

AGREEMENT No. 168
(of October 8, 2008)

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

THE BOARD OF DIRECTORS
OF THE PANAMA CANAL AUTHORITY

WHEREAS:

Article 18.5 *c* and *f* respectively of Law 19 of June 11, 1997, whereby the Panama Canal Authority is organized, confers upon the Board of Directors of the Panama Canal Authority the power to approve the regulations applicable to contracting work, supply acquisition, and the rendering of services necessary for the proper functioning of the Canal.

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

It is deemed convenient to amend the Acquisition Regulation to adapt its content to the requirements of the Authority within the field governed by these regulations, by modifying Article 89C, with the purpose of clarifying aspects concerning how to carry out the tender selection process and establishing the possibility of requesting the review of the price proposal to the best value tenderer before requesting new price proposals to all tenderers, whenever such proposal exceeds the amount allocated.

The Administrator of the Authority has submitted for the consideration of the Board of Directors the draft agreement that contains the pertinent modifications to the above.

AGREES:

ARTICLE ONE: To modify Article 89C of the Acquisition Regulation, as follows:

“**Article 89C.** The characteristics of the non-negotiated best-value tender process are the following:

1. The Call for Tenders shall be published according to the provisions of this Regulation.
2. The Tender Document shall contain the elements described in Section Four “Tender Document” of Chapter IV of this Regulation.
3. The technical and price proposals shall be submitted and received in public in separate, closed, and sealed envelopes. The bid bond, whenever it is required in the Tender Document, shall be included in the technical proposal.

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

5. The opening of the technical proposals shall be limited to the participation of the persons indicated in the Tender Document. Detailed minutes of the opening proceedings shall be prepared, and the Contracting Officer shall submit the technical proposals to the Technical Evaluation Board, which is indicated further on.

6. The Contracting Officer shall appoint the members of the Technical Evaluation Board and the Price Verification Board composed of Authority personnel. The Technical Evaluation Board shall evaluate the technical proposals and the Price Verification Board, separately, shall verify the calculation and other elements of the price proposals only after the completion of technical evaluations and when the opening of price proposals has taken place. These boards shall evaluate the proposals based only on the criteria and score established in the Tender Document and shall make no recommendation.

7. The Technical Evaluation Board, whenever it may deem necessary due to the complexity of the subject matter, may request the Contracting Officer professional advice from the Authority's experts or from others under contract to it before or during the evaluation process, with the purpose of obtaining further knowledge concerning the subjects contained in the proposals.

8. The Authority's Inspector General may request the hiring of outside auditors and consultants to assist with the revision and auditing of the tender selection process.

9. The Technical Evaluation Board shall verify that the technical proposals fulfill the requirements established in the Tender Document, and shall evaluate the technical proposals submitted according to the score and criteria assigned to each of the elements in the Tender Document. The price proposals shall be verified by the Price Verification Board according to the criteria established for that purpose in the Tender Document.

10. The Contracting Officer may request from the tenderers, 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 tenderers the opportunity to review, correct, or clarify their technical proposals. The technical proposals that maintain exceptions or conditions, or do not fulfill the requirements established in the Tender Document shall not be considered for award and the corresponding price proposals shall not be open.

11. The Authority may change the requirements of the Tender Document after the date and time established for the submission of tenders, 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 submission of new technical and price proposals to whomever presented the proposals originally, and shall return the original price proposals presented inside their sealed envelopes.

12. Upon receiving the technical evaluation report, the Contracting Officer shall confirm that the evaluation was conducted in accordance with the established in the Tender Document. If, in the Contracting Officer's opinion the evaluation does not meet the requirements of the Tender Document, he shall return the report to the Technical Evaluation Board along with his observations. The Technical Evaluation Board shall review and analyze the observations submitted by the Contracting Officer, make the corrections deemed necessary, and shall send its final report to the Contracting Officer.

13. Once the final report from the Technical Evaluation Board is received, the Contracting Officer shall communicate, in an amendment, the date, time, and place for the opening of price proposals in public session.

14. In the opening of the price proposal, the Contracting Officer shall open the envelope containing the amount allocated and shall announce it to all present to the effects of item 20 of this article; shall disclose the scores from the technical evaluation; and shall open the price proposals. The resulting scores of the pricing and technical evaluations shall be reflected on the tender abstract with their respective weightings.

15. After the opening of the price and technical proposal described above, the Contracting Officer, together with the Price Evaluation Board, shall analyze the price proposals and the Contracting Officer shall make the contract award to the successful tenderer, provided that the price proposal has no condition or exception and is not onerous.

16. If the price of the best-value proposal exceeds the allocated amount, the Contracting Officer shall request the tenderer to reduce the amount of his price proposal, for which he will be given a deadline of not less than 10 calendar days.

17. If the tenderer to which the previous item refers to presents a new price proposal that still exceeds the allocated amount or if he decides not to submit a new price proposal or if he lets the established deadline expire without submitting a new price proposal, the Contracting Officer shall request all tenderers who have submitted technical and price proposals who have fulfilled the requirements of the Tender Document, to submit new price proposals. To that effect, the Contracting Officer shall communicate, in an amendment, the new date, time, and place, for submitting the new price proposals and the opening of price proposals to disclose them.

18. In the above-mentioned public session of opening of price proposal, the Contracting Officer shall open the new price proposals and the new scores resulting from the new price proposals and the scores of the technical evaluation criteria will be reflected in a tender abstract with their respective weightings.

19. After the opening of the price proposal described above, the Contracting Officer together with the Price Verification Board, shall analyze the new price proposals and the Contracting Officer shall award the contract to the successful tenderer, as long as his price proposal includes no condition or exception and is not onerous.

20. Notwithstanding the provisions of Article 6A of this Regulation on non-negotiated best-value tender, if the proposal that represents the best value, after the submission of new price proposals pursuant to item 17, exceeds the amount allocated to award the contract, the Contracting Officer, before declaring the cancellation of the public tender, will communicate this fact to the Administration, in order for the latter to determine whether there is justification to increase the same. The Administration's decision shall consider project profitability and any other factors that may be grounds for the corresponding amendment, following a favorable opinion by the Board of Directors.

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 tender. 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 successful tenderer, as long as it does not exceed the amount allocated, as amended. Otherwise, he will proceed to declare the cancellation of the tender.

21. The award resolution shall contain a detailed account of the development of the tender process.”

ARTICLE TWO: This Agreement shall become effective upon its publication in the Panama Canal Record.

Given in the City of Panama, on the eighth day of the month of October, two thousand and eight.

TO BE PUBLISHED AND ENFORCED.

Dani Kuzniecky

Diógenes de la Rosa

Chairman of the Board of Directors

Secretary