



2. Webuild is a global construction leader specialized in building large works and complex infrastructure. *See Group Profile, Webuild, available at <https://www.wbuildgroup.com/en/group/profile> (last visited May 7, 2022), Exhibit 1.*<sup>1</sup>

3. Sacyr is a global construction group specializing in the development and management of large and complex infrastructure. *See Who we are, Sacyr, available at <https://www.sacyr.com/en/about-us/who-we-are> (last visited May 7, 2022) Exhibit 2.*

4. The GUPC Consortium, ultimately through a local project company, GUPC S.A., consisting of Applicants Webuild and Sacyr, as well as Jan De Nul N.V. (“Jan de Nul”) and Constructora Urbana S.A. (“CUSA”), made an investment in the Republic of Panama through the Consortium’s construction of the “Third Set of Locks” as part of the Panama Canal expansion project (the “Project”). This investment included the provision of technology, know-how, and initial operating capital.

5. In 2002, Panama hired Parsons Brinkerhoff (“Parsons”) as a principal consultant on the Third Set of Locks for the Panama Canal as part of the Panama Canal expansion program. *See ACP, “Message from the Chairman of Board of Directors,” contained within the 2002 ACP Annual Report, Exhibit 3; see also *Panama Canal, Expansion into the 21st Century*, WSP, available at <https://www.wsp.com/fr-CA/projets/panama-canal-expansion> (last visited May 7, 2022), Exhibit 4.*

6. As part of its work for Panama, Parsons assisted in preparing a cost, schedule and constructability analysis for the Third Set of Locks, which established a “cost breakdown structure, calculated the quantities based on the cost breakdown structure, evaluated the methods and equipment required for constructing the Atlantic and Pacific locks as well as the Pacific

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<sup>1</sup> A true and correct copy of each exhibit referenced herein is attached.

access channel, and established the schedule for completing the project within a reasonable timeframe.” *See* Parsons Cost Schedule and Constructability Analysis for Proposed Post-Panamax Locks, Concept Level Design Estimates Report dated April 2004, p. 2, Exhibit 5.

7. In 2006, Panama developed the Master Plan for the Panama Canal (“Master Plan”), a nearly 500-page document that served as the strategy for the Canal’s next twenty years. The Master Plan states that, in developing the Master Plan, Panama had taken into account the results of various studies it had conducted, which had “undoubtedly . . . been the most intense, comprehensive and in-depth initiative performed by the Canal since its inauguration.” The Master Plan also states that the document “acts as a summary and integrating link of the more than 120 studies, diagnoses and investigations, and the models on which they are based.” *See* Master Plan, dated June 7, 2006, § 2.4, Exhibit 6.

8. According to the Master Plan, the “cost of the construction of the third set of locks has been estimated using the most rigorous methods of analysis, and with the advice of internationally recognized experts.” In particular, the “cost estimate and execution schedule were developed by [Panama], with advisory by consultants specializing in cost estimation from Parsons Brinkerhoff International [and others].” *See* Master Plan, § 6.9.1, Exhibit 6.

9. To proceed with the Project pursuant to the Master Plan, Panama presented the Project to its people as part of a national referendum process, as required by the constitutional framework. Ahead of the national referendum, Panama publicized additional information on the main aspects of the plan for the expansion of the Panama Canal. One such document represented to Panamanians that “the model is conservative, so when considering contingencies and inflation, there is an 80% probability that the cost will be US\$5,250 million or less” and that the “users [of the Canal] will pay for the expansion.” *See* ACP Presentation for the National Referendum dated

2006, Exhibit 7. On October 22, 2006, Panamanians overwhelmingly approved the Project.

10. In 2006, Panama also developed the Proposal for the Expansion of the Panama Canal: Third Set of Locks Project (the “Proposal”)—its proposed plan for the Panama Canal Expansion Project involving a new set of locks. *See* Proposal for the Expansion of the Panama Canal: Third Set of Locks Project dated April 24, 2006, Exhibit 8. The Proposal references studies prepared by Parsons, including on managerial recommendations and costs. The Proposal states that its content and statements “are extensively detailed in the 2005-2025 Canal Master Plan, and are fully supported by the over 120 studies conducted” by Panama. *See* Proposal, p. 78, Exhibit 8. The Proposal estimates the costs for the canal expansion at US\$5.25 billion, relying on work performed by consultants, including Parsons. This estimate “includes contingencies to cover risks and unforeseen events such as those that might be caused by accidents, design changes, price increases, and possible delays, among others.” *See* Proposal, p. 18, Exhibit 8. In the Proposal, Panama represented that the “probability that the construction will be performed within the estimate, or less, is high.” *See* Proposal, p. 20, Exhibit 8.

11. As part of their due diligence before and during the tender phase for the Project between 2008 and 2009, Webuild, Sacyr and their partners reviewed documents and representations provided by Panama, including the Master Plan from Panama and the Proposal, as well as the consultant materials referenced therein. In these materials, Panama represented that it had performed decades-long analyses of the Panama Canal site in anticipation of the Project, and had engaged multiple consultants. Among the consultants Panama engaged was Parsons. *See* Master Plan Exhibit 6; Proposal, Exhibit 8.

12. To execute the Project, Panama issued a public tender. As part of the package of its tender documents, Panama issued a Request for Qualifications and a Request for Proposals.

*See* Request for Qualifications, Exhibit 9; Request for Proposals (Vol. I and Index of Vol. VI), Exhibit 10.

13. In making its tender offer, Webuild and Sacyr reviewed the tender documents, including the Request for Qualifications and Request for Proposals. Based on those two documents, Webuild and Sacyr understood that Panama had prepared its tender documents with the assistance of multiple well-known consultants, including Parsons and its local affiliate PB Consult Panama S.A. The Request For Qualifications, in particular, includes Parsons in its Conflict of Interest provision, which lists the consultants precluded from participating in the tender because they have been contracted by Panama. *See* Request for Qualifications, p.16, Exhibit 9.

14. In the Request for Qualifications, Panama states that “The Panama Canal Capacity Expansion Proposal is the result of an exhaustive study and planning process, commenced in 1996, involving analyses of market and competition, capacity and operations, technical and engineering options, risk and financial aspects and environmental and socio-economic considerations” and that these were incorporated in the Master Plan.” *See* Request for Qualifications, p. 11, Exhibit 9.

15. The Request for Qualifications assured that the “Project will be funded from a combination of ACP generated funds and external financing” and that the “Contractor of the Project will not be required to provide financing for the Project” and expressly incorporated the Master Plan and the Proposal. *See* Request for Qualification, p. 12, Exhibit 9.

16. Panama provided bidders with certain detailed conceptual designs, drawings and geotechnical data and reports as part of the Request for Proposals package. *See* Request for Proposals, Vol. VI (index), Exhibit 10. Webuild and Sacyr would later learn that Panama had

failed to provide the tenderers certain studies that it had conducted in relation to costs estimate of the Project and the nature of the existing conditions at the Project site, including those developed with Parsons.

17. Based on the representations by Panama in the Request for Qualifications and Request for Proposals (and other materials) Webuild and Sacyr reviewed in evaluating the tender – as well as Panama’s consistent representations that it had worked with multiple private-sector consultants, including Parsons – Webuild and Sacyr’s confidence increased. Webuild and Sacyr were prepared to invest the relevant personnel, talent, and services necessary to perform the Project as laid out by Panama in its Proposal.

18. In 2009, the GUPC Consortium submitted its technical proposal and its US\$3.22 billion price proposal, which was consistent with Panama’s estimated cost of US\$3.35 billion for the Third Set of Locks project. As part of the Contractor Selection Process, Panama’s “Technical Evaluation Board” reviewed the technical proposal, and the “Price Verification Committee” reviewed the proposed price proposal. *See* Contractor-Selection Process: Third Set of Locks Project dated July 2009, Exhibit 11; Executive Summary of the Contractor-Selection Process: Third Set of Locks Project dated July 2009, Exhibit 12; Explicative Document of the Process for the Tender Evaluation and Contractor Selection for the Design and Construction of the Third Set of Locks dated July 2009, Exhibit 13.

19. The technical evaluation board gave the GUPC Consortium the highest overall technical score. *See* Technical Evaluation – Final Report, Contracting Officer’s Report dated July 2009, p. 41 Exhibit 14. At the price proposal public opening ceremony, Panama unveiled its “Official Price” of US\$3.48 billion, this time without the contingencies that had been included in the cost estimate from the Proposal that Parsons helped to develop. The GUPC’s Consortium’s

price proposal was in line with the Official Price and Panama ultimately awarded the contract to the GUPC Consortium. *See* Technical Evaluation – Final Report, Contracting Officer’s Report dated July 2009, p. 43 Exhibit 14. The final report for the technical evaluation states that a “group of more than 50 ACP and international experts” provided technical advice to the technical evaluation board. *See* Technical Evaluation – Final Report, Contracting Officer’s Report dated July 2009, p. 9 Exhibit 14.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 17th day of May, 2022 in Buenos Aires, Argentina.

  
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ANTONIO MARIA ZAFFARONI