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Panama Canal Expansion Underway Amid Charges Of Contract Irregularities

by LADB Staff

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The Panama Canal's enormous new construction project is under contract, and Grupo Unidos por el Canal (GUPC) was the winning bidder. The international consortium won the job with a bid of US \$3.12 billion. At that price, Grupo Unidos underbid two competitors and was well under the target price of US\$3.48 billion established by the Autoridad del Canal de Panama (ACP). Grupo Unidos is composed of Sacyr Vallehermoso of Spain, Impregilo of Italy, Jan De Nul of Luxembourg, and Constructora Urbana (CUSA) of Panama. The winning date was July 16, but the ACP signed the contract only after receiving a US\$400 million performance bond and a US\$50 million payment bond on Aug. 11. This is one of the biggest engineering projects ever and certainly the largest in the world at this time. The bonds received and contract signed, the project has reached what has been called a critical milestone, and contracting officer Jorge de la Guardia issued the Notice to Commence. On Aug. 25, the actual work of design and construction of the new set of locks and water basins at either end begins, triggering a 1,883-day march to a scheduled finish on the 100th anniversary of the canal in 2014. The comments were celebratory. Canal administrator Alberto Aleman Zibieta tagged the signing, "One of the most significant moments for the ACP since we broke ground on expansion in September 2007." The 2007 date marked the start of the contracting process, consisting of requests for qualifications leading to the subsequent announcement of four prequalified consortia, involving 30 companies from 13 countries. Then came the release of requests for proposals, half a hundred meetings with the consortia, and field visits to the worksites. Along the way, one of the consortia dropped out, leaving three. Last, the ACP chose on the basis of weighted scores for the proposals and the final award. The scores were weighted 55% for the technical proposal and 45% on price. The expected payback for the expansion is impressive. A reported UU\$3.5 billion is expected in the first 11 years following the completion targeted for 2014 based on increases in the price of passage and on an increase in traffic. The canal currently handles 4% of world trade. By the 2014 completion, this is forecast to jump to 6%. This last fiscal year, with the higher tariffs already in place, the ACP brought in US\$700 million. The fiscal year runs October to September. Transparency fogged The fanfare and laudation extended to the openness, honesty, and transparency of the process as well as to its completion, but that part of the deal drew considerable criticism (see NotiCen, 2008-01-03). One issue was the eligibility of the Spanish element of GUPC. Spain subscribed to the designation of Panama as a tax haven, a place where internationals go to transact business without paying the taxes to which they would be subject in their home countries or most other jurisdictions. The G20 adopted the blacklist as part of a set of accords on banking transparency among the member countries. Before taking office, then President-elect Ricardo Martinelli went to Spain on a private mission to meet with President Jose Luis Rodriquez Zapatero and with King Juan Carlos. He was said to be seeking a deal to take Panama off the blacklist. Companies doing business in listed countries are subject to penalties of double the taxable amounts, and the penalties include both parties to the transaction, the Spanish and the counterpart. Panama used to be a preferred country for Spanish business, but that has come to a standstill since the blacklist has been in effect. Martinelli met with Zapatero about the haven problem and afterward told Spanish reporters, "Zapatero agreed to

collaborate to find a satisfactory solution within the context of the accords adopted in the framework of the London G20 meeting." On the Panamanian side of the deal, one of the companies that stood to lose big was CUSA, owned by the Aleman Zubieta family, which is also tied to the ACP, whose boss Alberto Aleman Zubieta is a cousin of Rogelio Aleman, CUSA's president. CUSA has been on the winning side of canal business since time began for the waterway. The company built the first set of locks. Ethics and personal relationships were no less tightly knotted on the Spanish side. Sacyr Vallehermoso president Luis de Rivero is reported to be a patron of David Taguas, director of SEOPAN, the Observatorio de la Construccion in Spain. This is the organization of the construction business. An unnamed high official of one of the Spanish companies in a losing consortium charged that Taguas used his office to lobby for the Sacyr group in Panama. Taguas denied an ethical breach. He said his objective was to squeeze US firms out of the running. "The Panamanians wanted to de-yanquify the canal, and their role was to pressure us to get them off the blacklist for tax havens." A wave of accusations of shady behavior by Sacyr overwhelmed Taguas' denial in the Spanish press. El Confidencial charged that the company's bid beat US company Bechtel's bid by such a tiny amount that it would have been nearly impossible. In Europe such a bid would have been disqualified on its face, said the publication. The weekly economic magazine Cinco Dias was equally doubtful, questioning the bid and warning that Sacyr and associates would never be able to bring in the project at the bid price and would not be capable of subcontracting the work within the budget. In a June article, Cinco Dias said Taguas had spoken to Martinelli about taxes as well, warning the president-elect that the project could not work economically if the consortium was going to have to pay taxes in Panama. An additional issue that some analysts thought shed unfavorable light on the process was that the president of Impregilo, the Italian partner in Grupo Unidos, jumped the gun on the announcement that his consortium had the inside track in the bidding back in June, more than a month before the winner was named. A flap ensued, causing the ACP to come forward to deny the claim. The ACP called it "totally inaccurate," going on to reiterate the rules and assure the security of sealed bids. The ACP also had to explain the process in case of cost overruns. An official said, "If the bids are above ACP's budget it has the option to go back and ask the three bidders to propose scope reductions." But he did not say how the situation would be handled if the winning bid came in under the ceiling but ran over later, as critics have charged would be the case with Sacyr and Grupo Unidos. In any event, the winners can breathe easy. The period for impugning them expired July 27.

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