

**ANNEX 4 - SINGLE TENDER DOCUMENTATION – REQUEST FOR QUOTATION, INVITATION TO TENDER, CONTRACT FOR THE PROCUREMENT OF GOODS, SERVICES AND CONSTRUCTION, FOR THE PANAMA CANAL AUTHORITY.**

- 4.28.1. <sup>1</sup>MINIMUM WAGE.** (For construction and services contracts in the Canal area.) In construction and services contracts, contractors must pay their employees the minimum hourly wage applicable. It is understood as minimum wage per hour applicable that corresponds to the highest between the minimum wage that has been established for the sector or item applicable by Executive Decree that sets the minimum wage rates throughout the national territory and the minimum wage established in B/.2.90 per hour in accordance with Executive Decree No. 80 of 1984.
- 4.28.2. <sup>2</sup>DUTIES, TAXES, RIGHTS, FEES, CHARGES OR CONTRIBUTIONS FROM THE COUNTRY OF ORIGIN.** The tenderer or contractor certifies that the proposed price includes all duties, taxes, rights, fees, charges or contributions, of a national, state or municipal nature applicable from the country of origin and the Republic of Panama. By virtue of this certification no claim applies.
- 4.28.3. <sup>3</sup>WITHHOLDING TAX APPLICABLE TO CONTRACTORS DOMICILED OUTSIDE THE REPUBLIC OF PANAMA.**
1. Panama Canal Authority (ACP) contractors domiciled outside the Republic of Panama, under contracts for rendering services whether totally or partially performed in Panama shall pay income tax to the National Treasury of Panama. Whenever the Contractor is a natural person domiciled outside Panamanian territory, such Contractor shall pay educational security tax also.
  2. Taxes will be paid through withholdings from the remittance of money made by the Panama Canal Authority pursuant to the Panamanian Fiscal Code.
  3. For supply and services contracts performed totally or partially in Panama, the income tax shall be applied to the total amount of the part of the Contract which relates to the services performed in Panama.
  4. The income tax rate applicable to legal persons that perform all or part of its contracts in Panama shall be 12.5% of the portion of the remittance of money that correspond to the part

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<sup>1</sup> Modified by article one of Resolution No. ACP-AD-RM13-41 (29 August 2013), effective 10 September 2013. Modified by article two of Resolution No. ACP-AD-RM-18-02 (February 16, 2018), effective February 20, 2018.

<sup>2</sup> Modified by article one of Resolution No. ACP-AD-RM13-41 (29 August 2013), effective 10 September 2013.

<sup>3</sup> Modified by article one of Resolution No. ACP-AD-RM05-28 (1 July 2005), effective 1 July 2005. Modified by article one of Resolution No. ACP-AD-RM10-99 (18 May 2010), effective 1 June 2010. Modified by article one of Resolution No. ACP-AD-RM11-57 (9 Dec. 2011), effective: (the day after date of publication 16 Dec. 2011), 17 Dec. 2011. <sup>3</sup> Modified by article two of Resolution No. ACP-AD-RM13-41 (29 August 2013), effective 10 September 2013.

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performed by the contractor in the territory of the Republic of Panama.

5. The income tax rate applicable to natural persons who perform all or part of their contract in the Panamanian territory shall be calculated over the 50% of the portion of the remittance of money that correspond to the part performed by the contractor in the territory of the Republic of Panama, as indicated in the chart down below. The 2.75% educational security tax shall continue to be withheld from the portion of the remittance of money that correspond to the part performed by the contractor in the territory of the Republic of Panama.

When the income subject to tax is:	The income tax rate shall be:
Up to 11,000	0
Over B/.11,000 up to B/.50,000	15% of the exceeding amount of B/.11,000 up to B/.50,000
Over B/.50,000	B/.5,850 for the first B/.50,000 and 25% over the exceeding amount of B/.50,000

6. To calculate the income withholding tax in each contract, the ACP shall take into account the total amount of the contracts that the ACP has paid to the contractor involved, within the January 1 through December 31 fiscal period.
7. Contractors who are natural persons domiciled outside Panama, to whom payments are made by remittance of money to their country, income tax will be withheld only when such persons within the same fiscal period receive contract payments for contracts performed all or in part in the territory of the Republic of Panama in excess of B/.22,000.00.
8. The income tax rate to be applied to natural persons domiciled outside the country who perform the contract within Panamanian territory and are paid in the territory of the Republic of Panama, shall be 15% of the contract amount; and 2.75% of educational security tax shall also be withheld from the contract amount.
9. No income tax shall be withheld when a natural or legal person domiciled outside the Republic of Panama, who has performed either total or part of the services contract within Panamanian territory, has registered as Income taxpayer before the *Dirección General de Ingresos* of the Republic of Panama. In such cases, the contractor shall submit original and duplicate copies of valid national and social security certificates of good standing along with the invoice for the pertinent payment. Originals shall be returned to contractors once compared with

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the duplicates. Submittal of these certificates is a requirement for initiating the payment process under Article 170 of the Panama Canal Authority Acquisition Regulations.

10. Pursuant to the provisions of the Fiscal Code of the Republic of Panama, foreign individuals who remain in the national territory for more than 183 consecutive or alternate days in the same fiscal year, which goes from January 1 to December 31, who receive or accrue income subject to income tax in the Republic of Panama, are under the obligation to submit their income tax statement to the National Revenue Authority of the Republic of Panama, on all Panamanian-sourced income received in that year and pay the corresponding taxes.

**4.28.4. <sup>4</sup> DOUBLE TAXATION AGREEMENTS**

Contractors domiciled outside the Republic of Panama, who wish to apply for benefits under a double taxation treaty or international agreement that the Republic of Panama is a signatory, should follow the steps and procedures stipulated by the National Revenue Authority of the Republic of Panama (ANI) and must comply with the requirements set forth by the entity requires pursuant to the provisions of Article 762-Ñ of the Tax Code. In order for the taxes paid through withholdings by ACP to be according to one of these treaties or agreements, the contractor must provide the ACP with proof of compliance with ANI's requirements for this purpose.

With regard to the proceedings before the ANI for the application of such treaties or agreements to avoid double taxation, the Panama Canal Authority will only issue certificates or documentation specifically required for each procedure under the applicable regulations on the subject, likewise reserving the right to require the contractor to present of the necessary documentation, which in ACP's opinion, supports that he is entitled to such benefits."

**4.28.5. <sup>5</sup> REQUIREMENT FOR CERTIFICATES OF NATIONAL TAX AND SOCIAL SECURITY CLEARANCES FOR CONTRACTORS DOMICILED IN THE REPUBLIC OF PANAMA FOR THE PAYMENT OF CONTRACTS IN EXCESS OF U.S. \$500.00.**

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<sup>4</sup> Derogated by article three of Resolution No. ACP-RM05-17 (12 April 2005), effective 15 April 2005. 4.28.4. TAX WITHHOLDINGS FROM CONTRACTORS DOMICILED OUTSIDE THE REPUBLIC OF PANAMA (For Construction and Services Contracts above \$10,000.00). Modified by article three of Resolution No. ACP-AD-RM13-41 (29 August 2013), effective 10 September 2013.

<sup>5</sup> Modified by article six of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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Contractors, individuals, organizations or corporations, domiciled in the Republic of Panama shall submit an original and a copy of valid national tax clearance and the Social Security clearance certificates at the time the invoice is submitted for payment. The originals will be returned, once they are compared to the copies. Submittal of the certificates is a requirement to start the payment process, pursuant to article 170 of the “Autoridad del Canal de Panamá” Acquisition Regulation. Purchase orders and contracts not exceeding U.S. \$500.00 shall be exempted from this requirement.

### **4.28.6. <sup>6</sup>IMPORT DUTIES AND SALES TAX EXEMPTIONS.**

1. By virtue of article 43 of the “Autoridad del Canal de Panamá” Organic Law, all the goods covered by the Contract, that are consigned to the ACP, and identified as such in the Contract, and services are exempt from payment of any national or municipal levies, taxes, duties, fees, charges, or contributions.
2. The contractor shall be responsible for processing and filing the Simplified Customs document as part of the delivery of consigned goods covered by the Contract.
3. The “Autoridad” will prepare the corresponding customs clearance documents.
4. When the goods are not accepted, the Contractor shall be responsible for the withdrawal of goods not accepted and for the corresponding customs processing; consequently, if in sixty days upon the notification of non-acceptance, the contract fails to withdraw the goods from “Autoridad” premises, with the corresponding customs documents, the “Autoridad” may dispose of the goods in any manner, without precluding the use, sale, donation or destruction of same, without recourse from the Contractor.
5. Noncompliance with the requirements herein established may delay the delivery of goods and payments to the contractor for causes not attributable to the “Autoridad del Canal de Panamá”.
6. According to the delivery terms, the contractor is responsible for the following:
  - a) Terms of Delivery DAP Panama (goods consigned to the ACP coming from foreign countries or from free zones):
    1. Goods. Pack, mark and accompany the goods with copy of the shipping documents, packing lists, certified copy of the invoice of origin and copy of the contract.
    2. Delivery of Documents. Deliver to the “Autoridad del Canal de Panamá”, Office of Exoneration, Building 710, Balboa,

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<sup>6</sup> Modified by article 54 of Resolution No. ACP-AD-RM08-11 (18 April 2008), effective 18 May 2008. Modified by article 11 of Resolution No. ACP-AD-RM09-03 (9 Feb 2009), effective 11 March 2009. Modified by article two of Resolution No. ACP-AD-RM11-52 (29 Sep 2011), effective 19 October 2011.

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- Republic of Panama, the original of the invoice of origin, copy of the order or contract and the original shipping documents.
3. Simplified Customs Document. Obtain at the “Autoridad del Canal de Panamá”, Office of Exoneration, Building 710, Balboa, Republic of Panama, the Simplified Customs document to withdraw the goods at the customs area.
  4. Withdrawal and delivery of the goods. Submit the Simplified Customs document in original and copy along with the original shipping documents and the original of the invoice of origin at the corresponding customs area, transport and deliver the goods as described in the purchase order or Contract.
  5. Submission of the complete invoice. See paragraph 7 of this clause.
- b) Other Terms of Delivery (goods consigned to the ACP originating in foreign countries or free zones):
1. Goods. Pack, identify, and accompany the goods with a copy of the purchase order or contract and the original invoice of origin.
  2. Submission of the complete invoice. See paragraph 7 of this clause.
- c) Goods originating from the local market with Terms of Delivery DAP Panama:
1. Goods: Pack, mark and accompany the goods with copy of the purchase order or contract.
  2. Submission of the complete invoice. See paragraph 7 of this clause.
7. Submission of complete invoice. In order to start the payment process following the delivery of the goods or services, the interested party shall submit the corresponding documentation, as the case may be, as follows:
- a) Term of Delivery DAP Panama.
1. If the interested party is domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee the original of the sales invoice, accompanied with the originals and copies of the national tax clearance and the Social Security clearance certificates, The originals of these certificates will be returned, once they are compared to the copies. In addition, it shall submit at the Office of Exoneration, Building 710, Balboa, Republic of Panama, the Simplified Customs document, dully stamped by the “Dirección General de Aduanas”, the original of the invoice of origin and the shipping documents so the ACP may process the customs clearance.
  2. If the interested party is not domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee the original of the sale invoice. In addition, it shall submit at the Office of Exoneration, Building 710, Balboa,

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Republic of Panama, the Simplified Customs document, duly stamped by the “Dirección General de Aduanas”, the original of the invoice of origin and the shipping documents so the ACP may process the customs clearance.

b) Other Terms of Delivery.

1. If the interested party is domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee the original of the sales invoice, accompanied with the originals and copies of the national tax clearance and the Social Security clearance certificates. The originals of these certificates will be returned, once they are compared to the copies.

2. If the interested party is not domiciled in the Republic of Panama: it shall submit to the contracting officer or his designee a certified copy of the sales invoice.

**4.28.7** <sup>7</sup>**OFFICIAL LANGUAGE:** The proposals, correspondence, and documents required by the purchase order or contract, shall be submitted in Spanish, or in the language indicated in the request for proposal. Notwithstanding the foregoing, when the language of the Request for Proposal is in Spanish, the descriptive commercial literature requested as part of the proposal or contract, which may be submitted in English or in the authorized language.

Once the contract is awarded, all correspondence and communications between the Contracting Officer and the Contractor will be in Spanish, except for those cases in which it has been expressly indicated that they will be in another language.

The resolutions issued by the Contracting Officer under the administrative dispute resolution process set out in Clause 4.28.13, will always be issued in Spanish, regardless of the language in which the request for proposal has been issued and/or the language in which the request for proposal establishing communications between the Contracting Officer and the Contractor should be carried out.

**4.28.8** **OFFICE HOURS:** The office hours for the contracting system shall be from 8:00 a.m. to 3:30 p.m., Monday through Friday during business days observed by the “Autoridad del Canal de Panamá.”

**4.28.9.** <sup>8</sup>**FOR MICRO-PURCHASES UP TO U.S. \$1,000.00.** The following articles of the “Autoridad del Canal de Panama” Acquisition Regulation

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<sup>7</sup> Modified by article five of Resolution No. ACP-AD-RM15-23 (31 august 2015), effective 7 september 2015.

<sup>8</sup> Modified by article thirty three of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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shall be applicable: 10, 11, 12, 17, 18, 19, 33, 44, 45, 46, 47, 50, 64, 66, 67, 68, 69, 76, 77, 78, 82, 83, 84, 85, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 123, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 161, 162, 164, 165, 166, 169, 170, 171, 172, 175, 176, 187, 214, 217, 218, 219, 220, 221, 222, 223, 225, and 226, which may be accessed on the Internet at: [www.pancanal.com](http://www.pancanal.com) under the Procurement and Sales, Administrative and Legal Section.

**4.28.10. <sup>9</sup>FOR SIMPLIFIED PURCHASES AND CONTRACTS OVER U.S.**

**\$1,000.00.** All the articles of the “Autoridad del Canal de Panamá.” Acquisition Regulation are applicable, specifically articles 10, 11, 12, 17, 18, 19, 42, 44, 45, 46, 47, 48, 49, 61, 64, 66, 67, 68, 69, 71, 73, 74, 75, 76, 77, 78, 81, 82, 83, 84, 85, 86, 87, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 123, 124, 125, 126, 127, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 144, 145, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 158, 161, 162, 164, 165, 166, 167, 169, 170, 171, 172, 175, 176, 187, 214, 217, 218, 219, 220, 221, 222, 223, 225, 226, and 226 a.; which may be accessed on the Internet at: [www.pancanal.com](http://www.pancanal.com) under the Procurement and Sales, Administrative and Legal Section.

**4.28.11. CONTRACT INTERPRETATION.** Contracts entered into by the “Autoridad” are subject to the provisions of the “Autoridad” Acquisition Regulation, as well as to the terms and conditions the Contract. The interpretation of the provisions of the Acquisition Regulation and of this Contract shall always recognize the fundamental purpose of the legal functions bestowed upon the “Autoridad”, and abide by the principle of equity in its relationship with the Contractors.

**4.28.12 CONTRACTING OFFICER’S REPRESENTATIVES (COR).**

The Contracting Officer may designate, by way of an administrative modification to the contract, contracting officer’s representatives for the technical, financial or general administration of the contract.

**4.28.13 <sup>10</sup>ADMINISTRATIVE PROCEDURES FOR CLAIMS.**

1. Claim as used in this contract means a written request by the contractor to the “Autoridad” indicating as a matter of right, the payment of certain sum of money, the adjustment or interpretation

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<sup>9</sup> Modified by article thirty four of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

<sup>10</sup> Modified by article thirty five of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 55 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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of contract terms, or other relief related to the contract. The request shall include the claimed sum certain that can be updated as costs continue to be accrued in the performance of the contract, the contractual clauses on which the claim is based and all evidence necessary to support the claim.

2. The contractor shall file any claim in writing to the contracting officer, as soon as he considers that there is a basis for such claim, but in any case, such claim shall be submitted within 90 calendar days from the date on which the fact that motivates the claim occurred.
3. The submission of a claim shall contain, as a minimum: the contract number, all the details and basis of the claim, including the support of the reasons why the contractor considers that the claim is attributable to the Panama Canal Authority, the certain and definitive sum of the claim, which could be adjusted if the claimed expenses continue to accrue in the performance of the contract, the contractual clauses and regulations on which it is based, all the evidence that supports it and a declaration that shall state that the claim is made in good faith, that the supporting data are accurate and complete, that the amount requested accurately reflects the contract adjustment for which the contractor believes the Panama Canal Authority is liable. The submission of a claim that does not contain, at least, the elements previously established, will give rise to the return of the request for claim and the request thus returned shall not suspend the time period for the presentation of the claim.
4. Within the period of sixty (60) calendar days after receipt of any claim, the contracting officer shall render a resolution disposing the claim. The resolution shall include the sum certain and the rationale for sums of money claimed accepted and rejected and shall resolve claims of contract interpretation or other relief.
5. The contracting officer's resolution is only subject to the administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The appeal shall be submitted to the Executive Manager of the Purchasing, Warehousing and Inventories Division, within five (5) office days of notification of the contracting officer's resolution to contractor by faxing a copy of the corresponding contracting officer's resolution, and shall include any new evidence that the appellant pretends to introduce at the second stage. For the appeal to be admitted, it shall be timely submitted.
6. The Executive Manager of the Purchasing, Warehousing and Inventories Division, shall notify, in writing by fax or email, the appellant of the admission or rejection of the appeal. The appeal decision shall be rendered by the Executive Manager of the Purchasing, Warehousing and Inventories Division, not later than thirty (30) calendar days counted from the date in which the respectively appeal was admitted. Copy of the resolution will be sent to the appellant by fax or email.



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7. Claims presented to the contractor by the Panama Canal Authority shall be rendered by a contracting officer's resolution; the claims shall be notified to the contractor by sending a copy of the resolution by fax or email, and shall be subject to the administrative appeal recourse established in the preceding paragraphs. The period for submission the appeal to Panama Canal Authority claim resolution shall be five (5) office days counted from the notification to the contractor. These claims will be documented as contract modifications, for bookkeeping purposes.
8. The resolution of the appeal by the Executive Manager of the Purchasing, Warehousing and Inventories Division exhausts the administrative proceeding.
9. As an exception and when deemed in the best interest of the Panama Canal Authority, the contracting officer may include expressly in the contract or in the tender documentation, an arbitration clause as means for the resolution of all disputes or claims under the contract in the interpretation, execution or termination of the present contract. In case the contracting officer decides to include such clause, the text shall be: "Exhausted the administrative proceeding, detailed in this clause, the contractor may present, within 60 calendar days following the date in which the administrative proceeding was exhausted, a request for arbitration for the same claim that was examined in the administrative proceeding. The arbitration shall be in law and the contract shall indicate the corresponding arbitral tribunal.

**4.28.14. <sup>11</sup>DELAYS IN THE COMMENCEMENT OF CONTRACT PERFORMANCE.**

1. When the Contractor cannot commence performance of the contract for causes attributable to the "Autoridad", and the contractor concomitantly, the contractor shall have the right only to an extension in the contract performance or delivery term for a period not less than those of the delays.
2. When the contractor cannot commence performance of the contract for causes attributable to the "Autoridad":
  - a) The contractor shall have the right to be reimbursed for the direct costs that necessarily and reasonably have been incurred during the proven delay period.
  - b) The Contractor may also be compensated for his administrative expenses, up to a maximum of ten percent (10%) of the direct costs that have been recognized by the "Autoridad" as being related to the period of delay; the "Autoridad" shall not compensate additional administrative expenses for any other circumstances nor use any other means to estimate this expense.

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<sup>11</sup> Modified by article nine of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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- c) Profits shall not be paid on expenses related to the delay.
- d) The Contractor shall have the right to an extension of the contract performance time, for a period not less than the delay.
- e) Cost increases and time extensions granted to the Contractor shall be documented in writing through amendments to the Contract.

**4.28.15. <sup>12</sup>SUSPENSION OR INTERRUPTION OF CONTRACT PERFORMANCE .**

1. The Contracting Officer may order the total or partial suspension or interruption of the performance of the contract for the period deemed appropriate and convenient to the interests of the Authority.
2. When the Contracting Officer suspends the performance of the contract for reasons attributable to the “Autoridad”, the Contractor shall be entitled to be reimbursed for all direct costs that necessarily and reasonably have been incurred during the period counted from the suspension of the performance of the Contract up to its resumption.
3. The Contractor may also be compensated for its administrative expenses, up to a maximum of ten percent (10%) of the direct costs that may have been recognized by the “Autoridad” as being related to the suspension period.
4. The “Autoridad” shall not compensate additional administrative expenses for any other circumstance nor use any other method to estimate these expenses.
5. Profits shall not be paid on expenses related to the suspension period.
6. The Contractor is entitled to receive a time extension for performance of the Contract, for a period of time not less than that of the suspension.
7. Cost increases and time extensions approved for the Contractor shall be documented in writing by amendments to the Contract.
8. The “Autoridad” shall not recognize any adjustment in the price or time of the contract if the suspension or interruption was due to causes attributable to the contractor, or if it is shown that the suspension or interruption has not affected the performance of the Contract or work.
9. When the interruption in the performance of the contract is due to causes attributable to the Autoridad and the contractor concomitantly, the contractor shall only have the right to a time extension in the performance of the contract for a period equal to the concomitant delays.

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<sup>12</sup> Modified by article ten of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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**4.28.16. RENEWAL. (For contracts with renewal clauses.)**

1. The renewal of a Contract is a unilateral right of the “Autoridad”, by which it may, if it so elects, acquire additional goods and services within the established time limit, or renew the period of the Contract for the periods stipulated in it.
2. When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “CONTRACT PERIODS SUBJECT TO RENEWAL” are included and identified in the Contract, the “Autoridad” may exercise its right to acquire these goods and services or to renew the Contract within the term and the prices established in the Contract, after notifying the Contractor, within 30 calendar days prior to expiration of: (a) the period of time established in the contract for ordering additional goods and services subject to renewal, or (b) the contract. The Contracting Officer shall amend the Contract to reflect the exercise of this right.
3. Prior to exercising the renewal, the Contracting Officer shall perform a market analysis to insure that the exercise of the renewal is the best alternative and benefits the “Autoridad”. To achieve this, it shall consider the administrative cost of the selection process that the “Autoridad” will have to incur as an element of the market analysis, prior to the exercise of the renewal. On purchases up to U.S. \$100,000.00, the administrative cost to be applied shall be U.S. \$4,000.00, and on those higher than U.S.\$100,000.00, the cost shall be U.S.\$9,000.00.

**4.28.17 <sup>13</sup>DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED.**

1. Having delivered and received acceptance of the goods or services that are the object of the contract, and the complete invoice, the contractor may offer a discount for prompt payment and request in the corresponding invoice or by means of a written request addressed to the Accounts Receivable and Payable Section, Accounting and Cost Division, that payment be made before 30 calendar days. The “Autoridad” may approve the request provided it considers that the offered discount is advantageous.
2. For contractors domiciled in the Republic of Panama, the complete invoice shall comply with the legal dispositions of the Republic of Panama in effect that require the following:
  - a. Contractor’s name,
  - b. RUC number,
  - c. DV number,
  - d. Contractor’s address,
  - e. Sequential numbering,

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<sup>13</sup> Modified by article thirty six of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 56 of Resolution No. AC´-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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- f. Flowchart of original and copies, preprinted,
- g. Invoice date,
- h. Contract number,
- i. Payment terms,
- j. Quantity and description of goods sold and services rendered, unit price and total,
- k. The invoices and other documents authorized by DGI shall contained preprinted the name and RUC of the printing plant, date printed and numbers contained in each pad.

**4.28.18** <sup>14</sup>**FORM OF PAYMENT.** The ACP will pay amounts due to Contractors under new or renewed contracts, according to instructions received from the Contractor as follows:

- 1. ACH payments to a local bank;
- 2. Electronic funds transfer (EFT) to a USA bank;
- 3. Bank transfer (SWIFT);
- 4. Other method established in the contract.

In accordance with the selected payment method, the contractor shall provide the following information to the ACP Contracting Officer:

- 1. ACH payment to a local bank:
  - a. Name of the bank
  - b. Name of the account
  - c. Account number
  - d. Type of account
  - e. Route and transit number
- 2. Electronic funds transfer (EFT) to a USA bank:
  - a. Name of the bank
  - b. Name of the account
  - c. Account number
  - d. Type of account
  - e. ABA / IBAN number
- 3. Bank transfer (SWIFT):
  - a. Name of the bank
  - b. Name of the account
  - c. Account number
  - d. Type of account
  - e. SWIFT code

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<sup>14</sup> Modified 10 February 2006. Modified by article 57 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article 1 of Resolution No. ACP-AD-RM09-19 (22-Jul-2009), effective 22-Aug-2009. Modified by article 1 of Resolution No. ACP-AD-RM10-108 (15-Jul-2010), effective 1-Oct-2010. Modified by article 1 of Resolution No. ACP-AD-RM11-54 (1-Nov-2011), effective 1-Jan-2012. Modified by article 1 of Resolution No. ACP-AD-RM17-15 dated may 8, 2017.

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In all payment methods, the contractor / supplier will be responsible for the costs related to the local or international transfer of funds, as well as for any correspondent bank fees or charges or costs associated to procedures or for financial or banking intermediation in the sending of funds in United States dollars or any other currency in which the payment of the service has been contracted.

The contractor accepts and will take into account that, as a consequence of the above, the intermediary banks or his bank can make debits or charges to the amount paid by the ACP. The ACP will be responsible for payment of the amount of the invoice duly accepted, so any amount charged or discounted from that amount by the intermediary banks or beneficiaries will be borne by the Contractor / Supplier. The ACP is not and shall not be responsible for any charge or cost that results from the implementation of the payment method selected by the contractor / supplier.

The Contractor will be responsible for any additional costs incurred as a result of providing incorrect payment instructions. This additional cost will be deducted from the payment.

The Contractor is responsible for notifying the Contracting Officer all and any changes in the payment instructions.

This clause does not apply to contracts that include a different payment method, in accordance with any special condition of the ACP.

### **4.28.19 <sup>15</sup>ASSIGNMENT OF PAYMENTS**

1. An assignment of payments is a proceeding by which the “Autoridad” accepts the contractor’s request to assign payments due him for the performance of a contract to a financial or government institution.
2. The assignment of payments shall only be made for the total of all payments to be issued under the respective contract.
3. This procedure cedes to the financial or government institution all future payments under a contract, and is independent of the amount stated in the assignment contract.
4. The “Autoridad” will make the assigned payments only to one financial or government institution.

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<sup>15</sup> Modified by article thirty seven of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article first of Resolution No. ACP-AD-RM17-42 of December 15, 2017.

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5. The financial institution, as the interested party for the payment shall submit its valid national tax and Social Security clearance certificates for the processing of its payments.
6. After acceptance of the assignment documentation, the contractor or interested party shall note on the face of all invoices submitted the following phrase: “Invoice corresponds contract subject to an Assignment of Payments.”
7. For the assignment of payments to be accepted by the “Autoridad”, the contractor shall submit the following documents for approval by the “Autoridad”:
  - a. The Assignment of Payments Contract between the contractor (assignor), and the financial institution (assignee). The Assignment Contract must contain the following information:
    - i. The number of the contract wherein the payments are being assigned.
    - ii. A statement to the effect that the assignment covers all the payments to be issued under the contract or of the remaining funds if payments have already been made.
    - iii. A statement to the effect that the parties to the Assignment Contract (assignor and assignee) release the “Autoridad del Canal de Panamá” of any liability arising from such assignment.
  - b. Authorization by the assignor’s Board of Directors to make the assignment.
  - c. A letter to the Contracting Officer requesting the assignment. The assignor’s authorized representative must sign the letter.
  - d. Certificates from the Public Registry (or equivalent in the case of foreign companies) of the assignor and assignee.
  - e. Authorization from the surety or guarantor of the contract.
  - f. Copies of the identification cards of the legal representatives or individuals authorized to sign for the assignor and assignee. In case these persons are not local residents, copies of any other personal identification documents acceptable to the parties.
  - g. Valid national tax and Social Security clearance certificates of the financial institution and assignor.
8. The following requirements apply to assignment of payments to a government institution:
  - a. A letter, signed by the legal representative of the contractor requesting that payments be made to a respective government institution, with acceptance of payments from the government institution.
  - b. Authorization by the assignor’s Board of Directors to make the assignment.
  - c. Certificates from the Public Registry of the assignor.
  - d. Authorization from the surety or guarantor of the contract.
  - e. Copy of the identification card of the legal representative of the assignor.

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In all assignments duly approved by the Authority, in his capacity as assignor, the contractor must cover and be responsible for the administrative cost charged by the Authority for managing this assignment. The amount of this cost is equivalent to the sum of B/.630.00 (six hundred thirty balboas), and will be automatically deducted by the Authority from the assigned amount, with the first payment to be made in favor of the assignor.

The assignments of payments to State institutions do not include the charge for the processing of said assignment.

**4.28.20 <sup>16</sup>ADMINISTRATIVE TERMINATION OF THE CONTRACT BY  
UNILATERAL DECISION OF THE “AUTORIDAD.”**

1. The “Autoridad” reserves the unilateral right to partially or totally terminate the performance of the contract. The Contracting Officer shall notify the Contractor in writing of the Contract termination, specifying the reasons, the dates and extent of the termination.
2. Upon being notified of termination of the Contract, the Contractor shall:
  - a. Immediately stop all the work that he or his subcontractors are performing;
  - b. Continue to perform any portion of the contract that has not been terminated.
  - c. Secure and protect all property of the “Autoridad”;
  - d. Remove from the work site all temporary installations and equipment that are his property and that have not been incorporated to the work, as long as such removal does not cause, in the “Autoridad” ’s judgment, any damage to “Autoridad” ’s property, or to the work and/or the installations already built;
  - e. Transfer title and deliver to the “Autoridad” any manufactured articles, supplies, material, drawings, designs, and any other information that, had the contract been completed, would become property of the “Autoridad”;
  - f. Make attempts to sell any manufactured article, supplies, material, or product of the contract that is not required by the “Autoridad”, as long as the Contracting Officer provides his approval.
  - g. Submit, at the latest 60 calendar days after termination of the contract, his claim for the amount, which he considers, is due him as a result of Contract termination.
3. In case of termination of the Contract due to the unilateral decision of the “Autoridad”, the Contractor shall have the right to be reimbursed

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<sup>16</sup> Modified by article twelve of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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those direct costs related to the work which was accomplished, and for preparatory work performed on the uncompleted portion of work, as long as these costs were necessary and reasonably incurred.

4. The contractor may also be compensated for indirect costs, up to a maximum of ten (10) percent of the direct costs of the work accomplished.
5. The “Autoridad” will not compensate any additional administrative expenses for any other reason nor use any other method to estimate that expense.
6. A profit rate of five (5) percent will be recognized on direct and indirect expenses incurred on the completed work.
7. No profit shall be recognized if it is estimated that the Contractor would have suffered losses, had the Contract been completed.
8. The amount that the “Autoridad” shall pay the Contractor as a result of termination of the Contract shall not be more than the total amount of the Contract.
9. In case of discrepancies regarding the termination of the Contract, these may be resolved using the resolution of claims clause.

**4.28.21 <sup>17</sup>PENALTY FOR CONTRACT DEFAULT.**

1. The contractor whose contract has been terminated for causes attributable to the contractor shall not be able to receive awards as penalty for defaulting on a contract for a period of:
  - a. Twelve months, when the contract amount is greater than \$100,000.00.
  - b. Three months, when the contract amount is \$100,000.00 or less.
2. The term of suspension will be counted from the date of the suspension is notified in Internet.
3. If the contractor, upon being sanctioned, is already serving a previous sanction period, the new period shall start at the end of the previous one.
4. The sanction is subject to the administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The appeal shall be filed within five office days counted from the date of notification in Internet.
5. For the appeal to be admitted the appellant shall be legally able to appeal, the resolution shall be susceptible to appeal recourse and shall be timely submitted.
6. If the appeal is admitted, the Executive Manager of the Purchasing, Warehousing and Inventories Division will notify in writing the appellant of the admission, whom will have five (5) office days, counted from the notification, to substantiate its pretension and present the evidence.

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<sup>17</sup> Modified by article thirty eight of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.



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7. The appeal decision shall be rendered by the Executive Manager of the Purchasing, Warehousing and Inventories Division not later than fifteen (15) office days counted from the date in which the appeal file was completed with the appellant's pretension and evidence.
8. The resolution of the appeal by the Manager, Contracting Division exhausts the administrative proceeding.

**4.28.22. ESTIMATED QUANTITY CONTRACTS.**

1. Contracts for estimated quantities may be used for purchase, delivery or service orders. When the "Autoridad" requires supply of goods and services in estimated quantities that are shown on the price list on the first part of the contract, it is committed to purchasing these from the contractor during the term of the contract. The amounts indicated on the price list are estimated and do not bind the "Autoridad" to order these, unless the contrary is stated or the price list identifies a minimum quantity, which the "Autoridad" would be obligated to purchase.
2. The goods and services required by the contract shall be acquired by purchase, delivery or service orders issued by the administrative unit responsible for the acquisition. These orders are subject to the terms, conditions and clauses of the contract. In case of discrepancies between the order and the contract, the last shall prevail.
3. The prices agreed to may not be increased during the period of the contract, unless the contract expressly allows this. The contractor agrees to deliver the goods ordered at the price and within the period agreed to.
4. If the "Autoridad" requires urgent delivery of goods and services within a different or shorter period than stated on the contract, and the contractor is unable to accept the order according to the terms, conditions and delivery requirements of said order, the "Autoridad" may purchase the goods and services by any other tendering procedures..
5. Orders issued during the term of the contract and not completed during said term, shall be completed according to the time limit expressed in the order. The rights and obligations of the parties arising from the contract shall extend up to the date of delivery shown on the order.
6. The place of delivery of the goods or services shall be stated on the order, if different from that stated in the contract, as well as the employee of the "Autoridad" responsible for the inspection and acceptance.
7. The contractor shall submit the corresponding invoice at the time of delivery of the goods and services to the employee of the "Autoridad" identified in the previous paragraph so that he may verify that the delivery and quality of these goods or services conform to the conditions agreed to in the contract and he shall issue his consent so that payment may follow.
8. Once the requirements stated in the previous paragraph have been complied with, the contractor shall submit his invoice, together with the

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verification and document of consent, to the Accounts Receivable and Payable Section of the “Autoridad”.

- 4.28.23. AGREEMENTS BASED ON PRICE LISTS.** The parties to an agreement based on price lists are the “Autoridad del Canal de Panamá” (“AUTORIDAD”) and the subscriber shown on the first part of the agreement (SUBSCRIBER). There may be more than one SUBSCRIBER. The parties agree to the following:
1. When the “AUTORIDAD” requires the supply of goods and services shown on the price list on the first part of this agreement, the “AUTORIDAD” binds itself to purchasing these from the SUBSCRIBER or SUBSCRIBERS during the period of the agreement, base periods and renewal periods, if any.
  2. The quantities indicated on the price list are estimated and do not obligate the “AUTORIDAD” to order these from the SUBSCRIBER or SUBSCRIBERS..
  3. The existing agreement based on price lists is not a contract. The contractual relationship is established with the issuance of the purchase order by the “AUTORIDAD”, and acceptance of it by the SUBSCRIBER, who shall have a period of three (3) office days, counted from the date on which the purchase order is sent, to inform of its acceptance or rejection.
  4. If there is more than one SUBSCRIBER for the same item, the “AUTORIDAD” will choose the SUBSCRIBER, after having verified the information on the ORACLE system, that it is the one with the least amount ordered.
  5. When the SUBSCRIBERS are not able to accept the purchase order in accordance with the terms and conditions of delivery, the “AUTORIDAD” may obtain the goods and services using any other means of tendering procedures.
  6. The prices agreed to shall not be increased during the term of the agreement, unless the agreement expressly states the opposite. The SUBSCRIBER agrees to deliver the goods ordered at the prices and within the term agreed to.
  7. Goods and services under the existing agreement will be acquired by the issuance of purchase by the administrative unit responsible for the purchase. Purchase orders are subject to the terms, conditions and clauses of the agreement. In case of discrepancies between the purchase order and the agreement, the agreement shall govern.
  8. Purchase orders issued during the term of the agreement and not completed during said term shall be completed in accordance with the date of delivery shown on the order. The rights and obligations of the parties identified on the agreement shall extend up to the date of completion indicated on the order.
  9. The purchase order shall describe the place of delivery of goods and services, and the employee of the “AUTORIDAD” responsible for the inspection and acceptance of these.

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10. The Contractor shall submit the corresponding invoice at the time of delivery of the goods and services to the employee identified in the previous paragraph, so that he may verify that the delivery and quality of these conform to the terms agreed to in the contract, and issue his consent so that payment may follow.
11. Once he has complied with the requirement stated in the previous paragraph, the Contractor shall submit the invoice, together with the verification and consent document, to the Accounts Receivable and Payable Section of the “AUTORIDAD”.

**4.28.24. COPYRIGHTS AND PROPRIETARY INDUSTRIAL RIGHTS.**  
**(Applicability shall be described in the purchase order or contract.)** The Contractor transfers exclusively to the “Autoridad del Canal de Panamá” all copyrights and proprietary industrial rights over drawings, designs, models, manuals, reports, and other documents specified in the tender document, that have been produced by the Contractor, in the performance of this Contract. The “Autoridad” shall have the exclusive right to carry out or authorize modifications, arrangements, and transformations on these; to publicly divulge them; to reproduce them; to register them as its own; to promote or market them; and use them in any manner.

**4.28.25. CONTRACT WITH A FOREIGN PUBLIC ENTITY.** A contract for technical services with a foreign public entity, with which an agreement exists for this purpose, shall incorporate the terms and conditions of said agreement.

**4.28.26. <sup>18</sup>PRICE ADJUSTMENT.**  
*(For construction contracts).*

The prices established in the contract are fixed, and shall not be subject to any price adjustment, except those pursuant to the provisions established by this standard clause tender. Contractors are responsible for including in their prices all direct or indirect costs, expenses, and utilities required for the performance of the contracted works and/or the rendering of services object of the contract.

**4.28.27. <sup>19</sup>CONTRACT PRICE BREAKDOWN.**  
*(For construction contracts).*

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<sup>18</sup> Modified by article first of Resolution No. ACP-AD-RM16-24 of 2 August 2016.

<sup>19</sup> Modified by article second of Resolution No. ACP-AD-RM16-24 of 2 August 2016.

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Within the first ten (10) calendar days after perfecting of the contract and/or as required by the Contracting Officer, the Contractor shall submit, for his approval, a detailed price breakdown of his proposal. The Contracting Officer may request the Contractor to provide supplementary, partial or total price breakdowns. The submitted price breakdowns shall include adequate and sufficient cost details so that cost allocation may be easily identified within the activities and tasks.

The Authority reserves the right to request adjustments to the proposed breakdown in the cases where the price breakdown or the cost details are not consistent with the activities or tasks. Payments to the contractor will be based on the price breakdowns approved by the contracting officer.

**4.28.28. PHYSICAL CONDITIONS DIFFERENT FROM THOSE  
CONTRACTED.**

*(For construction contracts in the Canal area).*

1. The Contractor shall immediately notify the Contracting Officer in writing when he finds any of the following conditions at the work site, before such conditions are disturbed:
  - a. Subsurface conditions that differ considerably from those indicated in the contract; or
  - b. Unknown or unusual conditions at the work site that differ considerably from those generally found on work of the type contracted.
2. The Contracting Officer shall immediately investigate the condition reported upon notification from the Contractor. If the condition differs considerably from that contracted and causes an increase or decrease in the price offered or in the length of time established for completing any portion of the work, a modification to the contract shall be agreed in order to implement the changes caused by the different site conditions encountered.
3. No adjustment to the contract shall be made if the Contractor does not provide the required written notice.
4. No adjustment to the contract shall be made for physical conditions differing from those contracted after final payment has been made on the contract.

**4.28.29. MATERIALS AND LABOR.**

*(For construction contracts in the Canal area).*

1. The equipment, materials, and articles to be incorporated into the work shall be new, of the best quality, and adequate for their intended bonds use, unless otherwise specified in the contract. Any reference in the specifications concerning equipment, materials, items, or patented processes by trade name, manufacturer, or catalog number is for the purpose of establishing a standard of quality and shall not be construed as restricting full and open competition. The Contractor may use any equipment, material,

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- article, or process that, in the opinion of the Contracting Officer, is equal to that specified.
2. The Contractor shall obtain the approval of the Contracting Officer for machinery, mechanical equipment, or any other type of equipment to be incorporated into the work. When requesting approval, the Contractor shall submit to the Contracting Officer the manufacturer's name, model number, and other information concerning performance, capacity, nature, and category of the equipment in question. When so required by this contract or by the Contracting Officer, the Contractor shall also obtain the Contracting Officer's approval for the material and articles that the Contractor plans to incorporate into the work. When requesting approval, the Contractor shall provide complete information concerning the material or article in question. When required, the Contractor shall submit samples for approval. The Contractor shall cover all costs related to the submission of such samples. All machinery, equipment, materials, and articles not duly approved and installed or used by the Contractor are under risk of a later rejection.
  3. All work under this contract shall be performed in the best possible manner, using high quality standards and qualified personnel for each of the different phases of the work. The Contracting Officer may require, in writing, that the Contractor remove from the work site any employee the Contracting Officer considers incompetent, careless, or otherwise objectionable.

**4.28.30. SUPERVISION OF THE PROJECT.**

*(For construction contracts in the Canal area).*

1. During the performance of this contract and until completion and acceptance, the Contractor shall designate a competent superintendent at the work site, approved by the Contracting Officer, and with authority to act on behalf of the Contractor.
2. As a minimum, the designated superintendent shall be a qualified professional licensed by the Technical Board of Engineering and Architecture, and shall have prior experience, preferably in the type of work specified in the contract. The superintendent shall be present at the work site during all working hours.
3. The superintendent shall have an adequate number of assistants or foremen for the different phases to be accomplished simultaneously at the site. The work superintendent, as well as his assistants and foremen, shall follow the instructions of the inspector related to compliance with contract specifications and drawings. The Contracting Officer may require, and the Contractor shall comply with, the change or removal of a foreman or supervisor found to be evidently incompetent or negligent.

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4. The Contractor shall not remove from the site the superintendent and foremen approved by the Contracting Officer, without prior notification in writing of such a measure and provided a substitute has been approved.

**4.28.31. OTHER CONTRACTS.**

*(For construction contracts in the Canal area).*

The Authority may perform, using its own personnel or third parties, work near or at the work site of this contract. The Contractor shall cooperate with other contractors or Authority employees and shall comply with all contractual obligations, adjusting his work schedule to accommodate the performance of other work according to the instructions that the Contracting Officer has given for such purposes. The Contractor shall not accept or permit any action that may interfere with the performance of the project by other contractors or Authority employees.

**4.28.32. PROTECTION OF THE VEGETATION, STRUCTURES, EQUIPMENT, AND EXISTING UTILITIES.**

*(For construction contracts in the Canal area).*

1. The Contractor shall protect and preserve all structures, equipment, and vegetation (such as trees, shrubs, and grass) on or adjacent to the work site, which are not to be removed and which do not interfere with the work required under this contract. The Contractor shall only remove trees when specifically told to do so and shall avoid causing damage to surrounding vegetation. If any limb or branch of a tree is broken during the execution of this contract due to the careless operation of equipment or by workmen, the Contractor shall trim the limb or branch with a clean cut and will paint the cut with a tree-pruning compound, as directed by the Contracting Officer.
2. The Contractor shall protect from damage all existing improvements and utilities in the area of the project or adjacent to it, as well as third-party property adjacent to the project area of which he has been notified or should have known about. The Contractor shall repair any damage caused to these structures or installations, including third-party property, resulting from negligence or from failure to comply with the requirements of this contract, or from failure to exercise proper care when performing the work.
3. In the event of damage to Authority property, installations, and equipment attributable to the contractor, the procedures established in the Financial Systems Manual (MFS) 5.110, Registry and Recovery of Costs for the Repair of Damages Caused by ACP Contractors to Proceed with the Investigations, Repair, and Compensation of Said Damages, shall be applied.

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**4.28.33. WORK SITE, SHOPS, STORAGE AREAS, AND FIELD OFFICES.**  
*(For construction contracts in the Canal area).*

1. The term “work site” includes all areas where the Contractor shall perform operations for the purpose of executing this contract, without exclusion of Authority work areas, shops, offices, roads, streets, and other facilities.
2. The Contractor shall limit his operations (including the storage of materials) to areas assigned in the solicitation document or to those approved by the Contracting Officer.
3. The Contractor is responsible for any work performed during the execution of the contract and releases the Authority (including its officers and agents) of any public liability regardless of the type of liability that may result from his actions.
4. Prior to starting the work, the Contractor shall submit for the approval of the Contracting Officer a blueprint, in triplicate, showing the location and dimensions of the facilities he intends to build on a temporary basis such as: offices, shops, storage areas, sanitary facilities, and other installations deemed necessary for the performance of the contract.
5. These temporary structures shall be built with labor and material supplied by the Contractor at no cost to the Authority. These temporary structures shall be the property of the Contractor and shall be removed, restoring the area to its original conditions, at no cost to the Authority, upon completion of the project and before final payment is made.
6. Only equipment and materials required by the contract shall be stored in the areas approved for such purposes for the Contractor’s use.
7. If, during the execution of the contract, areas assigned for the Contractor’s use are not being utilized by the Contractor or it is proven that they are not essential for the future development of the project as determined by the Contracting Officer, the Contractor shall immediately and when so instructed by the Contracting Officer, evacuate and clean the areas at no additional cost to the Authority.

**4.28.34. CLEANING OF WORK AREA.**  
*(For construction contracts in the Canal area).*

The Contractor shall, at all times, keep the work area, including storage areas, clean and free of accumulated waste materials. Before completing daily work, the Contractor shall remove from the work site and its surrounding areas any rubbish, tools, scaffolding, equipment, and materials that are not the property of the Authority. Upon completion of the project, the Contractor shall leave the work area in a clean, neat, and orderly fashion to the satisfaction of the Contracting Officer.

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**4.28.35. CONTRACT SPECIFICATIONS AND DRAWINGS.**

*(For construction contracts in the Canal area).*

1. The Contractor shall keep a copy of the contract specifications and drawings at the work site and shall allow the Contracting Officer or his representative to use them at anytime. Any information, data, or detail shown on the contract drawings, but not mentioned in the specifications or vice versa, shall be understood as having been specifically shown and mentioned in both. In cases where there are differences between the information shown on the drawings and the specifications, the specifications shall prevail. In case of discrepancies in the dimensions shown in the drawings or specifications, they shall be submitted, in writing, to the Contracting Officer who shall send his final interpretation to the Contractor in writing. In case of a discrepancy between the numerical dimensions and the scales shown on the drawings, the numerical dimensions shall prevail. Any erroneous interpretation by the Contractor, as well as any expenses resulting from such interpretation, shall be the sole responsibility of the Contractor.
2. Workshop drawings are drawings submitted to the Authority by the Contractor or Subcontractor for the purpose of showing the proposed detailed methods of manufacture and assembly of structural parts and details of the installation of systems, materials, and equipment. These shop drawings shall include drawings, diagrams, sketches, listing, and descriptive explanation of the equipment, illustrations, test results and all the necessary information that allows the Contractor to explain in detail how he will perform the different aspects of the work in accordance with contract requirements.
3. The Authority reserves itself the right to duplicate, use, and dispose of all shop drawings, equipment, and complementary information submitted for approval under this contract, as it may deem necessary for its interests.
4. If this contract requires the submittal of shop drawings, the Contractor shall be responsible for coordinating the preparation of these documents and insuring that they contain correct information and comply with contract requirements.
5. Prior to the submittal of shop drawings to the Authority, these must be approved by the Contractor, and as evidence of their review and approval, the drawings must be signed or sealed as such by the Contractor. If evidence of approval by the Contractor is lacking, the Contracting Officer shall return the drawings for subsequent submittal and approval.
6. The Contracting Officer shall approve or reject any shop drawings. Should the shop drawings be rejected, the Contractor shall be told the reasons for it. Any work done without the approval of the Contracting Officer based on the shop drawings, shall be at Contractor's risk and expense. The Contracting Officer's approval



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does not exempt the Contractor from any responsibility in the event of errors or omissions in the shop drawings, or from any responsibility in complying with contract requirements, with the exception of variations expressly approved by the Contracting Officer. Should the shop drawings show variations from contract requirements, the Contractor shall indicate such variations, in writing, to the Contracting Officer in a separate note when he submits the shop drawings for approval. In the event the Contracting Officer were to approve the variations, this action shall be formalized through a contract modification.

7. The Contractor shall submit to the Contracting Officer for review four (4) copies of the shop drawings (unless otherwise indicated elsewhere in the specifications) as required in the technical specifications. The Contracting Officer retains three (3) copies and returns one to the Contractor.

**4.28.36. SCOPE OF WORK.**

*(For construction contracts in the Canal area).*

1. The Contractor shall furnish all labor, materials, equipment, tools, instruments, transportation, fuel, power, water (except for any material, equipment, or services which the solicitation document establishes as being furnished by the Authority), and the necessary supervision to execute and complete the project strictly adhering to contract terms.
2. The main Contractor shall perform, with his own personnel, equipment, and material, the work equivalent to a minimum of fifty-five percent (55%) of the total work contracted. This percentage may be reduced during the execution of the work, if the Contractor so requests and the Contracting Officer considers that such reduction proves beneficial to the Authority.

**4.28.37. <sup>20</sup>ACCIDENT PREVENTION.**

*(For construction contracts in the Canal area).*

1. The Contractor shall provide and maintain work conditions and procedures that safeguard the lives of the general public and those of Authority personnel, as well as its property, materials, supplies, and equipment exposed to the work carried out by the Contractor. The Contractor shall also provide and maintain working conditions and procedures that prevent the interruption of Authority operations and delays in project completion dates, and that control costs during work performance.
2. For such purposes and for construction, demolition, removal, or improvement contracts, the Contractor shall –

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<sup>20</sup> Modified by article 59 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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- a. Provide appropriate safety barricades, signs, and signal lights.
  - b. Comply with the regulations, safety manuals, and safety and occupational health and environmental protection provisions of the Panama Canal Authority, Code of Federal Regulation standards (29 CFR Part 1926 and 29 CFR Part 1910) and standards of the National Fire Protection Association (NFPA) of the United States of America.
  - c. Adopt any safety measure that the Contracting Officer indicates as being necessary for the performance of work.
3. Should the Contracting Officer become aware of any deviation in these requirements or any condition posing imminent threat or risk to the health and safety of Authority personnel or the public in general, he shall notify the Contractor verbally, followed by a written note asking the Contractor for immediate action to correct the situation. This notification, when delivered to the Contractor or his representative at the work site, shall be considered an official notice of noncompliance with the contract that calls for corrective action. If the Contractor does not take corrective action or refuses to do so, the Contracting Officer may suspend the work totally or partially until such time when the Contractor takes proper measures. The Contractor shall not be entitled to submit a claim for an extension to the contract or for additional costs based on this order for suspension.
4. The Contractor shall notify the Contracting Officer or his representative of any dangerous condition that is not his responsibility but that can be corrected by others.
5. When the Contractor is performing electrical work or when the work is being done near electrical equipment or circuits, the Contractor shall take the following measures:
- a. The Contractor shall be responsible for insuring that the supply of electric current to the structure is de-energized, isolated, and identified with appropriate markings. The Authority will de-energize the electrical supply or isolate the cable, conductor, bus, circuit breaker, or line on which the Contractor desires to work. The Authority will re-energize the cable, conductor, bus, circuit breaker, or line once the Contractor has completed work and certifies that they are ready to be put back in service.
  - b. When performing paint jobs, roofing, or making improvements to buildings in close proximity to electrical lines, such work shall be programmed so that the lines are de-energized while personnel work in the area. The Contractor shall make the necessary arrangements with the Contracting Officer's representative and with the Authority's Energy Division for the necessary power outages.
  - c. Paintwork, alterations, and additions to Authority buildings usually require working in close proximity to electrical equipment and circuits within the buildings. When the Contracting Officer

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- considers it necessary to de-energize such circuits, the Contracting Officer will schedule such outages.
- d. Power outages, when necessary, shall be scheduled in such a manner as to avoid prolonged interruptions of energy services.
6. The Contractor shall also be responsible for:
- a. Submitting for approval his safety program within thirty (30) calendar days after contract award. The safety plan shall include safety training sessions and safety inspections on a frequent and appropriate manner, as a normal and integral part of contractual activities.
  - b. Submitting for approval a listing of personal protective equipment, by type and manufacturer, to be used by employees whose work involves any amount of risk.
  - c. Consult with Contracting Officer's representatives in order to develop a mutual understanding regarding the administration of the accident prevention program (analysis and control of risks, certifications and testing of material-handling equipment, and competent personnel and training of Contractor workers and supervisors, as well as the handling of coordination and authorizations in industrial areas and offices and contingency plans).
7. The Contractor shall include this clause in all of his subcontracts, making pertinent changes in relation to the parties involved.
8. The Contractor shall disregard any portions of this clause that does not specifically apply to the work required by this contract.

**4.28.38. PROJECT SIGN.**

*(For construction contracts in the Canal area).*

The Contractor shall make and install a sign at the work site at the location designated by the Contracting Officer. The sign shall be 1.20 meters high and 1.80 meters wide and shall comply with the requirements of the sketch attached at the end of this section of the solicitation document. The sign shall be installed no later than ten (10) calendar days after the Contractor receives notice to proceed. No separate payment shall be made for installing and maintaining the project sign.

**4.28.39. PROTECTION OF MATERIALS AND PROJECT.**

*(For construction contracts in the Canal area).*

1. The Contractor shall be responsible for the protection, preservation, and maintenance of all materials, supplies, or equipment (including any Authority supplies or property), as well as the work performed or in process of performance, against deterioration, damage, or loss during the period of performance until the date of acceptance of the work.

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2. The Contractor shall heed to any requests from the Contracting Officer concerning the protection of materials and the integrity of the project.
3. If, in the opinion of the Contracting Officer, the Contractor fails to take the necessary steps to protect materials, supplies, equipment and the work performed, they shall be protected by the Authority and the cost for such protection shall be charged to the Contractor or deducted from payments due to him.

**4.28.40. SANITARY FACILITIES.**

*(For construction contracts in the Canal area).*

The Contractor shall provide and maintain toilet facilities for the use of his personnel at the work site. The type, quantity, and location of these facilities shall be approved by the Contracting Officer. The Contractor shall maintain the toilet facilities in a clean and sanitary condition at all times. Upon completion of the work at the site, the Contractor shall remove the toilet facilities at his own expense.

**4.28.41. DRINKING WATER.**

*(For construction contracts in the Canal area).*

Unless otherwise indicated, the Contractor shall provide drinking water for his employees.

**4.28.42. <sup>21</sup>DESCRIPTIVE DATA AND CORRESPONDENCE.**

*(For construction contracts in the Canal area).*

1. All catalogues, operation instructions, descriptive literature, references, specifications, drawings, and notes relevant to the equipment and/or materials provided in accordance with the specifications, as well as all correspondence, shall be written in Spanish, with the exception of those documents referring to equipment and/or materials that are only available in English.
2. All blueprints and drawings shall be prepared in accordance with the requirements of the *American National Standard Institute (ANSI)* using the metric system of measurement. However, the use of the English system of measurement shall be allowed when the conditions so require and subject to the approval of the Contracting Officer.
3. When required by the specifications or by the Contracting Officer, the Contractor shall submit the following documents for approval:
  - a. List of Materials: Before any material, accessory, or equipment to be incorporated into the project may be purchased, the Contractor shall submit a complete list of such materials,

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<sup>21</sup> Modified by article 1 of Resolution No. ACP-AD-RM13-23 (25 April 2013) effective 1 May 2013. Modified by article 1 of Resolution No. ACP-AD-RM16-28 of September 1, 2016.

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accessories, or equipment, together with the manufacturers' names and addresses and their catalogue numbers and trade names. A complete and separate list shall be submitted for the materials, accessories and/or equipment required under each section of the specifications.

- b. Descriptive Data: The Contractor shall furnish detailed information and descriptive data for the different materials, accessories, and equipment to be incorporated into the work, for the purpose of determining quality and compliance with the requirements of the specifications. Any material, accessories or equipment that, in the judgment of the Contracting Officer does not comply with the specifications, shall be rejected. The products of any recognized manufacturer, regularly engaged in his commercial production, shall not be excluded on the basis of minor differences, as long as he is in compliance with specification requirements concerning materials, capacity, and performance.
4. Form No. 3816 "Material Submittals" shall be used for submitting information on materials, accessories, or equipment. All correspondence shall be addressed to the Contracting Officer indicating the contract number and title.
5. Submittal of information on materials, accessories and/or equipment may be done by sending the documentation to the e-mail address designated by the ACP or by personally delivering the documentation to the established physical address. Only one (1) set of copies of the documentation shall be submitted when sending information digitally, via e-mail. If the documentation is delivered in person to the physical address, the Contractor shall submit only one (1) copy of each document (unless otherwise indicated).
6. If the information is delivered in person to the physical address, it is understood that the Contractor has submitted all the required information at the time the Form 3816 is presented and sealed by the ACP. If the information is sent via e-mail, the documentation shall be considered as received at the time the e-mail containing the Form 3816 is received in the inbox designated by the ACP for that purpose. When the e-mail containing the documentation is received after ACP working hours, the time and date of delivery shall be established at the start of the next working day.
7. Samples:
  - a. The Contractor shall submit all the samples of materials required in the specifications within a reasonable period of time prior to their use, to allow for their inspection and testing thereof. Those

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samples of materials that require laboratory testing shall need, in general, a minimum of twenty (20) calendar days for testing once they are received by the Contracting Officer. However, a longer period of time may be needed depending on the nature of the required testing or the capacity of the testing laboratory to perform the tests.

- b. All samples, in the sizes and quantities required by the Contracting Officer or by the specifications, shall be submitted (unless otherwise stated by the Contracting Officer) properly identified with the contract number, the clause corresponding to the specifications, the name of the material, trade name, name of manufacturer, place of origin, name and location of the project where the material will be used and the name of the Contractor furnishing the sample.
  - c. The samples shall be packed in such a way as to guarantee that they arrive at their destination in good conditions, and all transportation and handling costs shall be prepaid by the sender.
  - d. Upon approval, those material samples not subject to destructive tests shall be filed at the office of the Contracting Officer until the project has been completed, with the exception of samples of accessories or other items approved by the Contracting Officer, which may be marked for identification and installation at the site of the project. Should the Contractor desire to keep an approved sample for his files, he shall submit sufficient additional samples to permit the required distribution. Any approved or rejected samples shall be returned only at the request of the Contractor, and any cost associated with returning the samples shall be paid by the Contractor.
  - e. The samples selected shall be subject to testing in accordance with the requirements of applicable specifications. If a sample fails to meet the specification requirements, the cost of the testing shall be at the Contractor's expense. The Authority reserves itself the right to reject samples of materials from any manufacturer whose previous samples failed to pass the tests required by the specifications.
8. Submittals of Materials, Accessories, and/or Equipment:  
Each submittal of material, accessories, and/or equipment shall be accompanied by its respective form (Panama Canal Authority Form 3816), completed in full and certified by the Contractor. To the extent possible, only one form shall be submitted with all the information relative to each section of the specification, but under no circumstances shall one form be submitted providing information on more than one section of the specifications. Each copy of the information submitted for approval shall be properly identified with the number and name of the section of the specifications, the corresponding material or equipment, and the contract number under which the submittal is made. Should

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there be any differences between the equipment or material proposed and those specified, these shall be clearly shown on the materials, accessories, and/or equipment submittal. Fabrication of material or equipment, or construction related thereto shall not start until approval has been given.

- a. As soon as the materials, accessories, and/or equipment submittals have been approved, the documentation shall be identified with a stamped seal indicating “Approved” or “Approved with Notes” and a set of copies shall be returned to the Contractor via e-mail (digital form) or hand-carried, according to the way the information was originally submitted by the Contractor. The submittal of materials, accessories, and/or equipment that have been approved in this manner shall not require re-submittal. However, if the Authority rejects the submitted documentation, these materials, accessories, and/or equipment shall be re-submitted as soon as possible with the necessary corrections and/or adjustments required by the Contracting Officer. If the Contractor desires to have more than one (1) copy returned to him, he shall increase the number of copies submitted in person in equal proportion, indicating his request in writing on the submittal form 3816. The ACP shall consider that the Contractor has been notified, at the time the ACP sends the documentation back via e-mail
- b. The approval of materials, accessories, and/or equipment submittals by the Contracting Officer does not represent, under any circumstances, a complete review of the items, but only indicates that, in general, the materials, equipment, system, arrangements, details, and/or methods of construction are satisfactory. Such approval does not relieve the Contractor from responsibility for any error or omission, which may exist, and the Contractor shall be responsible for the dimensions and design of adequate connections, details, proper construction, installation, and operation of all the work according to specifications. The approval shall be subject to a final inspection prior to acceptance of the project.

**4.28.43. AS-BUILT DRAWINGS.**

*(For construction contracts in the Canal area).*

1. During the progress of work, the Contractor shall keep a complete set of contract drawings on which he shall record all changes and corrections made to the information shown on the drawings initially furnished by the Contractor.
2. This set of updated drawings shall be available at the work site at all times. Should the Contracting Officer determine that the drawings are not up to date, the Contracting Officer may suspend the performance of those segments of the work where the changes or corrections have not been incorporated into the set of drawings. Any

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costs or delays resulting from the Contracting Officer's decision shall be borne by the Contractor.

3. Upon completion of work, the Contractor shall provide the Contracting Officer one set of contract drawings with all changes or corrections recorded or marked so that the work may reflect the "as-built" condition. This set of drawings marked "as-built" shall be submitted to the Contracting Officer prior to the acceptance of work. All revisions and changes made shall be made in such a manner that they stand out when viewed against the information originally provided.

**4.28.44. RESTRICTED AREAS.**

*(For construction contracts in the Canal area).*

1. Contractor employees shall need special installation clearances for access to restricted areas (such as locks, electrical power stations, water purification plants, pumping stations, and industrial areas). The Authority will process these clearances at no additional cost to the Contractor. The Contractor shall furnish a list of employees to the Contracting Officer at least fifteen (15) calendar days prior to the initiation of work. This list shall have the complete names, in alphabetical order, of employees together with their cedula or identification card number.
2. Contractor employees shall carry their cedula or identification cards at all times and show them when requested by authorized Authority personnel. The Contractor shall insure that employees stay within the work areas and do not wander indiscriminately about in other places within restricted areas.

**4.28.45. SUBCONTRACTORS.**

*(For construction contracts in the Canal area).*

1. If the main Contractor has awarded subcontracts for the performance of the contract work within this contract, he shall fill out the Subcontractor form and submit it for approval to the Contracting Officer within fifteen (15) calendar days after award of the contract to the main Contractor. The form shall contain the name and address of the subcontractor, a brief description of the work to be performed under the subcontract, and an outline of the subcontractor's experience in the type of work subcontracted. In case the Contracting Officer considers that the experience described is inadequate for the work to be performed, the Contracting Officer shall notify the main Contractor so that the subcontract may be rescinded. Subcontractors who in turn subcontract out work shall be subject to this regulation and approval procedure.
2. Under no circumstances shall a contractual relationship exist between subcontractors and the Authority. The Contractor shall be responsible for all the activities of the subcontractors and for the



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fulfillment of the obligations derived from his work and from the subcontracts. The Contractor shall be responsible to the Authority for work performed by his subcontractors, as if he had performed the work himself.

3. The Authority shall maintain no direct relations with the subcontractors. The Authority shall issue all orders and correspondence directly to the Contractor, who shall insure their immediate transmission to the subcontractors. The Contractor shall avoid delays in relaying the information to his subcontractors, as the Authority will only be concerned with the date when the order was given to the Contractor as the effective date of the order.

**4.28.46. SITE INVESTIGATIONS AND CONDITIONS AFFECTING THE WORK.**

*(For construction contracts in the Canal area).*

1. The Contractor acknowledges that he has taken all reasonable measures necessary to ascertain the nature and location of the work, and to have investigated to his entire satisfaction the general and local conditions that may affect the work or the cost of contract performance, including but not limited to:
  - a. Conditions relating to transportation, disposal, handling, and storage of materials;
  - b. Availability of labor, water, electric power, and accessibility;
  - c. Uncertainties concerning weather, bodies of water, or any other similar physical conditions at the work site;
  - d. The conformation and conditions of the terrain; and
  - e. The type of equipment and facilities required before and during the execution of the work.
2. The Contractor also accepts the conditions with respect to the type, quality, and quantity of surface and subsurface material or obstacles to be found, which have been verified through an inspection of the site, including all exploratory information supplied by the Authority, as well as information shown on the drawings and the specifications that are a part of this contract. Any failure on the Contractor's part to take the actions described and accepted in this clause shall not relieve the Contractor of any responsibility to properly estimate the difficulty and cost involved to successfully complete the project at no additional cost to the Authority.
3. The Authority assumes no responsibility for any conclusion or interpretation made by the Contractor based on the information furnished by the Authority, nor does it assume any responsibility for any comment, statement, or interpretation of the same, made before the start of the project, by any of its officers or agents concerning the conditions that may affect the work, unless such comment, statement, or interpretation was expressly included in the contract.

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**4.28.47. <sup>22</sup>PROTECTION OF CULTURAL AND PALEONTOLOGIC  
RESOURCES**

*(For construction contracts in the Canal area).*

1. Definition:  
**Cultural and paleontologic resources:** Human remains or graves; artifacts; structures, food, bone, vegetal charcoal remains or other deposits; pavements, walls or other construction; any indication of agricultural or human activity.
2. If during contract performance the Contractor discovers or encounters cultural or paleontologic resources, the Contractor shall immediately stop all work in the area of the finding and notify the Contracting Officer. The Contractor shall take necessary measures to record, report, preserve, and protect the site and the cultural or paleontologic resources found.
3. The Contracting Officer shall immediately notify the findings to the Panama Canal Authority Protection and Emergency Response Division, through the Executive Manager of the Purchasing, Warehousing and Inventories Division and the Executive Vice-president of the Administration and Finance Department, so that the Administrator may place the cultural or paleontologic resources at the disposal of the pertinent authorities according to legal procedures.
4. The Contracting Officer shall modify the contract in accordance with the contractual clause entitled “Suspension of Work.”

**4.28.48. <sup>23</sup>DISPUTES AND CLAIMS.** *(For construction, services, and related contracts.)*

**4.28.49. REQUIREMENT FOR THE SUBMITTAL OF CERTIFICATION  
DOCUMENT OR LICENSE.**

*(For construction, services, and related contracts.)*

Within 10 working days after the execution of the contract, the Contractor shall submit to the Contracting Officer a certificate or license issued by the Engineering and Architecture Technical Board accrediting him to render the specific service required by the contract, so that he can be given the order to proceed with any services, project, construction, or other related contracts.

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<sup>22</sup> Modified by article 60 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

<sup>23</sup> Derogated by article fourteen of Resolution No. ACP-AD-RM03-26 (25 June 2003), effective 7 July 2003.

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**4.28.50. <sup>24</sup>PERFORMANCE AND PAYMENT BONDS.**

*(For construction contracts in the Canal area. For goods and services contracts when required by the corresponding tender)*

1. The Contractor shall submit the performance and payment bonds within a period of ten (10) working days, pursuant to the provisions of Clause 4.28.74 “Bonds” of this tender following the notice of the perfection of the contract.
2. The performance bond guarantees the performance of the contract or the obligation to perform the contract objective faithfully. Once the contract is fulfilled, it guarantees that any defects that may be found shall be corrected. The penalty sum for the bond shall be \_\_\_\_\_ (\_\_\_ %) of the contract amount. The penal sum shall not be less than fifty percent (50 %) of the contract amount, unless the contracting officer indicates a lesser amount in accordance with a study of risk that shall be reviewed by the Executive Vice Presidency for Administration and Finance and the Vice Presidency for legal offices and approved by the Canal Administrator. It shall be effective during the period of the main contract performance, including any extension approved by the ACP, plus a period of one (1) year for movable property to cover latent defects, such as labor, defective material, or any other deficiency or defect in the object of the contract, except for consumable goods that have no special regulation, whose term of coverage shall be six (6) months, and a period of three (3) years to cover construction defects or the reconstruction of the work or of real estate property.
3. The payment bond shall guarantee payment to third parties for labor services rendered and supplies used in the execution of the main contract. The penalty sum shall be fifty percent (50%) of the contract amount, when the contract is less than B/.1,000,000.00; forty percent (40%) of the contract amount, when the contract is more than B/.1,000,000.00, but less than B/.5,000,000.00, and B/. 2,500,000.00 when the contract amount exceeds B/. 5,000,000.00. Its validity period shall be the same as the contract’s execution period, including any extension approved by the ACP, plus a period of one hundred and eighty (180) days counted from the date of the last publication of the ad announcing the completion of the project, and its satisfactory acceptance on the part of the Authority. Such publication shall be made in a newspaper with nationwide circulation.
4. For purposes of the ad mentioned in the previous article, the Contractor shall publish this ad within a period of thirty (30) days following the date of the issuance of a resolution indicating final acceptance of the object of the contract by the ACP. The ad on the

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<sup>24</sup> Modified by article sixteen of Agreement No. 107 (15 December 2005). Modified by article first of Resolution No. ACP-AD-RM16-20 of July 14, 2016.

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completion of the project shall be published for three (3) consecutive working days in a newspaper with nationwide coverage.

**4.28.51. <sup>25</sup>WORK GUARANTEE.**

1. The guarantee period shall begin upon the date that the Authority issues the taking-over certificate.
2. The Contracting Officer may determine that the guarantee period shall begin on the date that the Authority issues partial acceptance of the work, pursuant to the provisions of Clause 4.28.57 herein.
3. The Contractor shall be responsible for correcting all defects identified within the guarantee period.
4. The guarantee period shall be effective for three (3) years starting from the date of the final acceptance of the work, to cover any defects in the construction or reconstruction of the project or real estate property object of the contract. Notwithstanding the foregoing, the guarantee for the equipment and materials supplied shall only be in force during the first year of the guarantee period to respond to any redhibitory defects such as labor, material, or defective equipment, or any other deficiency or defect on the object of the contract. The coverage period for all paint works shall be one (1) year upon final acceptance of the work, unless otherwise indicated. The tender document may include various types and terms of guarantees different from the ones described herein, which shall be considered in addition to said guarantees.
5. The Contractor shall correct, within the terms of the guarantee, all defects or deficiencies discovered within the guarantee period. The Contracting Officer shall notify the Contractor, in writing, immediately after the discovery of the defect or deficiency.
6. The Contractor shall begin corrective work within ten (10) calendar days after notification of the defect or deficiency by the Authority and shall proceed diligently with such work until its completion and approval by the Authority. Such corrective works shall include the re-delivery of equipment and/or materials, and in no case, shall corrective work last more than three (3) months after the notification date. The Contracting Officer may, however, postpone the start of the corrective work by mutual agreement with the Contractor taking

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<sup>25</sup> Modified by article third of Resolution No. ACP-AD-RM16-24 of 2 August 2016.

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into consideration the complexity and nature of the work to be performed or until the material or equipment can be removed from service without harm to the Authority but, under no circumstance, shall corrective work be postponed for more than three (3) months from the date of discovery of the defects or deficiencies requiring correction

7. Replacement parts and repairs shall be subject to the Contracting Officer's approval. The Contractor shall bear the costs of all corrective work, which should include the disassembly, transportation, re-assembly, and re-testing required, as well as the repair or replacement of defective materials and/or equipment and any disassembly or re-assembly of adjacent materials and/or equipment, as long as the Authority, at its own cost, performs the disassembly or re-assembly of adjacent materials and/or equipment, not supplied by the Contractor that need to be disassembled in order to provide access to the defective materials and/or equipment. Similarly, the remediation work performed by the Contractor shall include, at the Contractor's expense, the cleaning, the restoration and putting back into service of any component, premises, equipment or structure that may have been affected by the failure or by the repair or remediation.
8. Should the Contractor not perform the corrective work in the manner and within the specified time, the Authority may have such work performed at the Contractor's expense, and the Contractor shall acknowledge and pay for such costs when demanded of him and his sureties shall be responsible for such payment.
9. The provisions of this clause are in addition to any guarantee or insurance condition established by the manufacturer. The guarantee or insurance conditions established by the manufacturer, covering a period longer than the guarantee period herein specified, shall not be modified or annulled due to any requirement of this clause.

**4.28.52 <sup>26</sup>INSURANCE. (For construction contracts and/or goods and services, when required for the tender document)**

1. The Contractor shall submit to the Contracting Officer the insurance policies or evidence of coverage or cover letters that meet the requirements indicated in this clause, within a period determined by the Contracting Officer. If corrections or adjustments are needed, the Contractor must present such

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<sup>26</sup> Modified by article first of Resolution No. ACP-AD-RM05-08 (18 March 2015); Modified by article 61 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article one of Resolution No. ACP-AD-RM10-97 (13 May 2010) effective 13 June 2010. Modified by article five of Resolution No. ACP-AD-RM-15-23 (31 August 2015) effective 7 September 2015. Modified by article second of Resolution No. ACP-AD-RM16-20 of July 14, 2016. Modified by article first of Resolution No. ACP-AD-RM18-04 (21 February 2018)

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corrections, endorsements or any other documentation required, before the start of work at the site. The evidence of coverage or cover letters should indicate that they are binding and are proof that the issuer shall be responsible to the Authority for the specified coverage.

a. For General Construction Contracts:

i. Vehicle Liability Insurance: Vehicle insurance for damages to property and/or personal injuries, including death, caused to the Panama Canal Authority (ACP) and/or its employees, or to third parties, caused by the operation of any vehicle, that belongs to, is rented by, or is used by the Contractor, his subcontractors, or any other third party contracted directly or indirectly by the Contractor or its subcontractors.

(1) Coverage limits: The Contractor or his Subcontractors shall maintain, if applicable, enough insurance to cover for damages, with limits not less than:

(a) In the case of heavy equipment or vehicles over 8 tons of weight which require vehicular registration and car plate issued by the Ground Transit and Transportation Authority (ATT) to circulate in public ways:

(i) Personal injuries: USD 100,000.00 per person and USD 300,000.00 per accident.

(ii) Property damages: USD 100,000.00 per accident.

(b) In the case of vehicles that require vehicle registration and car plate issued by the Ground Transit and Transportation Authority (ATT) to circulate in public highways, of up to 8 tons or used with the sole purpose of transporting passengers:

(i) Personal injuries: USD 5,000.00 per person and USD 10,000.00 per accident.

(ii) Property damages: USD 5,000.00 per accident.

For contracts where the Contractor is required to transport explosives by land, the insurance shall offer express coverage for land transportation of explosives.

ii. Comprehensive General Liability Insurance Policy: To cover damages to property, personal injuries, including death, in addition to damages to ACP and/or its employees or any other third party, by activities carried out by the Contractor, subcontractors or any other contracted directly or indirectly by the Contractor or its subcontractor during contract execution. This coverage shall include, in addition, the following risks:

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- Damages to cables, ducts and/or other underground or aerial facilities.
- Crossed public liability.
- Premises and operations.
- Damages caused by the use of mobile equipment, including elevator hoist, for the execution of their operations, when this type of equipment is used in the Contract. Mobile equipment is defined as a land vehicle (including any machinery and gear and/or apparatus connected to it), whether self or non self-propelled:
  - That does not require registration as a motor vehicle, nor car plates, or
  - That is maintained exclusively for use on the grounds of the property of insured party or rented to it, including the highways immediately adjacent, or
  - Designed for use, principally, outside highways and public roads, or
  - Designed and maintained for the sole purpose of providing mobility to certain equipment that form an integral part and is permanently connected to such vehicle.

(1) Coverage Limits: The Contractor shall maintain enough insurance to cover property damages, personal injuries and damages including death, with limits of not less than USD 300,000.00 single combined limit in the annual aggregate.

(2) Other terms and conditions: The policy shall indicate the following:

(a) ACP is an additional insured party and the insurer renounces its right to subrogate against the ACP for any claim in relation to this Contract.

(b) ACP may claim directly to the insurance company for those claims misdirected by third parties, which according to the Contract are the responsibility/liability of the Contractor.

(c) ACP and its employees shall maintain the right to claim as third parties. Therefore, the designation of ACP as additional insured does not impede that ACP or its employees to present claims against this policy, for damages, injuries and/or damages caused by the Contractor, subcontractor or any other contracted directly or indirectly by the Contractor or subcontractor.

b. For Contracts to Rent Heavy Equipment for Land Operation: In addition to the Vehicle Liability Insurance Policy and Comprehensive General Liability Insurance Policy above-mentioned under paragraph “a”, the Contractor shall present the following:

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ii. Marine Cargo Insurance Policy: Shall be presented only if the ACP needs to move rented equipment through Canal waters, to cover the damages caused to the equipment during the journey, including loading and unloading operations, when such transportation is done by ACP personnel and equipment. It should be specified that unclassified floating equipment (which does not comply with the design, construction and operation rules) will be used to transport the equipment.

(1) Coverage Limits: Shall be for the market value of the equipment.

(2) Other terms and conditions:

(a) The policy covers a maximum of \_ (indicate the amount) \_ journeys through Canal waters that include the mobilization of the equipment between islands \_ (name each of the islands where the work will be done; indicate that the reaches have islands without names and peninsulas), if appropriate.

(b) The insured party shall be the owner of the equipment.

c. For Contracts involving Dredging Operations: In addition to the Vehicle Insurance Coverage Policy mentioned in paragraph “a”, the Contractor shall submit the following:

i. Comprehensive General Liability Insurance Policy: To cover damages to property, personal injuries including death, in addition to damages to ACP and/or its employees or any other third party, by activities carried out by the Contractor, subcontractors, or any other contracted directly or indirectly by the Contractor or its subcontractor during the execution of land operations that are object of the contract.

In addition, the following should be covered:

- Specialized Operations: To cover damages, injuries, costs and/or expenses incurred during the performance of specialized operations, including but not limited to dredging, pile driving, drilling wells), cable or pipe laying, maintenance or removal, core sampling, spoil deposit, waste incineration or disposal operations.
- Drilling and Blasting Operations: To cover damages, injuries, costs and/or expensed incurred resulting from drilling and blasting, core sampling and production operations, including transportation, storage and use of explosives.
- Detonation or explosion of unexploded ordnance, in spite of the low probability of finding them.
- Pollution: To cover the damages, injuries, costs and/or expenses resulting from contracted operations that may result in pollution of the atmosphere, land and water resources which include, but are not



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limited to those caused by the construction of dikes, oil spills, and/or solvent and painting residues.

- Damages to cables, pipes and/or other underground and aerial facilities.
- Cross liability.
- Premises and operations.
- Damages caused by the use of mobile equipment, including forklifts, for the performance of their operations, when this type of equipment is used in the Contract. Mobile equipment is defined as a land vehicle (including any machinery and gear and/or apparatus connected to it), whether self or non self-propelled:
- That does not require registration as motor vehicles or license car plate, or
- That is maintained exclusively for use on the grounds of the property of the insured party or rented to it, including the highways immediately adjacent, or
- Designed for use, principally, outside highways and public roads, or
- Designed and maintained for the sole purpose of providing mobility to certain equipment to which they form an integral part and are permanently connected to such vehicle.

(1) Coverage Limits: The Contractor shall maintain enough insurance to cover property damages, personal injuries and damages including death, with limits of not less than ten percent (10%) of the value of the contract of single combined limit per occurrence.

(2) Other terms and conditions: The policy shall indicate the following:

- (a) ACP is an additional insured party and the insurer renounces its rights to subrogate against the ACP for any claim in relation to this Contract.
- (b) ACP may claim directly to the insurance company for those claims misdirected by third parties, which in accordance to the Contract are the responsibility/liability of the Contractor.
- (c) ACP and its employees shall maintain their right to claim as third parties. Therefore, the designation of ACP as additional insured does not impede that ACP or its employees to present claim against this policy, for damages, injuries and/or damages caused by the Contractor, subcontractor or any other contracted directly or indirectly by the Contractor or subcontractor.

ii. Maritime Operations Liability Policy and Protection and Indemnity (P&I): When the scope of the work contracted by the ACP involves the use of floating equipment, Contractor shall hire coverage for all risks usually

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related to maritime operations The Contractor shall have a Maritime Operations Liability Policy or P&I which must include the following:

- Salvage Operations: To cover damage to property, personal injuries, costs and/or expenses resulting from salvage operations conducted by the insured, including re-floating.
- Collision and wreck removal: To cover damages to property, personal injuries, costs and/or expenses incurred as a result of collision and/or debris removal or scrap from floating equipment used during operations.
- Pollution: To cover the damages, injuries, costs and/or expenses resulting from contracted operations that may result in pollution of the atmosphere, land and water resources. Coverage Limits: The Contractor shall maintain enough insurance coverage to cover property damages, personal injuries and damages including death, for not less than one hundred percent (100%) of the market value of floating equipment used for the execution of the contract of combined single limit per occurrence.

(2) Other terms and conditions: The policy shall indicate the following:

- (a) ACP is an additional insured party and the insurer renounces its rights to subrogate against the ACP for any claim in relation to this Contract.
- (b) ACP may claim directly to the insurance company or the P&I Club for those claims misdirected by third parties, which according to the Contract, are the responsibility/liability of the Contractor.
- (c) ACP and its employees shall maintain their right to claim as third parties. Therefore, the designation of ACP as additional insured does not impede that ACP or its employees may claim against this policy, for damages, injuries and/or damages caused by the Contractor, its subcontractor or any other party contracted directly or indirectly by the Contractor or subcontractor.

iii. Hull and Machinery Insurance: To cover any physical damage to the floating equipment used for the execution of the contracted works.

- (1) Coverage Limits: Shall be for the market value of the floating equipment.
- (2) Other Terms and Insurance Conditions: The policy shall indicate the following:
  - (a) ACP is an additional insured party and the insurer renounces its rights to subrogate against the ACP for any claim in relation to this contract.

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(b) ACP may claim directly to the insurance company for those claims misdirected by third parties, which according to the Contract are the responsibility liability of the Contractor.

2. The coverage of the insurance policy shall apply from the date of beginning of work indicated in the notice to proceed, including any extension approved by the ACP, until the date of the end of the construction, without limitation of obligations and responsibilities.

3. The Contractor shall procure and maintain the Comprehensive General Liability Insurance Policy (for Dredging Operations Contracts), Maritime Operations Liability or Protection and Indemnity (P&I), and/or Hull and Machinery Insurance, issued by the Members of the International Group.

- a. In the case of insurance companies and/or reinsurers legally established in the Republic of Panama and authorized by the Superintendence of Insurance and Reinsurance of the Republic of Panama to subscribe insurance business in the corresponding areas.
- b. In the case of international insurance companies, reinsurers and/or International P&I Clubs, such companies must hold, at the time of issuance of the insurance, a minimum long-term credit rating not lower than the A.M. Best "A-", Standard & Poors (S&P) "A-", Moody's Investor's Service "A3" or Fitch Ratings "A-", or the rating as the ACP at its sole and absolute discretion decides.

4. The Contractor must replace, at its cost, the policies issued by insurers and/or reinsurers that fail to comply with any requirement described herein.

5. A document stating and including a Cut-Through Clause in favor of the ACP. In case of using a reinsurance for the issuance of the policies, where the reinsurers commit themselves with the reinsured that in case that the latter does not comply with his contractual obligations to the ACP, the reinsurers shall pay to the originally insured the portion of any loss due to the reinsured which represents the liability of the reinsurers to the reinsured under the terms of this policy, less the premium, if any. The tender document will specify the application of this requirement, if any. ACP will provide the wording of the Cut-through Clause in the tender document when required by the contract.

6. All insurance policies shall indicate that they cannot be modified or amended without a written notice by the insurance company to the ACP Contracting Officer that administers the contract, with at least thirty (30) days in advance. The insurance company shall obtain a written confirmation of receiving such notification by the Contracting Officer for the notification to be considered valid.

7. The documentation related to the insurance policies that shall be presented to the ACP includes, but is not limited to, the General Conditions, Particular

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Conditions and all its endorsements, in case there are any. In the case of the Marine Cargo Insurance, the standard International Institute Cargo Clause shall be included in addition to the above.

8. The ACP reserves the right to procure at the expense of the Contractor, any required insurance indicated in these clauses, if the Contractor fails to obtain or maintain the required insurance coverage. In these cases, the ACP will deduct the amounts of the premium and any other direct and indirect expenses incurred, related to such insurance policy acquisition and any other brokerage and administration expenses.

9. All companies having policies or bonds in favor of the ACP, shall deliver annually to the ACP a copy of its audited financial statements and its notes, within ten (10) business days of its date of issuance. The company can deliver them in electronic format or through a link to a website.

10. Notwithstanding the provisions of the previous subparagraphs, the ACP shall not admit and shall reject any insurance policy issued by any insurer and/or reinsurer which:

- a. Has been debarred or sanctioned by the ACP, pursuant to the applicable ACP regulations, or
- b. Has been debarred by the National Government to contract with the Panamanian State or entities and companies owned by the Panamanian State, or
- c. Has been debarred in its country of origin, in the case of insurers incorporated outside of Panama; or
- d. Is in a process of regularization, undergoing an administrative or operational take over, or forced liquidation, or prevented or limited to conduct business as ordered by a competent authority in the Republic of Panama or in its country of origin in the case of insurers incorporated outside Panama; or
- e. Is in non-compliance with any of its contractual obligations as an insurance company, reinsurer or surety of the ACP, even when and while it is involved in a litigation or dispute with the ACP.

11. The Contractor shall replace, at its cost, within a thirty (30) calendar-day period, all insurance policies already admitted by the ACP, which have been issued by insurance and/or reinsurance companies which:

- a. Has been debarred or sanctioned by the ACP, pursuant to the applicable ACP regulations, or by the Panamanian State or in its country of origin, in the case of insurers incorporated outside of Panama; while said debarment is in force.
- b. Is in a process of regularization, undergoing an administrative or operational take over, or forced liquidation, or prevented or limited to conduct business as ordered by a competent authority in the Republic of Panama or in its country of origin in the case of insurers incorporated outside Panama; or

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- c. Is in non-compliance with any of its contractual obligations as an insurance company, reinsurer or surety of the ACP, even when and while it is involved in a litigation or dispute with the ACP.

**4.28.53. <sup>27</sup> FINE OR PENALTY DUE TO DELAYS IN THE EXECUTION OF THE WORK**

*(For construction contracts in the Canal area).*

1. The Contractor shall pay to the Authority the sum of (USD\_\_\_\_) for each calendar day of delay in the execution of the work, beginning on the day after the end of the execution period stipulated in the contract; without prejudice to the right of the Panama Canal Authority to cancel de contract for causes attributable to the Contractor according to Clause 4.28.63 and to claim damages caused by such delay.
2. In the event that the Panama Canal Authority decides not to cancel the contract administratively for reasons attributable to the Contractor and to allow the Contractor to continue with the execution after the deadline for implementation (including extensions granted), the fine or penalty payable by the Contractor shall correspond to the application of the daily rate specified in paragraph 1 above, until the work is finally accepted by the Panama Canal Authority.
3. In any case where the contract is cancelled administratively for reasons attributable to the Contractor (including any extension granted) the Contracting Officer shall notify the surety and execute the contract performance bond, whether the Guarantor pays the amount of the bond or assumes all rights and obligations of the Contractor and continues with the execution of the contract. If the Guarantor assumes all the rights and obligations of the Contractor and continues with the execution of the contract, the application of the penalty specified in paragraph 1 will be generated until the work is finally accepted to the satisfaction of the Panama Canal Authority.
4. In exceptional cases, pursuant to the provisions of paragraph 2 of Clause 28.4.57 (Acceptance of the Work), if the Contracting Officer partially accepts the work, he will stop the application of the fine or penalty due to delay in the execution of the work, following the date of partial acceptance defined by the Contracting Officer.

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<sup>27</sup> Modified by article first of Resolution No. ACP-AD-RM05-08 (18 March 2015)..

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**4.28.54. <sup>28</sup>MODIFICATIONS.**

*(For construction contracts in the Canal area).*

1. The contracting officer is the only person authorized to make modifications to the contract without this invalidating the contract and without the need to notify the surety. These modifications must be within the scope of the contract and must be, in the Contracting Officer's judgment, necessary or convenient to achieve full compliance with the object of the contract and may include, but are not limited to:
  - a. Modifications to the specifications, including drawings and designs;
  - b. Modifications to the work method;
  - c. Modifications to the facilities, equipment, materials, and/or services that the Authority provides in the contract; and
  - d. Acceleration orders to the working method.
2. Modifications to the contract shall be made in writing. Similarly, no additional work shall be performed without the written authorization of the Contracting Officer.
3. The contractor shall notify the Contracting Officer immediately and in writing when he considers that the Authority has made or is about to make a change not contemplated in the contract, or when he has received an order, instruction, interpretation, or determination from the Contracting Officer which he considers to be a change to the contract.
4. No modification shall be made for the purpose of avoiding the competitive process. Modifications shall be limited to changes within the scope established by the contract.
5. The Contracting Officer may unilaterally modify the contract, whose compliance is of an obligatory nature, without this limiting the Contractor's right to appeal the modification under the clause 4.28.13 "ADMINISTRATIVE PROCEDURES FOR CLAIMS".
6. Changes to the contract which cause an increase or decrease in the value or period of execution shall be compensated at a reasonable price based on the market conditions and shall become effective by means of a written modification. The contract amount shall not be increased by more than fifteen (15%) percent of the original contract value, except in the case of work contracts for estimated amounts. In such cases, the may only be increased by more than fifteen (15%) percent with prior approval from the Board of Directors.
7. In case of variations in the work that cause an increase in the value of the contract, the Contractor shall submit the necessary endorsements to the performance and payment bonds.

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<sup>28</sup> Modified by article 62 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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**4.28.55. SUBMISSION OF PROPOSALS – MODIFICATIONS TO THE CONTRACT.**

*(For construction contracts in the Canal area).*

1. For proposals concerning modifications to the contract, the Contractor shall deliver, together with his proposal, a detailed price breakdown per request from the Contracting Officer. The breakdown shall be detailed in such a manner so as to allow for an analysis of the cost of materials, labor, equipment, subcontractors, cost overruns, and profit margins, and shall cover all aspects of the modification work including any eliminations, additions, or changes to the original project. Any quantity indicated as a subcontract shall also be broken down. Similarly, any request for an extension shall be substantiated. The proposals, together with the price breakdowns and the justification for additional time extensions, shall be delivered on the dates requested by the Contracting Officer.
2. For the purposes of additional work or modifications to the contract, whether the work is to be performed by the Contractor or subcontractors, the Authority shall recognize fifteen percent (15%) for general expenses and a profit on the total direct costs agreed upon.
3. In the event that the modification agreed to include an extension or reduction to the period established in the contract, the Authority shall not recognize any additional compensation for indirect costs resulting from such extension.

**4.28.56. QUALITY CONTROL AND CONTRACT INSPECTION.**

*(For construction contracts in the Canal area).*

1. The Contractor shall maintain an adequate inspection and quality control system to guarantee that the work performed is in accordance with the contract. The Contractor shall maintain complete records of inspection and quality control, and these must be available at all times for review by the Authority. Nevertheless, the Authority may maintain its own quality control system for purposes of supervisory control. All work shall be subject to inspection and testing on the part of the Authority, at all places and at all times before acceptance, for the purpose of guaranteeing strict compliance with the terms and conditions of the contract.
2. Technical inspections by the Authority on work contracts are a requirement for acceptance and payment of such projects. Contract work shall be inspected by the contract work inspection unit of the Authority. The Contracting Officer may designate one or several Inspectors to insure faithful compliance of the obligations on the part of the Contractor. The Inspectors shall have the authority to inspect all work done on the site of the project, as well as all works that are supplied. These inspections shall cover the entire project or part of it and will include preliminary work or the manufacture of materials to be supplied. The Contractor shall provide the Contracting Officer

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all inventories on quantities and costs, work schedules, reports, invoices, receipt forms, records, and other data that the Authority may require concerning the performed work and the materials supplied or to be supplied under this contract. Said Inspectors shall inform the Contracting Officer on the progress of the work, the manner in which it is carried out, and the quality of materials provided by the Contractor performing the work, as well as also draw attention to any failure or violation observed. The fact that the Inspector does not bring on time to the attention of the Contractor any defect in the work shall not constitute grounds for the acceptance or approval of such defect by the Authority. The Inspector may require any tests considered necessary to confirm that the work has been properly performed.

3. The inspection or lack thereof on the part of the Authority shall not relieve the Contractor from his obligation to execute the work in strict conformance with the specification requirements, nor shall this constitute or imply in itself the acceptance of the work, and shall not affect the rights of the Authority once the work is accepted. Additionally, the inspection on the part of the Authority shall not relieve the Contractor from providing adequate means for quality control, or from the responsibility for damage or loss of materials prior to the acceptance by the Authority.
4. The Inspector is not authorized to change any of the terms and conditions of the contract without written authorization from the Contracting Officer. Therefore, any observations to the Contractor from the Inspector that specifications are not being complied with does not, in any manner, constitute an obligation on the part of the Contracting Officer or the Authority, and does not exempt the Contractor from faithfully complying with this contract.
5. The Contractor shall supply all materials and/or equipment necessary to perform the work, which is the object of the contract, with the exception of that which is described in the specifications to be furnished by the Authority. The quality of the materials, equipment and labor must be in accordance with the requirements of the contract. The materials and equipment to be incorporated to the work shall be new and of recent and proven manufacture.
6. The Contractor shall provide all installations, labor, equipment, and materials required to perform all inspections and testing reasonably indicated by the Contracting Officer and that may be accomplished in a timely, safe, and convenient manner for both parties, without it implying an additional cost to the Authority. The Contractor shall notify the Contracting Officer as to the place, date, and time of the operations that require inspections or testing, in accordance with the specifications, within a period of no less than ten (10) working days if the event is to be performed in the Republic of Panama, or thirty (30) working days if it is to take place abroad. The Authority may charge the Contractor any additional cost for inspection or testing incurred in cases where the Contractor is not ready at the time



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indicated for the inspection or testing, or when such inspections or tests have to be repeated due to a previous rejection caused by failures on the part of the Contractor. The Contractor shall not be entitled to any form of compensation as a result of the performance and/or failure of such tests, or because of the rejection of materials and/or equipment resulting from the failure of any tests. The Authority shall perform all inspections and testing in such manner that the work will not be delayed unnecessarily. All tests shall be performed exactly as described in the specifications. The Authority's absence from the testing or inspections shall not relieve the Contractor from his responsibility to supply the materials and/or equipment in accordance with contract requirements.

7. The Contractor shall replace or correct, without additional cost to the Authority, any work that it considers in disagreement with contract requirements, even after having approved it.
8. If the Contractor does not replace or correct the rejected work diligently, the Authority may –
  - a. Replace or correct the work by its own means or using a third party at the Contractor's expense.
  - b. Terminate the contract for causes attributable to the Contractor.
9. Should the Authority decide to investigate the work already completed and finds that such work was performed according to the drawings and specifications of this contract, the expenses incurred by the Contractor for such investigation shall be covered by the Authority through an adjustment to the contract value. Similarly, the Authority shall recognize an extension in the time of the contract if it is so merited.
10. Unless otherwise determined in the contract, the Authority may accept all the work required under this contract or that portion of the work that the Contracting Officer determines may be accepted separately, as soon as possible once all work has been completed and inspected. The acceptance shall be final and conclusive, except for redhibitory defects, fraud, and/or the rights of the Authority under any guarantee. The time transpired to perform corrective work on defects shall be counted as a delay in the completion of the project. The Authority shall not allow an extension for the completion of the work due to such delay.

**4.28.57. <sup>29</sup>WORK ACCEPTANCE.**  
*(For construction contracts).*

1. The Authority shall only accept work that conforms to the specifications, terms, and conditions of the contract.
2. The Contracting Officer may issue partial acceptance of the work, phase and/or portions of the work, provided that the level of progress

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<sup>29</sup> Modified by article second of Resolution No. ACP-AD-RM15-08 (18 March 2015). Modified by Article fourth of Resolution No. ACP-AD-RM16-24 of 2 August 2016.

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in the execution of the activities permits the Authority the satisfactory use of the object of the work despite any pending non-conformance items or contract requirements whose deferred completion do not affect its usufruct.

3. Partial acceptance of the work, a phase, or a portion of the work, shall suspend, until the date the Contractor has agreed to make the final delivery of the work, the application of any penalty or pecuniary sanction caused by a delay in the execution of such work. In the event that the Contractor fails to complete and/or fails to deliver the work on the agreed date, the Authority shall apply the corresponding penalty or pecuniary sanction to the period between the day following the agreed delivery date to the date that the completed work is finally delivered to and approved by the Authority.
4. For construction contracts with established partial delivery of the work by milestones or phases, partial acceptance notices issued by the Authority will only suspend the application of the corresponding penalty to the milestone or phase it was issued for.

**4.28.58. USE AND POSSESSION PRIOR TO COMPLETION OF THE PROJECT.**

*(For construction contracts in the Canal area).*

1. The Authority shall have the power to take possession of or use any portion of the work that is totally or partially completed. Before taking possession or use any portion of the work, the Contracting Officer shall submit to the Contractor a list of pending items of work remaining to complete the contract or the portions of the work that the Authority intends to take possession of or use.
2. The fact that any pending work item is not shown on the list prepared by the Contracting Officer shall not relieve the Contractor of his responsibility for complying with the terms and conditions of the contract. The Authority's possession or use shall not be deemed an acceptance of any work under the contract.
3. The Contractor shall not be responsible for damages or loss to the work portions while the Authority exercises possession or use.

**4.28.59. <sup>30</sup>PAYMENT TO CONTRACTORS.**

*(For construction contracts in the Canal area).*

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<sup>30</sup> Modified by article thirty nine of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 63 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article one of Resolution No. ACP-AD-RM10-94 (14 May 2010) effective 29 May 2010.

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1. The Authority agrees to pay the contract price for projects, goods, and services received and accepted in accordance with the terms and conditions of the contract. The payments shall be made in “Balboas” or US Dollars.
2. Payments may be made in monthly installments as the works progress. For the purposes of these payments, the closing date shall be the twentieth (20<sup>th</sup>) day of the month; thus, for the purposes of this clause, the twentieth (20<sup>th</sup>) day shall be the last day covered by the monthly installment. The contractor shall prepare and submit to the Contracting Officer, within seven (7) calendar days from the account closing date, a preliminary report on the works performed from said account closing date; and the inspector shall review and approve or disapprove such report within eight (8) working days. Once the report is approved, the contractor shall submit the monthly invoice of progress for the agreed amount, in original and one duplicate copy to the Contracting Officer, who shall then forward it to the Inspection Section for the proper receipt acknowledgement. The inspector assigned to the work shall issue a receipt acknowledgement for the good or service.
3. With the invoice, the Contractor shall include:
  - a. A list of the work performed, indicating the quantity performed (if applicable), and the overall total;
  - b. A list of the work performed by sub-contractors, indicating quantity performed;
  - c. A list of the work (indicating quantity performed) already paid under the contract;
  - d. Any other information requested by the Contracting Officer..
4. For Contractors domiciled in the Republic of Panama the complete invoice shall comply with the terms of paragraph 2 of contract clause 4.28.17 “DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED.”
5. Should any discrepancies be found in the invoice, the Contracting Officer shall inform the Contractor, so that he can take corrective actions.
6. Should no discrepancies be found in the invoice, the Authority shall prepare the necessary documents to process payment and shall forward these documents to the: “Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority.”
7. The Authority may also make payments for partial delivery of any portion of the contract with a separate price in the Bid Schedule, as long as it has been accepted by the Authority and meets the requirements of the contract.
8. Should the Contracting Officer determine that the progress of the work is not satisfactory, he may withhold up to ten percent (10 %)

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of each approved invoice. The amount withheld shall be returned once the project (or a portion thereof) has been concluded to the Authority's satisfaction. The quantities withheld shall draw no interest. If the project is substantially completed, the Contracting Officer may withhold any quantity he may deem adequate to protect the Authority. If the work is contracted in phases, the amount withheld shall affect each phase, and shall be returned once the work has been concluded to the Authority's satisfaction.

9. From each approved invoice, the Contracting Officer may subtract any sum that the Contractor must pay to the Authority in penalties, as specified in the contract.
10. The cost of the performance and payment bonds may be reimbursed to the Contractor once the Contractor submits to the Contracting Officer proof that such bonds have been paid in full. This payment shall not represent an addition to the contract price. The payment made to the Contractor for bonds shall be deducted from the monthly installments payable to the Contractor for work progress, at a rate of fifteen per cent (15%) from each payment, unless the last outstanding deduction corresponds to a lesser percentage, in which case the outstanding percentage shall be deducted. In the event that the last Contract invoice is submitted and approved, the total amount outstanding for bonds shall be deducted in full from such invoice payment.
11. The partial payment certifications are not to be construed as approval or acceptance of the work done so far, or exempt the Contractor from his contractual responsibilities.
12. Partial payments shall be made thirty (30) calendar days after the Contractor submits the Invoice Document and the original invoice of the monthly advance to the Accounts Receivable and Payable Section, Accounting and Cost Division indicated. Upon expiration of the deadline, the Contractor shall have the right to the payment of interests, should the delay be attributable to the Authority.
13. The Authority shall pay interest due calculated on the basis of the LIBOR rate at three months up to the date when the check is drawn to the Contractor or the electronic transfer of funds to the Contractor's account is made.

**4.28.60. <sup>31</sup>PAYMENT TO CONTRACTORS - FOR SUPPLIES AND RATE OF PROGRESS OF THE PROJECT.**

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<sup>31</sup> Modified by article forty of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 64 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article 1 of Resolution No. ACP-AD-RM10-107 (15 July 2010) effective 26 July 2010, date of publication.

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*(For construction contracts in the Canal area).*

1. The Authority agrees to pay the contract price for projects, goods, and services received and accepted in accordance with the terms and conditions of the contract. The payments shall be made in “Balboas” or US Dollars.
2. Supplies: For the purposes of this clause, they are the materials and equipment specifically mentioned in the Bid Schedule.
3. Form of Payment for Supplies: The Authority shall make partial payments for the supply of materials and/or equipment specifically mentioned in the Bid Schedule and in accordance with the Solicitation Document. The Contracting Officer may pay up to a maximum of 80% of the value of the materials and/or equipment, in conformity with that which is indicated in the entry in the Bid Schedule or the corresponding commercial invoice, whichever has the lesser value. Payment shall be made once the Authority has inspected and accepted the materials placed at the site of the project. Of the remaining quantity of the entry in the Bid Schedule, 50% shall be paid when the materials and/or equipment are installed and accepted, and the final 50% after final acceptance of the project by the Authority. To request payment for supplies, the Contractor shall submit to the Contracting Officer a copy of the corresponding commercial invoice.
4. Form of Payment for Rate of Progress of the Project: Monthly partial payments may be made according to the rate of progress of the project. To this effect, the Contractor shall submit to the Contracting Officer, within the first ten (10) days of each month, a report of the work performed, and the Inspector shall have five (5) working days to review and approve or reject such report. Once the report is approved, the Contractor shall submit to the Contracting Officer an invoice for the monthly progress in the amount agreed. The invoice must be delivered to the Contracting Officer in an original and a copy. In turn, the Contracting Officer shall forward it to the inspection section for acknowledgement of receipt. The Inspector assigned to the project shall acknowledge receipt of the good or service.
5. Any material and/or equipment the Authority has paid for becomes the property of the Authority, even if they remain in the hands of the Contractor. The Contractor shall be directly and fully responsible for their preservation and maintenance and may not use them for any purpose other than that established in the contract. It is agreed that the Contractor assumes all the risks of loss, corrosion, damage, or deterioration of the materials and/or equipment that were supplied, whether they have been paid for by the Authority or not, until final delivery and acceptance of the project.
6. With the invoice, the Contractor shall include:
  - a. A list of the materials and or equipment that were supplied;

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- b. The original of the commercial invoice for the materials and/or equipment;
  - c. A list of the work performed, indicating quantity performed (if applicable) and the overall figure;
  - d. A list of the work performed by sub-contractors, indicating quantity performed;
  - e. A list of the work (indicating quantity performed) already paid under the contract;
  - f. Any other information requested by the Contracting Officer.
7. For Contractors domiciled in the Republic of Panama the complete invoice shall comply with the terms of paragraph 2 of contract clause 4.28.17 “DISCOUNT FOR PROMPT PAYMENT ON INVOICES SUBMITTED”.
  8. If any discrepancies are found in the invoice, the Contracting Officer shall inform the Contractor so that he can take the pertinent corrective measures.
  9. If no discrepancies are found in the invoice, the Authority shall prepare the necessary documents to process payment and shall forward these documents to the: “Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority.”
  10. The Authority may also make payments for partial delivery of any portion of the contract with a separate price in the Bid Schedule, as long as it has been accepted by the Authority and meets the requirements of the contract.
  11. Should the Contracting Officer determine that the progress of the work is not satisfactory, he may withhold up to ten percent (10 %) of each approved invoice. The amount withheld shall be returned once the project (or a portion of it) has been concluded to the Authority’s satisfaction. The quantities withheld shall draw no interest. If the work is contracted in phases, the amount withheld will affect each phase, and shall be returned once the work has been concluded to the Authority’s satisfaction.
  12. From each approved invoice, the Contracting Officer may subtract any sum that the Contractor must pay to the Authority in penalties, as specified in the contract.
  13. The cost of the performance and payment bonds may be reimbursed to the Contractor once the Contractor submits to the Contracting Officer proof that such bonds have been paid in full. This payment shall not represent an addition to the contract price. The payment made to the Contractor for bonds shall be deducted from the monthly installments payable to the Contractor for work progress, at a rate of fifteen per cent (15%) from each payment, unless the last outstanding deduction corresponds to a lesser percentage, in which case the outstanding percentage shall be deducted. In the event that the last Contract invoice is submitted and approved, the total

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amount outstanding for bonds shall be deducted in full from such invoice payment.

14. The partial payment certifications are not to be construed as approval or acceptance of the work done so far or exempt the Contractor from his contractual responsibilities.
15. Partial payments shall be made thirty (30) calendar days after the Contractor submits the invoice duly approved by the Authority. Upon expiration of the deadline, the Contractor shall have the right to the payment of interest, if the delay were attributable to the Authority. The Authority shall pay interest due calculated on the basis of the LIBOR rate at three months up to the date when the check is drawn to the Contractor or the electronic transfer of funds to the Contractor's account is made.

**4.28.61. <sup>32</sup>FINAL PAYMENT.**

1. Final payment constitutes full and complete payment for the performance of the contract work, including any additional work performed. After insuring compliance with all contract requirements, the Authority shall issue the receipt or letter of final acceptance, as appropriate, certifying the date on which the work specified in the contract was accepted. Once this receipt or final acceptance statement is issued, the Contractor shall proceed to submit the following: (i) a final invoice, in case that it has not been submitted; (ii) current national tax clearance certificate, issued by the corresponding Tax Authority (General Tax Directorate of the Ministry of Economy and Finance) and the Social Security (CSS) in case that these tax clearance statements apply, and (iii) the details of any claim, that has not been previously filed, according to the provisions of Clause 4.28.13.
2. In the event that the contract demands guarantees in favor of third parties (i.e. payment bond, etc.), the Contractor must present evidence that he has published the notice of completion of the work three (3) consecutive times in a newspaper of national coverage; the proof of publication must be an original.
3. If there are discrepancies in the final invoice, the Contracting Officer shall inform the Contractor so that the pertinent corrective measures may be taken.
4. If there are no discrepancies in the final invoice, the Authority shall prepare the necessary documentation to process the final payment and shall send the package to the Accounts Receivable and Payable Section, Accounting and Cost Division, Panama Canal Authority.
5. Final payment shall be made within a period of thirty (30) days after the presentation of the final invoice and the Invoice Document at the

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<sup>32</sup> Modified by article 65 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article 5 of Resolution No. ACP-AD-RM15-23 (31 August 2015) effective 7 september 2015.

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Accounts Receivable and Payable Section, Accounting and Cost Division. After said period, the Contractor has the right to be paid interest, if the delay were attributable to the Authority. The Authority shall pay any interest due at the Libor rate at three months until the date when payment is made to the Contractor or the electronic transfer of funds to the Contractor's bank account is made. Final payment shall include all amounts withheld from the Contractor and any other outstanding balance.

6. If the Contractor does not submit the required invoice and the tax clearance (National and Social Security System [CSS]), or does not perform any collection management during the five (5) years following the date when the Authority received or accepted, pursuant to the work, the goods, or services covered by the Contract, the Authority shall consider the prescribed payment obligation and shall remove it from its accounting records.

Paragraph: In the event that partial or advance payments have been agreed under the Contract, the Contractor shall submit with the invoice for the partial or advance payment, the corresponding tax clearance certificates (National and from the CSS), as applicable.

**4.28.62. AMOUNTS OWED TO THE AUTHORITY.**

*(For construction contracts in the Canal area).*

The Authority may deduct from partial payments or the final payment any outstanding debt that the Contractor may have with the Authority. The Contracting Officer may offset amounts owed to the Contractor with amounts owed to the Authority.

**4.28.63. <sup>33</sup>ADMINISTRATIVE TERMINATION OF THE CONTRACT DUE TO CAUSES ATTRIBUTABLE TO THE CONTRACTOR.**

1. The Authority may partially or totally terminate the execution of the contract for causes attributable to the Contractor.
2. The following are causes for an administrative termination:
  - a. Non compliance with contractual obligations;
  - b. The Contractor's death, the Contractor's permanent physical disability, or the dissolution of the Contractor's firm when it is a corporation and such a dissolution results in the extinction of the contractual relationship according to the terms that, in this regard, are established in the contract;

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<sup>33</sup> Modified by article 66 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.



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- c. The Contractor's bankruptcy or existence of creditors' liens, or when the Contractor's payments have been suspended or stopped, without the Contractor having filed for bankruptcy;
    - d. Any obvious indication that there will be noncompliance with the contract terms.
3. Prior to the notice of cancellation, the Contracting Officer shall notify the Contractor and his surety, (when a performance bond was required), and assignee of payments (when an assignment of payments agreement has been approved in accordance with clause 4.28.19), in writing, of the intent to terminate the contract, explaining the reasons for the termination and providing a deadline to the Contractor to correct the deficiencies that have led to the default, delay, or the failure to comply with instructions given. If the Contractor does not submit to the satisfaction of the contracting officer disagrees with the Authority with regard to the measures to correct, repair, remedy, amend, or resolve the situation in a satisfactory manner, or does not comply with the agreed measures, the contracting officer may terminate the contract.
4. The contracting officer's resolution by which the contract is terminated for cause attributable to the contractor shall be notified by fax or email by sending a copy of such resolution the contractor, the surety, (when a performance bond was required), and assignee of payments (when an assignment of payments agreement has been approved in accordance with clause 4.28.19).
5. Once notified of the resolution of contract termination, the Contractor shall:
  - a. Suspend all work that either he or his subcontractors are performing;
  - b. Continue performing any portion of the work that was not terminated;
  - c. Guarantee and protect the property of the Authority.
6. The contracting officer shall immediately notify the surety (when a performance bond was required) of the contract termination and it shall be allowed a period of thirty (30) calendar days from the date of the default notice to pay the performance bond or substitute the contractor in all of his rights and obligations.
7. If the Contracting Officer would terminate the contract for reasons attributable to the Contractor, the Panama Canal Authority will stop all due and payable payments to the Contractor or any approved in accordance with Clause 4.28.19. In the case of the Guarantor (when a performance bond was required) would comply with the obligations assumed by the Contractor under the performance bond, whether by paying the amount of the bond or by means of the execution of the secured obligations, it will subrogate the Contractor in all its rights and obligations, including, among others, compensation, deferred payments, retained percentages, and credits owed by the Panama Canal Authority to the Contractor at the time of the

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termination of the contract or that ought to have been paid to as the stipulated in the contract.

The Panama Canal Authority will pay the Guarantor any pending assigned payments due to the Contractor only after the Guarantor has paid the bond or if the Guarantor decides to continue with the execution of the contract, subrogated to all the Contractor's rights and obligations once the work has been accepted to the satisfaction of the Panama Canal Authority. Without limiting the foregoing, and before proceeding to make the corresponding payment to the surety, the Contracting Officer may deduct directly the amounts that for any reason may be due to the Panama Canal Authority by the Contractor, including, among others, any damage and prejudice that might be caused.

8. In case of termination for reasons attributable to the Contractor, if the Guarantor decides to continue with the execution of the contract, payments according to the progress of the work to the Guarantor will be as established in Clause 4.28.59 - Payments to Contractors and/or 4.28.60 - Payments to Contractors - Supplies and Construction Progress.

9. In the event that the Contracting Officer may terminate the contract for reasons attributable to the Contractor, and a bond has not been required, the Panama Canal Authority shall have no liability to pay any amount due to the Contractor until: (i) the fines or monetary penalties applicable under Clause 4.28.53; (ii) the costs of completion of the work, (iii) damages caused; and (iv) any other expenditure incurred by the Panama Canal Authority have been calculated and deducted. In these cases, the Contractor shall only be entitled to the resulting amounts after the above deductions have been made.

In the event that the amounts due to the Contractor, after the above deductions are made, do not cover all pending obligations to the Panama Canal Authority, they will be considered amounts due and therefore outstanding and recoverable.

10. Against the contracting officer's resolution, the Contractor may submit an administrative recourse of appeal to the Executive Manager of the Purchasing, Warehousing and Inventories Division. The recourse of appeal shall be submitted and will be resolved in accordance with the proceedings established in numeral 5 and subsequent of clause 4.28.13 Administrative Procedures for Claims.

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**4.28.64. <sup>34</sup>FORTUITOUS CAUSES.**

The Contract will not be terminated for causes attributable to the Contractor and no penalties will be charged to the Contractor in the event that the Contractor's failure to comply with the obligations of the Contract or the Contractor's delay in the performance of the Contract is based exclusively on events that constitute "force majeure" or "fortuitous events".

"Force Majeure" or "Fortuitous Events" means any unforeseeable event which is beyond the Contractor's control, which having arisen, the Contractor could not have reasonably avoided or overcome and which impedes, the Contractor in the performance of its obligations under the Contract. Examples of these causes, as long as they are not attributable to the Contractor, but not limited to the herein indicated, are fires, floods, epidemics, strikes by persons other than the Contractor's personnel and other employees of the Contractor and Subcontractors, quarantine restrictions, and unusual weather conditions such as earthquakes, hurricanes and typhoons.

The Contractor shall notify the Contracting Officer in writing, not later than one working day after the Contractor is affected by any force majeure or fortuitous event which impedes or delays the Contractor's performance of the Contract.

The Contractor may request an extension of time for completion of the contract, provided that the occurrence of the force majeure or fortuitous event alleged by the Contractor occurred and such event has caused him a delay. The time extension will depend on the delay caused to the Contractor by the event.

Any additional cost as a result of the force majeure or fortuitous event shall be the Contractor's responsibility.

**4.28.65. WORK SCHEDULE.**

*(For construction contracts in the Canal area).*

1. Within a period of ten (10) working days from the award date, the Contractor shall prepare and submit three (3) copies of his work schedule for approval by the Contracting Officer. The schedule shall include the type, duration, order, and critical path of every activity inherent to the contract (including the acquisition of materials, plant, and equipment) and the initiation and completion dates. The schedule shall be submitted in the form of a bar chart that allows for an adequate indication of the percentage of progress on any given date during the contract execution period. The Contractor shall

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<sup>34</sup> Modified by article 67 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008. Modified by article one of Resolution No. ACP-AD-RM09-35 (of 9 September 2009)

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consult the details of activities for the work schedule with the Contracting Officer. If the Contractor does not submit the work schedule within the established deadline or if such schedule is not submitted in the manner described and with the required details, the Contracting Officer may retain progress payments until the Contractor submits the required work schedule.

2. The Contractor shall record in the work schedule the actual progress made at the end of each month, and shall keep a copy of the schedule in a visible place at the worksite. Additionally, he shall submit to the Contracting Officer three (3) copies of the updated work schedule at the end of each month.
3. The Contracting Officer shall use the approved work schedule as an aid to determine if the Contractor is accomplishing the work with the required speed to assure completion by the time specified in the contract. If, in the Contracting Officer's judgment, the Contractor falls behind the approved work schedule, the Contractor shall take the necessary steps to recover lost time, including those measures, which the Contracting Officer may require, at no additional cost to the Authority. Under these circumstances, the Contracting Officer may demand that the Contractor increase his workforce, working hours, overtime, and equipment, and/or take any other corrective action needed to guarantee timely completion of the contract. The Contractor shall submit a supplementary work schedule to show how he intends to recover the rate of progress that was previously approved.

**4.28.66. WORK LAYOUT.**

*(For construction contracts in the Canal area).*

1. The Contractor shall be responsible for the accurate layout of work from bench marks, base lines, and elevation points provided by the Authority on the contract drawings or during the performance of the work.
2. The Contractor shall furnish, at his own expense, all instruments, tools, material, stakes, templates, platforms, transportation, and labor required for an accurate work layout. The Contractor is responsible for performing the work to the lines and grades indicated on the drawings or those indicated in writing by the Contracting Officer. The Contractor is also responsible for maintaining and preserving all stakes and other marks established by the Authority, until the Contracting Officer authorizes their removal.
3. The Contracting Officer may deduct from the Contractor's payment, the cost to replace the stakes or marks given as reference points by the Authority, if destroyed, damaged, or removed due to the Contractor's negligence before the Authority authorizes their removal.

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**4.28.67. <sup>35</sup>IMPORT DUTIES AND TAX FOR THE TRANSFER OF GOODS AND SERVICES (ITBMS).**

*(For construction contracts in the Canal area).*

The price offered shall include all import duties and the tax for the transfer of goods and services provided at the rate in effect when the obligation of payment of such goods and services provided are acquired and must be paid at the Ministry of Treasury and Finance for all materials and/or equipment that are incorporated into or utilized in this contract, except for the supply of specific materials and/or equipment noted in the solicitation document.

**4.28.68. ADDITIONAL INFORMATION.**

*(For construction contracts in the Canal area).*

1. Prior to awarding a contract, the Contracting Officer shall determine that the bidder and any subcontractors are qualified to do the work as required by the Panama Canal Authority Procurement Regulations. To reach such determination, the bidder shall provide the following information within five (5) calendar days after the bid opening date:
  - a. **Financial Information.** To prove that he has the financial resources to carry out the work, the bidder shall submit a letter from a financial institution promising financial support for the work. The letter shall be issued by a financial company(ies) registered to operate locally. Along with the letter from the financial company, the bidder shall include a copy of his company's Public Registry document (or the equivalent for foreign companies), issued within thirty (30) calendar days prior to the bid opening date.
  - b. **Satisfactory History.** The bidder shall submit a list of projects carried out during the past five (5) years. The list shall include the contract number, title, a brief description of the work accomplished, and the names and telephone numbers of the owners in order to verify the references. The bidder shall also deliver letters of reference from companies or persons for which he has worked.
2. In addition to the aforementioned requirements, the bidder shall also submit a list of his company's supervisory personnel and any other pertinent documents for the evaluation of the company's capabilities pursuant to the provisions of Article 45 of the Regulation.

**4.28.69. <sup>36</sup>RESERVED.**

**4.28.70. BID PROPOSAL.**

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<sup>35</sup> Modified by article 1 of Resolution No. ACP-AD-RM10-110 (15 July 2010) effective 26 July 2010, date of publication.

<sup>36</sup> Modified by article first of Resolution No. ACP-AD-RM09-55 (7- Dec-09), effective 7-Jan-10.

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(For construction contracts in the Canal area).

1. The offerors shall submit their price proposals in the form that is included in Part I of this solicitation document.
2. The price proposal, adjusted to the solicitation document, shall be submitted in one (1) sealed envelope, which shall contain, in addition to the Bid Bond, any other information expressly requested in the solicitation document.
3. The offeror shall complete the information requested in boxes 20, 21, and 22 of the bid proposal form in three (3) sets, two of which shall be originals, and one a copy. All the sets shall be duly signed manually by the legal representative of the firm or the person formally authorized by the Board of Directors of the company or corporation.
4. The sealed envelope that contains the proposal shall be submitted with the following information:
  - Panama Canal Authority.
  - Solicitation No.
  - Date and Time (a.m./p.m.): *Established for Submittal of Proposals*
  - Place: *Established for Submittal of Proposals*

**4.28.71. AMENDMENTS.**

(For construction contracts in the Canal area).

1. Should any amendments be made to the solicitation document, all terms and conditions of the solicitation document that have not been modified or changed shall remain unaltered and in effect.
2. Offerors shall acknowledge receipt of the amendments to the solicitation document prior to the time, date, and place established for the bid opening by one of the following methods:
  - a. By filling out the amendment form, signing it, and including it in the bid envelope; or
  - b. By identifying the number and date of the amendment in the spaces provided in the bid form (see box No. 20 of the form); or
  - c. By letter identifying the solicitation document and the number of amendments.

**4.28.72. CONSULTATIONS.**

(For construction contracts in the Canal area).

1. Offerors requesting explanations or information on the solicitation documents, drawings, specifications, etc., shall prepare written requests with sufficient time so that the answers may be distributed to all participants. Verbal explanations or instructions given prior to the award of the contract shall not be considered valid.
2. Offerors may send their written questions regarding the solicitation document, specifications, and drawings to the following address:

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*(Hand-carried  
correspondence)*

Panama Canal Authority  
Administration of Civil Works  
Contract Division  
Administration of Civil Works  
Projects  
Contracting Officer  
Building 710, Balboa  
Republic of Panama

*(Mailed correspondence)*

Panama Canal Authority  
Administration of Civil Works  
Contract Division  
Administration of Civil Works  
Projects  
Contracting Officer (PCA-IAP)  
P.O. Box No. 025532  
Miami, FL 33102-5532

3. Offerors may send their bid proposals to the following address:

*(Hand-carried  
correspondence)*

Panama Canal Authority  
Administration of Civil Works  
Contract Division  
Administration of Civil Works  
Projects  
Contracting Officer  
Building 710, Balboa  
Republic of Panama

*(Mailed correspondence)*

Panama Canal Authority  
Administration of Civil Works  
Contract Division  
Administration of Civil Works  
Projects  
Contracting Officer (PCA-IAP)  
P.O. Box No. 025532  
Miami, FL 33102-5532

- 4.28.73.** <sup>37</sup>**BID BOND.** *(For constructions contracts in the Canal area. For goods and services contracts when required by the corresponding tender.)*

1. The ACP shall establish the criteria or applicable limits for issuance of bid bonds. The limits or criteria shall be defined by the Finance and Risk Management Division of the Executive Vice Presidency for Administration and Finance.
2. Unless otherwise specified, proponents shall submit together with their bid proposal a bid bond, which should amount to no less than ten per cent (10%) of the total amount of the bid proposal.
3. This bond shall be in effect for no less than ninety (90) calendar days after the date established to receive the proposal in the corresponding bidding ceremony, except for such cases in which, due to the amount of the bid or complexity of the ceremony, the Contracting Officer sets a different period.
4. The bid bond may be in either one of these forms:
  - Bid bond
  - Irrevocable letter of credit

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<sup>37</sup> Modified by article one of Resolution No. ACP-AD-RM10-97 (13 May 2010) effective 13 June 2010. Modified by article third of Resolution No. ACP-AD-RM16-20 of July 14, 2016.

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5. Should the submitted bid security be a bid bond, it shall comply with the provisions set forth in clause 4.28.74 “Bonds” (*For construction contracts*. For goods and services contracts when required by the corresponding tender ) contained herein.
6. Should the submitted bid security be an irrevocable letter of credit, it must be issued by an “Acceptable Financial Agency”.
7. An Acceptable Financial Agency means any financial entity legally established in the Republic of Panama, with a General License issued by the Bank Superintendency of the Republic of Panama.
8. An Acceptable Financial Agency may issue irrevocable letters of credit up to ten per cent (10%) of the most recent Net Worth published by the Bank Superintendency of the Republic of Panama. Those Acceptable Financial Agencies that are branches of foreign companies may issue letters of credit up to a maximum of ten percent (10%) of the most recent Net Worth audited by its parent company, for which they must provide documentation showing such value.
9. Acceptable Financial Agencies that have the “Acceptable Financial Rating for Letters of Credit”, may issue letters of credit up to thirty per cent (30%) of the most recent Net Worth published by the Bank Superintendency of the Republic of Panama, and in the case of the branches of foreign companies, of the last Net Worth audited by its parent company, for which they must provide documentation showing such value.
10. An “Acceptable Financial Rating for Letters of Credit” means the minimum long-term credit rating the financial agency that presents the letter of credit shall have and that shall be at least “A-” from Standard & Poors (S&P), or “A3” from Moody’s Investor’s Service; or “A-“ from Fitch Ratings. In case the financial agency holds several long-term credit ratings, the rating with the most recent date will be taken into account.
11. Should the corresponding bid security not be attached to the proposal or if the bid security does not comply with the requirements established in this clause, said proposal shall be flatly rejected.
12. Notwithstanding the provisions of the previous paragraphs, the ACP shall not admit and shall reject any irrevocable letter of credit issued by an “Acceptable Financial Agency” that: (i) has been debarred or sanctioned by the ACP or debarred by the National Government pursuant to the applicable regulations, while said debarment is in force; or (ii) is in a process of regularization, undergoing an administrative or operational take over, or forced liquidation ordered by the Insurance and Reinsurance Superintendence of the Republic of Panama.
13. In the event that the ACP has accepted an irrevocable letter of credit issued by an “Acceptable Financial Agency”, which is subsequently



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debarred or sanctioned by the ACP or debarred by the National Government, or is in a process of regularization, undergoing an administrative or operational take over, or forced liquidation ordered by the Insurance and Reinsurance Superintendence of the Republic of Panama, the Authority shall require from the Contractor the replacement of said letter of credit within a thirty calendar-day period, beginning on the date of the notification of the situation by the ACP to the Contractor, unless the interests of the ACP are affected, in which case the Contracting Officer shall determine the most suitable action to protect the best interests of the ACP.

**4.28.74. <sup>38</sup> BONDS. (For construction and/or goods and services contracts, when required by the corresponding tender)**

1. The ACP shall establish criteria or limits applicable for issuance of bonds.
2. The ACP shall establish the criteria or limits applicable to the bonds and bond issuers and shall only approve and accept bid bonds when issued by an “Acceptable Insurer and/or Reinsurer”.
3. An “Acceptable Bond Insurer and/or Reinsurer” means any insurance company and/or bond insurer legally established in the Republic of Panama and authorized by the Superintendence of Insurance and Reinsurance of the Republic of Panama to subscribe surety business, that:
  - a. Has an Adjusted Technical Net Worth of not less than ten million balboas (USD 10,000,000.00) according to the most recent quarterly report published by the Superintendence of Insurance and Reinsurance of the Republic of Panama; and
  - a. Is an “Acceptable Insurers and/or Reinsurers” by the ACP, pursuant to the policies set forth.
4. Acceptable Insurers and/or Reinsurance Companies may issue bonds up to a maximum of ten percent (10%) of the most recent last Technical Adjusted Net Worth published by the Insurance Superintendency of the Republic of Panama in the quarterly report for the period during which the bond should be issued.
5. The Acceptable Insurers and/or Reinsurance companies may only issue bid bonds in favor of the ACP, a minimum of fifty per cent (50%) of the most recent Adjusted Technical Net Worth, published by the Insurance Superintendency of the Republic of Panama in their quarterly report, for the period during which the bond is to be issued.

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<sup>38</sup> Modified by article one of Resolution No. ACP-AD-RM10-97 (13 May 2010) effective 13 June 2010. Modified by article third of Resolution No. ACP-AD-RM16-20 of July 14, 2016. Modified by article first of Resolution No. ACP-AD-RM18-04 of February 21, 2018.

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6. The Insurers and/or Acceptable Reinsurers may issue bonds in favor of the ACP using the figure of the co-insurer subject to a maximum of five (5) co-insurers per bond; each co-insurer shall meet the same requirements, and hold the same rights and responsibilities, and shall only be held liable for the amounts established in the bond for each individually, and one co-insurer shall be appointed as leader and representative throughout the term of the bond, both in the presentation as well as for the execution of the contractual term.

7. The Acceptable Insurers and/or Reinsurer may issue bonds in favor of the ACP using the figure of the co-insurer in those cases where the bonds exceed the maximum limit established by bond in subparagraph 4 of this clause. Insurance companies and/or reinsurers that the ACP will accept for reinsurance must have an international long-term credit rating, not less than A.M. Best of “A-“, or “A-“ from Standard & Poors (S&P), or “A3” from Moody’s Investor’s Service, or “A-“ from Fitch Ratings. In case the insurance company or the re-insurer has several long-term credit ratings, the rating with the most recent date will be taken into account. The reinsurance structure must be approved by the ACP based on the procedure set forth in paragraph 8 of this clause. In these cases, the “Acceptable Insurers and/or Reinsurer” shall retain directly, per bond, a minimum of five percent (5%) of the most recent Adjusted Technical Net Worth published by the Insurance Superintendency of the Republic of Panama in their quarterly report, for the period during which the bond is to be issued.

8. The ACP will approve the reinsurance structure of the Insurance Company and/or Reinsures, prior to the presentation of the bond by the Contractor to the Contracting Officer. To comply with this requirement, the Insurance and/or Reinsurance Company must send a formal letter with the reinsurance structure to the ACP’s Risk Management Section of the Executive Vice Presidency for Administration and Finance or to the office that takes the place of this section within the ACP, with no less than five (5) working days’ notice before the expiration date on which the bond must be submitted, together with the following information:

- a. Tender or contract number and title;
- b. Value withheld by the Acceptable Insurer or Reinsurance Company by the ACP and which sends the formal letter with the required reinsurance structure and documentation.
- c. Maximum amount to be retained by each Insurance Company and/or Reinsurer by type of bond and company name of each company. In case of a co-insurer, maximum amount subscribed by each co-insurer per type of bond and Company name of each co-insurer.
- d. The most recent long-term credit rating of the insurance or reinsurance companies that will be subscribing part of the bonds, name of the financial rating issuer and number assigned by it, if applicable.
- e. Document stating and including direct action clause in favor of the ACP (Cut-Through Clause), where the reinsurance companies agree with the

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reinsured that if the latter does not comply with their contractual obligations with the ACP, the reinsurers shall pay to the originally insured that portion of any loss due to the reinsured which represents the liability of the reinsurers to the reinsured under the terms of this policy, less the premium, if any, to the reinsurers. The ACP tender document will specify the application of this requirement.

9. Reinsurance structures made up of insurers and reinsurers that participate or are part of the same economic and or corporate group will not be approved; and/or have in common: executives with leadership, members of the boards of directors, common shareholders with effective control or mother companies or subsidiaries.

Acceptable Insurers and/or Reinsurers will not include in their application, or at any time prior to the act of contractor selection, reveal to the ACP or any of its employees the identity of the Company or tenderer for whom the review is being requested and acceptance of the reinsurance structure, nor the exact value of the bond proposed to be issued.

10. For the acceptance of the bonds under reinsurance agreement, after the ACP issues formal acceptance of the reinsurance structure, in the bidding, the bidder or contractor must submit along with the bond, the following documentation:

a. Letter issued by the ACP approving the reinsurance structure to the Acceptable Insurer and/or Reinsurer indicating the tender or contract number and title; the value retained by it in each bond; the name of each of the insurance or reinsurance companies used, and the value subscribed by each one of them;

b. Letter from each insurer or reinsurer used in the issuance of each bond, indicating the tender or contract number and title; the value subscribed by each of these in the issuance of the bonds; and the RUC, Name of the Legal Representative, physical address and email address of the person responsible for the subscription;

c. Agreement or endorsement of direct action by the ACP (Cut-Through Agreement or Endorsement) where the reinsurer and the reinsured agree that in case of insolvency or financial problems of the reinsured, or should at any time become insolvent or face any financial problems with the ACP, notice be given to the reinsurers, the reinsurers shall pay to the originally insured that portion of any loss due to the reinsured which represents the liability of the reinsurers to the reinsured under the terms of this policy, less the premium, if any, to the reinsurers. The contract will specify the application of this requirement.

d. The letter approving the reinsurance structure issued by the ACP Risk Management Section, addressed to the insurance company.

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11. Notwithstanding the provisions of the previous subparagraphs, the ACP shall not admit and shall reject any bond issued by an “Acceptable Authorized Insurer and/or Reinsurer” that:

- a. Has been debarred or sanctioned to contract with the ACP, pursuant to the applicable regulations of the ACP, by the National Government or by the country of origin in the case of insurance companies incorporated outside the national territory, while such debarment lasts; or
- b. Is in a process of regularization, undergoing an administrative or operational takeover, or forced liquidation ordered by a competent authority in the Republic of Panama or in its country of origin in case of insurance companies incorporated outside the national territory; or
- c. Is in breach of its insurer or surety obligations with respect to the ACP, the National Government, and/or in its country of origin (in the case of insurance companies incorporated outside the national territory); and even when it is undergoing a dispute process.

12. In the event that the ACP has admitted bonds from an “Acceptable Insurance and/or Reinsurance Company”, that:

- a. Has been debarred or sanctioned to contract with the ACP, pursuant the applicable regulations of the ACP, by the National Government or by the country of origin in the case of insurance companies incorporated outside the national territory, while such debarment lasts; or
- b. Is in a process of regularization, undergoing an administrative or operational takeover, or forced liquidation ordered by a competent authority in the Republic of Panama or in its country of origin in the case of insurance companies incorporated outside the national territory; or
- c. Is in breach of its insurer or surety obligations with respect to the ACP, the National Government, and/or in its country of origin (in the case of insurance companies incorporated outside the national territory); and even when it is undergoing a dispute process.

13. The ACP will only accept bonds that are presented in the forms made exclusively for the ACP for this purpose (Form No. 1525, Bid Bond; Form No. 1526, Compliance Bond and Form No.1527, Payment Bond). Any bond issued in forms not authorized by the ACP will be firmly rejected.

**4.28.75. OFFICIAL CURRENCY.** Only prices offered in Balboas (B/.) or United States Dollars (US\$) shall be considered for award.

**4.28.76. FINANCIAL INFORMATION ON THE “AUTORIDAD DEL CANAL DE PANAMÁ”.** The “Autoridad del Canal de Panamá” is included on

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the Dun & Bradstreet list under the number D&B D-U-N-S: 85-367-3143. The information is available only to those subscribers of D&B. See the following electronic address for D&B at: <http://www.dnb.com>.

- 4.28.77. SPECIFIC INSTRUCTIONS FOR THE SUBMISSION OF TENDERS. (As described on the tender document or format, basic elements and others.)**
- 4.28.78. EVALUATION CRITERIA. (To be included only on public tender documents.)**
1. Price.
  2. Other price-related factors.
- 4.28.79. EVALUATION CRITERIA. (To be included only on negotiated tenders based on the lowest price.)**
1. Price.
  2. Other price-related factors.
  3. Minimum criteria for quality evaluation.
- 4.28.80. EVALUATION CRITERIA. (Only to be included on negotiated tenders based on best value.)**
1. Price.
  2. Other price-related factors.
  3. Criteria for evaluation of quality and weight factors.
  4. Criteria for best value.
- 4.28.81. PRICE. (For tender documents, public and negotiated tenders that include renewals the following text shall be used.)** When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “EFFECTIVE CONTRACT TERMS SUBJECT TO RENEWAL” are included or identified in the Contract, the “Autoridad” will determine the lowest price based on the sum of initial prices of goods and services, and those subject to renewal.
- 4.28.82. PRICE. (For tender documents on agreements based on price lists that include renewals, the following text shall be used.)** When “ADDITIONAL GOODS AND SERVICES SUBJECT TO RENEWAL” or “EFFECTIVE CONTRACT PERIODS SUBJECT TO RENEWAL” are included or identified in the tender document for agreements based on price lists, the “Autoridad” will determine the official price based on the lowest price for each item within the effective period of renewal established, as long as these comply with the terms of the tender document..
- 4.28.83. IDENTICAL TENDERS.** When identical tenders are received, the Contracting Officer shall select the one with local representation or presence. In other cases, he shall select the tender based on a random

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choice in the presence of two witnesses and this event shall be registered in the abstract of tenders.

- 4.28.84. <sup>39</sup>ADMINISTRATIVE COST OF CONTRACTING BY LINE ITEM OR COMBINATION OF LINE ITEMS.** The Contracting Officer shall consider as an evaluation criterion the administrative cost incurred by the “Autoridad” for the administration of each Contract and shall apply this amount to the lowest price of each line item if award will be by line item or to the combination of items if award will be by combination of items in order to select the tender providing the lowest price. For purchases up to U.S. \$10,000.00, the administrative cost is \$200.00, except for those made by the Inventory Management Section of the Purchasing, Warehousing and Inventories Division, from \$10,000.01 to \$100,000.00, the cost is \$500.00 and for those made by the Inventory Management Section of the Purchasing, Warehousing and Inventories Division, and higher than \$100,000.00, the cost is \$1,000.00, unless another amount is specified.
- 4.28.85. PRE-TENDER MEETINGS.** Considering the complexity of certain Contracts, the Contracting Officer may hold pre-tender meetings for the purpose of homologating the tender document. *(The Contracting Officer shall announce the method: in writing, orally, by electronic means, or with the physical presence of the interested parties, and date and time of the meetings.)*
- 4.28.86. <sup>40</sup>VERIFICATION OF COMPLIANCE WITH THE REQUIREMENTS OF THE TENDER DOCUMENT.** When the tender opening is being held by electronic means on solicitations based on the lowest price, compliance with the requirements of the tender document shall be verified prior to award using one of the following methods:
1. Requiring that the tenderer submits its technical proposal, hand carried, by fax or e-mail before the date and time set forth for the tendering proceeding.
  2. Requiring that the tenderer indicates in its technical proposal the trademark, model and, if applicable, the part number of the proposed good or an Internet address, that shall directly conduct to the information relative to the good or service proposed.
  3. Not requiring a technical proposal. The submission of the price tender in itself demonstrates compliance with all the requirements stated in the tendering documents.

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<sup>39</sup> Modified by article forty one of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article 70 of Resolution No. ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

<sup>40</sup> Modified by article forty two of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

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**4.28.87. <sup>41</sup>PERIOD OF VALID TENDERS.** In compliance with the tendering procedure, the tenderer agrees, if his tender is accepted within the period of acceptance counted from the date set forth for the tender opening, to submit the items on which he tendered prices, at the prices he has tendered, at the established place of delivery, and in the stipulated time for delivery. The tenders shall remain valid for a minimum of 30 calendar days for Contracts of up to U.S. \$10,000.00; 60 calendar days for Contracts between \$10,000.01 and \$100,000.00, and 90 days for Contracts of more than \$100,000.00, or a different time period as specified on the tender document

**4.28.88. <sup>42</sup>PROTESTS RELATED TO TENDERING PROCEDURES.**

Protests are objections, based upon legal requirements, within a tenderer selection process, against the tender document, contracts awards, disqualification of a tenderer, or the denial of prequalification request.

1. To be admitted, the protest shall be received at Building 710, Balboa, Republic of Panama, and addressed to the Executive Manager, Purchasing, Warehousing and Inventories Division, within the established terms and accordance with the Acquisition Regulation. Protests shall be accompanied with preconstituted proofs and will be resolve by the chief of the contracting office within a period of thirty (30) calendar days, counted from the date of its receipt.
2. The protest shall clearly state that it is a protest, objection or claim against the tender document, contracts awards, the disqualification of the tenderer, or the denial of prequalification request; it shall include general information on the protester; the tender or Contract number; the action which is being protested; the effect or damage caused the protester; a request for correction and copies of the pertinent documents.
3. The protest against the tender document does not require a monetary protest bond and shall be presented before the date and time established for the receipt of tenders, except when a different date and time have been expressly established in the tender document, in which case, the protest shall be presented in accordance with and within the term established in the tender document. When a prequalification process has taken place prior to a tenderer selection process, only the prequalified tenderers may present a protest against the tender documents.
4. Protests against contract awards and disqualification of a tenderer shall be presented within three (3) office days counted from the last day of the announcement of the notification of award on the Internet.

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<sup>41</sup> Modified by article forty three of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006.

<sup>42</sup> Modified by article 71 of Resolution ACP-AD-RM08-11 (18 April 2008) effective 18 May 2008.

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After this term has ended, no protest shall be admitted. The term of the award notification in Internet is five (5) office days. The term shall start after the next office day following the date of the award notification.

5. The protest against contract awards above U.S.\$10,000.00 shall, in order to be admitted, be submitted together with a monetary bond (certified check) payable to the “Autoridad del Canal de Panamá” equivalent to five per cent (5%) of the amount of the tender, but not more than U.S.\$100,000.00, to compensate for any damages and losses resulting from its processing. In cases where the protest is determined clearly to be without merit, on the written determination, issued by the Executive Manager, Purchasing, Warehousing and Inventories Division, shall be ordered that payment on the bond be made effective in favor of the “Autoridad”.
6. The protest against the disqualification of a tenderer does not require a protest bond.
7. An admitted protest will suspend the tendering procedure or the performance of the Contract until it has been resolved, except in those cases in which the suspension would prove damaging to the “Autoridad”.
8. The resolution of the protest issued by the Executive Manager, Purchasing, Warehousing and Inventories Division concludes the administrative recourse.

**4.28.89. REQUIREMENT FOR A LOCAL PRESENCE ON CONTRACTS FOR THE SUPPLY OF EXPLOSIVES, MUNITIONS, AND SIMILAR MATERIAL.**

In order to participate in Contracts for the supply of explosives, munitions, and similar material, the tenderer must certify that he has a local presence and shall submit together with his tender, a certificate providing evidence that he possesses all permits required by the Ministry of Government and Justice authorizing him to engage in the importation, sale, use, preparation, fabrication and transportation of explosive material, as the case may require, and that he complies with all other requirements specified in the tender document. The following certifications are required to be submitted with the tender: *(the Contracting Officer shall indicate them.)* Tenderers are exempt from this requirement when the place of delivery is located at Gatun Lake.

**4.28.90. <sup>43</sup>PROPOSED TERM, CONDITION, AND PLACE OF DELIVERY.**

1. When the tender document authorizes the tenderer to choose the term of delivery, he shall indicate on his tender the delivery term

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<sup>43</sup> Modified by article forty four of Resolution No. ACP-AD-RM06-06 (10 February 2006), effective 25 February 2006. Modified by article two of Resolution No. ACP-AD-RM11-52 (29 Sep 2011), effective 19 October 2011.



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proposed (*Incoterms® 2010*), CIP Miami, CIP Panama, DAP Panama or DDP Panama. Additionally, for CIP Miami he shall specify the volume and weight of the shipment in cubic feet and pounds unless this information is requested by line item.

Weight of Shipment \_\_\_\_\_ pounds.

- **CIP MIAMI:** (Carriage and Insurance Paid To). The seller must deliver the goods to the contracted carrier, or, if there are successive carriers, to the first carrier, to be transported to the agreed point, in the agreed place, on the agreed date. Agreed place: 8619 NW 68 Street, Miami, FL 33166-2667, P.O. Box 526725, Miami FL 33152-6725, limited to bulks of a maximum of 70 lbs., and 108 inches (longest girth).
  - **CIP PANAMA:** (Carriage and Insurance Paid To). The seller must deliver the goods to the contracted carrier, or, if there are successive carriers, to the first carrier, to be transported to the agreed point, in the agreed place, on the agreed date, or within the agreed period of time. Agreed place: as established in the solicitation document, at the installations of the “Autoridad del Canal de Panamá” administrative unit, Republic of Panama.
  - **DAP PANAMA:** (Delivered at Place). The seller make the good available to the buyer, or to his designee, on the carrier used, and without unloading the goods, when they arrive at the agreed point of destiny, on the agreed date, or within the agreed period of delivery. Designated destination point: as established in the solicitation document, at the installations of the “Autoridad del Canal de Panamá” administrative unit, Republic of Panama. By virtue of article 43 of the “Autoridad del Canal de Panamá” Organic Law, all the goods covered by the Contract, that are consigned to the ACP, and identified as such in the Contract, and services are exempt from payment of any national or municipal levies, taxes, duties, fees, charges, or contributions. The Contractor shall be responsible for processing the Simplified Customs Declaration and paying customs costs, as part of the delivery of consigned goods, under the contract.
  - **DDP PANAMA:** (Delivered Duty Paid). The seller must make the goods available to the buyer, or to his designee, on the carrier used, and without unloading the goods, when they arrive at the agreed point of destiny, on the agreed date, or within the agreed period of delivery agreed to. Designated destination point: as established in the solicitation document, at the installations of the installations of the “Autoridad del Canal de Panamá” administrative unit, in the Republic of Panama.
2. Regardless of the delivery terms selected by the ACP in the purchase order or contract award, the process for payment of invoices shall be initiated after the goods have been received and

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accepted in the installations of the “Autoridad del Canal de Panamá” administrative unit, in the Republic of Panama. CIP Miami transit time to Panama is 2 days.

3. In the tendering proceeding on the basis of the lowest price contractor, the presiding official shall flatly reject, during the tender opening, those tenders that did not contain the information required under paragraph 1, for delivery terms CIP Miami.
4. In the tendering proceeding, the Contracting Officer shall award the Contract based on the lowest price that results after application of the mathematical formulas that consider costs relative to the different points of delivery proposed by the tenderers and the equivalent price for delivery at the installations of the administrative unit of the “Autoridad” in the Republic of Panama. For comparison purposes, the terms CIP Panama and DAP Panama are equivalent.
  - CIP MIAMI to DAP PANAMA: To convert CIP Miami price to DAP Panama price, the following formula shall be used:  
DAP = [CIPM + (I x CIPM)] + (FH x WPB)  
DAP = 1.01CIPM + 1.29WPB Where:  
DAP = DAP Panama Price  
I = Insurance = 1% of CIPM  
CIPM = CIP Miami Price  
FH = Freight and handling to the installations of the administrative unit = \$1.00 per pound.  
WPB = Weight in pounds of the bulk

**4.28.91 ASSIGNMENT OF CONTRACTS**

1. By the assignment of a contract, the contractor (assignor) transfers to a third party (assignee) the rights and obligations proceeding from the contract, requiring prior expressed approval of the Panama Canal Authority, after having fully complied with the requirements established in the Acquisition Regulation, the contract and the conditions contained in the tender document.
2. To request the assignment of contract, the following documents shall be submitted:
  - a. A letter, signed by the legal representative or by a person authorized by the assignor, requesting to the contracting officer the assignment of contract, that shall include the contract description, (number, amount, object and award date), and the name of the assignee.
  - b. The Assignment of Contract Agreement, signed by the legal representative or by a person authorized by the assignor and assignee, with the corresponding notarization of the signatures. This Agreement shall indicate that the assignee accepts all responsibilities for the execution of the contract in accordance with the terms and conditions required in the contract.

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- c. Authorizations by the assignor's and assignee's Board of Directors to make and accept, respectively, the Assignment.
- d. All the necessary documents that will allow the contracting officer to corroborate that the assignee meets and complies with all the requirements and criteria applied to the assignor at the time of contract award, as well as all the conditions and warranties required as a contractor.
- e. Certificates from the Public Registry of the assignor and assignee (or its equivalency in case of foreign entities).
- f. Authorization and indorsement from the surety or guarantor of the contract and any insurance policies required in the contract.
- g. Copy of the identification card or passport of the legal representative or person authorized to sign for the assignor and assignee.
- h. In case the assignor and assignee are foreign entities, all documentation shall be notarized, and translated to the English or Spanish language, in the language in which the contract was made.

**4.28.92 RULES OF CONDUCT**

In order to avoid conflicts of interests, real or apparent, with respect to former officials and employees of the Panama Canal Authority, the following rules of conduct shall apply:

1. In accordance with article 32 of Agreement 11 (6 May 1999) and corresponding modifications, by thereof the Ethic and Conduct Regulation of the Panama Canal Authority, the following rules of conduct are established:
  - a. Former employees shall not represent another person, entity, group, or organization, at the Panama Canal Authority, in relation to any contract or particular business in which the former employee participated in a personal and substantial manner while employed by the PCA. This prohibition forbids the former employee to communicate, present itself, participate in meetings, act or represent, in any manner, another person or entity, corporation, organization of any nature or group at PCA, in relation to any contract or particular business in which the former employee participated in a personal and substantial manner, by reasons of its duties while employed by the PCA.  
For these purposes, it shall be understood that "direct, personal and substantial participation" means that participation of the former employee that took place while employed by PCA and in which he / she made a decision with respect to the contract or particular business; made an approval, disapproval,

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recommendation, or advisory in relation to a contract or particular business; or made an investigation with respect to the contract or particular business; or made contacts with firms, tenderers, providers, contractors, and received and evaluated documentation, proposals, tenders, programs, getting involve in such a manner in interactions that gave him / her knowledge of the business before or after the contract.

- b. For a period of two years after leaving employment with PCA, the former employee shall not represent another person at PCA, in relation to any business that was pending under his / her responsibility during the last year of service. It shall be understood that “any business that was pending under his / her responsibility” means any theme that was assigned to the former employee or to any person supervised by the former employee, including projects or contracts that were being in process under his / her responsibility during the last year of employment with PCA.
  - c. During the period of two years after leaving employment with the PCA, the Administrator, the Sub-Administrator, Inspector General, and the chiefs of principal offices shall not represent any person with the intention to influence in PCA, in relation to any pending issue or of substantial interest to PCA.
2. In accordance with article 18 of Agreement 24 (4 October 1999) and later modifications, by which the Acquisition Regulation of the Panama Canal Authority was created, the following rules of conduct are established:
- a. Former PCA employees whose principal duty was the participation in PCA’s acquisition processes, shall not act in any tenderer selection process for the period of two (2) years from the last day of employment with PCA. This prohibition is for those former employees that had as a main duty to recommend, evaluate or select in the contracting process, or performed duties as purchasing agents, contract specialists, contract specialist supervisors, and contracting managers.
  - b. Former PCA employees, which have participated in a specific acquisition process, shall not represent the contractor at PCA in any business related to this process, for a period of three (3) years from the last day of employment with PCA. The former employee shall not participate, process, act nor represent the contractor at the PCA, in any business related to the contract in which he / her participated, until the stated period of three (3) years has concluded.

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3. PCA officials and employees that have to deal with former PCA officials or employees in situations as described above, shall inform the former PCA official or employee, and the persons, firms, organizations or groups that he / her represents, that in accordance with this contractual clause it is not possible or viable to realize any type of interaction or activity with such former official or employee. The official or employee that experience or has knowledge of any incident that involves the noncompliance with any of the rules of conduct mentioned in this clause, shall immediately inform his / her direct supervisor, manager or hierarchical superior.
4. The noncompliance with any of the rules of conduct included in this clause shall be construed as an intentionally noncompliance with a contractual obligation with the PCA, for the former PCA official or employee and to the firm represented by these former PCA officials or employees, and in addition to any penal and civil actions, may constitute grounds to initiate the debarment proceeding against the former PCA official or employee and to the firm, established in Chapter XVI of the Acquisition Regulation of PCA.

**<sup>44</sup>4.28.93. FLOATING EQUIPMENT PURCHASE AND SALE CONTRACT**

As part of the compliance with the object of the contract, the contractor shall submit to the Panama Canal Authority (PCA) all documents relative to the transfer of title of the floating equipment under this contract and complete and submit form 1056 (AJ) PURCHASE AND SALE CONTRACT (PANAMA). All documents originating in a foreign country shall be dully authenticated with affixed seals or through consular services, with charges to the contractor.

**<sup>45</sup>4.28.94. COMPLIANCE WITH THE GLOBAL COMPACT OF THE UNITED NATIONS ORGANIZATION**

The Panama Canal Authority as signer of The Global Compact of the United Nations Organization, and in recognition of this initiative of ethic compromise, adopts as an integral part of its strategy and its operation to watch and promote the Compact Principles among its suppliers and contractors, as detailed herein:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: Make sure that they are not complicit in human rights abuses.

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<sup>44</sup> Incorporated by article 11 of Resolution No. ACP-AD-RM09-03 (9 February 2009), effective 11 March 2009. Modified by article 1 of Resolution No. ACP-AD-RM12-20 (20 June 2012), effective 2 July 2012.

<sup>45</sup> Incorporated by article 12 of Resolution No. ACP-AD-RM09-03 (9 Feb 2009) effective 11 March 2009. Modified by article five of Resolution No. ACP-AD-RM-15-23 (31 August 2015) effective 7 september 2015.

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Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining;

Principle 4: The elimination of all forms of forced and compulsory labour;

Principle 5: The effective abolition of child labour; and

Principle 6: The elimination of discrimination in respect of employment and occupation.

Principle 7: Businesses should support a precautionary approach to environmental challenges;

Principle 8: Undertake initiatives to promote greater environmental responsibility; and

Principle 9: Encourage the development and diffusion of environmentally friendly technologies.

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

With the submission of its proposal, the tenderer or contractor certifies that it is not incurring or will incur in its contractual relationship with the Authority in violation of the Universal Declarations and Conventions covered under the ten Global Compact principles set out in this clause.

### **<sup>46</sup>4.28.95. INVITATION FOR BIDS COVERED BY CHAPTER 9 OF THE TRADE PROMOTION AGREEMENT BETWEEN THE REPUBLIC OF PANAMA AND THE UNITED STATES (TPA).**

Bidders should be aware that in the event that this invitation for bid held by the Panama Canal Authority, for the contract or acquisition of products, goods or services is estimated to exceed U.S. \$ 593,000.00 or for construction services exceeding U.S. \$ 12,000,000.00, it shall be covered by Chapter 9 of the Trade Promotion Agreement between the Republic of Panama and the United States of America ratified by Law 53 of December 13, 2007."

### **<sup>47</sup>4.28.96. USE BY CONTRACTORS OF TRADEMARKS PROPERTY OF THE PANAMA CANAL AUTHORITY BY CONTRACTORS**

The Panama Canal Authority owns the brand and design "Canal de Panamá", "Panama Canal", "Autoridad del Canal de Panamá" as well as other names, trademarks and denominations, which are duly registered and protected by current industrial property laws.

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<sup>46</sup> Incorporated by article first of Resolution No. ACP-AD-RM14-08 (4 april 2014) effective 15 april 2014.

<sup>47</sup> Incorporated by article first of Resolution No. ACP-AD-RM16-03 (14 march 2016) effective 21 march 2016.

**SINGLE TENDER DOCUMENTATION – INVITATION TO TENDER,  
CONTRACT FOR THE PROCUREMENT OF GOODS AND SERVICES  
OF THE AUTORIDAD DEL CANAL DE PANAMA AND ATTACHMENT**

Contractors must be aware that a contractual relationship with the Panama Canal Authority does not imply authorization to use the Panama Canal's name or any of these brands to their advantage.

It is strictly forbidden to use the Panama Canal's name or any trademark, logo, design or name that refers to it without the prior written consent from the Panama Canal Authority. The corresponding Contracting Officer will manage such authorization through the Vice Presidency for Corporate Communications who shall be responsible of such decision.

In addition, contractors must keep in mind that the Panama Canal Authority does not guarantee the quality of a product, good or service that has been provided by means of a contractual relationship, therefore, the above prohibition includes any unauthorized advertising carried out by any means, referring to the Panama Canal or the Panama Canal Authority or any of its trademarks.

The Panama Canal Authority reserves the right to take the legal action it deems appropriate in the event of any violation of the provisions herein.

On the other hand, and notwithstanding the above, all goods to be delivered to the Panama Canal Authority applicable under a Contract for the supply of goods, may not bear the name or logo of the supplier permanently incorporated in the delivered goods, except in the case of supplies to be incorporated into the construction works or that this has been expressly requested by the Panama Canal Authority or that it may be the manufacturer's name. The administrative unit that must receive the good will check the situation at the time of receipt and will notify the Contracting Officer, if necessary, for a determination of acceptance.