

**AGREEMENT No. 166
(of September 10, 2008)**

“Whereby the Panama Canal Acquisition Regulation is amended”

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

WHEREAS:

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

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

It is deemed convenient to modify the Acquisition Regulation to adapt its content to the requirements of the Authority within the field governed by these regulations in the following manner:

- To amend Article 6B, with the purpose of adding the concept of willful breach of contract as grounds for annulment of any negotiation that limits the contractor’s liability.
- To modify Article 33 to add items 17 and 18, with the purpose of allowing the contracting of professional experts to advise the Technical Evaluation Board whenever it is required, as well as auditors and consultants for the Office of the Inspector General.
- To add a new Article 131 B, to legitimate the option of including stipulations that may be subject to the law and regular foreign jurisdiction in confidentiality agreements, in adhesion contracts for the use of software licenses, and in bank deposit and financial services contracts that are perfected abroad and pursuant to the corresponding stipulation. This is absolutely necessary in order to obtain those rights or services.
- To modify Article 226 so that this provision may be applied to tenders based on best value.

The Administrator of the Authority has submitted the draft agreement containing the pertinent amendments to the Board of Directors for its consideration.

AGREES:

ARTICLE ONE: To amend Article 6B of the Acquisition Regulation 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:

1. 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.
2. Include terms and conditions in bidding specifications and contracts to protect the Authority’s interests more effectively than the provisions contained in this Regulation, or that were not mentioned in it, and may be, in the Authority’s opinion, necessary or convenient to better protect its interests. Such terms and conditions shall prevail between the contracting parties in relation to the matters they refer to.”

ARTICLE TWO: To amend Article 33 of the Acquisition Regulation, which shall read as follows:

“Article 33. It shall not be necessary to complete the contractor selection process 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 arbitrators and experts for labor, contract, maritime, administrative and legal processes in which the Authority is a party.
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 catastrophic insurance policies.
13. The contracting of literary, artistic, or historic works or of those of a general cultural nature.
14. 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.
15. The contracting for banking and credit risk rating services.
16. The contracting of security and protection consultants of the facilities of the Authority and the Panama Canal.

17. 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.
18. 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.”

ARTICLE THREE: Article 131B is added to the Acquisition Regulation, which shall read as follows:

“**Article 131 B.** Notwithstanding the stipulations of previous articles, the confidentiality agreements, adhesion contracts for the use of software licenses, bank deposit and financial services contracts that are perfected abroad, may be subject to the law and regular foreign jurisdiction pursuant to the corresponding stipulation.”

ARTICLE FOUR: To modify Article 226a of the Acquisition Regulation, which shall read:

“**Article 226 A.** 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 FIVE: This agreement shall become effective upon its publication in the Panama Canal Record.

Given in the City of Panama, on the tenth day of September, of two thousand and eight.

TO BE PUBLISHED AND ENFORCED.

Dani Kuzniecky

Diogenes de la Rosa

Chairman of the Board of Directors

Secretary