

**AGREEMENT No. 193
(of September 25, 2009)**

“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* 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, in the following manner:

- a. To modify Article 6B to allow as an exception, the stipulation of limits to the contractor’s liability, as long as those agreements (i) are typical or of common use in an industry or particular activity; and (ii) if not introduced, would impede or unjustifiably raise the price of the contracting or reduce the competition by making it unreasonably onerous or risky for the contractor and do not imply a major risk for the Authority; (iii) include a risk analysis study; (iv) are revised by the Department of Administration and Finance; (v) include the opinion of the Office of the General Counsel, and (vi) have the Administrator’s approval.
- b. To add an Article 6D to the Acquisition Regulation with the purpose of moving the text contained in current Article 6 B, item 2, to a separate article, keeping the norm that establishes that in contracts whose celebration was preceded by the prequalification process, the Authority may include terms and conditions that, in the Authority’s opinion, protect its interests more effectively than the provisions contained in the Acquisition Regulation or that are necessary to better protect the Authority’s interests.
- c. To modify Article 33, item 12, of the Acquisition Regulation to allow the Authority to contract in a restricted way the insurance policies it may require in accordance with and by virtue of the way the insurance market operates, but as long as they have been placed by a duly hired broker through a contracting selection process, with the purpose of guaranteeing an objective, transparent, and independent process of said broker in regards to the final insurer.

- d. To modify Article 33, item 15, of the Acquisition Regulation to adapt it to different banking loans contracts and contracts for banking services under the norms and procedures that regulate such contracting.
- e. To modify Article 131 B of the Acquisition Regulation to allow that adhesion contracts for the use of software licenses, financial services contracts, opening of accounts in financial institutions, and bank deposits include clauses which are standard of each industry, and are required for the contracting of these type of services, notwithstanding that in the case these contracts are perfected abroad, they may be subject to the law and regular foreign jurisdiction.

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 6B of the Acquisition Regulation of the Panama Canal Authority, as established below:

“**Article 6B.** The Authority may exceptionally agree upon in its contracting clauses that limit the contractor’s liability, provided that:

- 1. Such stipulations are typical or of common use in the contracts of an industry or particular activity, and
- 2. The exclusion of a stipulation limiting the contractor’s liability impede or unjustifiably raise the price of the contracting or reduce the competition by making it unreasonably onerous or risky for the contractor and do not imply a major risk for the Authority.

To the effects of what is established in this Article, Management will support and leave written proof of the convenience of including in the said contracting, stipulations that limit the contractor’s responsibility, for which reason Management shall comply with the following:

- a. The preparation of a risk analysis study on the contractor’s limit of liability in the specified contract.
- b. The review by the Department of Administration and Finance.
- c. The opinion of the Office of the General Counsel.
- d. The approval by the Administrator through a motivated resolution in consideration to the provisions set out in the present Article.

In no case shall limited liability be stipulated for fraud, deliberate or intentional default, fault or serious negligence of the contractor.”

ARTICLE TWO: To add an Article 6D to the Acquisition Regulation of the Panama Canal Authority, which shall read as follows:

“**Article 6D.** In the tender document and in the contracts whose celebration had been preceded by the prequalification process established in Section Two of CHAPTER VII of this Regulation, the Authority may include terms and conditions which, in the Authority’s opinion, protect more effectively its interests than the provisions contained in this Regulation or that were not mentioned in it, may be, in the Authority’s opinion, necessary or convenient to better protect its interests. Such terms and conditions shall prevail between the contracting parties in relation to the matters they refer to.”

ARTICLE THREE: To modify items 12 and 15 of Article 33 of the Acquisition Regulation of the Panama Canal Authority, as established below:

“**Article 33.** It shall not be necessary to complete the contractor selection process in the following cases:

...

12. The contracting of any kind of insurance policies, provided that they have been acquired through the use of the services of a duly hired insurance broker based on this regulation, with faculties to contract insurance policies on behalf of the Panama Canal Authority.

...

15. The contracting of banking loans, banking services, credit risk rating, and specialized services to mitigate the risks inherent to the fluctuations in the price of supplies, interest rates, and foreign exchange. In these cases commonly industry accepted practices for such contracting shall be used.”

ARTICLE FOUR: To modify Article 131 B of the Acquisition Regulation of the Panama Canal Authority, as established below:

“**Article 131B.** Notwithstanding the stipulations of previous articles, the confidentiality agreements, contracts and insurance policies, adhesion contracts for the use of software licenses, financial services contracts, opening of accounts in financial institutions, and bank deposits, may incorporate the standard clauses of the industry, required for contracting these services, previous opinion of the Office of the General Counsel, pursuant to the corresponding stipulation.

The contracting to which this Article refers to, may be subject to the law and regular foreign jurisdiction.”

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

Given in the City of Panama, on the twenty-fourth day of the month of September, two thousand and nine.

TO BE PUBLISHED AND ENFORCED.

Romulo Roux

Diogenes De La Rosa

Chairman of the Board of Directors

Secretary