of the project, and where this is feasible, the period of time covered, technical specifications, performance period, delivery period, financing period and conditions, useful life of the project, maintenance program and other aspects that the Authority may establish, in accordance with prior studies made.

Article 193. In addition to those conditions established in the corresponding act itself, the solicitation documents, the pertinent provisions of this Regulation and the rules of audit established by the Authority shall become part of the administrative concession or contract action for special services.

Article 194. It is understood that the following rules are incorporated into all the concessions or special services contracting:
1. The right of the Authority to supervise, inspect, control and modify the terms of the contract action, for the purpose of avoiding an adverse effect on the activity object of the contract and insure its continuity and efficiency.

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[109] Expanded by Agreement No. 30 of December 16, 1999.
[110] Expanded by Agreement No. 30 of December 16, 1999.

2. The interest of the user or beneficiary of the activity shall have priority over the interest of the concessionaire.
3. The Authority shall not be responsible for acts of the concessionaire's agent or contractor.
4. The Administration shall exercise the right to administer contracts pursuant to the provisions of Chapter XIII.

Section Two
Procedure for Concessions and Special Services

Article 195. The Administration shall process concession grants and special services contracting and shall keep the Board of Directors informed of their proceedings, so that the Board may accomplish inspection tasks and evaluate the actions taken and proceed to the granting of the concession or appropriate contract action, when this authority is not delegated to the Administration.

Article 196. The solicitation or invitation documents shall be published pursuant to the provisions of Chapter VI of this Regulation, and shall include, as a minimum, the requirements established in Chapter IV, in addition to the clauses and conditions inherent to the concession or special services.

Article 197. Concessions and special services contracts shall be awarded through the tendering procedure prescribed in this Regulation. The Administration is authorized to select the most adequate procedure, as required by the nature of the concession or service, having first communicated this decision to the Board of Directors.

When in a concession process refers to a solicitation based on the lowest price, this shall be understood to mean the best price or benefit to the Authority.

Article 198. Any conflict that may arise from awards of concessions or special services contract by the Board of Directors shall be resolved in accordance with the procedure prescribed in Chapter X.

Article 199. Guarantees required for concessions and special services contracts shall be constituted in accordance with the provisions of Chapter XI.

Section Three
Duration of the Concession

Article 200. Concessions shall have a maximum duration of twenty (20) years. However, concessions may be granted for a period of up to forty (40) years when, in the opinion of the Board of Directors of the Authority, a longer period of time is required due to the nature and extent of the concession.

Article 201. Upon expiration or conclusion of a concession, any construction or improvement that the concessionaire has made to Authority property during the term of the concession shall be incorporated, free of cost, to the Authority's estate.

Section Four
Termination of Concessions and Special Services Contracts

Article 202. Concessions shall be terminated for the following causes, in addition to the causes for administrative termination contemplated in this Regulation:

1. The improper use or purpose by the concessionaire of the property under concession, without the Authority's permission.
2. Concealment by the concessionaire of disqualifications, incompatibilities, or prohibitions, or providing false information during the concession process.
3. Assignment by the concessionaire of his rights to third parties, or encumbrance of his rights, without the Board of Directors' approval.

Article 203. The Board of Directors has the authority to terminate concessions and special services contracts, pursuant to the provisions of Chapter XIX of this Regulation, except in the cases in which the Administrator has granted the concession or awarded the special services contract.

Chapter XVIII [111]
Disposition of Excess Property
Section One
General Provisions

Article 204.[112] Any office that determines that any property under its administration is excess property, shall deliver such property to the Authority's Excess Disposal Office, which shall proceed to evaluate the property. This evaluation shall be the basis to determine which office is responsible for its disposal.

Article 205.[113] The sale of excess property shall be based on its assessed value, as determined in conformance with the above paragraph, unless the Administrator issues a written determination stating that the property be transferred gratuitously.

Article 206.[114] The administrative office responsible for excess movable property disposition may sell excess or obsolete property with an assessed value not to exceed B/.10,000.00, and which does not require additional removal expenses. The disposal of property with an assessed value of more than B/.10,000.00, and which requires additional removal expenses shall be placed under the responsibility of the Administrator, who shall authorize its disposal.

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[111] Title of the Chapter modified by article eight of Agreement No. 34 of May 30, 2000.
[112] Modified by article nine of Agreement No. 34 of May 30, 2000.
[113] Modified by article ten of Agreement No. 34 of May 30, 2000.
[114] Modified by article twenty-six of Agreement No. 48 of August 7, 2001.

The Administrator shall periodically report excess property disposition to the Board of Directors.

Section Two
Sale of Excess Property[115]

Article 207.[116] Notices of sale and tender documents, if any, shall be published in Spanish, pursuant to the provisions of Chapter VI of this Regulation. When deemed necessary, they may also be published in other languages.

Article 208. As a minimum, the notices and tender documents for the sale of excess property shall contain:
1. Date, time, and place of opening of tenders, when the tender is public.
2. Requirements for participating in the tender.
3. Rights and obligations of the Authority and of the buyer or contractor.
4. Conditions and characteristics of the property placed on sale.
5. Circumstances regarding time, place and method of sale considered necessary to promote full and open competition.
6. General and specific conditions of sale.

Article 209.[117] The Contracting Office shall be responsible for transfer of the property when the assessed value exceeds B/.10,000.00.

Article 210.[118] In addition to the public tender based on price, the public auction method may be used for the sale of excess property. The contracting officer shall select the process that best suits the purpose, in accordance with the nature of the sale.

When in such procedures reference is made to the lowest price, it shall be understood that it is the best price or benefit to the Authority.

Article 211.[119] The sale shall be cancelled in those cases when there are no tenderers or when the tenders received are under the minimum price established.
a. If the contracting process is cancelled, a new tender may be announced whereby the Contracting Officer may transfer the property at the highest price offered, provided this results in the most advantageous alternative to the interests of the Authority and this condition is noted on the award determination document, which shall be approved by the Chief, Contracting Office.
b. If the new tender is cancelled, the goods in question shall be disposed of in the most advantageous manner for the interests of the Authority, a circumstance that shall be noted on the appropriate resolution, approved by the Chief Financial Officer.

Article 212. Any conflicts arising from sales shall be resolved pursuant to the procedure for resolution of controversies set forth in this Regulation.

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[115] Title of the Section modified by article twenty-two of Agreement No. 34 of May 30, 2000.
[116] Modified by article twenty-seven of Agreement No. 48 of August 7, 2001.
[117] Modified by article twenty-eight of Agreement No. 48 of August 7, 2001.
[118] Modified by article thirteen of Agreement No. 34 of May 30, 2000.
[119] Modified by article eighteen of Agreement No. 107 of December 15, 2005

Article 213. Tender and performance bonds, when required, shall be issued in accordance with the provisions of this Regulation. In no event shall the guarantee amount be less than ten (10) percent of the value of the tender.

Chapter XIX
Administrative Termination of Contracts
Section One
General Conditions

Article 214[120]**.** The partial or full termination of contracts may be made for causes attributable to the Contractor, or by a unilateral decision of the Panama Canal Authority.

Article 215. The contracting officer shall notify the contractor in writing when the contract has been terminated. The notification shall include the reasons for termination, the time and the extent of the termination action. Before terminating a contract the contracting officer shall obtain the opinion of the Office of General Counsel.

Article 216. The notice of termination described in the previous paragraph shall be forwarded simultaneously to the contractor and guarantor or surety of the contract.

Section Two
Administrative Termination of the Contract by Unilateral Decision of the Authority

Article 217. When the contracting officer terminates a contract by unilateral decision of the Authority, he shall compensate the contractor for the work performed and for any preparatory work accomplished on the uncompleted portion of the work, including a reasonable, verified loss of profit, which shall not exceed five (5) percent of the total amount performed.

Article 218. The contractor, once notified of the contract termination, shall:

1. Suspend all work that he or his subcontractors may be performing.
2. Continue performing all other portions of the contract that have not been terminated.
3. Guarantee and protect the property of the Authority.
4. Submit a price proposal as soon as possible stating the amount to which he considers to be entitled as a result of the contract termination.

Article 219. No profit shall be recognized if it is determined that the contractor would have incurred a loss had the contract been completed.

Article 220. The amount that the Authority shall pay the contractor as a result of the termination shall not exceed the total value of the contract.

[120] Modified by article nineteen of Agreement No. 107 of December 15, 2005.

Section Three
Administrative Termination of the Contract for Reasons Attributable to the Contractor

Article 221. The following are reasons for an administrative termination of a contract due to causes attributable to the contractor:
1. Failure to comply with contractual obligations.
2. The contractor's death, the contractor's permanent physical disability, or the contractor's legal extinction when the party in question is a corporation, when the contractual relationship ceases in accordance with the terms established in the contract.
3. Contractor's bankruptcy or creditors' liens against the contractor, or when the contractor has been suspended or payments withheld, without bankruptcy having been declared.
4. Any clear and convincing evidence that a default will arise due to non-compliance with the contract terms.

These causes will be utilized although they may not be included in the contract.

Article 222. Prior to the notice of termination, the contracting officer may grant the contractor a period of time to correct the circumstances that are leading to, or might lead to the termination of the contract, and this period shall be granted according to the requirements established under Chapter XII of this Regulation.

Article 223. The contractor, once notified of the contract termination, must:
1. Suspend all work that either he or his subcontractors are performing.
2. Continue the performance of any portion of the contract that has not been terminated.
3. Guarantee and protect the property of the Authority.

Article 224. The surety shall be advised of the contractor's default, and it shall be granted a period of thirty (30) calendar days from the date of the notification of non-compliance, to pay the performance bond or substitute the contractor in all of his rights and obligations, on condition that whomever is to continue the work, on account of and at the surety's risk, has the necessary technical and financial capacity, as previously approved by the contracting officer.

Article 225. The contractor whose contract has been terminated shall be liable for the penalties imposed for such situations under the contract and this Regulation, notwithstanding any public liabilities that may correspond due to the contractual non-compliance.

Article 226. The contractor has the right to appeal the termination according to the procedures prescribed in Chapter X of this Regulation.

Article 226a.[121] When a termination decision has been issued under a contract for causes attributable to the contractor, the contracting officer may award a new purchase order or contract on the bases of the tenders originally received. For such purpose, he shall order that all original tenders that complied with the tender requirements, except those of the terminated contractor, in ascending order, with the one having the lowest price being the first on the list, be confirmed as

[121] Added by article twenty-four of Agreement No. 61 of October 17, 2002.

to their acceptability, one by one in that order until he has received confirmation of one tender that complies with the solicitation requirements, comes from a qualified tenderer, and is not onerous for an award of a new purchase order or contract.

Article 227. This Regulation will become effective on the twelfth hour of the thirty-first day of December of the year nineteen hundred and ninety-nine.

AGREEMENT NO. 30
(December 16, 1999)

"By which Articles 190 and 191 of the Contracting Regulation of the Panama Canal Authority are developed"

THE BOARD OF DIRECTORS
OF THE PANAMA CANAL AUTHORITY

WITNESSETH:

That Article 18 of the Organic Law of the Panama Canal Authority authorizes the Board of Directors to approve the Regulation on the criteria and procedures applicable to contracting of special services, as well as the granting of concessions.

That by virtue of said authority the Contracting Regulation of the Panama Canal Authority was approved by Agreement No. 24 dated October 4, 1999, that in its Articles 190 and 191 is established that the Board of Directors shall be charged with granting concessions and approving the contracting of special services; and that for this purpose it shall determine, as proposed by the Administration, the activities that shall be the subject of concession and the services that are to be considered special.

That the Administrator of the Panama Canal Authority has submitted the draft of the corresponding agreement to the Board of Directors.

AGREES:

ARTICLE ONE: Pursuant to Articles 190 and 191 of the Contracting Regulation of the Panama Canal Authority, the following definitions are established:

Service Contracts. Those awarded by the Authority for the installation, repair, maintenance, rehabilitation, modification, operation, or modernization of its property, or for the training of its human resources, according to the technical specifications described in the solicitation document.

Special Services Contracts. Those awarded by the Authority for activities related to consulting, analyses, studies, and evaluations, as well as those relative to the financial administration and risk-taking by the Authority, according to the specifications described in the solicitation document.

ARTICLE TWO: The concessions for public works, public utilities, and utilization of Panama Canal Authority property and contracts for special services shall be authorized by the Board of Directors according to the Contracting Regulation, provided their total amount is in excess one hundred thousand Balboas (B/.100,000.00).

ARTICLE THREE: The Administration is authorized to grant and approve concessions and contract special services, in accordance with the provisions of the Contracting Regulations, provided their total amount does not exceed one hundred thousand Balboas (B/.100,000.00).

ARTICLE FOUR: This agreement shall become effective on the twelfth hour of the thirty-first day of December of the year nineteen hundred ninety-nine.

TO BE PUBLISHED AND EXECUTED.

Ricardo Martinelli B.	Diógenes de la Rosa
_____	_____
Minister for Canal Affairs	Secretary