

INSTRUCTIONS TO TENDERERS

A. GENERAL

1. The Panama Canal Authority (ACP), hereinafter referred to as "the Employer," wishes to receive Tenders for the design and construction of the third set of locks which involves the design and construction of two locks complexes, one of the Atlantic side and the other on the Pacific side of the Canal; each complex shall consist of the lock structures and systems themselves, in addition to the associated buildings, facilities, and systems required for their Operation and maintenance, all as more particularly defined in the Employer's Requirements and referred to herein as "the Works".^{A17} Unless otherwise stated, terms in this request for proposals number 76161 (and any amendments thereto) ("RFP"), shall have the meaning set out in the Conditions of Contract, Volume III of the RFP (the "Conditions of Contract").^{A17}

^{A17} The Works are part of the Panama Canal Expansion Program (also described in this RFP as the "Project" or the "Program"), which is intended to increase transit capacity of the Canal to meet the growing cargo-carrying demand along major international maritime trade routes.^{A17} Further information on the Panama Canal Expansion Program can be found at:

<http://www.pancanal.com/eng/plan/documentos/propuesta/acp-expansion-proposal.pdf>

^{A23} On December 9, 2008, the Employer signed certain Credit Facility Agreements with international development agencies for the sum of up to US\$2,300 million, in order to partially finance the development and construction costs of the Panama Canal Expansion Program. The participation of the agencies in the financing structure is distributed as follows: CORPORACIÓN ANDINA DE FOMENTO, ("CAF") for an amount of up to US\$300 million; EUROPEAN INVESTMENT BANK, ("EIB") for an amount of up to US\$500 million; INTER-AMERICAN DEVELOPMENT BANK, ("IDB") for an amount of up to US\$400 million; INTERNATIONAL FINANCE CORPORATION, ("IFC") for an amount of up to US\$300 million; JAPAN BANK FOR INTERNATIONAL COOPERATION, the international arm of Japan Finance Corporation for an amount of up to US\$800 million.^{A23}

2. The Panama Canal Expansion Program consists of three major components:
 - a. **Principal Component:** The principal component, and the object of this Contract, is the Works, which comprise:
 - 1) **Atlantic Lock Complex:** The Atlantic complex shall be aligned and sited where indicated on the relevant drawings contained within Volume II, Part 4 (Requirement Drawings), which is east of Gatun Locks, on the Atlantic end of the Canal, in the Republic of Panama.
 - 2) **Pacific Lock Complex:** The Pacific complex shall be aligned and sited where indicated on the relevant drawings Volume II, Part 4 (Requirement Drawings), which is southwest of Miraflores Locks, on the Pacific end of the Canal, in the Republic of Panama.
 - 3) In addition, and as part of the Works, the Contractor shall execute other work all as set out **in the Employer's Requirements and required by the Contract.**^{A17}
 - b. **Second Component:** ^{A17} The second component of the Panama Canal Expansion Program, not included in this Contract, is the excavation of access channels to the locks and the widening of existing navigational channels.^{A17}

c. **Third Component:** The third component of the Panama Canal Expansion Program, also not included in this Contract, is the deepening of the navigation channels and the raising of the maximum operating level for Gatun Lake.

3. **In these Instructions to Tenderers:** where an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date; and where there is a reference to time, that time shall be UTC/GMT (Coordinated Universal Time / Greenwich Mean Time) minus 5 hours.

4. **Eligible Tenderers**

Only those consortia who received pre-qualified status as a result of the prequalification process prescribed in the RFQ will be eligible to submit Tenders. Each pre-qualified consortium will be considered as a Tenderer and together the pre-qualified consortia are referred to as the Tenderers.

5. **Cost of Tenders and Payment of Stipends**

Each Tenderer shall bear all costs associated with the preparation and submission of its Tender and the Employer will in no case be responsible or liable for those costs.

However, the Employer shall, upon award of the Contract, pay a stipend to each unsuccessful Tenderer who submits a fully compliant Tender. The total amount of the stipend is fifteen million dollars (US\$15,000,000.00), which shall be divided equally between the unsuccessful Tenderers who 1) submit a fully compliant Tender and 2) allow the Employer the right to use the information/concepts contained within their Tenders, for its own use associated with the Works and the Employer's Operations and not for other commercial purposes.

In the event that an unsuccessful fully compliant Tender had specifically developed, adapted or used computer based modeling, simulation, forecasting or calculating software tools and software applications such as, but not limited to spreadsheets and databases, and refers to, mentions or includes them in support of their Tender, the Tenderer shall supply to the Employer these software tools/applications and a full license for their use by the Employer. ^{A17}This does not apply to the commercially available or off-the-shelf software on which the software tools or applications run. ^{A17} Each such license shall be valid for a period of no less than five years from the date established for the submission of Tenders.

6. **Alternate Tenders**

Each Tenderer shall submit only one Tender. A Tenderer who submits or participates in more than one Tender will be disqualified. Tenderers shall submit Tenders which comply fully with the Employer's Requirements as stipulated in the various documents that form part of the RFP. Alternate Tenders or Tenders with qualifications, conditions, objections, options or alternatives will not be considered and shall be disqualified.

7. **Examination of Site Conditions**

Tenderers are advised to visit and examine the Site and its surroundings and obtain for themselves, at their own responsibility, all information that may be necessary for preparing their Tenders. The costs of visiting the Site and obtaining all information for preparing their Tenders shall be at the Tenderer's own expense.

The Tenderers and any of their personnel or agents will be granted permission by the Employer to enter upon the Employer's premises and lands for the purpose of such inspection, provided that the Tenderers and their personnel and agents, release and indemnify the Employer and its personnel and agents from and against all liability arising out of or in connection with such inspection and will be responsible for death or personal injury, loss of or damage to property and any other loss, damage, costs and expenses incurred as a result of such inspection.

Tenderers may also view the geotechnical boring cores that are located in the respective facilities to the east and west of Puente Centenario and in Corozal West. Those wishing to view the cores shall make their requests in advance to allow coordination by the Employer. Because of the tremendous volume of cores (stored in approximately 8,600 different cases), such requests should identify the specific borings and elevation ranges that are of interest, to the extent possible.

The amount of time required to prepare the samples for inspection will depend upon the complexity of the request; the Employer will contact the Tenderer within seven (7) days of receiving the request to indicate when and where (at which of the indicated facilities) the inspection can be made as well as the meeting point. In the event that a Tenderer should wish to inspect all available cores (from both Atlantic and Pacific areas), the Employer will make them available.

The Employer may conduct a Site visit concurrently with the Pre-Tender Meeting.

^{A17} Drawings of existing conditions at the Site, a geotechnical data report, other reports, and other reference documents are provided in Volume VI - Reference Documents. Some of the drawings in Parts 5 and 6 of Volume VI – Reference Documents have been superseded by the reference drawings included in Part 1 of the same Volume.^{A17}

Tenderers are directed to Sub-Clauses 4.10, 4.12 and 5.1 of the Conditions of Contract with regard to responsibility for information and data supplied by the Employer and unforeseeable physical conditions.

8. Examination of Models

Tenderers are advised that Consorcio Post-Panamax is conducting physical model tests of the locks filling and emptying systems – see Sections 01 81 13 – *[Filling and Emptying Systems]* and 01 81 13.13 – *[Physical Model for Filling and Emptying System]* of the Employer's Requirements, at the Compagnie National du Rhone Laboratory in Lyon, France.

- a. Tenderers should contact Jean-Louis MATHURIN (j.mathurin@cnr.tm.fr) Director of CNR Engineering with copy to Mattia SCOTTI (m.scotti@cnr.tm.fr) Director of CNR laboratory, Christine THIMON (c.thimon@cnr.tm.fr) Assistant in Charge of External contacts and Tere Abadia (tabadia@pancanal.com) ACP Contract Specialist, to coordinate visits to the filling and emptying model in Lyon, France.
- b. Tenderers may visit the laboratory once free of charge but will bear their own travel expenses.
- c. The maximum duration of this visit will be one day.
- d. The maximum number of attendees will be six (6) persons per Tenderer.
- e. The dates reserved for Tenderers' visits will be from the 1st to 15th of March 2008 on regular work weekdays and hours.
- f. All questions concerning present studies and results should be addressed to the Employer's Contracting Office.

- g. Tenderers may also visit the navigation tank model by Consorcio Post-Panamax Flanders Hydraulic Research Laboratory in Antwerp, Belgium, which is performing tests for the Employer to study different marine operations parameters:
- h. Tenderers should contact Erik LAFORCE (erik.laforce@mow.vlaanderen.be) of FHR with copies to Marc WILLEMS (marc.willems@mow.vlaanderen.be) and Karine DEGRAUWE (karine.degrauwe@mow.vlaanderen.be) and Tere ABADIA (tabadia@pancanal.com), Employer's Contract Specialist, to coordinate visits to the navigation tank model in Antwerp, Belgium.
- i. Tenderers may visit the laboratory once free of charge, but will bear their own travel expenses.
- j. The maximum duration of visit will be a half-day.
- k. The maximum number of attendees will be six (6) persons per Tenderer
- l. The dates reserved for Tenderers' visits will be from the 4th to 14th of March 2008 on regular work weekdays and hours.
- m. All questions concerning present studies and results should be addressed to the Employer's Contracting Office.

9. Changes in the Composition of Tenderers

From and after the Base Date Tenderers may not make and the Employer will not consider any Changes in Composition.

"Changes in Composition" means with regard to Tenderer any addition of a Member, replacement of a Member, or change in the role or responsibility or the percentage participation of any Member. A Change in Composition shall also include any replacement or substitution, or change in ownership or control, of any Project Designer (as defined in the RFQ) and/or Lock Gates Fabricator (otherwise referred to as the Lock Gate Fabricator Entity in the RFQ).

For the purposes of these Instructions to Tenderers, "Member" shall mean the individual, distinct and separate legal entities which comprise a Tenderer and which have entered into an association, consortium, joint venture or other unincorporated grouping for the purposes of, inter alia, submitting a Tender.

In the event of any proposed Changes in Composition following pre-qualification and prior to the Base Date, the Tenderer shall promptly seek approval of the proposed change and provide the Employer with complete details of the change proposed. The information to be provided in respect of the proposed new entity or other Change in Composition shall be the same as that required in the RFQ with respect to the original Member or other entity included in the Tenderer's original submission to the Employer. ^{A17} Both the new entity and, after giving effect to the proposed Change in Composition, the Tenderer, shall, individually (as to its Members and its associated Project Designer and/or Lock Gates Fabricator) and collectively, meet or exceed the criteria originally required for pre-qualification in the RFQ. ^{A17}

Members from one Tenderer shall not form part of another Tenderer. Mergers, teaming arrangements or alliances of any kind between Members of different Tenderers and/or between Tenderers will not be allowed, and will be grounds for disqualification of the Tenderers involved. This requirement shall also apply to the Lock Gates Fabricators and the Project Designers. To verify this requirement, the Employer may request clarifications

and additional information pertaining to publicly-announced mergers or acquisitions affecting Members:

^{A17}Only the Member designated as having the legal authority and capacity to act on behalf of a Tenderer (the "Lead Member") will be authorized to submit to the Employer requests for Changes in Composition in respect of such Tenderer.^{A17}

The Employer reserves the right, in its sole discretion, to reject any Change in Composition and to consider a Tender non-compliant if the Tenderer makes a Change in Composition without the Employer's approval on/or after the Base Date.

10. Participation of Members with more than one Tenderer

- a. To ensure a fair and competitive procurement process, Members and the Project Designer for each Tenderer, whether or not the Project Designer is itself a Member or a Subcontractor, shall not participate or collaborate, in any capacity, with or in more than one Tenderer during the course of the entire procurement process.
- b. Without limiting the application of paragraph A-10(a) above, Members in different Tenderers or the Project Designers associated with different Tenderers may not share the same intermediate or ultimate Parent Company or be under partial or total common ownership or under control of the same government, public or private entity or otherwise be part of the same group of companies. Further, no Member, or Project Designer associated with one Tenderer, may have partial or total ownership in or control over (or be part of the same group of companies as) any Member of, or Project Designer associated with, any other Tenderer.
- c. For the purposes of this RFP, any Member or Project Designer is presumed to have the control or ownership interest prohibited by sub clause (b) hereof, when:
 - 1) it has 3% or more participation, stock, shares or ownership in/of a Member of a different Tenderer or the Project Designer associated with a different Tenderer; and/or,
 - 2) its Parent Company (if any) has 3% or more participation, stock, shares or ownership in/of a Members of a different Tenderer or Project Designers associated with a different Tenderer; and/or,
 - 3) a Member or a Project Designer or their respective Parent Company (if any) has one or more representatives appointed to the Board of Directors (or equivalent authority) of another Tenderer or Member, or Project Designer of a different Tenderer, or any member of the Board of Directors (or equivalent authority) of a Tenderer, Member or Project Designer is also a member of the Board of Directors (or equivalent authority) of any other Member, Tenderer and/or Project Designer.
- d. ^{A23}For the purposes of this paragraph A-10(c) "Parent Company" means a company which:^{A23}
 - 1) controls the composition of the board of directors of a Member or Project Designer;
 - 2) ^{A17}controls more than half of the voting power in a Member or Project Designer; or^{A17}
 - 3) holds more than half of the issued share capital of a Member or Project Designer (excluding any part thereof which consists of preference shares and treasury shares).

- e. Violations of this clause will disqualify the Tenderer, all Members of, and the Project Designer associated with, such Tenderer. The prohibitions contained in this clause will apply at all stages of the procurement process in respect of the RFP.

11. Acquisition Regulation of the Panama Canal Authority

This Tendering process is subject to a “Non-Negotiated Tender based on Best Value” process described in the article 89C of the Acquisition Regulation of the Panama Canal Authority.

The provisions of the Acquisition Regulation of the Panama Canal Authority are hereby incorporated in this RFP; the Regulations may be accessed on the Internet at: www.pancanal.com under the “Procurement section,” “Information and Documents.”

The official version of the Acquisition Regulation of the Panama Canal Authority is in Spanish.

B. REQUEST FOR PROPOSALS (RFP)

1. Content of the RFP Package

The RFP comprises the following:

Volume I – Tender Documents:

Part 1 - Instructions to Tenderers

Part 2 - Tender Forms

Part 3 - Forms of Security

Volume II – Employer’s Requirements:

Part 1 - Locks Performance and Design Criteria

Part 2 - Supplemental Requirements

Part 3 - General Requirements

Part 4 – Requirement Drawings

Volume III – Conditions of Contract:

Conditions of Contract

Volume IV – Employer’s Evaluation Criteria:

Part 1 Overall Execution Plan

Part 2 Key Personnel

Part 3 (Not Used)

Part 4 Design-Build Execution Methodology

Part 5 Design Plan

Part 6 Construction Plan

Part 7 ^{A18}Maintenance Services ^{A18}

Part 8 Training of Employer's Personnel

^{A23}Part 9 Price Proposal and Price Adjustment Timetable ^{A23}

Volume V – Contractor's Proposal (Instructions)

Part 1 - Overall Execution Plan

Part 2 – Key Personnel

Part 3 – (Not Used)

Part 4 – Design-Build Execution Methodology

Part 5 – Design Plan

Part 6 - Construction Plan

^{A18}Part 7 – Maintenance Services ^{A18}

Part 8 - Training of Employer's Personnel

^{A23}Part 9 - Price Proposal and Price Adjustment Timetable ^{A23}

Volume VI – Reference Documents:

Part 1 - Reference Drawings

Part 2 - Geotechnical Reports

Part 3 - Seismic Data for Temporary Structures

Part 4 - Environmental Impact Study of the Third Set of Locks

Part 5 - Conceptual Design of Post Panamax Locks (Pacific); CPP, May 2003;
<http://www.pancanal.com/esp/plan/estudios/0137.html>

Part 6 - Update of Pacific Locks Conceptual Design and Harmonization of Atlantic Locks
- Conceptual Design; CPP, May 2005;
<http://www.pancanal.com/esp/plan/estudios/0268.html>

Part 7 - Hydro-meteorological Report

Part 8 - ^{A19}Filling and Emptying Systems Reference Documents ^{A19}

Part 9 - Handbook of Lockage Procedures (existing locks)

Part 10 - Blasting Records

Part 11 - Widening and Deepening of the Pacific Entrance and South Approach Channel
to the Third Set of Locks of The Panama Canal

Part 12 - Feasibility Evaluation of a Tug Assisted Locks Vessel Positioning System
[Maneuvering Times], <http://www.pancanal.com/esp/plan/estudios/0202.html>

Part 13 - Tugboat Fleet Principal Particulars,
<http://www.pancanal.com/eng/maritime/tugs/index.html>

Part 14 - ^{A19}Design [Specification and Drawings] for East Barrier Dam 2E, West Barrier Dam 1W and West Barrier Dam 2W Structures^{A19}

Part 15 - Programa de Ampliación del Canal: Canal de Aproximación Norte Pacífico Proyecto No. PAC 2

Part 16 - Electrical Works Reference Data

Part 17 - Miraflores Swing Bridge Reference Documents

Part 18 - Gatun Lake Dump Sites Bathymetric Data

Part 19 - Administrative

^{A19}Part 20 - Traffic Scenarios^{A19}

Volume VII – Employer's Data:

Part 1 - Geotechnical Interpretive Report

Part 2 - Topographical Data

Part 3 - Seismic Design Criteria Data

2. Clarification of RFP

A Tenderer requiring any clarification of the RFP shall notify the Employer in writing or by fax at the Employer's address indicated in the Appendix to Tender. E-mails will be allowed only as a means of transmitting signed letters and documents as attachments, written in the Tenderer's stationary and sent to TABADIA@pancanal.com. Tenderers must send their requests for clarifications not later than seven (7) days prior to the Base Date.

The Employer may respond to any request for clarification before the Base Date. Copies of the Employer's response will be forwarded to all Tenderers, including a description of the inquiry.

^{A17}If any Tenderer sends requests for clarification after the last day to send requests for clarifications, the Employer will consider them and if an amendment to the RFP is issued by the Employer between the Base Date and the due date for receipt of Tenders, then the Employer may, at its discretion, extend the due date for receipt of Tenders, in order to provide the Tenderers the opportunity to request additional clarifications to the amendments and to respond thereto.^{A17}

3. Amendment of the RFP

At any time prior to the deadline for submission of Tenders, the Employer may, for any reason, whether at its own initiative or in response to a clarification requested by a Tenderer, change the RFP Documents by issuing amendments.

Any amendment thus issued (and to the extent not amended by subsequent amendments) shall be part of the RFP and shall be notified in writing to all Tenderers. Tenderers shall acknowledge receipt of each amendment to the Employer.

To afford Tenderers reasonable time in which to take an amendment into account in preparing their Tenders, the Employer may extend the deadline for submission of Tenders.

C. PREPARATION OF TENDERS

1. Official Language of Tenders

The Tender, and all correspondence and documents, related to the Tender, exchanged between the Tenderer and the Employer shall be in the English language.

2. Documents Comprising the Tender

The Tender submitted by the Tenderer shall comprise the following component parts specified in this paragraph C-2. Such components shall be signed in accordance with the requirements of paragraphs C-10 and C-11 and as follows:

- i. the Letter of Tender shall be signed by each Member;
- ii. the Appendix to Tender shall be signed by each Member;
- iii. the Tender Security shall be signed by the issuer thereof;
- iv. any Certification Letter (as defined in paragraph C-2(a)(4)(a)) shall be signed by each Member;
- v. any Confirmation Letter (as defined in paragraph C-2(a)(4)(b)) shall be signed by each Member;
- vi. the Technical Documents shall be signed by any of the Tenderer's Authorised Tender Signatories (as defined in paragraph C-2(a)(5)(a));
- vii. the Price Proposal and Price Adjustment Timetable shall each be signed by each Member; and
- viii. any other document shall be signed as specified herein.

a. Tender Documents

Tenderers shall submit the following documents of Volume I, duly completed and executed:

- 1) the Letter of Tender;
- 2) the Appendix to Tender;
- 3) ^{A23}the Tender Security (as provided for in paragraph C-8);
- 4) (a) a further original of the charter, consortium, association or other similar agreement containing original signatures of each of the Members, together with an original letter in the form provided as Annex 1A to Part 1 of Volume I, which shall be dated the same date as the date of the Letter of Tender (the “**Certification Letter**”); or
(b) an original letter in the form provided as Annex 1B to Part 1 of Volume I, which shall be dated the same date as the date of the Letter of Tender (the “**Confirmation Letter**”);
and in either case in the form specified in paragraphs C-10(a)(2) and C-11;
- 5) Tender signature authority documents (the “**Tender Signature Authority Documents**”), consisting of:
(a) either:

- (i) powers of attorney (or equivalent instruments) governed by the laws of Panama, issued by each Member; or
- (ii) resolutions of the Board of Directors (or equivalent pursuant to the bylaws of the member and law of the jurisdiction of the Member) (and, if required pursuant to the constitutive documents of any Member, resolutions of the Shareholders) of each Member,

providing the authority for the named persons therein to sign all pages of the original and all copies of the Technical Documents on behalf of each Member and the Tenderer (such persons, the **"Authorised Tender Signatories"**); *provided that in no event shall any Tenderer appoint more than ten (10) Authorised Tender Signatories*; and

- (b) where the powers of attorney (or other instruments) have been provided in accordance with paragraph C(2)(a)(5)(a)(i), resolutions of the Board of Directors (or equivalent) (and, if required pursuant to the constitutive documents of any Member, resolutions of the Shareholders) of each Member, authorising and providing the authority for the person(s) granting such power of attorney (or equivalent instrument) on behalf of each Member to the Authorised Tender Signatories; and.

- 6) any other material required to be completed and submitted in accordance with these Instructions to Tenderers.^{A23}

b. **Technical Proposal**

All documentation and information stipulated in Volume V, Parts 1 to 8 – (the "Contractor's Technical Proposal"); and

c. **Price Proposal**

- 1) ^{A23}This shall be in the form of the Schedule of Project Elements and Prices set out in Volume V, Part 9 of the RFP fully completed by the Tenderers as required therein and in accordance with these Instructions to Tenderers (the "Price Proposal").
- 2) The completed and signed Price Adjustment Timetable as set out in Volume V, Part 9 of the RFP shall be included in the envelope with the completed and signed Price Proposal.^{A23}
- 3) No other documents shall accompany the Price Proposal.^{A19}

- d. In addition, Tenderers will submit any other materials required to be completed and submitted in accordance with these Instructions to Tenderers.

3. **Tender Prices**

Unless stated otherwise in the RFP, the Price Proposal to be submitted by each Tenderer shall take into account and reflect the discharge of and compliance with all the obligations described in Volumes I, II, III and V of the RFP for the whole of the Works.

^{A19}In completing the Price Proposal, the Tenderers shall fill in the prices for all elements of the Works and requirements described in the Schedule of Project Elements and

Prices, Part 9 of Volume V. Elements against which no price is entered by the Tenderer will not be paid for by the Employer when executed and shall be deemed covered by the other prices in the Price Proposal.^{A19}

^{A23} Except as provided for in paragraph C-5 below, all duties, taxes and other levies payable by the Contractor under the Contract prior to the deadline for submission of Tenders, shall be included in the rates and prices and in the Total Base Price as set out in Price Proposal submitted by the Tenderers.^{A23} The Tenderers shall become familiar with the tax Laws of the Employer's Country.

^{A23} The Tenderers attention is directed to Sub-Clause 13.8 [*Adjustments for Changes in Prices for Specified Materials*] of the Conditions of Contract.^{A23} Tenderers have the opportunity to suggest to the Employer reference data sources different from those indicated in Sub-Clause 13.8 of the Conditions of Contract. Any such suggestions are to be submitted in writing to the Employer's aforementioned email address.^{A18} The Employer shall consider such suggestions until December 19, 2008.^{A18} Any changes to the reference data sources that are deemed to be appropriate by the Employer will be included in an Amendment to the RFP.

4. ^{A23} **Price Adjustment Timetable**^{A23}

The Tenderers shall complete the Price Adjustment Timetable in Volume V, Part 9 of the RFP by entering an Adjustment Quantity for each Adjustment date. The Adjustment Quantity for each Adjustment Date can range from 0 up to the Maximum Adjustment Quantity stated in the Price Adjustment Timetable for a Specified Material. For each Specified Material the total aggregate of all the Adjustment Quantities entered by the Tenderer against the Adjustment Dates must not exceed the Maximum Adjustment Quantity stated in the Price Adjustment Timetable for that Specified Material.^{A20}

5. **Exemption of Import Duties, Taxes and Levies**

Tenderers should note that, pursuant to Sub-Clause 14.1 of the Conditions of Contract, no import duties, taxes or levies shall be imposed on certain items manufactured outside of the Republic of Panama and which are then subsequently shipped/consigned to the Employer. Accordingly, the Price Proposal should reflect this exemption.

6. **Currencies of Tender**

The Price Proposal shall be quoted by the Tenderers in US Dollars.

7. **Tender Validity**

Tenders shall remain valid until 3.30 pm on the one-hundred and eightieth (180th) day (or if such day is not a Business Day, the next such Business Day) after the date of submission of Tenders (the "Tender Validity Period").

8. **Tender Security**

^{A19} Tenderers shall furnish, as part of its Tender, a Tender security in the amount of fifty (50) million U.S. Dollars, in one of the following forms, either a (1) bid bond in the form provided in at Annex B Volume I, Part 3 of the RFP or (2) Bid security in the form provided in at Annex B-1 Volume I, Part 3 of the RFP, (in either case "Tender Security").^{A19}

^{A17}If the Tender Security is provided in the form of (1) as aforesaid, such bid bond shall be issued by an Acceptable Bond Issuer.^{A17}

^{A17}If the Tender Security is provided in the form of (2) as aforesaid, such Tender security shall be issued by an Acceptable Financial Institution.^{A17}

^{A17}The Tender Security shall be valid for sixty (60) days beyond the expiration of the Tender Validity Period.^{A17}

^{A23}Any Tender not accompanied by Tender Security in the form required by this paragraph C-8 shall be rejected by the Employer as not fully compliant with the terms of this RFP.^{A23}

The Tender Securities provided by unsuccessful Tenderers will be returned as promptly as possible as and not later than twenty-eight (28) days after the expiration of the Tender Validity Period.

^{A17}The Tender Security provided by the successful Tenderer will be returned after the successful Tenderer has executed and delivered the Contract Agreement, and furnished the Performance Bond, the Payment Bond and, if required pursuant to the terms of Sub-Clause 1.7A.4 of the Conditions of Contract, the Parent Company Guarantee.^{A17}

9. **Pre-Tender Meetings and Visit**

There will be a Site visit on February 12, 2008. The time and place of meeting for this Site visit will be notified by the Employer.

The Employer will hold individual meetings with the representatives from each Tenderer during the periods established specifically in this Section, at a set time to be notified by the Employer to each Tenderer. These meetings will be held at the Ascanio Arosemena Training Center, Balboa.^{A23} Tenderers may continue to request Site visits and send their request for clarifications according to paragraph B-2 above, however, individual meetings will cease after January 16, 2009^{A23}. Any Site meetings or inspections must not interfere with the Employer's Operations.

The Employer will also hold a pre-Tender meeting with all Tenderers on March 26, 2008 at a set time to be notified by the Employer. This meeting will be held at the Ascanio Arosemena Training Center, Building 705, Balboa ("Pre-Tender Meeting").

The purpose of the meeting will be to clarify issues and to answer questions related to the RFP.

Tenderers are requested to submit any questions in writing, to the Employer's email address mentioned in paragraph B-2 of these Instructions to Tenderers to reach the Employer not later than one week before the meeting.

Minutes of the Pre-Tender Meeting, including the text of the questions raised and the responses given will be transmitted without delay to all Tenderers. Any change of the RFP which may become necessary as a result of the Pre-Tender Meeting shall be made by the Employer exclusively through the issue of amendments, and not through the minutes of the Pre-Tender Meeting.

Tenderers are advised to attend the Pre-Tender Meeting. However, non-attendance at the Pre-Tender Meeting will not be a cause for disqualification of a Tenderer. Tenderers

who do not attend the pre-Tender Meeting assume the responsibility to comply with the changes to the RFP that are communicated through amendments.

- a. **Improper Contacts:** Except for group and individual Employer scheduled meetings, all contacts from the Tenderers or their agents with the Employer, with respect to the RFP, shall be in writing to the Contracting Officer, via the Employer's email address mentioned in paragraph B-2 of these Instructions to Tenderers.

Tenderers are expected to conduct their participation in this procurement process and the preparation and submittal of their proposal with professional integrity, with an arms-length relationship and free of lobbying activities directed at the Employer, its advisors and consultants and other entities of the Government of Panama. Tenderers have been advised that the following provision among others of the Procurement Regulations of the Panama Canal Authority applies to this RFP:

“Article 1a. Panama Canal Authority contracting processes prohibit the making of agreements, contracts, understandings, or the collusive financial and legal connection among all or several bidders for the purpose of affecting or restricting the principles of concurrence, competition, and equality among participants, in such manner that may cause injury to the administration in its attempts to obtain goods and services of sufficient or optimum quality, better prices, and other conditions favorable to the interest of the Authority.”

^{A23} Tenderers and their agents and consultants shall refrain from contacting, directly or indirectly, any member of the Technical Evaluation Board, Price Verification Board, the Employer's administration, the Employer's Board of Directors, the Employer's Advisory Board (as designated by the Employer's Board of Directors), any Employer's staff or Employer's consultants regarding the subject matter of this RFP after the issuance date of this RFP, except as specifically permitted hereby or approved in advance by the Contracting Officer.^{A23} Improper contacts include all activities, communications or actions intended to obtain privileged, inside or confidential information or to attempt to obtain favors, special considerations and waivers or to influence or interfere with the proceedings or outcome of the procurement process. All RFP related consultations or communications directed to the Employer from the Tenderers shall be in accordance with these Instructions to Tenderers.

Any verified allegation that a Tenderer or any of its Members or an agent or consultant of the foregoing has made such contact or attempted to influence the evaluation, ranking, and/or selection process may be a cause for the Employer to reject any Tender submitted by the offending Tenderer and/or to discontinue further consideration of such Tenderer and to return its Tender.

- b. ^{A17} **Meetings between Tenderers and the Employer.**^{A17} The Employer will hold pre-Tender meetings with all Tenderers. Additionally, the authorized representatives of each Tenderer will have the opportunity to meet individually with designated Employer officials to ask questions, voice concerns or propose improvements to the RFP. The Employer will schedule these individual meetings at its earliest convenience upon request from the Tenderers. Each Tenderer may meet several times with the Employer as allowed by the schedule and time frame. Tenderers shall indicate in their request the specific subject matter to be discussed in the meetings so the Employer might have the subject matter experts available.

These meetings will be held in the Employer's facilities at the Ascanio Arosemena Training Center, Balboa, Republic of Panama. For coordination purposes, each Tenderer representative interested in requesting such meetings shall notify the Employer (at e-mail address tabadia@pancanal.com) of the desired date of the meeting, at least 72 hours in advance. All Tenderers will be informed of the requests received for such meetings once a week beginning Friday, January 25, 2008.

The Employer will record all meetings for the purpose of drafting minutes. Individual meeting proceedings will be kept confidential. At these individual meetings the Employer will not disclose information not publicly available, or information that has not been communicated previously to other Tenderers. Nothing said by Employer officials in these meetings shall be deemed by the Tenderer as an amendment to the RFP. The following schedule of meetings will be implemented:

- 1) **Pre-Individual Meetings.** The Employer will meet individually with duly authorized representatives of the Tenderers up to April 30, 2008 for clarifying RFP issues. The Employer will hold individual meetings with Tenderers at their request during an additional period from June 2 to October 8, 2008.

^{A20}The following three additional periods to hold individual meeting are included: ^{A20}

November 11 – 14, 2008 – General Individual Meeting

^{A20}December 9 – 19, 2008 – General and Technical Individual Meeting

January 13 – 16, 2009 – Final Individual Meeting

Each pre-qualified consortia may request one general and one technical individual meeting per period, if applicable. ^{A20}

- 2) **Joint Meetings.** The Employer will hold a pre-Tender meeting with all Tenderers on March 26, 2008. ^{A18}An additional pre-Tender meeting will be held on October 30, 2008 at 8:30 am, at Building 705 of the Ascanio Arosemena Training Center. ^{A18}

- c. **Project Site Inspections.** The Employer will allow duly authorized representatives of the Tenderers to visit and inspect the Site. Tenderers will be allowed to do tests, borings and any other type of inspection that they may require as long as it does not interfere with the Employer's Operations or impacts work being done by Employer contractors near or on the Site. The following requirements apply for Site inspections:

- 1) Tenderer representatives shall be escorted to the Site by Employer security guards.
- 2) The Employer will not be liable for any accidents or costs incurred by any accidents in which the Tenderer representatives may be involved during the Site inspections. The Tenderer representatives shall sign a waiver of liability, assumption of risk and indemnity agreement, before the Site visit.

- 3) Tenderers shall make a request to the Contracting Officer for Site inspections in accordance with these Instructions to Tenderers at least 72 hours prior to the event. The request shall include the names and identifications of the persons that will be doing the inspections, the part of the Site to be inspected and the nature and extent of the inspection in sufficient detail to ascertain possible impacts to the Employer operations. The Employer will issue temporary identification passes to the Tenderers.
- 4) The Employer will do its best effort to coordinate Site inspections in such a schedule as to allow only one Tenderer at any part of the Site at a time.

10. Format of Tenders

The Tender shall contain no alterations, omissions or additions, except those to comply with instructions issued by the Employer, or as necessary to correct errors made by the Tenderer, in which case such alternations, omissions or additions shall be initialed by each Member.

^{A17}The Tender shall be submitted following the written text format described in Volume II, Part 3, Subpart 1, Section 01 33 00 (*Submittal Procedures*), Subparagraph 1.04.A.^{A17}

Tenderers are requested to prepare and organize the Tender in two distinct sections, as follows:

- a. **Technical Proposal:** The Technical Proposal shall be submitted in the following two (2) parts:
 - 1) **Technical documents** comprising all information stipulated in Volume V, Parts 1 to 8 (the "**Technical Documents**").

Tenderers shall deliver the Technical Documents as follows:

- a) one (1) original set of the Technical Documents;
- b) ^{A18}three (3) identical sets of copies of the Technical Documents; and^{A18}
- c) ^{A18}fifteen (15) digital media copies of the Technical Documents in Acrobat readable Adobe PDF file format stored in Compact Disks or DVDs. ^{A18} CDs and DVDs shall be submitted in their industry standard hard plastic cases. Plastic cases shall be labeled to clearly identify the Tenderer, the description and number of the Tender. In addition, the discs themselves shall be labeled with the same information using industry standard printed sticker labels. In case of conflict between the paper submission and the digital media version of the Tender submitted, the paper copy shall take precedence.

All such documents shall be clearly marked "ORIGINAL" and "COPY" as the case may be. In the event of any discrepancy between them, the original shall prevail.

^{A17}The Technical Documents may comprise a variety of documents and supporting exhibits in different presentations, including, among other things, bound documents, renderings, digital media, drawings,

animations, plans and scale models. In the case of scale models, working displays, and other three dimensional exhibits and large format renderings, the Tenderer shall only be required to submit one set of each such model, display, exhibit and rendering and no additional copy sets or digital media copies shall be required.^{A17}

^{A20}For the one (1) original set of the Technical Documents, any drawings or plans in large format renderings shall be submitted in rolled standard E size, Mylar paper as following the requirements described in Volume II, Part 3, Subpart 1, Section 01 33 00 (*Submittal Procedures*), Subparagraph 1.05.F.^{A20}

^{A20}For the three (3) identical set of copies of the Technical Documents, any drawings or plans shall be submitted in rolled or folded (uniformly, with title block on top) bond paper in half size standard E size paper.^{A20}
^{A18}

All Technical Documents shall be packaged in sturdy, closed, non-transparent and sealed containers appropriate for the size and weight of the contents but in individual parcels that can be easily lifted and carried by an adult without requiring mechanical transport equipment.

All Technical Documents (including scale models, working displays, three dimensional exhibits, large format renderings and displays), shall be packaged in sturdy and non-transparent containers of such material that will not permit identification of its contents without opening the packaging.

Each container of the Technical Documents shall be clearly labeled on its outside as follows:

For the original set:

Solicitation # CMC-76161, for the Design and Build of the Third Sets of Locks

For the Autoridad del Canal de Panamá

TECHNICAL PROPOSAL: TECHNICAL DOCUMENTS

ORIGINAL

Box # ___ of ___

(Description of the Contents of the Box)

(Name of the Bidder)

(Address of the Bidder)

^{A18}**Do not open before: 11:00 a.m. on March 3, 2009.**^{A18}

For the set of copies:

Solicitation # CMC-76161, for the Design and Build of the Third Sets of Locks

For the Autoridad del Canal de Panamá

TECHNICAL PROPOSAL: TECHNICAL DOCUMENTS

COPY

^{A23}**Set ___ of 3**^{A23}

Box # ___ of ___

(Description of the Contents of the Box)

(Name of the Bidder)
(Address of the Bidder)

^{A18}Do not open before: 11:00 a.m. on March 3, 2009. ^{A18}

The Tenderer shall complete the "Set" and "Box" numbering of the original and each copy set of the Technical Documents.

If the Technical Documents are not sealed and marked as above, the Employer shall not be responsible for the misplacement or premature opening of the Technical Documents.

The original and all copies of the Technical Documents shall be typed or written in indelible ink. ^{A23}All pages of the original set of the Technical Documents shall be signed by any of the Authorised Tender Signatories. ^{A23}

^{A23}All pages of the original set of the Technical Documents where hand written entries have been made shall be initialed by any of the Authorised Tender Signatories. ^{A23}

2) **Tender documents** comprising:

- a) ^{A17}the Letter of Tender;
- b) the Appendix to Tender;
- c) the Tender Security;
- d)
 - ^{A23}(i) a further original of the charter, consortium, association or other similar agreement containing original signatures of each of the Members, together with an original Certification Letter; or
 - (ii) an original Confirmation Letter;and in either case in the form specified in paragraphs C-10(a)(2) and C-11.
- e) the Tender Signature Authority Documents; and ^{A23}
- f) any other material required to be completed and submitted in accordance with these Instructions to Tenderers, (collectively the **"Tender Documents"**). ^{A17}

Tenderers shall submit the Tender Documents as follows:

- (i) one (1) original set of the Tender Documents,
- (ii) three (3) identical sets of copies of the Tender Documents.

All such documents shall be clearly marked "ORIGINAL" and "COPY" as the case may be. In the event of any discrepancy between them, the original shall prevail.

The Tender Documents shall be delivered in a single sturdy, closed and sealed 8.5" by 14" envelope or such other sized enveloped as appropriate for the size and weight of the Tender Documents. The

envelope shall be non-transparent of such material that will not permit identification of the contents without opening the envelope.

The envelope that contains the Tender Documents shall be clearly labeled in its outside as follows:

For the original set:

Solicitation # CMC-76161, for the Design and Build of the Third Sets of Locks

**For the Autoridad del Canal de Panamá
TECHNICAL PROPOSAL: TENDER DOCUMENTS
ORIGINAL**

**(Name of the Bidder)
(Address of the Bidder)**

^{A18}**Do not open before: 11:00 a.m. on March 3, 2009.** ^{A18}

For the set of copies:

Solicitation # CMC-76161, for the Design and Build of the Third Sets of Locks

**For the Autoridad del Canal de Panamá
TECHNICAL PROPOSAL: TENDER DOCUMENTS
COPY**

^{A23}**Set ___ of 3** ^{A23}
**(Name of the Bidder)
(Address of the Bidder)**

^{A18}**Do not open before: 11:00 a.m. on March 3, 2009.** ^{A18}

The Tenderer shall complete the "Set" numbering of each copy set of the Tender Documents.

If the Tender Documents are not closed, sealed and marked as above, the Employer shall not be responsible for the misplacement or premature opening of the Tender Documents.

The original and all copies of the Tender Documents shall be typed or written in indelible ink and shall be signed and otherwise in the form specified in paragraphs C-2, C-10(a)(2) and C-11; provided that in all such cases where a Member is signing any Tender Document, by its signature such Member will be deemed to have signed such Tender Document for and on its own behalf and for and on behalf of the Tenderer. All pages of the Tender Documents where entries have been made shall be initialed by each Member; provided that in all such cases where a Member is initialing any Tender Document, by its initial such Member will be deemed to have initialed such Tender Document for and on its own behalf and for and on behalf of the Tenderer.

- b. **Price Proposal:** ^{A23}The Price Proposal and the Price Adjustment Timetable shall be delivered in a separate closed, sealed and sturdy 8.5" by 14" envelope appropriate for the size and weight of the Price Proposal. ^{A23}The envelope shall be non-transparent as to make impossible any identification of its contents without opening it.

The envelope shall be effectively sealed with permanent adhesive in such a way that its contents cannot be extracted without leaving visible evidence of opening.

^{A23}The Price Proposal and the Price Adjustment Timetable shall be submitted in one (1) original paper copy (hard) and shall be clearly marked "ORIGINAL".^{A23}

^{A23}The single envelope that contains the Price Proposal and the Price Adjustment Timetable shall be clearly labeled in its outside as follows:^{A23}

Solicitation #CMC- 76161, for the Design and Build of the Third Sets of Locks

For the Autoridad del Canal de Panamá

PRICE PROPOSAL

ORIGINAL

(Name of the Bidder)

(Address of the Bidder)

^{A18}**Do not open before: 11:00 a.m. on March 3, 2009.**^{A18}

^{A23}If the Price Proposal and the Price Adjustment Timetable is not sealed and marked as above, the Employer shall not be responsible for the misplacement or premature opening of the Price Proposal.^{A23}

The original of the Price Proposal and the Price Adjustment Timetable shall be typed or written in indelible ink and shall be signed by each Member; provided that in all such cases where a Member is signing any Tender Document, by its signature such Member will be deemed to have signed such Tender Document for and on its own behalf and for and on behalf of the Tenderer. All pages of the Price Proposal and the Price Adjustment Timetable where entries have been made shall be initialed by each Member; provided that in all such cases where a Member is initialing any Tender Document, by its initial such Member will be deemed to have initialed such Tender Document for and on its own behalf and for and on behalf of the Tenderer.

11. Notarization and Certification of Documents

^{A23}The following documentation stated in this paragraph C-11, if granted, signed or issued in the Republic of Panama, shall be notarized by a notary public; and if it is granted, signed or issued outside the Republic of Panama, shall also be legalized by a Consular Office of the Republic of Panama or certified with an Apostille conformant with The Hague Convention of 5th October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents:^{A23}

- a. the Letter of Tender, which in addition shall include the original signature of each Member;
- b. where the Tenderer is an unincorporated associated:
 - 1) ^{A23}the further original of the charter, consortium, association or other similar agreement, which in addition shall contain original signatures of each of the Members together with all the information and details required by the RFQ with respect to such agreement, together with an original Certification Letter; or
 - 2) an original Confirmation Letter;

- c. the Tender Signature Authority Documents;
- d. any replacement documentation required as a result of a Change of Composition approved by the Employer pursuant to paragraph A-9 above; and
- e. the Tender Security.^{A23}

12. Income Tax

- a. ^{A19}Contractors, if domiciled in the Republic of Panama, will be subject to Panamanian fiscal Laws. As a consequence, in order to determine the amount to be paid as income tax, the Contractor shall seek advice and file an income tax return with the Panamanian Government.^{A19}
- b. ^{A19}When the Contract is partially or totally executed in the Republic of Panama and the Contractor is domiciled outside the Republic of Panama, the Contractor is required to pay income tax to the Panamanian Government through withholding to be made by the Employer, as set forth in the Fiscal Code of the Republic of Panama.^{A19} In this case, the income tax rate to be withheld from payments due to the Contractor shall be 15% of the total Contract Price.

^{A17}By submission of a Tender, each Tenderer confirms that it has considered all applicable taxes in its Tender.^{A17}

D. SUBMISSION OF TENDERS

1. Sealing and Marking of Tenders

^{A23}All documents comprising the Tender shall be sealed and marked in accordance with paragraph C-10 in order to enable the Tender to be returned (including the unopened Price Proposal) in case it is declared "late".^{A23}

^{A23}If the Tender is not sealed and marked as indicated in paragraph C-10, the Employer shall not be responsible for the misplacement or premature opening of the Tender.^{A23}

2. Deadline for Submission of Tenders

^{A18}Tenders must be received by the Employer on **March 3, 2009** at the address specified below between 8:00 a.m. to 11:00 a.m.^{A18}

The Tenderer shall submit its Tender to the Employer at the following address:

**Autoridad del Canal de Panamá
Centro de Capacitación Ascanio Arosemena
Edificio 705, Ala Gerencial, Balboa
Panama, Republic of Panama**

The Employer may, at its discretion, extend the deadline for submission of Tenders by issuing an amendment to the RFP, in which case all rights and obligations of the Employer and the Tenderers previously subject to the original deadline will thereafter be subject to the deadline as extended.

3. Late Tenders

Any Tender received by the Employer after the deadline for submission of Tenders will be rejected, declared "late" and returned unopened to the Tenderer.

4. Modification and Withdrawal of Tenders

^{A17}Tenderers shall not modify or withdraw their Tenders after Tender submission, except when amendments to the RFP are made, in which case withdrawal or replacement may be allowed in order to make the necessary consequential modifications, provided that a written request from Tenderers for making modifications and replacement is received by the Employer prior to any deadline for re-submission of Tenders, according to the Employer's Acquisition Regulations.^{A17}

^{A17}Save as aforesaid, no Tender may be modified by the Tenderer after the deadline for submission of Tenders, unless the Contracting Officer, during the evaluation process, requests clarifications or additional information deemed necessary to evaluate the Technical Proposals according to Article 89C of the Employer's Acquisition Regulations.^{A17}

E. ^{A17}TENDER RECEIPT, OPENING AND EVALUATION^{A17}

1. ^{A17}Tender Receipt^{A17}

^{A17}The Employer will receive the Tenders in public and in the presence of the Tenderer's representatives who choose to attend, at the time, date and location indicated for submission of Tenders.^{A17} The Tenderer's representatives who are present shall sign a register evidencing their attendance.

^{A23}The Technical Proposals and the Price Proposals shall be submitted in the form provided for in paragraph C-10.^{A23}

^{A17}The Tenderer's names and other details as the Employer may consider appropriate, will be announced and recorded by the Employer at the ceremony for the receipt of the Tenders.^{A17} The Tenderer's representatives will be required to sign the record.

The seals of the packages containing the Price Proposals will be verified by the Contracting Officer, by a representative of the Employer's Inspector General's Office and by a representative of the Employer's independent auditing firm and will be sent under guard to the National Bank in Balboa where they will remain under guard until the evaluation of the Technical Proposals is completed.

^{A19}Tenders will be considered that have been submitted within the period stipulated in paragraph D-2 when Tenderers deliver the Price Proposal before 11:00 a.m. even if the Tenderers have not finished the process of unloading and delivering in the containers, components or boxes that contain the Technical Proposal.^{A19}

^{A17}2. Tender Opening^{A17}

The envelopes containing the Technical Proposal will be opened in private by the Contracting Officer and his team, a Notary Public appointed by the Contracting Officer, representatives of the Employer's independent auditing firm and representatives of the Employer's Inspector General's Office.

^{A19}The envelopes containing the Price Proposals will be opened after the evaluation of the Technical Proposals is completed, at a public ceremony, presided by the Contracting Officer, and opened to all who may wish to attend.^{A19 A17}The time, date and location of the public ceremony for the opening of the Price Proposals will be communicated to the Tenderers through an amendment to the RFP.^{A17} The envelopes shall be opened in the presence of the Employer's Inspector General and the representative of the Employer's independent auditing firm.

^{A17}**3. Process to be Confidential**^{A17}

^{A23}Information relating to the examination, clarification, evaluation of Tenders and recommendations for the award of the Contract shall not be disclosed to Tenderers or any other persons not officially concerned with such process until notification of Contract award has been made.^{A23} Any effort by a Tenderer to influence the Employer's processing of Tenders or award decisions may result in the rejection of the Tenderer's Tender.

Additionally, all Tenderers must comply with the following ethical practices:

^{A17}The Tenderer, by submitting its Tender in response to this RFP, warrants and undertakes that it has not and will not, and none of its board members, agents or employees, directly or indirectly, pay, give, deliver, receive, agree, or undertake to pay, give, deliver, receive, agree, any bribe, pay-off, kick-back, gifts, gratuity or unlawful commissions or other things of value, in any way or form, or have paid or will pay directly or indirectly unlawful amounts, as an inducement or reward, in local currency or foreign currency, in the Republic of Panama or any other place where such conduct relates to the Contract, or any other place in violation of applicable Laws, including without limitation any applicable anti-corruption legislation under the Laws of the Republic of Panama, or any similar law of the Republic of Panama, to:^{A17}

- a. ^{A17}any person while knowing that all or a portion of such payment, bribe, pay-off, kick-back, gift, gratuity, unlawful commissions, unlawful gratuity or unlawful amount will be offered, given, delivered or promised to government officials or employees, political parties, political party officials or political candidates or third persons with influence over government officials or employees; or^{A17}
- b. ^{A17}any government official or employee, political party official or political candidate or third person that due to his/her influence over any government official or employee, could be influential in connection with the award of the Contract, or over any actions in relation to the award of the Contract, before or during the execution of all and/or any of the activities related to the award of the Contract.^{A17}

Each Tenderer warrants that it has an ethics or compliance program or similar policy by document which implements internal policies and procedures to prevent and detect violations of law, regulations, and rules, and to promote ethical behavior by and within it.

4. Examination of Tenders and Determination of Compliance

^{A17}Prior to the detailed evaluation of Tenders, the Employer will determine whether each Tender (i) has been properly signed; (ii) is accompanied by the Tender Security; and (iii) is fully compliant with the requirements of the RFP.^{A17}

^{A23} A fully compliant Tender is one in which the Technical Proposal and Price Proposal both conform to all the terms and conditions of the RFP, without deviation or reservation and includes the Tender Security in accordance with paragraph C-8.

If the Tenderer fails to include a Tender security with its Tender, the Tender shall be rejected by the Employer and not considered for the award, and the Tender cannot subsequently be made fully compliant by submitting a Tender Security. If a Tenderer includes a Tender security with its Tender which does not comply with the requirements of paragraph C-8, the Contracting Officer will request to the Tenderer to rectify, correct or clarify such Tender security.^{A23}

^{A23} If a Tender is not fully compliant, after the Contracting Officer has requested clarifications or additional information according to the process established in Article 89 C of the Employer's Acquisition Regulations, then the Tender will be rejected by the Employer and shall not be considered for the award, thus it may not subsequently be made fully compliant by correction or withdrawal of the nonconforming deviation or reservation. Where the Employer determines that a Technical Proposal is not fully compliant and is therefore rejected, the corresponding Price Proposal shall not be opened.^{A23}

^{A17} 5. **Clarification of Tenders**^{A17}

^{A23} To assist in the examination and evaluation of Tenders, the Employer may, at its discretion, ask any Tenderer for clarification of its Tender. The request for clarification and the response shall be in writing, but no change in the Price Proposal, the Price Adjustment Timetable, or substance of the Tender shall be sought, tendered or permitted.^{A23}

^{A23} The Contracting Officer may, at any time during the technical evaluation process, on his own initiative or at the request of any of the technical evaluation board, request the Tenderers to provide whatever clarifications or additional information is deemed necessary for the evaluation of the Technical Proposals.^{A23}

6. **Evaluation of Tenders**

^{A23} The Employer shall evaluate only the Tenders determined to be fully compliant.^{A23}

^{A19} The evaluation of Tenders shall be made in accordance with the methods and procedures described in Volume IV – Employer's Evaluation Criteria of the RFP and in accordance with and subject to the process established in Article 89 C of the Employer's Acquisition Regulations.^{A19}

^{A19} After the opening of the Price Proposals in accordance with paragraph E-2, the Employer may require Tenderers to produce detailed price analyses for any item deemed necessary, to demonstrate the internal consistency of those prices with the construction methods and schedules proposed.^{A19}

^{A19} The results of evaluation of Tenders shall be expressed as whole numbers without decimals. In circumstances where the evaluations of Tenders results in a decimal score, the score shall be rounded as follows: where there is a decimal from zero to four the score shall be round down to the nearest whole number and where there is a decimal from five to nine the score shall round up to the nearest whole number.^{A19}

F. **CONTRACT AWARD**

1. **Right to Accept any Tender and to Reject any or all Tenders**

The Employer reserves the right to accept or reject any Tender, and to annul the tendering process and reject all Tenders, at any time prior to award of the Contract, without thereby incurring any liability to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for the Employer's action.

2. Award

^{A19}The award of the Contract will be made in accordance with the methods and procedures described in Volume IV – Employer's Evaluation Criteria of the RFP and in accordance with and subject to the process established in Article 89 C of the Employer's Acquisition Regulations.^{A19}

^{A19}For the Tenderer who is awarded the Contract, the Total Base Price as set out in the Price Proposal will become the Accepted Contract Amount in the Contract.^{A19}

Since all Tenderers participating in this RFP have already been pre-qualified, the Employer will confirm, prior to award, that the Tenderer's conditions for pre-qualification remain substantially unchanged. Such examination shall be a prerequisite for award.

For purposes of this examination, each Member shall submit, as additional necessary information, its audited financial statements for fiscal year 2008. Such statements shall be submitted during the evaluation process when the Contracting Officer so requests. In the event that the fiscal year 2009 financial statements for any Member have been audited and issued prior to award, such 2009 audited financial statements shall also be submitted by such Member. All such audited financial statements shall comply with the prequalification requirements established in Section 14.1.2. [Financial Information] of the RFQ.

In addition to the foregoing requirements, at any time prior to award, the Employer may require and obtain all information it may deem necessary in order to determine that the Tenderer's conditions for prequalification remain substantially unchanged and in compliance with Article 45 of the ACP Acquisition Regulations.

^{A19}The following rules will apply in the case of ties between Tender evaluations:

- a. **Ties on the Same Scores for the Technical Proposal:** In the case of a tie between the evaluations of two or more Technical Proposals, no tie breaker shall be applied and the evaluation of each Technical Proposal shall be maintained. For publishing purposes and presenting the information during the public ceremony for the opening of the Price Proposals, where Tenders have tied in the evaluation of the Technical Proposal, the tied Tenders shall be listed in the order by which they were submitted.
- b. **Ties in Total Points:** If two or more Tenders are tied following evaluation of both the Technical Proposal and the Price Proposal, the following rules will apply to break the tie and, subject to the process established in Article 89 C of the Employer's Acquisition Regulations, award the Contract:
 - 1) The Tenderer whose Tender offers the lowest Total Base Price (as set out in the Price Proposal), shall be awarded the Contract.
 - 2) If the Tenders have the same Total Base Price (as set out in the Price Proposal), then the Tenderer whose Tender has the higher score in respect of the evaluation of the Technical Proposal shall be awarded the Contract.

- 3) If the Tenders have the same Total Base Price (as set out in the Price Proposal), and the same score in respect of the evaluation of the Technical Proposal, the Tenderer whose Tender has the highest score in respect of the "Construction Plan" evaluation criteria (as set out in Part 6 of Volume IV of the RFP) shall be awarded the Contract.
- 4) If the Tenders have the same Total Base Price (as set out in the Price Proposal), the same score in respect of the evaluation of the Technical Proposal and the same score in respect of the "Construction Plan" evaluation criteria, then the award of the Contract shall be determined by using a random method to separate the tied Tenders^{A19}

3. Notification of Contract Award

Prior to expiration of the Tender Validity Period the Employer will notify the award of the Contract by issuing the Letter of Acceptance by the posting of the Letter of Acceptance on the Employer's webpage (www.pancanal.com) for a period of five (5) Business Days. The issuance of the Letter of Acceptance shall be the Employer's legal written acceptance and shall name the sum (hereinafter referred to as "the Accepted Contract Amount") which the Employer will pay to the Contractor in consideration for the execution and completion of the Works, the remedying of any defects and the performance by the Contractor of its obligations under the Contract. The Contractor shall be bound under the terms of the Contract from the date of the Letter of Acceptance.

4. Contract Signing

After the issuance of the Letter of Acceptance in accordance with paragraph F-3 above, the Employer will send to the successful Tenderer the Contract Agreement included in Part 2 of Volume I.

The Employer will notify to the successful Tenderer the date and place for execution of the Contract Agreement, which date will be within twenty eight (28) days counted from the first Business Day of the issuance of the Letter of Acceptance.

5. Protests Related to the Evaluation and Award Process

^{A17}Protests are those legal challenges made by Tenderers during the tendering process against the provisions of the RFP, award decisions or disqualification of Tenderers, in accordance with the Employer's Acquisition Regulations.^{A17}

Protests must be submitted along with pre-constituted proofs that Tenderers may deem appropriate. Pre-constituted proofs will be examined according to logical and reasonable rules of evaluation.

To be considered, the protest shall be received at Building 710, Balboa, Republic of Panama, and addressed to the Head of the Contracting Office, who shall determine the protest within a period of thirty (30) days, counted from the date it is admitted.

The protest must clearly state that it is a protest, challenge or claim against the provisions of the RFP, the award decision or the disqualification of the Tenderer; it must include general information on the Tenderer; the Tender or Contract number; the action which is being protested; the effect or damage caused to the Tenderer; a request for correction and copies of the pertinent documents.

Protests against the provisions of the RFP do not require a monetary protest bond and must be presented within fifteen (15) days before the date and time established for the

opening of Tenders. Only Tenderers may submit protests against the provisions of the RFP.

Protests against an award decision and disqualification of a Tenderer must be submitted within three (3) Business Days after the last day of the publication of the Letter of Acceptance, as established in paragraph F-3 above.

Protests against award decisions on Contracts above US\$10,000.00 must, in order to be considered, 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 US\$100,000.00, to compensate for any damages and losses resulting from its processing.

^{A19}In cases where the protest is declared without any merit, on the written determination issued by the Head of the Contracting Office shall be ordered that payment on the bond be made effective in favor of the Employer. ^{A19}

^{A17}A protest against the disqualification of a Tenderer does not require a monetary bond. ^{A17}

^{A17}Protests which are considered will suspend the Tendering process or the execution of the Contract until it has been resolved, except in those cases in which the suspension would prove damaging to the Employer. ^{A17}

The determination of the protest issued by the Head of the Contracting Office concludes the administrative remedies of a Tenderer.

END OF DOCUMENT

^{A23} ANNEX 1A FORM OF CERTIFICATION LETTER

Date: _____, 2009 ¹

NAME OF CONTRACT: Design and Construction of the Third Set of Locks, Panama Canal (RFP No. 76161)

TO: Autoridad del Canal de Panamá
Centro de Capacitación Ascanio Arosemena
Edificio 705, Ala Gerencial, Balboa
Panama, Republic of Panama
(the "**Employer**")

By delivery of this letter, we, the tendering parties below (collectively, the "Tenderer" and, for the purposes of the Contract, the "**Contractor**"), pursuant to the requirements of the RFP 76161 (the "**RFP**"), each hereby certifies, states and affirms as of the date above that:

- (1) attached to this letter is another original copy of the charter, consortium, association or other similar agreement of the Tenderer containing original signatures of each of the Members (the "**Consortium Agreement**");

[SELECT APPLICABLE OPTION FROM THE FOLLOWING:]

- (2) such Consortium Agreement formed part of the Statement of Qualifications submitted by the undersigned in response to the RFQ 73902 (the "**SOQ**"), has not been amended, modified or supplemented since its original date of submission to the Employer, and otherwise remains true, correct and complete, unchanged and in full force and effect; and

[OR]

- (2) such Consortium Agreement has been amended, modified or supplemented since its original date of submission to the Employer and prior to the Base Date (as defined by the Conditions of Contract, Volume III of the RFP) (but not after the Base Date), as follows: [INSERT DETAILS OF AMENDMENT, MODIFICATION OR SUPPLEMENT(S)], the Employer has approved in writing all such amendment(s), modification(s) or supplement(s); and such Consortium Agreement otherwise remains true, correct and complete, unchanged and in full force and effect; and
- (3) except as may be contained in any amendment, modification or supplement, the details of which have been provided in paragraph (2) above, there has been no Change in Composition (as defined in paragraph A-9 of Part 1 of Volume 1 of the RFP) of the Tenderer since the submission of the SOQ.

SIGNED by:

Name:

Position:

Address:

Date:

for and on behalf of the Tenderer and for and on behalf of [insert name of Lead Member], as Member and Lead Member in the presence of

¹ To be dated the same date as the date of the Letter of Tender

Witness:

Name:

Address:

Date:

SIGNED by:

Name:

Position:

Address:

Date:

for and on behalf of the Tenderer and for and on behalf of [insert name of Member], as Member in the presence of

Witness:

Name:

Address:

Date:

[Insert such number of execution blocks as required to enable all Members to sign the Certification Letter. The Certification Letter is to be signed by each Member on its own behalf and on behalf of the Tenderer.]^{A23}

^{A23} ANNEX 1B FORM OF CONFIRMATION LETTER

Date: _____, 2009²

NAME OF CONTRACT: Design and Construction of the Third Set of Locks, Panama Canal (RFP No. 76161)

TO: Autoridad del Canal de Panamá
Centro de Capacitación Ascanio Arosemena
Edificio 705, Ala Gerencial, Balboa
Panama, Republic of Panama
(the "**Employer**")

By delivery of this letter, we, the tendering parties below (collectively, the "Tenderer" and, for the purposes of the Contract, the "Contractor"), pursuant to the requirements of the RFP 76161 (the "**RFP**"), each hereby certifies, states and affirms as of the date above that:

- (1) the charter, consortium, association or other similar agreement containing original signatures of each of the Members (the "**Consortium Agreement**") and which formed part of the Statement of Qualifications submitted by the undersigned in response to the RFQ 73902 (the "**SOQ**") has not been amended, modified or supplemented since its original date of submission to the Employer and otherwise remains unchanged, true, correct and complete and in full force and effect; and
- (2) there has been no Change in Composition (as defined in paragraph A-9 of Part 1 of Volume 1 of the RFP) of the Tenderer since the submission of the SOQ.

SIGNED by:

Name:
Position:
Address:
Date:

for and on behalf of the Tenderer and for and on behalf of [insert name of Lead Member], as Member and Lead Member in the presence of

Witness:
Name:
Address:
Date:

SIGNED by:

Name:
Position:
Address:

² To be dated the same date as the date of the Letter of Tender

Date:

for and on behalf of the Tenderer and for and on behalf of [insert name of Member], as Member in the presence of

Witness:

Name:

Address:

Date:

[Insert such number of execution blocks as required to enable all Members to sign the Confirmation Letter. The Confirmation Letter is to be signed by each Member on its own behalf and on behalf of the Tenderer.]^{A23}