



December 2, 2014

DCN: IAE-UPC-2342

Mr. Giuseppe Quarta
Grupo Unidos por el Canal, S.A.
Building 22B, Brujas Road
Cocoli, Republic of Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks,
Panama Canal

Subject: Numbering of Variations

Dear Mr. Quarta:

The Employer refers to a number of determinations, as listed below, which have resulted in changes to the Contract Price. For administrative purposes, the Employer has assigned variation numbers to each determination as shown in the table below. This is not intended to have any defining, modifying or other effect on the contents of the letters referred to.

ITEM	REFERENCE	DATE	VO NUMBER
Range Tower No. 2	IAE-UPC-1201	13-Aug-2012	122
Claim No. 10 Fiscal Law 8	IAE-UPC-1202	13-Aug-2012	123
On-Site Testing	IAE-UPC-1203	13-Aug-2012	124
Transition Walls	IAE-UPC-2119	25-Jun-2014	125
Gate Drive Mechanism	IAE-UPC-2122	25-Jun-2014	126
Claim No. 66 Increase in Wages	IAE-UPC-2127	2-Jul-2014	127
VDS Semaphores	IAE-UPC-2156	24-Jul-2014	128
Claim No. 96 - Labor Strike	IAE-UPC-2192	6-Aug-2014	129
Maintenance Closure System	IAE-UPC-2199	8-Aug-2014	130
Fingerprint Readers	IAE-UPC-2217	26-Aug-2014	131

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The Employer attaches a variation form in respect of each of the items above. The Contractor's Representative's signature is not required.



Sincerely yours,

A handwritten signature in blue ink, appearing to read 'Jorge de la Guardia', is written over the printed name.

Jorge de la Guardia

Employer's Representative

Locks Project Management Division

11. NAME AND TITLE OF THE PERSON AUTHORIZED TO SIGN (Type or print)		12. NAME AND TITLE OF THE EMPLOYER'S REPRESENTATIVE/CONTRACTING OFFICER (Type or print)	
		Jorge de la Guardia, Employer's Representative	
13. CONTRACTOR	14. DATE:	15. PANAMA CANAL AUTHORITY	16. DATE:
			2/21/12
(Authorized signature)		(Employer's Representative/Contracting Officer's signature)	

July 2, 2014

DCN: IAE-UPC-2127

Mr. Giuseppe Quarta
Grupo Unidos por el Canal, S.A.
Building 22B, Brujas Road
Cocoli, Republic of Panama

Reference: Contract No. CMC-221427, Design and Construction of the Third Set of Locks,
Panama Canal

Subject: Increase in Wages pursuant to Decree No.6 of the "Ministry of Labour and Labour
Development", subject of the DAB Referral No.6 (Claim No. 66)
Calculation of additional costs to be compensated pursuant to Clause 13.7 of the
Conditions of Contract
GUPC's Employees - Period from 25th January 2012 to April 2014

Dear Mr. Quarta:

The Employer refers to the Contractor's letter GUPC-IAE-2960 dated June 16, 2014, in which the Contractor enclosed its detailed calculation of the additional cost of wages for the Contractor's employees, pursuant to Claim No. 66 which related to the effect of Decree No.6 of the "Ministry of Labor and Labor Development" and pursuant to the decision of the DAB in Referral No.6.

Sub-Clause 20.4 of the Conditions of Contract provides that the Parties are to give effect to a decision of the DAB unless and until the same is revised in an amicable settlement or an arbitral award.

Accordingly, and as requested by the Contractor, the interim determination of the Employer's Representative of the Contractor's entitlement pursuant to Claim 66 as decided by the DAB is enclosed with this letter.

This determination and any payment pursuant thereto is made without prejudice to the Employer's Notice of Dissatisfaction with the DAB decision set out in the Employer's letter IAE-UPC-1329 dated December 3, 2012 and the Employer's rights under Sub-Clause 20.6 [Arbitration]. In addition, the Employer's rights, remedies and defenses in connection with the Contractor's Claim 66 including (without implying limitation) the right to claim or reclaim any monies over-paid to the Contractor (pursuant to Sub-Clause 2.5 [Employer's Claims] of the Conditions of Contract and/or by way of correction or modification pursuant to Sub-Clause 14.6

July 2, 2014

[Issue of Interim Payment Certificates] of the Conditions of Contract or otherwise) are expressly reserved.

The Contractor will have noted from the Employer's letter IAE-UPC-2120 dated June 26, 2014 that the Employer's Representative, Jorge de la Guardia, is out of the office until July 7, 2014 and that his duties are delegated, during his absence, to Cheryl George. Sub-Clause 3.2 of the Conditions of Contract requires the consent of both Parties if determinations are to be carried out by a delegee. The Parties have verbally agreed that Cheryl George may make this determination. The Employer has recorded its consent on the determination and the Contractor is requested also to record its consent in the space indicated on the determination and to return a hard copy of the determination bearing that signature to the Employer such that the Employer can proceed to make payment.

Sincerely yours,



Cheryl George
Employer's Representative Delegee
Locks Project Management Division

Enclosure


JULY 2, 2014

CONTRACTOR'S CLAIM NO.66

**INCREASE IN WAGES PURSUANT TO DECREE NO.6 OF THE
"MINISTRY OF LABOR AND LABOR DEVELOPMENT"**

**EMPLOYER'S REPRESENTATIVE INTERIM DETERMINATION
PURSUANT TO DAB REFERRAL NO.6**

The Employer and the Contractor have signed this determination to record their consent to the determination being carried out by Cheryl George, Employer's Representative Delegee.

PARTY	NAME	SIGNATURE
Employer	Cheryl P. George	
Contractor	Giuseppe Quarta	

BACKGROUND

1. The Contractor's Claim No. 66, concerns the liability for the payment of the increase of wages rising out of the issuance and publication on January 23, 2012 of Decree No. 6 by the Ministry of Labor and Labor Development of the Republic of Panama. Decree No. 6 provided for an increase in wages for workers on the Project. The Contractor submitted a notice of claim for additional labor costs in accordance with Sub-Clause 13.9 and other provisions. The Employer rejected the claim on a number of grounds including that it was time-barred.
2. The claim was referred to the DAB by the Contractor and, on November 16, 2012 the DAB published its decision, which set out the DAB's findings as follows:
 1. *The Contractor is entitled to recovery under Sub-Clause 13.7 for any costs incurred by reason of the increase in labor costs resulting from Decree No. 6 but excluding Labor Costs, as defined in Sub-Clause 13.9.8. The period of any entitlement for GUPC under Sub-Clause 13.7 commences 28 days prior to the 22nd February 2012 (i.e. 25th January 2012).*
 2. *The Contractor is entitled to recover under Sub-Clause 13.9 insofar as the Labor Costs, as defined under Sub-Clause 13.9.8, are concerned.*
 3. *The notice of claim dated 25th January 2012 is an invalid notice for the purposes of Claim No. 66.*

THE CONTRACTOR'S SUBMISSION

3. The Contractor submitted a request for payment to the Employer by way of letter GUPC-IAE-2960 dated June 16, 2014 for payment of \$31,445,826 for the period between January 25, 2012 and April 30, 2014.

4. In that letter the Contractor stated:

“We submit our valuation for your consideration and determination under the Contract, and we trust that you will proceed with such determination at least on an interim basis as expeditiously as possible.”

THE EMPLOYER’S POSITION

5. Sub-Clause 20.4 of the Conditions of Contract provides that the Parties are to give effect to a decision of the DAB unless and until the same is revised in an amicable settlement or an arbitral award. Accordingly, and as requested by the Contractor, the Employer’s Representative Delegee has made this interim determination
6. This determination and any payment pursuant thereto is made without prejudice to the Employer’s Notice of Dissatisfaction with the DAB decision set out in the Employer’s letter IAE-UPC-1329 dated December 3, 2012 and the Employer’s rights under Sub-Clause 20.6 [Arbitration]. In addition, the Employer’s rights, remedies and defenses in connection with the Contractor’s Claim 66 including (without implying limitation) the right to claim or reclaim any monies over-paid to the Contractor (pursuant to Sub-Clause 2.5 [Employer’s Claims] of the Conditions of Contract and/or by way of correction or modification pursuant to Sub-Clause 14.6 [Issue of Interim Payment Certificates] of the Conditions of Contract or otherwise) are expressly reserved.
7. The time periods used by the Contractor are the same as the CBLR periods referred to in Sub-Clause 13.9 of the Conditions of Contract. This was treated as being for convenience only. The validation process carried out for Claim 66 does not replace (and is without prejudice to) any validation in relation to Sub-Clause 13.9 of the Conditions of Contract.

ASSUMPTIONS

8. The definition of Cost in the Conditions of Contract is as follows:
- ““Cost” means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Site, including overhead and similar charges, but does not include profit.”*
9. The following assumptions have been made:
- (a) Liabilities disbursed through reserves have been recognized, even though some of this cost may not have been disbursed at this point, on the assumption that disbursement will take place in due course.
 - (b) The labor costs incurred by the Contractor were reasonably incurred in that the labor was reasonably deployed and reasonably utilized and the sums paid to employees were reasonably incurred.

In this respect, reference is made to paragraph 6 of this determination.

DETERMINATION PROCESS

10. Two different methodologies have been used by the Contractor for the calculation of the additional cost of wages for the Contractor’s employees as follows:
- Annex 2 (\$31.4M): Includes labor costs as defined in Sub-Clause 13.9.8 plus any other cost incurred by reason of the increase in labor costs resulting from Decree 6.

- Annex 3 (\$17.9M): Reflects the methodology of the DAB decision in Referral No.6. Consequently it excludes Labor Costs as defined in Sub-Clause 13.9.8. Therefore, only Annex 3 has been evaluated.

ANALYSIS OF THE INFORMATION SUBMITTED BY THE CONTRACTOR IN ANNEX 3:

11. The Contractor has divided the additional cost calculations as follows:
 - Period 1: January 25, 2012 to April, 2012
 - Period 2: May 2012 to October, 2012
 - Period 3: November 2012 to April, 2013
 - Period 4: May 2013 to October, 2013
 - Period 5: November 2013 to April 2014
12. Decree 6 modified the minimum salary from \$2.90 to \$3.34. For qualified labor there was a salary increase of 12.5%.
13. To determine the impact of the above salary increase, the Contractor, in accordance with the decision of the DAB, only took into account the followings items, summarized as “Other Incomes” and “Benefits”:
 - “Other Incomes”: The Contractor has included the following: Lluvia, Martillo, Tunel/Galerias, Bonificaciones, Productividad, Prima de Antigüedad, Preaviso, Décimo Tercer Mes, Duelo Nacional, Dias Nacionales – Feriados, Incapacidades, Gastos de Representacion, Devolucion/Descuentos/Deducciones, Descansos, Permisos, Retroactivos, Indeminizaciones, Ausencias y Tardanzas, Maternidad, Recargos, Cambios, Otros ingresos, subsidios, Compensatorio/Auditos/Jornadas, Trabajos Domingos, Alturas, Vacaciones, Acuerdos y Viaticos, Ajustes.
 - “Benefits”: Seguro Social, Seguro Educativo Patronal, Riesgo Profesional, Reserva Vacaciones, Reserva XIII mes, Reserva Prima de Cesantía, Reserva Prima de Antigüedad, Reserva Indemnización.
14. The methodology used by the Contractor was as follows:
 - The Contractor submitted the actual payroll items of cost for actual Other Incomes and Benefits.
 - The Contractor simulated the same payroll for Other Incomes and Benefits, but without the Decree 6 salaries increase.
 - The Contractor calculated the impact as follows:

$$IMPACT = (Actual\ Other\ Income + Actual\ Benefits) \text{ minus } (Simulated\ Other\ Income + Simulated\ Benefits)$$
15. With the exception of the 6% error reported by the auditor and referred to below, the Contractor’s figures in Annex 3 have been validated. This has been possible within a relatively short space of time due to
 - (a) the willingness of the Contractor to attend meetings on June 20, 23 and 24, 2014 with the Employer, to explain the documentation and to answer questions.
 - (b) the provision on June 26, 2014, by the Contractor, of further documentation requested

by the Employer (beyond that enclosed with the Contractor's letter GUPC-IAE-2960 dated June 16, 2014) and

16. For the first period (January 25, 2011 – April.2012), the Contractor submitted an audit carried out by KMPG, which reported a 6% error described as *“related to mathematical inaccuracies on the input of hours worked between the approved timesheet and the payroll cost information; discrepancies in the calculation of the termination costs of ceased employees and file documentation on certain employees not located and therefore not able to be validated”*.
17. To account for this percentage error a 6% discount on the impact validated for Period 1 has been applied.

	PERIOD	ADDITIONAL COST CLAIMED	ADJUSTMENT (6%)	TOTAL ADDITIONAL COST
PERIOD 1	JAN12-APR12	2,232,503.73	133,950.22	2,098,553.50
PERIOD 2	MAY12-OCT12	4,639,438.78		4,639,438.78
PERIOD 3	NOV12-APR13	4,035,463.32		4,035,463.32
PERIOD 4	MAY13-OCT13	4,745,133.11		4,745,133.11
PERIOD 5	NOV13-APR14	2,252,422.46		2,252,422.46
TOTAL		17,904,961.40		17,771,011.17

18. Consequently, the total determined as the Contractor's entitlement for Claim No.66 is, subject to the points made in this determination, is **\$17,771,011.17**.

SIGNED

Cheryl George

Employer's Representative Delegee

July 2, 2014