

**IMPORTANT NOTICE:**

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Furthermore, this document is a compilation of the Agreements issued regarding a specific Regulation. Its sole purpose is to facilitate quick access to updated information. Therefore, for official purposes, please refer to the specific Agreement in its Spanish version.

**COMPILATION OF THE ACQUISITION REGULATION  
OF THE PANAMA CANAL AUTHORITY <sup>1</sup>**

**(Latest Revision: April 2022)**

CHAPTER I .....	5
General Provisions and Definitions .....	5
Section One .....	7
General Provisions.....	7
Section Two.....	7
Modification and Implementation of the Regulation .....	7
Section Three.....	8
Formal and Legal Control.....	8
Section Four.....	8
Definitions .....	8
CHAPTER II .....	12
The Contracting Authority and its Delegation .....	12
CHAPTER III.....	12
Conflicts of Interests and Improper Practices.....	12
Section One .....	12
Rules of Conduct .....	12
Section Two.....	13
Improper Practices .....	13
CHAPTER IV .....	13
Preparation for Contracting .....	13
Section One .....	13
The Administrative Unit .....	13
Section Two.....	14
Acquisition Planning .....	14
Section Three.....	15
Market Study .....	15
Section Four.....	15
The Tender Document .....	15
CHAPTER V .....	16
Competition Requirements .....	16
Section One .....	16
Promotion of Full and Open Competition .....	16

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Section Two.....	16
Contracting Excepted from and Open Competition.....	16
CHAPTER VI.....	19
Announcements and Publications.....	19
Section One .....	19
Disclosure of Programs.....	19
Section Two.....	19
Notice and Publication of Contractors Selection .....	19
CHAPTER VII .....	20
Impediments, Qualification and Prequalification .....	20
Section One .....	20
Impediments .....	20
Section Two.....	21
Qualification .....	21
Section Three.....	21
Pre-qualification .....	21
CHAPTER VIII .....	24
Purchasing Procedures.....	24
Section One .....	24
General Considerations.....	24
Section Two.....	24
Procedure .....	24
Section Three.....	25
Agreements Based on Price Lists .....	25
CHAPTER IX.....	26
Tendering Processes .....	26
Section One .....	26
General Considerations.....	26
Section Two.....	28
Public Tenders Based on the Lowest Price.....	28
Section Three.....	30
Negotiated Tenders.....	30
Section Four.....	31
Negotiated Tenders Based on the Lowest Price.....	31
Section Five .....	32
Negotiated Tenders Based on Best Value.....	32
Section Six.....	33
Two-Step Tender .....	33
Section Seven .....	33
Reverse Negotiated Solicitation at the Price of the Lowest Bidder .....	33
Section Eight.....	34
Non-Negotiated Tender on Best Value.....	34
CHAPTER X .....	37
Resolution of Conflicts .....	37
Section One .....	37
Interpretation of Contracts .....	37
Section Two.....	37
Protests .....	37
Section Three.....	40
Controversies Related to Contracts.....	40

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CHAPTER XI.....	40
Guarantees and Bonds .....	40
Section One .....	40
Tender Bonds.....	40
Section Two.....	41
Performance and Payment Bonds .....	41
Section Three .....	42
Bonds for Advance Payments.....	42
Section Four.....	42
Types of Guarantees .....	42
Section Five .....	42
Effecting and Voiding Guarantees.....	42
Section Six.....	43
Other Guarantees and Insurance .....	43
Section Seven .....	43
Particular Risks.....	43
 CHAPTER XII .....	 43
Delays and Defaults.....	43
Section One .....	43
Performance of the Contract .....	43
Section Two.....	44
Delays by the Authority.....	44
Section Three.....	44
Default and Delay by the Contractor .....	44
 CHAPTER XIII .....	 45
Contract Administration .....	45
Section One .....	45
General Principles.....	45
Section Two.....	47
Rights and Responsibilities of the Parties.....	47
Section Three.....	49
Perfection of the Contract .....	49
Section Four.....	49
Auditing of Contractor and His Contract-Related Documents .....	48
Section Five .....	50
Contract Records .....	50
Section Six.....	50
Assignment of Contracts.....	50
Section Seven .....	50
Nullity of Contract Actions and Contracts.....	50
Section Eight.....	51
Modifications.....	51
Section Nine .....	52
Quality Control and Contract Inspection .....	52
Section Ten .....	53
Duration of Contracts .....	53
 CHAPTER XIV.....	 53
Payments .....	53
Section One .....	53
Payment to Contractors.....	53

CHAPTER XV .....	55
Availability of Information .....	55
CHAPTER XVI .....	56
Debarment of Contractors .....	56
Section One .....	56
General .....	56
CHAPTER XVII.....	58
Special Services .....	58
Section One .....	58
General Provisions.....	58
Section Two.....	58
Special Services Contracting Procedures.....	58
Chapter XVIII .....	61
Disposition and Sale of Excess Property.....	61
Section One .....	61
General Provisions.....	61
Section Two.....	61
Sale of Excess Movable Property .....	61
CHAPTER XIX .....	62
Administrative Termination of Contracts .....	62
Section One .....	62
General Conditions .....	62
Section Two.....	63
Administrative Termination of the Contract by Unilateral Decision of the Authority .....	63
Section Three.....	64
Administrative Termination of the Contract for Reasons Attributable to the Contractor .....	64
AGREEMENT No. 30 (December 16, 1999) .....	66

## CHAPTER I

### General Provisions and Definitions

#### Section One General Provisions

**Article 1.** This regulation establishes the uniform norms and procedures applicable to the contracting or acquisition of the works, goods and services necessary for the operation, maintenance, conservation, modernization and expansion of the Panama Canal; to the disposition and sale of movable property of the Authority; and to the contracting of special services.

The contracting system must guarantee sufficient or superior quality, more favorable prices and more timely delivery or fulfillment in the execution of works, acquisition of goods or provision of services by third parties in favor of the Authority; as well as the disposition and sale of movable property of the Authority and the contracting of special services in the most favorable terms.

**Article 1A.** 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 1B.** Nothing in this Regulation shall be applied or interpreted in the sense of granting to any contractor rights or benefits that exceed those stipulated in the contract it entered into with 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.** Except as provided in the following article, the Authority may contract obligations arising only from contracts, provided that the Chief Financial Officer certifies that the corresponding budget item exists to comply with the contract.

**Article 4.** The Panama Canal may award contracts that establish the obligation to make payments that, as agreed in the contract, must be charged to the budget of one or more fiscal periods subsequent to the date of award of the contract, provided that the Authority:

- a) Is obliged in such contracts to consign the pertinent items in the budget of the years in which the respective payments must be made;
- b) Holds a certification signed by the head of the Finance Office of the Authority, issued in accordance with the provisions of Article 27 A of the Finance Regulations; and
- c) Obtains the authorization of the Board of Directors, in cases in which the totality of the funds to be consigned in budgets of one or more fiscal periods subsequent to the date of award of the contract is one million balboas (B/.1,000,000.00) onwards, in accordance with the certification required in point b above.

The Administration may proceed with the contracting process but may not award a contract that establishes payments charged to the budget of one or more fiscal periods subsequent to the date of its award without having the authorization of the Board of Directors indicated in this article.

**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.** 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.** 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.** 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.

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.** Clauses that limit the Contractor's liability may be exceptionally agreed upon in the contracts of the Authority, provided that:

1. Such stipulations are typical or commonly used in the contracts of a particular industry or activity; and
2. The exclusion of a provision limiting the Contractor's liability prevents or unjustifiably increases the cost of contracting or reduces competition by making it unreasonably onerous or risky for the Contractor and does not imply a greater risk for the Authority.

For the purposes of the provisions of this article, the Administration will sustain and record in the record the agreement of having included in the contracts in question, stipulations that limit the responsibility of the Contractor, for which it will comply with the following:

- a. Preparation of a risk analysis on the Contractor's limitation of liability in the particular contract. Contracts that incorporate limitation of liability clauses will be excepted from carrying out a risk analysis, when they are typical or commonly used in the activity subject to the contract and, in turn, the amount of the contract is less than B/.100,000.00.
- b. The review of the Vice Presidency for Finance of the Authority.
- c. Review by legal counsel.
- d. The approval of the Administrator by means of a reasoned resolution, prior to the award of the contract, in consideration of the provisions of this article.

In no case may limits of liability be stipulated for fraud, deliberate or intentional breach, or fault or gross negligence of the Contractor.

**Article 6C.** 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.

**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.

## **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.** 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.** In application of the principle of legality, the following acts will be subject to review of the Office of General Counsel, to verify that all legal and regulatory requirements are met:

1. Contracting of works, goods and services, and excess and sale of movable property by the Authority, the amount of which exceeds B/.100,000.00.
2. Declaration of restricted contracting for amounts greater than B/.100,000.00.
3. The written determinations that must be reviewed in accordance with these regulations.
4. Errors in offer s and actions to be taken by the contracting officer.
5. Formal protests against a contracting process.
6. Disputes over a contract.
7. Debarment of contractors.
8. Disqualification of contractors.
9. Modification of contracts that affect the price in more than ten percent (10%) and the performance time in more than thirty (30) calendar days.
10. Suspension of contract performance.
11. Administrative termination of the contract.
12. Disclosure of information from contractors or that related to the contractual matter.
13. Recovery of funds.
14. Approval of advance payments.
15. Insurance policies and bonds, with the exception of those proposed.
16. Assignment of contract payments to financial institutions authorized by the contractor.

### **Section Four Definitions**

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

**Administrative unit.** The offices of the Authority, other than the contracting office, which define the contracting needs and are also authorized to enter into decentralized contracts.

**Agreement based on price lists.** Agreements entered into with tenderers following a public

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announcement of contractors' selection, for the acquisition of goods and services at the official unit price.

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

**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.

**Best-Value Tender.** 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.

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

**Contracting.** 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:

1. **Centralized Contracting.** This type of contracting is carried out by the Authority Contracting Office.
2. **Decentralized Contracting.** The one carried out by the administrative units of the Authority.

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

**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.

**Contractor Selection Procedure.** Administrative procedure by which the Authority, prior public announcement, selects, in equal opportunities, the offer that meets the requirements set forth in the law, regulations and the tender specifications.

**Control, Controlling or Controlled.** It is understood as the direct or indirect power to exercise significant influence (i) on the administration, direction and policies of a person or (ii) on the distribution of economic benefits of a person, either through:

- a. Ownership of shares, participation fees or similar interests,
- b. Contractual rights or

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c. In any other way.

For the purposes of the preceding paragraph, any natural or legal person who, individually or in mutual agreement with others, directly or indirectly: (i) has the right to appoint a majority of members of the board of directors or another person of any other administrative body ; or (ii) is the holder, has the right to exercise the vote, or receives the economic benefits of twenty percent (20%) or more of the shares, participation quotas or similar interests of another person, it will be presumed to exercise control on said other person, unless proven otherwise to the satisfaction of the Authority.

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

**Declaration of cancellation of bidding procedure.** That administrative act resulting from a contractor selection process where there is no award for evidencing any of the assumptions contemplated in Article 68 of these regulations.

**Digital certificate.** It is the only means that allows to guarantee technically and legally the identity of a person on the Internet. It constitutes a computer file electronically signed by a certification service provider, considered by other entities as an authority for this type of content, which links signature verification data to a signer, so that it confirms his identity.

**Estimated Amount Contracts.** Contract in which the Authority aims to acquire goods, services or works, whose total or partial quantities are variable, depending on the needs of the Authority. The contract will establish its scope, duration and fixed unit price. The final amount to be paid by the Authority will depend on the amounts that are actually required and / or executed.

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

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

**Office of Finance of the Authority.** Office that directs, coordinates and has the responsibility for the administration of the finances of the Authority.

**Onerous offer.** One which exceeds the original or amended budgeted amount for a contract action.

**Pre-tender Conference.** 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.

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

**Purchase Order.** One of the documents through which the contractual relationship is formalized.

**Qualified Tenderer or Contractor.** Tenderer or contractor with the capacity to perform the

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contract.

**Quotation.** Solicitation document received for micro-purchases.

**Related Parties.** It is understood as a related party (ies):

1. Those persons who, directly or indirectly through intermediaries, control, are controlled or are under common control of the person with who they are linked to (including in the case of legal persons, subsidiaries, and affiliates);
2. Only for the purposes of the provisions of Article 43 of this Regulation, to the general manager or similar position; and every executive who reports it; the legal representative, administrators, shareholders, directors and dignitaries of the persons indicated in Paragraph 1 above, as long as they have been responsible for acts that have led the latter person to incur in some of the causes of impediment identified in the Article 43 of this Regulation.

Likewise and only for the purpose of the cause identified in paragraph 3 of Article 43 of this Regulation, any person who is a general manager, shareholder, legal representative, director, official or administrator or who has any association or relationship with the proponent or contractor.

**Revision by the Office of General Counsel.** To verify, through the Office of General Counsel of the Authority, that all legal and regulatory requirements are met.

**Service Contracts.** Those held by the Authority with third parties, to install, repair, maintain, rehabilitate, modify, operate or modernize movable or immovable property owned by the Authority or under its private administration, or to train its human resources, in accordance with the technical specifications described in the tender specifications.

**Special Services Contracts.** Those held by the Authority with third parties for them to carry out consulting, analysis, study and evaluation activities for the Authority, as well as those held with third parties for them to carry out activities related to the financial and risk management of the Authority, in compliance with the specifications described in the tender specifications.

**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.

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

## **CHAPTER II**

### **The Contracting Authority and its Delegation**

**Article 11.** The power to conduct contractor selection processes, issue administrative acts and enter into the contracts referred to in these Regulations, corresponds to the Administrator. This power may be delegated sufficiently broadly so that the person who has received, in turn, delegate it to the contracting officers. The contracting officers may bind the Authority within the limits expressly authorized.

**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.** The Contracting Office of the Authority and the administrative units expressly authorized by the Administrator pursuant to the provisions of Article 11 of this Regulation, shall carry out micro-purchases, tenders and restricted contracts. The other administrative units of the Authority will carry out micro-purchases, tenders and restricted contracts up to a maximum amount of B/. 10,000.00.

The Administrator will determine who is authorized to excess and sell movable property.

**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.** Personnel involved in the contractor selection process, awarding and managing contracts must declare their personal financial status as provided in the Ethics and Conduct Regulation of the Authority.

**Article 17.** In order to avoid conflict of interest, Panama Canal Authority employees and officials may not enter into any contract or enter into negotiations with the Authority. This prohibition extends to legal entities in which employees and officials have more than five percent (5%) of participation, or control, or representation thereof.

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**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.

## **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.** All acquisitions of the Authority will be planned as soon as the need is known, meaning that the efforts of the personnel responsible for the coordination and performance of a contract will be integrated to ensure that the Authority meets its needs in the most efficient and economical way. For contracts worth more than B/. 100, 000 the planning must be documented.

In exceptional circumstances and when this is convenient for the operation, the expansion or protection of the Canal, the Authority may enter into two or more contracts for the same purpose, for comparison purposes. In these cases, prior approval of the Board of Directors will be required.

**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, in order to meet their needs, several administrative units of the Authority require contracts to provide the same good or service, the Contracting Office will group and integrate these needs to carry out a single contractor selection procedure, which may be awarded to one or more contractors. These acts will be celebrated by the Contracting Office, regardless of the 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.** Prior to the preparation of the tender specifications or as part of the acquisition plan, the administrative unit may carry out a market analysis for any contract. This analysis will be executed with the purpose of determining:

1. Possible suppliers, with the purpose of encouraging competition.
2. Market practices related to guarantee, term and means of delivery, and financing.
3. Availability of the goods or service in the market.
4. Estimated prices.

### **Section Four The Tender Document**

**Article 27.** Repealed.

**Article 28.** 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.

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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.

## **CHAPTER V**

### **Competition Requirements**

#### **Section One**

#### **Promotion of Full and Open Competition**

**Article 29.** In order to obtain full and open competition, all information that allows tenderers to be duly informed and participate in the selection procedures of contractors of the Authority will be published and disclosed by different means of communication. Similarly, specifications and designs will be developed with reasonable flexibility that allows and promotes participation, without deteriorating quality.

If these requirements have been met, and only one qualified tenderer submits a tender to and the Contracting Officer determines that the offer presented is convenient, fair and not onerous, he may proceed with his award, which means that the requirement of promoting full and open competition.

**Article 30.** The contractor selection process that will be used to promote the broadest competition are the following:

1. Micro-purchases.
2. Tenders. Tenders may be:
  - a. Public Tenders Based on the Lowest Price.
  - b. Negotiated Tenders, which in turn present three modalities:
    1. Negotiated Tenders Based on the Lowest Price.
    2. Negotiated Tenders Based on Best Value.
    3. Reverse Negotiated Solicitation at the Price of the Lowest Bidder.
  - c. Non-Negotiated Tender on Best Value
  - d. Public tenders in two stages.
3. Sales of excess property, belonging to the Authority, which presents two modalities:
  - a. Public tender based on price or benefit for the Authority.
  - b. Public auction.

#### **Section Two**

#### **Contracting Excepted from and Open Competition**

**Article 31.** When a specific brand or model or of a specific manufacturer, distributor, supplier or seller is required for the procurement of products, services or works, the requesting administrative unit shall submit to the Contracting Officer for approval, a written determination, which shall include a founded technical report, where it will support the contracting and must indicate, among other things, the reasons why there is no adequate substitute.

The intention of contracting pursuant to this article will be published in the corresponding media.

**Article 32.** Whenever a clear and compelling emergency arises that does not allow the necessary time to carry out a contractor selection process, the Contracting Officer shall request offers from as many tenderers as possible, given the circumstances of the case, and may waive the contractor selection process. In this case, the requesting administrative unit shall submit a written determination based on the approval of the Contracting Officer and review of the Office of General Counsel, in compliance with the provisions of Article 34, which may be done after the contract is awarded. The written determination must include an explanation of the causes, situations or events that caused the need to hire urgently.

**Article 33.** The contractor selection process will not be necessary in the following cases:

1. Micro-purchases subject to the provisions of Article 50.
2. Contracts governed or authorized by a special law.
3. Loans with financial institutions, according to law.
4. Contracts entered into by the Panama Canal Authority with other government entities.
5. Duly justified contract extensions and renewals.
6. Contracts for the exchange of personal property.
7. Contracts for the acquisition of specific real property, or for leasing specific real property in cases where the Authority is the leaseholder.
8. The contracting of mediators, arbitrators and experts.
9. The contracting of legal services and jurisdictional representation.
10. The contracting of catering services for official events of the Authority.
11. The contracting of public, air, maritime, and ground transportation for official travel on established commercial routes.
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.
13. Contracts of a literary, artistic, historical or, in general, cultural nature.
14. Contracts for maintenance and repair services of equipment that include a previous diagnosis to determine the scope of the required service, for which a market analysis will be made that defines the best option available at the time.
15. The contracting for equipment maintenance and repair, when a prior diagnosis is needed to determine the scope of the required maintenance or repair, for which a market analysis to define the best available option at the time shall be made.
16. 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.
17. The contracting of security and protection consultants of the facilities of the Authority and the Panama Canal.
18. In tenders based on best value preceded by a prequalification process, contracting of experts to advise the Authority in relation to the content of the proposals during their evaluation, pursuant to the provisions of this Regulation.

19. In tenders based on best value preceded by a prequalification process, contracting of auditors and consultants required by the Inspector General to assist him with the review and audit of the contractor selection processes, pursuant to the provisions of this Regulation.
20. Contracts for the acquisition of works, goods, services, and special services, to be paid with funds that come from conditional donations, non-refundable loans or non-refundable technical cooperations.
21. Contracting of subscriptions or memberships to public or private associations.
22. Subscription to publications.
23. Contracting of enrollment of employees, officials and members of the Board of Directors in training activities, events and conferences.
24. Contracting of platform services in social networks.
25. The contracting of hotels and / or convention or meeting rooms, as well as the rental of premises and real estate for official purposes.
26. The purchase of digital certificates.
27. The sale of personal property declared obsolete, provided that:
  - a. It is done through the contracting of the services of sales agents based on any procedure contemplated in this Regulation for such purpose; and
  - b. Corresponds to floating equipment declared obsolete or excess, namely, cranes, tugboats, dredgers and the like; power generation plants, their auxiliary equipment and the like; as well as any other unused movable property that, exceptionally, is necessary or more convenient for the Authority, which are promoted through the services of sales agents; prior reasoned resolution of support by the Contracting Officer and the approval of the Vice President for Finance.

**Article 34.** The administrative unit that requests restricted contracting, based on Articles 31 and/or 32 of this Regulation, must justify the contracting by means of written determination, which will include the founded technical report and that will be submitted for the corresponding approvals, pursuant to Article 35 of this Regulation.

The written determination will be included in the file. When the contracting exceeds B/.100,000.00, the written determination will require the review of the Office of General Counsel.

**Article 35.** The written determination referred to in Articles 31, 32 and 34 of this regulation will require approvals according to the amount of the contract, as indicated below:

1. From B/. 1,000.01 to B/.100,000.00, by the supervisor of the contracting officer.
2. From B/.100,000.01 to B/.500,000.00, it will require the approval of the Chief Contracting Officer.
3. From B/.500,000.01 to B/.1,000,000.00, it will require the approval of the Administrator, who will inform the Board of Directors.
4. For more than B/.1,000,000.00, the approval of the Board of Directors will be 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, ensuring 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.** Contracts must be published and announced in a timely manner through the means of publication of the Authority or other means of communication, except for the exceptions contemplated in this regulation.

**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.** Announcements will be published as follows:

1. Contracts up to B/. 10,000.00 will be announced on the Internet for a period of not less than eight business hours, offers may be known immediately after this period.
2. Contracts exceeding B/.10,000.00 will be announced on the Internet, for a period of not less than five (5) business days, with the understanding that the term will begin from the business day following the date the announcement is posted. Proposals may be known immediately after this period has elapsed.

**Article 41.** 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.

**Article 42.** Amendments to the tender documents used in the contractor selection process will be made available to the public by the same means used for publication and distribution. The amendments will be published for a term of not less than eight (8) business hours, so that participants are allowed sufficient time to submit their offer or modify it.

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**CHAPTER VII**  
**Impediments, Qualification and Prequalification**

**Section One**  
**Impediments**

**Article 43.** All natural or legal persons (individuals and corporations) and their related parties who are in any of the following situations are prevented from being contractors of the Authority:

1. Those who have been debarred: (i) administratively or judicially to contract with the Government of Panama, the Authority or any government entity in Panama or (ii) judicially, in any other country in the world, for acts related to any of the offenses equivalent to those indicated in paragraph 2 of this Article, while these measures are in force.
2. Who have been convicted in Panama or in any other country in the world, within five (5) years prior to the award of the contract by a competent authority, with penalties of more than five (5) years for the commission of the crimes of money laundering, terrorism and financing of terrorism, embezzlement, corruption of public servants, fraud in public procurement acts, influence peddling, falsification of documents in general and international bribery. In the case of convictions abroad, crimes equivalent to those previously indicated will be considered.–
3. That they have celebrated with the Public Ministry of the Republic of Panama or with any similar entity in any other country in the world, within the last five (5) years prior to the contract award of the contractor in question, penalty agreement related to any of the offenses listed in paragraph 2 above. In the case of convictions abroad, crimes equivalent to those previously indicated shall be considered.
4. That they have been included in the list of companies and persons unable to be contracted in projects financed by the World Bank or any other list that the Board of Directors determines from time to time, during the period of validity of said sanction. The lists that the Board of Directors so determine will be published on the Authority's web page.
5. Carrying out reckless or bad faith judicial or arbitration actions or processes against the Authority, either because it has been previously determined by a competent judicial or arbitration authority, or ratified by the Board of Directors, prior approval by the Administration.

The proposals received from a person debarred from participating in any contract award act held by the Authority, as indicated in this Article, will be rejected in the award decision. Against this rejection there is no protest, no recourse.

Notwithstanding, the foregoing, in accordance with the provisions of this Article, the rejection of a tenderer may be appealed, considering it a related party of a person debarred by the Authority, as provided in Chapter X "Conflict Resolution", Section Two "Protests" of this Regulation.

**Article 43A** Exceptionally and after submittal and support by the Administration, the Board of Directors may approve the contracting with natural or legal persons who are in any of the situations

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of impediment referred to in Article 43 above, when justified because the Authority it has sufficient information to separate the natural or legal person from situations of disability, or because the interests of the Authority could be affected or compromised.

Only for the purposes of this article, it is considered that the interests of the Authority could be affected or compromised, when for any circumstance it may impact: (i) the operation, administration, conservation, maintenance, improvement and modernization of the Panama Canal, as well as its activities and related services; or (ii) the development of its complementary activities.

## **Section Two Qualification**

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

**Article 45.** A tenderer will be considered as qualified if it is determined that it has the capacity to perform the contract. The Contracting Officer may obtain and consider for qualification all information that allows to verify the following:

1. That the tenderer has the resources to execute the contract or the capacity to obtain them.
2. That the tenderer has a satisfactory record of compliance with its obligations.
3. That the tenderer has not engaged in the conduct provided for in Article 1A of this Regulation.

**Article 46.** 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.** The disqualification of the tenderer may be appealed through a protest in accordance with the provisions of Chapter X "Conflict Resolution" Section Two "Protests" of this Regulation.

## **Section Three Prequalification**

**Article 47A.** The Authority may, exceptionally and with prior authorization from the Board of Directors, use the prequalification process to determine the bidders who may participate in the corresponding bidding process. The prequalification process will have the following characteristics:

1. The prequalification specifications document will contain the minimum requirements and the ponderable evaluation criteria to be applied in the prequalification.
2. The prequalification document will indicate the purpose of the Concession contract for which the bidders will be prequalified.

3. The Authority may establish in the prequalification specifications document the maximum number of eligible bidders to participate in the corresponding tender. The bidding will indicate the criteria that will be applied to select said bidders.
4. The Authority shall call one or more public meetings in order to clarify and review the terms and conditions of the prequalification specifications document.
5. The Authority may carry out consultations, surveys, questions or meetings, in a confidential manner, with possible interested parties in the corresponding prequalification process, which must be duly documented in the file of the corresponding process, in order to exchange opinions and comments regarding the corresponding selection process.
6. Any change to the prequalification specifications document will be communicated by amendment.
7. In the event that, after the prequalification has been carried out, any of the prequalified bidders intends to make changes, if the bidder were a consortium, the composition of its members or, if it were a company, the composition of its shareholders or partners or the percentage of participation of these in society, the prequalified bidder must, within the terms provided for that purpose in the prequalification specifications document, submit his claim in writing to the Authority, complying with the conditions and abiding by the prohibitions contained in said document regarding such changes, and also subject to the following:
  - a. The Authority has the discretionary power to authorize or not the proposed changes and may, before deciding, request from the petitioner any additional information that it deems appropriate; and,
  - b. In no case may the Authority authorize the replacement of a member of the consortium if the new member does not meet or exceed the minimum requirements and each of the weighted evaluation criteria that were taken into account to prequalify the member of the consortium to be replaced, or nor may it authorize changes in the composition or in the participation of the partners or shareholders of the prequalified company if the change reduces the result of the company's evaluation.
8. The prequalification specifications document will be subject to the provisions Chapter X Section Two of this Regulation for the presentation of protests to the tender 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. 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

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days counted from the announcement of the resolution.

12. 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, services and works are acquired through contractor selection process. Contracts entered into by the Authority shall be formalized by issuing purchase orders or documents established for these purposes.

### **Section Two Procedure**

**Article 49.** For micro-purchases, the contractor selection process described in this section will be used. In the case of tenders, the processes contemplated in Chapter IX.

**Article 50.** Micro-purchases may be made through any of the following processes:

#### **A. Micro-purchases through quotations in the Panama Canal Authority's Tender Online System (SLI).**

1. Micro-purchases shall be made by means of requests for quotations on the Tender Online System (SLI).
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 notified according to the previous paragraph shall have the period established in the quotation request to communicate his acceptance or rejection of the intention to purchase.
4. The acceptance by the tenderer 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.

#### **B. Micro-purchases in businesses in the Republic of Panama or through Internet portal sites that are open to the public and dedicated to the regular sale of the products and rendering**

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**of services required.**

1. These micro-purchases will be used to obtain products and services at a low cost that are available in shops in the Republic of Panama or in Internet portals, with prices that have been advertised to the general public, in a transparent way and in accordance with the internal control mechanisms established for that purpose.
2. These micro-purchases will be carried out by employees authorized by the Authority to:
  - i. Suppliers in their permanent businesses stores regularly dedicated to the sale to the public of retail products required or the rendering of services and who have the products in stock and available for immediate delivery at the purchase site or availability to manufacture the product or render the service in a timely manner.
  - ii. Commercial suppliers through their Internet portal sites and dedicated regularly to the sale to the public of retail products, having the products in stock, with published prices and available for immediate delivery.
3. Purchases shall be made at the prices published or displayed in stores or in the Internet portal sites offered to the general public, less discounts, offers and rebates that could be applied, plus delivery costs.
4. Payments may be made by check, credit card used by the Authority, electronic transfer of funds or in cash provided by the Authority.
5. Once the purchase is completed, the employee who made the purchase will complete the recording and processing of the purchase by virtue of the payment method used, and according to the procedures and controls approved by the Administration.

Micro-purchases may not be made of products or services available on inventory or those acquired through Agreements based on Price Lists or by contracts of estimated amounts.

The Administrator will establish the procedures, the delegations of authority, the internal control mechanisms and the limits of amounts not exceeding B/.1,000.00 that will be applied to each of the two micro-purchase processes.

**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.** Price lists for the same good or service may be established with more than one proponent. The lowest bidder price that meets the requirements established in the tender documents will be taken as the official unit price. Once the official price has been established, all bidders who have complied with the process requirements will be able to take advantage of it. The contracting officer will reject the proposals from Related Parties, in order to maintain fairness in the distribution of purchase orders.

**Article 54.** The administrative units shall issue purchase orders to all signatories of the agreement in the most equitable manner possible.

## **CHAPTER IX Tendering Processes**

### **Section One General Considerations**

**Article 55.** A tender process will be applied as stated in this regulation, for:

1. Acquisitions of works, goods and services, when the amount of the contracting exceeds B/. 1,000.00.
2. The sale of movable excess property by the Authority.

**Article 56.** The tender processes are as follows:

1. Public Tenders Based on the Lowest Price.
2. Negotiated Tender, which in turn present three modalities:
  - 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.** 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.** 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

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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.

**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 modifications submitted before the date and time established shall remain unopened and in a safe place until the indicated time.

**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.** The contracting officer shall declare the cancellation of bidding procedure partially or totally, by reasoned resolution, in cases where:

1. Absence of tenderers.
2. All tenders submitted fail to comply with the requirements in the tender specification 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 Related Parties.
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.** 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.

**Article 69A.** 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.** 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.** 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 use another of the bidding processes contemplated in this chapter, with the prior approval of the Chief Contracting Officer.

**Article 71.** 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 offers.
3. The Contracting Officer may, prior authorization from his supervisor, request in advance the extension of the acceptance period of the tenders when it is anticipated that the award may not

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be made within the time provided.

4. Award 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 offer 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.** 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.** 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.

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.** 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.

Notwithstanding the foregoing, the Contracting Officer may share the specific and pertinent information regarding the bidders with the officials and directors of the Authority in order to comply with the provisions of Articles 43 and 43A of this Regulation, as appropriate.

**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 by electronic means or in sealed envelopes and shall comply with the requirements of the tender document.

In cases where the submission of a tender bond is required, but the offer must be submitted electronically, the respective bond will be physically delivered in a sealed envelope, as established in the tender specifications. For cases in which the offer must be delivered in a sealed envelope, the bid bond will be included in the offer envelope, in compliance with what is established in the tender specifications.

**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.** 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 specifications.

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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.
3. Once the opening of tenders 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 analyzed independently by the Contracting Officer or by whoever 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, as long as these changes are caused by a variation in the needs of the Authority and do not modify the contract's objective. In these cases the Contracting Officer may amend the solicitation document, with the prior approval of the Chief Contracting Officer 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 tender process.
7. The written 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 with an existing a prior written determination by the contracting officer, the contract may be awarded to the qualified tenderer who submitted the most advantageous offer 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.** The Contracting Officer shall do the following during the tender evaluation process:

1. Submit to the Technical Evaluation Board the offer with the lowest price for its objective evaluation.
2. If required, request clarifications of the offer with the lowest price to determine if it fulfills the tender document requirements.
3. Award the contract to the offer 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 an offer is onerous shall be properly accounted for in the file.
4. In the event that the contract cannot be awarded according to the previous paragraph, the Contracting Officer may decide to end the bidding process, declaring its cancellation due

to lack of tenderers, or continue to the next stage of the process. In this last case, the Contracting Officer shall submit all of the offers received to the Technical Evaluation Board for its objective evaluation.

5. If the process is not declared cancelled, according to the abovementioned paragraph, individual negotiations shall be conducted with each of the offerors to inform them of the technical and economic deficiencies of their offers and to give them the opportunity to correct, revise, or improve them. Once the corrected or improved offers are received, the Contracting Officer shall convene the Technical Evaluation Board to repeat the evaluation process.
6. Once it is determined that the offers fulfill the requirements, the contract shall be awarded among them to the qualified tenderer offering the lowest price, as long as the offer is not onerous.
7. The negotiation process shall be repeated until an offer is obtained from a qualified offeror, that fulfills the requirements of the tender requirements, 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.** 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.** 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.** 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 specification 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 in the file.
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 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 quality price relationship. 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.** 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 requirements. 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 offers and it shall be awarded to the lowest price offer. 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 Reverse Negotiated Solicitation at the Price of the Lowest Bidder**

**Article 89A.** 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 89B.** The reverse solicitation includes the following:

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 Non-Negotiated Tender on Best Value**

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

1. The Request for Proposals shall be published according to the provisions of these Regulations.
2. The Request for Proposals shall contain the elements described in Section Four “Request for Proposals” of Chapter IV of these Regulations.
3. The technical and price proposals shall be submitted in separate, closed, and sealed envelopes and received in public. The Tender Security, whenever it is required in the Request for Proposals, shall be included in the technical proposal.
4. The envelopes containing the price proposals shall be kept closed, sealed and duly safeguarded until the evaluation of the technical proposals has been completed.
5. The opening of the technical proposals shall be limited to the participation of the persons indicated in the Request for Proposals. Detailed minutes of the opening proceedings shall be taken, and the Contracting Officer shall deliver the technical proposals to the Technical Evaluation Board, as further indicated.

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6. The Contracting Officer shall appoint the members of the Technical Evaluation Board and the Price Verification Board who shall be personnel of the Authority. 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 Request for Proposals and shall abstain from making recommendations.
7. The Technical Evaluation Board, whenever it may deem necessary due to the complexity of a subject matter, may request to the Contracting Officer the professional advice from the Authority's experts, who have been contracted by the Authority before or during the evaluation process, with the purpose of increasing their knowledge with respect to matters 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 contractor's selection process.
9. The Technical Evaluation Board shall verify that the technical proposals fulfill the requirements established in the Request for Proposals and shall evaluate the technical proposals submitted according to the score and criteria assigned to each of the elements in the Request for Proposals. The price proposals shall be verified by the Price Verification Board according to the criteria established for that purpose in the Request for Proposals.
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 convenient 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 Request for Proposals shall not be considered for award and the corresponding price proposals shall not be open.
11. The Authority may change the requirements of the Request for Proposals 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 those tenderers that originally submitted proposals and shall return the original price proposals submitted inside their sealed envelopes.
12. Upon receiving the technical evaluation report, the Contracting Officer shall verify that the evaluation was conducted in accordance with the established in the Request for Proposals. If the Contracting Officer's deems that the evaluation does not meet the requirements of the Request for Proposals, he shall return the report to the Technical Evaluation Board along with his observations. The Technical Evaluation Board shall review and analyze the Contracting Officer's observations, 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, through an amendment, the date, time, and place for the public opening ceremony of the price proposals.
14. In the public opening ceremony of the price proposals, the Contracting Officer shall open the envelope containing the amount allocated to the tender process and shall announce it to all persons present for the purposes of sub-paragraph 20 of this article; shall disclose the scores resulted from the technical evaluation; and shall open the price proposals. The resulting scores of the price and technical evaluations shall be reflected on a summary table with their respective weightings.
15. After the opening of the price and technical proposals described above, the Contracting Officer, together with the Price Evaluation Board, shall analyze the price proposals and the Contracting Officer shall award the contract to the tenderer who submitted the best value proposal, provided that its price proposal does not contain any conditions or exceptions and is not onerous.
16. If the price of the best-value proposal exceeds the allocated amount for the respective tender process, the Contracting Officer shall request such tenderer to reduce the amount of his price proposal, for which such tenderer will have not less than 10 calendar days.
17. If the tenderer, to which the previous sub-paragraph refers to, submits a new price proposal that still exceeds the allocated amount, or such tenderer decides not to submit a new price proposal or the established deadline expires without such tenderer submitting a new price proposal, the Contracting Officer shall request to all tenderers that have submitted technical and price proposals and which its tenders fulfilled the requirements established in the Request for Proposals, to submit new price proposals. To that effect, the Contracting Officer shall communicate, through an amendment, the new date, time, and place, for submission of the new price proposals and the public opening ceremony of the price proposals.
18. In the above-mentioned public opening ceremony of the 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 summary table with their respective weightings.
19. After the public opening ceremony described in the above paragraph, 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 tenderer that represents the best value proposal, as long as its price proposal does not contain any conditions or exceptions and is not onerous.
20. Notwithstanding Article 6A of these Regulations on a non-negotiated best-value tender process, if the proposal that represents the best value, after the submission of new price proposals pursuant to sub-paragraph 17, exceeds the amount allocated to award the contract, the Contracting Officer, before declaring the annulment of the tender process, shall communicate this fact to the Administration, in order for the latter to determine whether there is justification to increase the allocated amount for such tender process. The Administration's decision, with the previous favorable opinion of the Board of Directors, shall consider the project's profitability and any other factors that may be grounds for such modification. If the Administration considers that such

an increase is not justified, it shall communicate this to the Contracting Officer in order for the latter to declare the annulment of the tender process. In the opposite case, the Administration shall amend the allocated amount, with the previous favorable opinion of the Board of Directors. Once the amount allocated has been increased, the Contracting Officer shall award the contract to the tenderer who submitted the best value proposal, as long as its price proposal does not exceed the amount allocated as amended. Otherwise, the Contracting Officer will proceed to declare the annulment of the tender process.

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

**Article 91.** Protests are the legal challenges that, within a contractor selection process, are made against:

1. The tender specifications
2. The disqualification of bidders
3. Denial of the prequalification request.
4. The rejection of tenderers, considering them related parties of a person debarred by the Authority, in accordance with the provisions of Article 43 of this Regulation.
5. Contract award acts.

The protests must be accompanied by the pre-constituted evidence that the petitioner wishes to present, evidence that will be appreciated in accordance with the rules of sound criticism. The Chief Contracting Officer may dictate measures to better provide and, after consulting the Office of General Counsel, shall resolve the protest.

Protests against the tender specifications may be presented by any person.

Protests against: the disqualification of tenderers; denial of a prequalification request; rejection of a tenderer because it is considered a related party of a person debarred by the Authority, or against the award act, may only be presented by those who have participated, within the process in question,

presenting a proposal or a request for prequalification, within the process in question.

**Article 92.** Protests against the tender specifications will be presented before the time and deadline for receipt of proposals, except when a different deadline and time has been expressly established in the tender, in which case only protests may be submitted with subject and within the term established in the tender specifications.

**Article 93.** 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.** 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.** 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.

**Article 95.** Protests against disqualification acts, denial of prequalification requests, rejection of a tenderer, considering it a related party of a person debarred by the Authority, or against contract award acts must be submitted within three (3) business days, counted from the expiration of the term the posting of the notification of the award established in Article 69 of this Regulation. Once this term has expired, no protest will be admitted.

The protest presented within the aforementioned term will suspend the execution of the contract until the Chief Contracting Officer resolves it, unless the suspension represents a disadvantage to the Authority, a situation in which the Contracting Officer, after the opinion of the Office of the General Counsel, will record the decision not to suspend the execution of the contract, what has been performed as in the file by means of a reasoned resolution, for the purposes set forth in the following articles.

**Article 96.** 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.** If the Contracting Officer, with the objective of preventing damage, does not suspend

the execution of the contract and the Chief Contracting Officer 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, this being the only compensation and / or compensation to which the petitioner will be entitled as a result of his protest.

If, in addition, it is determined that the petitioner should have been awarded the contract, the Chief Contracting Officer 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 as well as convenient for the best interests of the Authority.

In the event that it is not feasible or convenient and the resolution of the non-executed portion is not ordered, the petitioner will have the right to be compensated for the reasonable and proven expenses incurred in the preparation of the proposal, this being the only compensation and / or indemnity to which the petitioner will be entitled.

**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.** Protests against disqualification, the rejection of a tenderer, considering it a related party of a person that has been debarred by the Authority, to be admitted, must be accompanied by a monetary bond in favor of the Authority equivalent to five percent (5%) of the amount of the proposal, not exceeding B /.100,000.00, to cover the expenses and damages caused by its process. Exceptions to this obligation are contracts that do not exceed B /.10,000.00. In the event that the protest is declared clearly unfounded, the resolution issued by the Chief Contracting Officer will order the execution of the bond in favor of the Authority.

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

**Article 99B.** The protests against the denial of the prequalification request, will be presented within the term established in Clause 11 of Article 47B of this Regulation.

The protest against the denial of the prequalification request presented within the aforementioned term will suspend the corresponding selection or tender procedure until the Chief Contracting Officer resolves it.

**Article 99C.** 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.** 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

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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.** 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 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.** 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 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 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 the performance of the main 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 of 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 works in a newspaper of national coverage, and its satisfactory acceptance by the Authority. Third parties that have outstanding credits against the contractor must present them to the guarantor within that term.

**Article 111.** The requirement of performance and payment bonds is optional in construction contracts under B/.25,000.00.

For contracts for the acquisition of goods and services, the requirement of compliance and payment bonds is optional. In these contracts, the Contracting Officer may request compliance and / or payment bonds, with the prior authorization of the Chief Contracting Officer.

**Article 112.** Repealed.

**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 guarantees. Performance of the contract shall not be authorized until such the bonds have been approved by the

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contracting officer, prior 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 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.

**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 guarantees within the allotted time, the tender guarantee shall be foreclosed in favor of the Authority.

Once the contract is awarded, 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 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 Financial Officer and the Office of General Counsel, and the approval of the Panama Canal Authority Administrator.

## **CHAPTER XII Delays and Defaults**

### **Section One Performance of the Contract**

**Article 123.** Once the contract has been awarded 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.** 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.

**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.** 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.** 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 131B.** Notwithstanding the provisions 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 General Counsel, pursuant to the corresponding provision.

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

The chartering of vessels which are currently in service and the acquisition of public air, maritime and land passenger transportation services, as well as land transportation of passengers offered by public networks at pre-determined rates may be carried out according to procedures, contracts and clauses accepted in the industry and of common use for such contracting, including direct contracting, and shall be excluded from the application of the rules of this Regulation and from the process that develops it that may come into conflict with the procedures, contracts and clauses used for these acquisitions and may be subject to the law and regular or arbitral foreign jurisdiction. The chartering contract requires previous opinion of the Office of General Counsel regarding the compliance with applicable provisions.

Contracting for the acquisition of works, goods and services, including special services to be paid with funds that come from conditional donations non-refundable loans or non-refundable technical cooperation, whose donation requires that the contract be subject to procedures, rules and clauses that differ from this Regulation and the rules that implement it, may be excluded from the rules of this Regulation and from the implementing procedure that differ from such conditions.

**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.
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. 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 ensure 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.
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 ensure 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 award contracts on behalf of the Authority, pursuant to the limits of authority granted.

**Article 136.** When the contractor is an individual, the offer will be submitted by him/her or by whoever is authorized to represent him/her. When the contractor is a joint venture, corporation or company, the legal representative or the person duly authorized by the company shall submit the tender. In the case of joint ventures and temporary associations, the legal representatives, the tender must be submitted in the name of the consortium and will be done by the person duly authorized to represent the joint ventures and temporary associations.

**Article 137.** When expressly stated in the corresponding specifications, two or more individuals or corporations may submit one offer jointly for the award, performance or performance of a contract, being jointly and severally responsible for each and every one of the obligations derived from the offer and the contract.

The corresponding specifications will indicate the requirements that must be met to consider that the offers are presented jointly.

Therefore, the actions, acts and omissions arising during the course of the offer 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 nor prevented 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 as indicated in this Regulation, 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, which may be electronic, of all contract related documentation. The documentation must be sufficient so that, by itself, it constitutes a complete history of the contracting carried out, which supports the decision making at each stage of the contracting process, contains the information necessary to carry out audits and investigations and supports the facts in case 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 ensure that all pertinent documentation is included in the record and shall proceed to seal it. Regardless of the closing of the file, the guarantees that are part of the contract will remain in force in accordance with the terms and conditions of said guarantees.

**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.** Contractors shall not cede the rights and obligations that originate from the contract, unless the Authority authorizes such cession specifically, except in cases where the Authority expressly authorizes such assignment, subject to compliance with the formalities established in these regulations, in the contract and in the conditions set forth in the tender requirements. The assignee must meet the conditions and provide the guarantees required of the assigning contractor, in accordance with the provisions of the tender specifications.

**Article 145.** 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.** 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 grounds for annulment of the various acts held as part of the contractor selection actions:

1. Those that the Constitution or the law indicate.
2. Acts whose content is impossible or constitute crimes.
3. The acts celebrated by decision of authority that lacks competence to award the contract.
4. Those that have been held with absolute disregard for the procedure 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 ensure 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 grounds for annulment of contracts:

1. Those held by people with disabilities to contract in the cases determined by this Regulation.
2. Those held by Authority personnel who lack the competence to contract.
3. The nullity of the award decreed by judicial means.”

**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.

## **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 Contracting Officer 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.** 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 161A.** 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.

**Article 162.** In order to avoid serious effects to the interests of the Authority, in cases where the Authority proposes a bilateral modification and an agreement is not reached with the contractor, the Contracting Officer may unilaterally modify the contract, in which case such modification will be mandatory, notwithstanding that the contractor may submit a claim in accordance with the administrative process for dispute resolution included in the contract.

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

The Board of Directors may, exceptionally, authorize contracts that exceed the maximum term of five years, when it is demonstrated that the object of the contracting cannot be fulfilled in shorter periods of time; or better price offers or economic benefits can be obtained for the Authority.

**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.

## **CHAPTER XIV Payments**

### **Section One Payment to Contractors**

**Article 169.** 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, which will be established prior approval by the supervisor of the Contracting Officer who perfects the contract and review of the Office of General Counsel.

The Contracting Officer is authorized to approve advanced payments when it is adequate for the commercial practice, discounts can be obtained, or it represents some other benefit for the Authority.

**Article 170.** 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 progress reports to the contracting officer, who will verify these against the progress reports submitted by the contract inspector. These payments shall conform to the following rules:

1. The tender requirements 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 advance payments are authorized, these may be made in cash, by means of letters of credit or other financial instruments, with the prior approval of the Chief Financial Officer. 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.** The Authority shall suspend all payments due to 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 the Office of General Counsel.

**Article 176.** When the contractor is in debt to the Authority due to advance payments or excess payments, the Authority shall automatically charge the contractor interest on the amount of the debt, at the rate established in Article 170, after the thirty (30) calendar day period from the date of the notification of deb and until the date of payment.

**Article 176A.** 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.

## **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 envelopes.
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.** 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.
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.
7. That the Authority knows or discovers, after the award of a contract, that at the time of submitting its proposal, the contractor was in any of the causes of impediment referred to in paragraphs 2 and 3 of article 43 of this Regulation.
8. Be convicted, after awarding a contract by the Authority, for the commission of the crimes of money laundering, terrorism and financing of terrorism, embezzlement, corruption of public officials, fraud in public procurement acts, influence peddling, falsification of documents in general and international bribery in Panama or in any other country in the world. In the case of convictions abroad, crimes equal to or equivalent to those indicated here should be considered, unless the person found in this situation proves otherwise to the satisfaction of the Authority.
9. Be included, after a contract has been awarded by the Authority, in the list of companies and persons unable to be contracted in projects financed by the World Bank or any other list that the Board of Directors determines from time to time. The lists that the Board of Directors so determine will be published on the Authority's web page.

**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.** The Administrator's decision to initiate the debarment process will be notified to the tenderer or contractor through a written notice posted 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. 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.** 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 is 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 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.

**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**

### **Special Services**

#### **Section One**

#### **General Provisions**

**Article 190.** The Administration is entitled to contract special services for a total amount that does not exceed one hundred thousand Balboas (B / .100,000.00); when a special services contract exceeds this amount, prior approval of the Board of Directors will be required.

In each act in which the Board of Directors approves a contracting of special services, it will authorize the Administrator to sign the corresponding contracts and documents.

**Article 191.** For the purposes of the preceding article, the Board of Directors will determine, at the proposal of the Administration, the services to be considered special.

**Article 192.** In any special services contract, the general plan of the project must be fully justified, and as far it is feasible, the period covered, technical specifications, execution time, delivery time, financing time and conditions, and project life period, and other aspects established by the Authority, through a previous study.

**Article 193.** They will be part of the contracting of special services, in addition to the conditions established in the corresponding act, the tender specifications, the relevant provisions of these regulations and the rules for supervision issued by the Authority.

#### **Section Two**

#### **Special Services Contracting Procedure**

**Article 194.** It is up to the Administration to process the contracting of special services and keep the Board of Directors informed of its development.

The Administrator is authorized to sign the corresponding contracts and documents.

**Article 195.** In the case of contracts for special services for the external review of the quality control of the internal audit of the Panama Canal Authority, the Board of Directors shall exercise the following functions:

1. Approve or disapprove the tender specifications and the terms of reference prepared by the Inspector General, as well as its amendments.
2. Consider and make the observations it deems pertinent to the technical evaluation report prepared by the Technical Evaluation Board, after its review by the Contracting Officer.
3. Once all the stages of the bidding process have been completed, whether or not to award the respective special contract.

The members of the Technical Evaluation Board will be appointed by the Inspector General, and will be qualified personnel from the office in charge.

In what does not contradict the provisions of this article, the pertinent norms established in the regulations for negotiated or better value tenders will be applied.

The administration will carry out the contracting process in support of the Board of Directors and, once the act is awarded, the Contracting Officer will sign the contract and the corresponding documents according to the Regulations.

The Board of Directors is responsible for the resolution of these contracts for the provision of special services in accordance with the provisions of Chapter XIX of these regulations, upon the recommendation of the hiring officer, as well as the resolution of disputes related to these contracts, which may not have been possible to be resolved by the Contracting Officer in coordination with the Inspector General.

**Article 195A.** When contracting special services for an external quality assessment review of the internal audit functions of the Panama Canal Authority, the Board of Directors shall exercise the following duties:

1. Prepare the terms of reference and approve or disapprove the tender document, as well as its amendments.
2. Determine which qualifications shall have the Panama Canal Authority employees who will serve on the Technical Evaluation Board appointed by the contracting officer.
3. Consider and make whatever remarks deemed appropriate to the technical evaluation report prepared by the Technical Evaluation Board, after its review by the contracting officer.
4. Once all the phases of the solicitation process have been complied with, award or not to award the respective special services contract.

Pertinent rules established in the regulation for negotiated or best-value tenders shall be applied provided they do not contravene any provisions in this article.

The Administration shall perform the solicitation process in support of the Board of Directors and, once the tender has been awarded by the Board of Directors, shall subscribe the contract and the corresponding documents pursuant to the Regulation.

**Article 195B.** In the contracting of special independent external audit services, the Contractor who has been awarded the contract for this service, may not be awarded or participate in the contractor selection process for the new consecutive contract to provide the same service, unless The Board of Directors expressly authorizes it so. Notwithstanding the foregoing, the Board of Directors may authorize the participation and award to that same contractor, of one or more consecutive contracts for the provision of this service provided that the total term of such combined contracts does not exceed twelve years.

Proposals that do not comply with the above will not be considered for the award. In order for the same firm that has provided independent external audit services to participate again in a contractor selection process or be contracted to provide such services in favor of the Authority, a period of four years must have gone by, counted from the date its last contract ended.

**Article 196.** In the contracting of special services of independent external audit, the contractor to whom a contract for this service has been awarded, may not be awarded or participate in the process of selecting contractors of the new consecutive contract to provide the same service, unless The Board of Directors expressly so authorizes it. Notwithstanding the foregoing, the Board of Directors may authorize the participation and award that same contractor, of one or more consecutive contracts for the provision of this service provided that the total term of the term of such combined contracts does not exceed twelve years.

Proposals that do not comply with the above will not be considered for the award.

In order for the same firm that has provided independent external audit services to participate again in a contractor selection process or be hired to provide such services in favor of the Authority, a period of four years, counted from the ending date its last must have gone by.

**Article 197.** The tender documents shall be published in accordance with the provisions contained in chapter VI of these regulations, and shall contain, at a minimum, the requirements set forth in chapter IV, in addition to the special service clauses and conditions.

**Article 198.** For the celebration of the acts, the tender procedure established in these regulations will be used. It will be the faculty of the Administration to select the most appropriate process as required by the nature of the special service.

**Article 199.** The bonds required for the provision of special services shall be constituted in accordance with the provisions of Chapter XI.

**Article 199-A.** Public works, public service and use or exploitation concessions of a good of the Panama Canal Authority, and special service contracts, will be authorized by the Board of Directors in accordance with these Regulations, when their total amount exceeds one hundred thousand balboas (B/.100,000.00).

The power to grant and approve concessions and contract special services whose total amount does not exceed one hundred thousand balboas (B/.100,000.00) is delegated to the Administration, subject to these Regulations.

**Article 200.** Repealed.

**Article 201.** Repealed.

**Article 202.** Repealed.

**Article 203.** Repealed.

## **Chapter XVIII Disposition and Sale of Excess Property**

### **Section One General Provisions**

**Article 204.** Any office that determines that any property under its administration is excess property, shall deliver such property to the Authority's Excess Disposal and Sale Office, which shall proceed to evaluate the property

**Article 205.** 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.** The administrative office responsible for the excess and sale of movable property 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.

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

### **Section Two Sale of Excess Movable Property**

**Article 207.** 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 movable 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.** Repealed.

**Article 210.** In addition to the public tender based on price, the public auction method may be used for the sale of excess movable property. The Contracting Officer shall select the process that best suits the purpose, in accordance with the nature of the sale.

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*Working document for information use only. For official purposes, please refer to the specific Agreement in its Spanish version.*

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.** 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 process of contracting a sale is cancelled, a new act may be called, in which the Contracting Officer may transfer the good at the highest price offered, provided that this is most advantageous to the interests of the Authority and be approved by the supervisor of the contracting officer.
- 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 supervisor of the contracting officer.

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

**Article 213.** Tenderers participating in an act of selling excess movable property declared obsolete or obsolete must submit a bid bond whose value may not be less than 10% of the base price.

In the event that the Contracting Officer decides to request a performance bond, the amount thereof will be determined on the basis of a risk analysis.

## **CHAPTER XIX**

### **Administrative Termination of Contracts**

#### **Section One**

#### **General Conditions**

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

**Article 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 completed.
3. Guarantee and protect the property of the Authority.
4. Keep all equipment and materials on the site where the contract is executed until authorized by the Contracting Officer for removal.
5. Submit a price offer 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

### **Section Three**

#### **Administrative Termination of the Contract for Reasons Attributable to the Contractor**

**Article 221.** The following are grounds for administrative resolution for reasons attributable to the contractor:

1. Breach of your contractual obligations.
2. Having made a false statement or representation when submitting your proposal.
3. That the Authority knows or discovers, after the award of a contract, that the contractor was in any of the grounds of impediment referred to in paragraphs 1, 2 and 3 of Article 43 of this Regulation.
4. Having been convicted, after the awarding of a contract by the Authority, for the commission of the crimes of money laundering, terrorism and financing of terrorism, embezzlement, corruption of public servants, fraud in public procurement acts, influence peddling, falsification of documents in general and international bribery in Panama or in any other country in the world. In the case of convictions abroad, crimes equal to or equivalent to those indicated here should be considered, unless the person found in this situation proves otherwise to the satisfaction of the Authority.
5. Be included, after a contract has been awarded by the Authority, within the list of companies and persons disqualified from being hired in projects financed by the World Bank or any other list that the Board of Directors determines from time to time.
6. The death of the contractor, the permanent physical disability of the contractor, or the dissolution of the contractor in the case of companies or legal persons, when this must cause the termination of the contractual relationship in accordance with the terms established in the contract.
7. Bankruptcy or insolvency of the contractor or being in a bankruptcy process or state of suspension or default of payments, without the official bankruptcy declaration.
8. Any evident indication that there will be breach of the contractual terms.

These grounds will apply, even if they are not 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.
4. Keep all equipment and materials on the site where the contract is executed until authorized by the Contracting Officer for removal.

**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 whoever 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.** Whenever 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 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 purchasing 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).