

**AGREEMENT No. 157  
(of March 25th, 2008)**

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

**THE BOARD OF DIRECTORS  
OF THE PANAMA CANAL AUTHORITY**

**WHEREAS:**

Article 18.5 *c* and *f* respectively of Law 19 of June 11, 1997, by which the Panama Canal Authority was constituted, confers to the Board of Directors of the Panama Canal Authority the faculty to approve the regulations applicable to the contracting and acquisition of works, goods, and services necessary for the operation of the Canal;

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

It is deemed necessary to modify the aforementioned Regulation to adapt its content to the present requirements of the Canal, by:

1. Modifying Article 6B so that the clauses of limited liability refer to contracts whose celebration was preceded by a prequalification process and that such clauses be customary in international contracting;
2. Modifying Article 10 to include in the definition of “protest” the reference that they are juridical in nature and in accordance to stipulations of Section Two, “Protests”, of Chapter X of the Regulations;
3. Modifying Articles 47 and 95 to unify the term for the presentation of the protests;
4. Modifying numeral 11 of Article 47B since the procedure to resolve the protests against the denial of a prequalification request is contained in Article 91, as amended by this Agreement;
5. Modifying Articles 58 and 59, inverting their order, to obtain more clarity; eliminate the reference that affirms that protests against the contents of the pre-proposal conference documents, and confirm the understanding that in all cases observations about the invitation for bids may be made with the purpose of clarifying its formal or fundamental contents, and that this will not interrupt the contractor selection process;
6. Modifying Article 91 to clarify and limit the scope of protests so that the same refer to aspects of juridical nature; the denial of a prequalification request is included as another of the types of protest and the method is stated precisely so that the Chief of the Office of Contracts evaluates the documentation of the protest and may recommend the best measures to resolve it;
7. Modifying Article 92 to include the possibility of establishing in the invitation for bids the date and hour limit to present protests against the same and adding a paragraph to indicate the legitimacy of presenting protests in cases where a prior prequalification process has taken place;

8. Modifying Article 93 for more clarity, adding the requirement of obtaining the approval of the Chief of the Office of Contracts to be able to continue with the contractor selection process even though a protest against the invitation for bids has been received, and state precisely that the damage to the Authority must be important;
9. Modifying Articles 94 and 97 to replace the term “provable” with “proven”;
10. Adding Article 94A to establish that in cases in which the invitation for bids sets a deadline prior to the presentation of proposals for the submittal of protests, the contracting officer shall not continue with the contractor selection process until the protest against the invitation for bids has been resolved;
11. Modifying Articles 95, 97, and 99 to state that the competent instance to resolve the protests is the Chief of the Office of Contracts;
12. Modifying Articles 96 and 97 to replace the term “affected” with “petitioner” and clarify the language of the text;
13. Adding Article 99A to indicate the procedure for protests against disqualification, established in Article 47 of the Acquisition Regulation;
14. Adding Article 99B to state that the term for presentation of protests against the denial of a prequalification request is described in numeral 11 of Article 47B;
15. Adding Article 99C to establish the term of 30 calendar days to resolve the protests;
16. Adding Article 99D to incorporate the figure of negative administrative silence when the protests are not resolved in 30 calendar days;
17. Modifying Articles 131A, 144, and 145 to clarify the text;
18. Adding Article 145A to establish in contracts of government loans, private loans, or credit obligations that the Authority may negotiate conditions that authorize lenders to transfer their credits with or without the Authority’s authorization;
19. Modifying Article 161 and add a new Article 161A to state precisely that contracts for works may only increase in more than fifteen percent (15%) with prior approval of the Board of Directors;
20. Modifying Article 167 to replace the word “term” for “time limit” and establish that the Board of Directors, as an exception, may authorize contracts that exceed the maximum time limit of five (5) years;
21. Adding a paragraph in Article 176A to establish that in government loans, private loans, and other credit obligations interests charged on delayed payment may be negotiated over the interest rate agreed upon in the respective contract.

The Administrator of the Authority has submitted to the Board of Directors for its consideration the draft Agreement containing the relevant modifications.

**HEREBY AGREES:**

**ARTICLE ONE:** Article 6B of the Acquisition Regulation of the Panama Canal Authority is modified to read as follows:

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

**ARTICLE TWO:** The definition of the term *protest* in Article 10 of the Acquisition Regulations of the Panama Canal Authority is modified to read as follows:

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

**ARTICLE THREE:** Article 47 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read as follows:

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

**ARTICLE FOUR:** Numeral 11 of Article 47B of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read as follows:

“**Article 47B.** The prequalification process will be following:

...

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 days counted from the announcement of the resolution.”

**ARTICLE FIVE:** Article 58 of the Panama Canal Acquisition Regulation is modified, which shall read the following:

“**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 SIX:** Article 59 of the Acquisition Regulation of the Panama Canal Authority is modified as follows:

“**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 SEVEN:** Article 91 of the Acquisition Regulation of the Panama Canal Authority is modified as follows:

“**Article 91.** Protests are impugnations of juridical nature, within the contractor selection process, which are made against:

1. The invitation for bids
2. Award acts
3. Disqualification of bidders
4. Denial of the prequalification request

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

**ARTICLE EIGHT:** Article 92 of the Panama Canal Authority Acquisition Regulation is modified to read the following:

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

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

**ARTICLE NINE:** Article 93 of the Acquisition Regulation of the Panama Canal Authority is modified to read the following:

“**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 TEN:** Article 94 of the Acquisition Regulation of the Panama Canal Authority is modified to read as follows:

“**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 ELEVEN:** Article 94A of the Acquisition Regulation of the Panama Canal Authority is modified to read as follows:

“**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 TWELVE:** Article 95 of the Acquisition Regulation of the Panama Canal Authority is modified to read the following:

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

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

**ARTICLE THIRTEEN:** Article 96 of the Acquisition Regulation of the Panama Canal Authority is modified to read as follows:

“**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 FOURTEEN:** Article 97 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read as follows:

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

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

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

**ARTICLE FIFTEEN:** Article 99 of the Acquisition Regulation of the Panama Canal Authority is modified to read as follows:

“**Article 99.** In order to be admitted, protests against award acts shall be accompanied of a monetary bond in favor of the Authority equivalent to five percent (5%) of the amount of the proposal, not to exceed \$100,000.00, to cover expenses and costs incurred in the procedure. Contracts that do not exceed \$10,000.00 are not subject to this obligation. In case the protest is declared clearly groundless, in the resolution issued by the Chief of the Office of Contracts the execution of the bond in favor of the Authority shall be ordered.”

**ARTICLE SIXTEEN:** Article 99A is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

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

**ARTICLE SEVENTEEN:** Article 99B is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

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

**ARTICLE EIGHTEEN:** Article 99C is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

“**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 NINETEEN:** Article 99D is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

“**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 after the presentation of a protest, expires without a resolution having been issued, it shall be considered denied.”

**ARTICLE TWENTY:** Article 131A of the Acquisition Regulation of the Panama Canal Authority is modified to state the following:

“**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 TWENTY-ONE:** Article 144 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read:

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

**ARTICLE TWENTY-TWO:** Article 145 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read:

“**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 TWENTY-THREE:** Article 145A is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

“**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.”

**ARTICLE TWENTY-FOUR:** Article 161 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read:

“**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 TWENTY-FIVE:** Article 161A is added to the Acquisition Regulation of the Panama Canal Authority, which shall read:

“**Article 161 A.** 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 TWENTY-SIX:** Article 167 of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read:

“**Article 167.** The Board of Directors may, exceptionally, authorize in Canal expansion programs, or when it is demonstrated that the objective of the contract cannot be accomplished in shorter time limits, contracts that exceed the maximum time limit of five years.”

**ARTICLE TWENTY-SEVEN:** Article 176A of the Acquisition Regulation of the Panama Canal Authority is modified, which shall read:

“**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.”

**ARTICLE TWENTY-EIGHT:** This Agreement becomes effective upon its publication in the Canal Record.

Issued in Panama City, on March 25th, 2008.

TO BE PUBLISHED AND ENFORCED.



Dani Kuzniecky

Diogenes de la Rosa

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Chairman of the Board of Directors

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Secretary