

OMEGA ENGINEERING LLC AND MR. OSCAR RIVERA
V.
THE REPUBLIC OF PANAMA

OPENING SUBMISSION OF THE REPUBLIC OF PANAMA



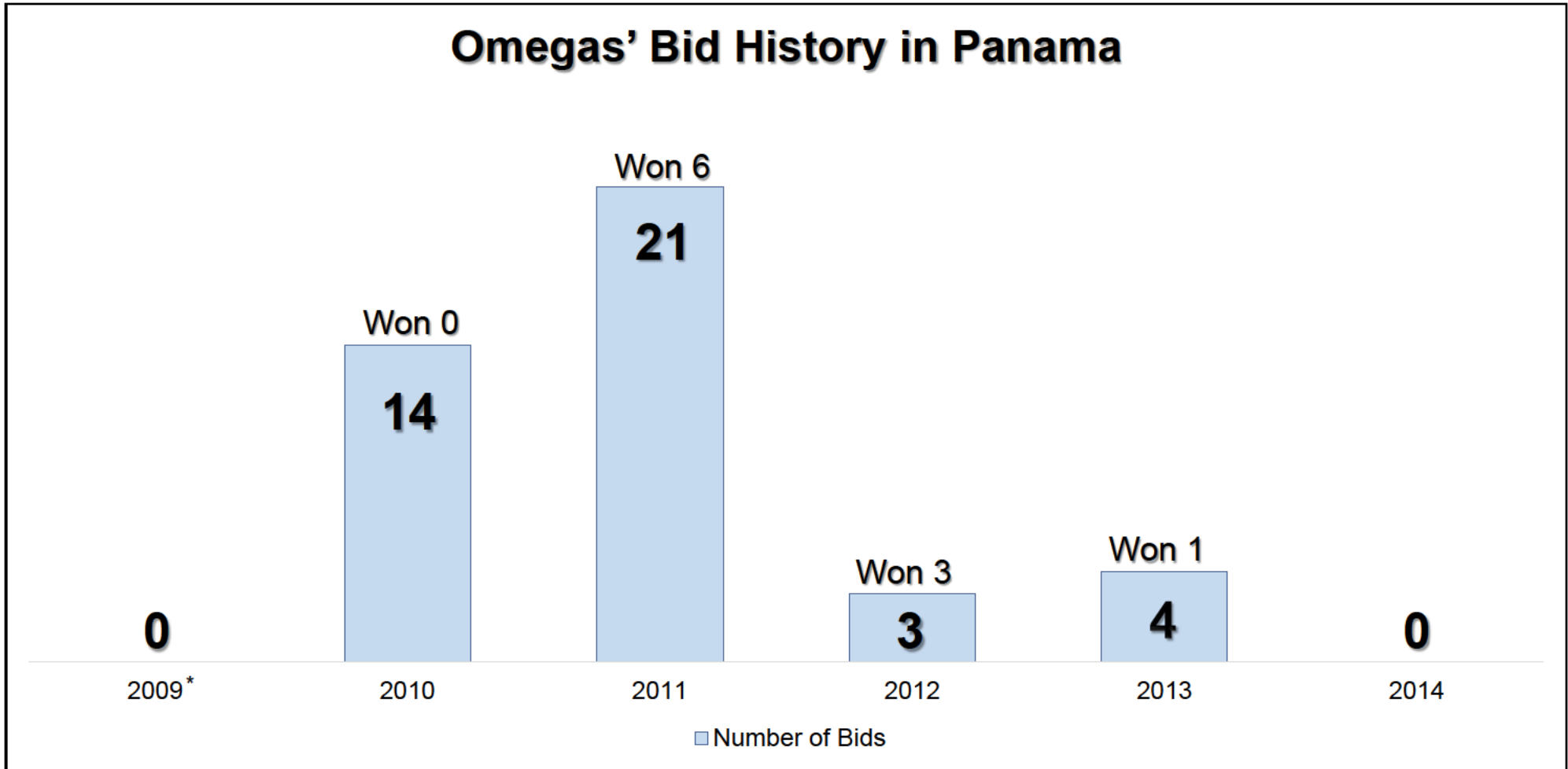
CLAIMANTS

Year	Omega U.S. Net Earnings	Omega Panama Net Earnings
2010	[REDACTED]	[REDACTED]
2011	[REDACTED]	[REDACTED]
2012	[REDACTED]	[REDACTED]
2013	[REDACTED]	[REDACTED]

Sources: Omega US Net Earnings: 2013 (C-0389), p. 7; 2012 (QE-104), p. 7; 2011 & 2010 (QE-102), p. 7.
Omega Panama Net Earnings: 2013 & 2012 (C-0136), p. 5; 2011 (C-0137), p. 5; 2010 (C-0311), p.8.
Opening Submission of the Republic of Panama | February 24, 2020

CLAIMANTS

Omegas' Bid History in Panama




*: Excludes commercial project bids Omega made "at the beginning" and lost (Lopez 1 ¶ 19; Compass Lexicon 1 ¶¶ 38-39).

Source: First Expert Report of Daniel Flores, Figure 9.

JURISDICTION: CORRUPTION

Judicial Authority Contract

[C-0048 resubmitted]


 96869
Republic of Panama
Judicial Branch
Supreme Court of Justice
Presidency

WORKS CONTRACT 150/2012
EXECUTED BETWEEN THE JUDICIAL BRANCH AND THE OMEGA ENGINEERING CONSORTIUM

Between the signatories, to wit: Justice Alejandro Moncada Luna, male, Panamanian, of legal age, carrier of personal identification document No. [REDACTED], in his capacity as President of the Supreme Court of Justice, and the signatory, to wit: Oscar Iván Rivera Rivera, male, Panamanian, of legal age, carrier of personal identification document No. [REDACTED], in his capacity as President of the Consortium, who together shall be referred to as **THE CONTRACTOR**, and the signatory, to wit: **THE GOVERNMENT**, of legal age, carrier of personal identification document No. [REDACTED], in his capacity as President of the Supreme Court of Justice, who together shall be referred to as **THE GOVERNMENT**, of legal age, carrier of personal identification document No. [REDACTED], in his capacity as President of the Supreme Court of Justice, who together shall be referred to as **THE CONTRACTOR**, party of the second part; the parties have agreed to execute this Works Contract, authorized by public record regarding Best-Value Abbreviated Tender No 2012-0-30-0-08-AV-004833 for the "CONSTRUCTION OF A BUILDING FOR THE REGIONAL JUDICIAL UNIT OF THE CHORRERA DISTRICT," pursuant to the following clauses:

ONE: THE CONTRACTOR agrees to perform all the work related to the "CONSTRUCTION OF A BUILDING FOR THE REGIONAL JUDICIAL UNIT OF THE CHORRERA DISTRICT," pursuant to the breakdown of activities listed in the technical specifications and conditions established by Judicial Branch for these purposes, within the respective Tender Documents governing the Best-Value Abbreviated Tender No 2012-0-30-0-08-AV-004833.

THE CONTRACTOR accepts the Tender Documents of Best-Value Abbreviated Tender No 2012-0-30-0-08-AV-004833, with all its parts, to wit: General Conditions, Special Conditions and Technical Specifications that were the basis for the selection of **THE CONTRACTOR**.

TWO: THE CONTRACTOR formally agrees to commence and conclude the work referred to herein within **FIVE HUNDRED FORTY (540) CALENDAR DAYS**, as of the commencement date stated in the notice to proceed.

THREE: THE CONTRACTOR agrees to pay **THE GOVERNMENT** four percent (4%) of the amount equal to the undelivered or unexecuted part divided by thirty (30) for every calendar day delivery of the works is delayed after the term indicated in the notice to proceed or the extensions granted thereto have lapsed, as liquidated damages for the harm caused due to the delay, which shall be subtracted from the payments **THE GOVERNMENT** makes to **THE CONTRACTOR**.

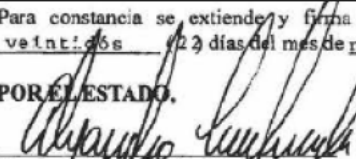
The total value of this penalty shall in no way exceed ten percent (10%) of the Contract value and shall be deposited into the National Treasury.

V	COMPTROLLER GENERAL OF THE REPUBLIC	
C	(Official Stamp)	
R	[Signature]	1
I	27 DEC 2012	
F		
I		
E	Marcos Muñoz	
D	Overseer	

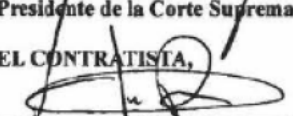
An advance payment of 15% of the total contract value shall be made at the moment of the receiving the respective Notice to Proceed, which shall be progressively discounted from the bills submitted and shall be calculated based on the same percentage of the advance payment.

Para constancia se extiende y firma este Contrato de Obra, en la ciudad de Panamá a los veintidos (22) días del mes de noviembre del año dos mil doce (2012).

PORELESTADO,


 Magistrado Alejandro Moncada Luna
 Presidente de la Corte Suprema de Justicia

EL CONTRATISTA,


 Oscar Iván Rivera Rivera
 Pasaporte N.º 421723037
 CONSORCIO OMEGA ENGINEERING

JURISDICTION: CORRUPTION

Payment 1 from Judiciary to Sarelan Corp., S.A.



JURISDICTION: CORRUPTION

[RP-0010]
14622

SWORN STATEMENT OF ANA BEATRIZ BOUCHE GONZALEZ

In the city of Panamá, at eleven o'five in the morning (11:05 a.m.), on this day, Tuesday, the twenty-ninth (29) of July, two thousand and fifteen (2015), Ms. ANA BEATRIZ BOUCHE GONZALEZ

the request of Justice Alejandro Moncada Luna. Even Mr. Alejandro Moncada Luna told me of the existence of the corporation that Mr. Rodríguez Guardia had created for him. As for Sarelan Corporation, I am aware of its existence because Mr. Alejandro Moncada Luna, being a Court Justice, asked me to help him process its establishment and he asked me to support him by listing one of my family members as its president and legal representative, since his intention was to use it to establish an estate for his minor son, José Alejandro Moncada Luna Marín. For this reason, I began the process to draft the corporate Articles of Incorporation and send them to Notary Two by email in order for formalization into a public document. This was completed and it was later submitted to the Public Registry for recording. Its initial directors were Xenia González as President,

rganized Crime Division to give a sworn statement ducted by this Office. It is noted that she took the Penal Code on "False Testimony" which reads as "an translator who, in part or all of a statement, report, sehood or denies or silences the truth to the mpriisonment of 2 to 4 years. When the offense is he defendant or is the basis upon which the nt, the term of imprisonment shall be four to eight ything she may know and may be asked. She is also nstitution which states, "No person is required to er against himself, his spouse, or his relatives within f affinity." She was asked to identify herself and she she is a woman of Panamanian nationality, of legal

CANO (R.I.P.) and ANA BEATRIZ GONZALEZ PITTI, aw and Political Science, and consequently she can then questioned as follows. QUESTION: This Office mission of an Economic Crime, specifically Money

Laundrying, on the basis of investigations conducted by the National Assembly against Mr.

was established was replaced by Tatiana Marín, the mother of minor José Alejandro Moncada mentioned above. I was to coordinate by email with the office of Mr. Luis Adolfo Corro for the issuance of a Sarelan Corporation share certificate for 100% of the shares to Alejandro Moncada Luna. We also know the Luxol, S.A. corporation because Mr. Alejandro Moncada Luna also asked

by the National Bar Association, our of the Panama Circuit, dated ALEZ was one of the signatories. fore you and spans pages 5356- A BEATRIZ BOUCHE GONZALEZ is is notarized sworn statement on the name ANA BEATRIZ BOUCHE

File 0049-15
/cjdg

[signature]
4-151-904

(1)

JURISDICTION: CORRUPTION

Payment 2 from Judiciary to Sarelan Corp., S.A.



Source: R-0114.12.

Opening Submission of the Republic of Panama | February 24, 2020

Shearman & Sterling LLP

JURISDICTION: CORRUPTION

[R-0064]

PLEA BARGAIN

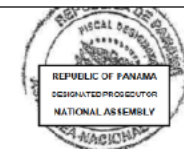
At 6:00 P.M. on February 23, 2015, ALEJANDRO MONCADA LUNA CARVAJAL, male, Panamanian, of legal age, with personal ID Card No. [REDACTED],

1. **ALEJANDRO MONCADA LUNA CARVAJAL** pleads **GUILTY** to the crime of unjust enrichment defined in Article 351 of the Criminal Code and the crime of perjury in public documents defined in Article 366 of the aforementioned Code.
2. The agreed sentence is **sixty (60) months in prison** as a primary penalty, with the **accessory penalties** of disqualification from holding public office for the same period of time and the **confiscation** of Apartment No. 26 in the Ocean Sky Condominium (Property 95734, Doc. 1659483) registered to the company Corporación Celestial, S.A. and Apartment No. 16 in the Santorini Condominium (Property 455589, Digital Registry Document 2540971, Entry 1) registered to Corporación Alpil, S.A.

NATIONAL ASSEMBLY
TRUE COPY OF THE ORIGINAL
bf
Franz ([legible])
General Secretary



PEDRO MIGUEL GONZÁLEZ PINZÓN
PROSECUTOR



JURISDICTION: CORRUPTION

IGRA Invoice

(7) 266-0000
(507) 299-8981
(507) 266-8954
email: gromel@gonzalez.com
www.gonzalez.com

ICA GONZALEZ-RUIZ & ALEMAN
ABOGADOS - LAWYERS
CALLE AGUILINO DE LA GUARDIA
EDIFICIO IGRA
R.U.C. 41-472-4615 D.V. 73

[C-0558]
ZONE 0825-02430
PANAMA, REP. OF PANAMA

FACTURA INVOICE N° 525361

PANAMA, May 1, 2013

Account No.: 999866.SOC.0

SUBJECT (RE)

PREPARATION OF PURCHASE AND SALE COMMITMENT CONTRACT FOR FARM NO. 35659, IN THE PROVINCE OF LOS SANTOS.

OS

US\$ 850.00

PAYMENT AUTHORIZATION

Approved
 Not approved

Project No.: 6038
Code: ndm
For: 4/30/14
Date: [Signature]

RECEIVED

02 MAY 2013

OMEGA ENGINEERING, INC.

FOR BANK TRANSFERS: ACCOUNT NAME: ICASA, GONZALEZ-RUIZ & ALEMAN
ACCOUNT N°: 100-91217
BENEFICIARY BANK: CITIBANK, N.A., NEW YORK
111 WALL STREET 5TH FLOOR, NY 10043
ABA: 021-00008 SWIFT: CITIUS 33

DIAMBO ENVE EL PASO, HAGA REFERENCIA A, NÚMERO DE ESTE DOCUMENTO / WHEN YOU SEND PAYMENT MAKE REFERENCE TO THIS INVOICE NUMBER.
ESPERAMOS CANCELADOR DENTRO DE LOS PROXIMOS 30 DIAS / YOUR PAYMENT IS EXPECTED WITHIN 30 DAYS.

ORIGINAL - CLIENT

11

US\$ 850.00

US\$ 850.00

Source: C-0558.

JURISDICTION: CONTRACTUAL DISPUTE RESOLUTION PROVISIONS

Panama Bilateral Investment Treaty

Signed October 27, 1982; Entered into Force May 30, 1991

2. In the event of an investment dispute between a Party and a national or company of the other Party with respect to an investment of such national or company in the territory of the first Party, the parties to the dispute shall initially seek to resolve it by consultation and negotiation. The parties may, upon the initiative of either of them and as a part of their consultation and negotiation, agree to rely upon non-binding, third-party procedures, such as the fact-finding facility available under the Rules of the Additional Facility ("Additional Facility") of the International Centre for the Settlement of Investment Disputes ("Centre"). **If the dispute cannot be resolved through consultation and negotiation, then the dispute shall be submitted for settlement in accordance with the applicable dispute- settlement procedures upon which they have previously agreed. Such procedures may provide for recourse to international arbitration using a forum such as the Inter-American Commercial Arbitration Commission.** With respect to expropriation by either Party, any dispute-settlement procedures specified in an investment agreement between such Party and such national or company shall remain binding and shall be enforceable in accordance with, inter alia, the terms of the investment agreement, relevant provisions of the domestic laws of such Party and treaties and other international agreements regarding enforcement of arbitral awards to which such Party has adhered.

PUBLIC OF
MENTS, WITH


nying papers,
se of the Senate

with a view to receiving the advice and consent of the Senate ratification, I transmit herewith the Treaty between the United States of America and the Republic of Panama concerning the Treatment and Protection of Investments, with Agreed Minutes, signed October 27, 1982, at Washington. I transmit also, for the information of the Senate, the report of the Department of State with

[35]

Source: Treaty between the United States of America and the Republic of Panama Concerning the Treatment and Protection of Investment, at Art. VII (2).

JURISDICTION: CONTRACTUAL DISPUTE RESOLUTION PROVISIONS

<p>[C-0028 resubmitted]</p> <p>CONTRACT No. 077 (2011)</p> <p>FOR THE ANALYSIS, DESIGN DEVELOPMENT, CONSTRUCTION, FURNISHING AND FINANCING OF THE INNOVATIVE PRIMARY HEALTHCARE CENTER (MINSA CAPSI)</p> <p>Between the undersigned, to wit: [REDACTED] VERGARA, Panamanian woman, legal age, carrier of personal identification document No. [REDACTED], in her capacity as General Director of the Government of the Republic referred to as THE GOVERNMENT, party of the first part, and OSCAR I. RIVERA R., male, United States citizen, legal age, passport number [REDACTED], acting in his capacity as legal representative of the company OMEGA ENGINEERING, INC., a company organized pursuant to Panamanian law (Commercial), under record 679896, document 1672002, in his capacity as legal representative of the OMEGA CONSORTIUM, which is comprised of the following companies: CIRAN CONSULTING, INC., a company organized and existing under the laws of the United States of America, and OMEGA ENGINEERING, INC., a company organized and existing under the laws of Panama, party of the second part, the following is agreed:</p> <p>SIXTY- (60) DAYS</p> <p>Any dispute arising from the performance of this contract shall be resolved in accordance with the provisions of the contract and the applicable laws of Panama.</p>	<p>[C-0042 resubmitted]</p> <p>REPUBLIC OF PANAMA NATIONAL INSTITUTE OF CULTURE</p> <p>CONTRACT No. 093-12</p> <p>Analysis, Design, Supply of Material, Labor equipment, Administration, and Construction of the Ciudad de las Artes Project</p> <p>Between the undersigned, to wit: MARIA EUGENIA HERRERA de VICTORIA, Panamanian woman, legal age, carrier of personal identification document No. [REDACTED], in her capacity as General Director of the National Institute of Culture, who hereinafter shall be referred to as THE INSTITUTE, party of the first part, and OSCAR IVAN RIVERA RIVERA, male, United States citizen, legal age, passport number [REDACTED], acting on behalf and in representation of the company OMEGA ENGINEERING, LLC, a company registered in the Public Registry of Panama as a Foreign Company, under record 1677, Document 1781593, and on behalf and in representation of OMEGA ENGINEERING CONSORTIUM, a company organized and existing under the laws of Panama and registered in the Public Registry of Panama, party of the second part, the following is agreed:</p>	<p>[C-0056 resubmitted]</p> <p>PANAMA MUNICIPALITY</p>  <p>FRANCO DE LA ROSA, PANAMA P.O. Box 0816-07708, Panama 1, Panama</p> <p>WORKS CONTRACT No. 857-2013</p> <p>"DESIGNS, CONSTRUCTION PLANS, LAND SURVEY, ENVIRONMENTAL IMPACT, CONSTRUCTION AND FURNISHING OF THE PACORA AND JUAN DIAZ PERIPHERAL MARKETS PURSUANT TO THE TECHNICAL SPECIFICATIONS SET FORTH IN THESE TENDER DOCUMENTS."</p> <p>We, the undersigned, to wit: RONAMA MENDOZA O, female, Panamanian, of legal age, carrier of personal identification document No. [REDACTED], in her capacity as Mayor and Legal Representative of the Panama Municipality, duly authorized by LAW No. 106, dated October 8, 1973, amended by Law 32 of 1984, to execute this agreement, hereinafter referred to as THE MUNICIPALITY, party of the first part, and OSCAR I. RIVERA R., male, United States citizen, legal age, carrier of passport number [REDACTED], who is acting on behalf and in representation of the OMEGA CONSORTIUM, which is a company organized and existing under the laws of Panama and registered in the Public Registry of Panama, party of the second part, the following is agreed:</p> <p>1. This contract</p> <p>2. The specifications established in the tender documents for the Best-Value Abbreviated Tender No. 2013-5-76-0-08-AV-004644</p> <p>3. The bid submitted by THE CONTRACTOR along with the letters and documents that supplement the scope of the Best-Value Abbreviated Tender No. 2013-5-76-0-08-AV-004644.</p> <p>THIRD: THE CONTRACTOR shall create a work schedule in coordination with the personnel of the Office of Municipal Works and Construction in order to meet the time frame and scheduling of projects in accordance with the breakdown of activities listed in the Tender Documents.</p> <p>FOURTH: THE CONTRACTOR agrees to deliver the completed works with all the elements and furnishings indicated in the tender documents with its respective warranties.</p> <p>Deadline for Delivery:</p> <ul style="list-style-type: none"> Pacora Market THREE HUNDRED (300) CALENDAR DAYS Juan Diaz Market THREE HUNDRED SIXTY-FIVE (365) CALENDAR DAYS <p>10 SEPT 2013 Signature Vicente Manuel Ojeda</p>
<p>THIRTEENTH: THE CONTRACTOR shall be liable for the damages caused to THE MUNICIPALITY or third parties based on the actions or omissions due to fault or negligence and any legal action shall be filed with the Panamanian Courts. As a consequence, THE CONTRACTOR releases THE MUNICIPALITY and its representative of all actions arising from the performance of this contract, as established in the specifications provided.</p>		
<p>the Panamanian courts.</p> <p>ONE: (Purposes of the Contract)</p> <p>This Contract is established as a turnkey contract, the purpose of which is the analysis, design development, construction, furnishing and financing of the innovative primary healthcare center (MINSA CAPSI), in Rio Sereno, located in the Chiriqui Province, in the Republic of Panama, THE CONTRACTOR regarding the best-value Tender No. 435-2010 for the construction, furnishing and financing of ten innovative primary health centers, which is an integral part of this Contract.</p> <p>Comm</p> <p>The de</p> <p>for pur</p> <p>any Co</p> <p>1</p> <p>(1)</p>	<p>The General Conditions, Special Conditions, Reference Terms, Technical Specifications, Exhibits, Addenda and other documents for the construction project Analysis, Design, Supply of Material, Labor equipment, Administration, and Construction of the Ciudad de las Artes Project, as well as the price breakdown provided by THE CONTRACTOR in the Proposal.</p> <p>INAC</p> <p>COMPTROLLER GENERAL OF THE REPUBLIC OF PANAMA</p> <p>(illegible)</p> <p>Signature</p> <p>Eyra (illegible) Rodriguez</p> <p>Director General</p> <p>(signature)</p> <p>(signature)</p> <p>(1)</p>	<p>1. This contract</p> <p>2. The specifications established in the tender documents for the Best-Value Abbreviated Tender No. 2013-5-76-0-08-AV-004644</p> <p>3. The bid submitted by THE CONTRACTOR along with the letters and documents that supplement the scope of the Best-Value Abbreviated Tender No. 2013-5-76-0-08-AV-004644.</p> <p>THIRD: THE CONTRACTOR shall create a work schedule in coordination with the personnel of the Office of Municipal Works and Construction in order to meet the time frame and scheduling of projects in accordance with the breakdown of activities listed in the Tender Documents.</p> <p>FOURTH: THE CONTRACTOR agrees to deliver the completed works with all the elements and furnishings indicated in the tender documents with its respective warranties.</p> <p>Deadline for Delivery:</p> <ul style="list-style-type: none"> Pacora Market THREE HUNDRED (300) CALENDAR DAYS Juan Diaz Market THREE HUNDRED SIXTY-FIVE (365) CALENDAR DAYS <p>10 SEPT 2013 Signature Vicente Manuel Ojeda</p> <p>(1)</p>

JURISDICTION: THE CLAIMANTS HAVE ASSERTED COMMERCIAL CLAIMS

Each of the Claimants' Claims is Predicated on Alleged Breaches of Contract

Expropriation

- “But once the Varela Administration took charge, each of the Government entities with which the Omega Consortium had contracted breached their respective obligations almost simultaneously” (Memorial, ¶ 147)

Fair and Equitable Treatment

- “An important and legitimate expectation for any foreign investor is that a State will comply with its contractual commitments.” (Memorial, ¶ 147)

Full Protection and Security

- “The contractual right to payment for the work performed under the Contracts was one of the cornerstones of financial security that Claimants enjoyed in Panama.” (Memorial para 183)
- Panama “withheld payment through the Comptroller General and unjustifiably terminated a number of the contracts through its government agencies.” (Id.)

Umbrella Clause

- Respondent’s breaches of its obligations under the Contracts also amount to a breach of the “umbrella clauses” found in the BIT and TPA. (Memorial, ¶ 188)

JURISDICTION: THE CLAIMANTS HAVE ASSERTED COMMERCIAL CLAIMS

The Claimants Allege that their Commercial Problems Were Politically Motivated

3. Everything changed during and following the Panamanian presidential election of

2014, wherein two former allies turned political rivals, former President Ricardo Martinelli and current President Juan Carlos Varela, vied for power. When Mr. Varela assumed the office of the Presidency in July 2014, the new Government promptly targeted Mr. Rivera and the Omega Consortium, whose contracts had each been awarded during the previous Administration, with a number of hostile measures. Outstanding invoices from the Omega Consortium went completely unpaid, Respondent failed to provide required permits and change orders, it declared default on their largest contract, and wrongfully terminated or abandoned the others. In the midst of this pattern of targeted measures, the Government zeroed in on Mr. Rivera and Omega Panama with baseless criminal investigations, and launched a highly-public campaign aimed at sullyng their international reputation.

IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES

OMEGA ENGINEERING LLC
AND
MR. OSCAR RIVERA
CLAIMANTS

v.

THE REPUBLIC OF PANAMA
RESPONDENT

CLAIMANTS' MEMORIAL

Counsel for Claimants

venue
d Plaza, Suite 3300
a 33131

JONES DAY
21 Tudor Street
London EC4Y 0DJ
England

Avenue, N.W.
Washington, DC 20001
United States

INTERNATIONAL DISPUTE RESOURCES
701 Brickell Avenue, Suite 1550
Miami, FL 33131
United States

25 JUNE 2018

JURISDICTION: THE CLAIMANTS HAVE ASSERTED COMMERCIAL CLAIMS

The Criminal Investigation Into Mr. Rivera and Omega Panama Do Not Change the Commercial Nature of the Claimants' Claims

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES

ICSID CASE No. AF
OMEGA ENGINEERING
and
OSCAR RIVERA
Claimants
v.
REPUBLIC OF PANAMA
Respondent

FIRST WITNESS STATEMENT OF JOSE

7 January 2019

37. I understand that Mr. Rivera has said that he was the target of three investigations and that he was found innocent or not culpable in each of them. As the person in charge of conducting those investigations, I can attest that his statement is not true. As discussed above, the first investigation, before the National Assembly, was focused only on Justice Moncada Luna. Mr. Rivera and Omega Engineering came to our attention solely because of their status as a contractor and vendor to the Judiciary. We had no specific interest in Mr. Rivera or Omega Engineering until we found the two payments described above.

38. As the National Assembly did not have the authority to investigate and prosecute Mr. Rivera or Omega Engineering it referred that investigation to the Public Prosecutor. There, as I have described and as is consistent with standard Panamanian criminal procedure, two different divisions of the Public Prosecutor's office opened related investigations.

39. At no time did the National Assembly, the Public Prosecutor's office, or a court find that Mr. Rivera and Omega Engineering were not guilty of the charges being investigated.

PANAMA'S ACTIONS DO NOT VIOLATE SUBSTANTIVE PROTECTIONS UNDER THE BIT

Expropriation

- Panama's actions do not constitute a "taking"
- Claimants have failed to establish that Panama breached its contractual obligations
- Claimants' contract claims involve commercial actions taken by various ministries in their commercial capacity – regardless of which administration was in office

PANAMA'S ACTIONS DO NOT VIOLATE SUBSTANTIVE PROTECTIONS UNDER THE BIT

Fair and Equitable Treatment

- The BIT and TPA link the FET standard to customary international law norms
- The concept of “legitimate expectations” does not apply to FET claims under the BIT and TPA
- Even if legitimate expectations could be considered, Claimants have not established any legally cognizable expectations that were violated

PANAMA'S ACTIONS DO NOT VIOLATE SUBSTANTIVE PROTECTIONS UNDER THE BIT

Full Protection and Security

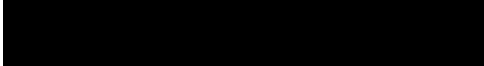
- Protects against the government's failure to take reasonable measures to protect an investor and investment against physical harm
- Does not apply to legal or regulatory protections
- Does not prevent the exercise of legitimate police powers
- Claimants investments were not subjected to physical harm
- The criminal investigation of Mr. Rivera and Omega Panama was reasonable and grounded in substantial probable cause

PANAMA'S ACTIONS DO NOT VIOLATE SUBSTANTIVE PROTECTIONS UNDER THE BIT

Umbrella Clause

- Umbrella clauses do not automatically protect against breaches of contract by a government
- TPA does not contain an umbrella clause
- If the umbrella clause is applied to contract breaches, compensation is limited to contract remedies

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

	Claimants (as of 12/31/2014)	Panama
Losses on Future Contracts	US\$ 46.75 million	US\$ 0
Losses on Existing Contracts	US\$ 8.69 million	US\$ 3.8 million
Moral Damages		US\$ 0

Source: Compass Lexecon 2, Table XVI; Quadrant 2, Figure 1.

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

	Claimants (as of 12/31/2014)	Panama
Losses on Future Contracts	US\$ 46.75 million	US\$ 0

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

The Claimants Purport to Value Omega Panama as a Going Concern

**Assessment of Losses of
Omega Engineering LLC and Mr. Oscar
Rivera's Investment**

ICSID Case No. ARB/18/12

Supply Contract

Pablo Sebastian Rivera

a. Losses on existing contracts estimated at US\$ 8.7 million as of December 23, 2014. These losses relate to unpaid billings and future payments that Omega Engineering Inc. ("Omega Panama") and Omega U.S. (together the "Omega Consortium") would have collected (but it will not) on eight contracts that were awarded by the Republic of Panama between 2010 and 2013.

b. Losses on new contracts estimated at US\$ 46.7 million as of December 23, 2014. These losses relate to Omega Panama's capacity to generate new contracts, based on the historical performance of the company, as well as on the observed and expected evolution of public sector investment in infrastructure in Panama.

COMPASS
LEXECON

May 27, 2019

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

The Claimants Purport to Value Omega Panama as a Going Concern

Assessment of Losses of Omega Engineering LLC and Mr. Oscar Rivera's Investments in Panama

ICSID C

Supp

Pablo Lopez Zuccon
Sebastian Zuccon

54. Therefore, in order to compensate Claimants for the losses suffered as a result of the Measures, the value of Claimants' interest in Omega Panama should be calculated using the FMV standard. Namely the value that a willing buyer and a willing seller would have given to Omega Panama in a hypothetical transaction as of December 2014. This value cannot be zero as claimed by Dr. Flores, but US\$ 51.22 million as concluded in our analysis.



May 27, 2019

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

The Claimants Purport to Value Omega Panama as a Going Concern

IN THE MATTER OF AN ARBITRATION
UNDER THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES

2. *The Compensation Claimed for Potential Future Contracts Is Supported and Accurate*

481. The first Compass Lexecon report calculated Claimants' losses concerning on future contracts at US\$ 46.75 million as of 23 December 2014.¹³³⁶ Claimants' experts have now updated that value to US\$ 42.53 million in their second report.¹³³⁷ Respondent, on the other hand, assigns no value at all to losses on future contracts. Key to the issue is Omega Panama's ability to generate valuable business into the future. It is uncontested that Omega Panama was able to win 10 competitive public works bids in the five years leading to the Date of Valuation and that it won a

ER-

Bacon LLP
Blvd., Suite 3200

United States of America

JONES DAY
21 Tudor Street
London EC4Y 0DJ
England

30 MAY 2019

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon Does Not Value Omega Panama

Assessment of Losses of Omega Engineering LLC and Mr. Oscar Rivera's Investments in Panama

44. Second, the evidence shows that Omega Panama had a track record, as well as competitive advantages, that would have allowed it to continue to win public sector contracts in Panama beyond 2014 in the absence of the Measures. In fact, during its participation in the Panamanian market for public works, Omega Panama competed in 42 bids for public infrastructure tenders, winning 10 of them.⁴⁰ Moreover, Omega Panama showed competitive advantages due to its financial capacity, bonding capacity, and experience in construction works.⁴¹ As a consequence, and contrary to Dr. Flores' opinions, the operation and performance of Omega Panama cannot be easily replicated by a new entrant.



May 27, 2019

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon Does Not Value Omega Panama

b. Omega Panama

32. Following the early success of PR Solutions' Tocumen Airport project, Mr. Rivera and his team were ready to use the Omega brand to bid for and complete larger public works projects in Panama.⁵³ While it carried the Omega name, Omega Panama was a newly registered company without its own track record. This created an issue for Omega Panama when bidding, and ultimately, from mid-2010, all bids for large public projects in Panama were made through a consortium consisting of Omega Panama and Omega U.S. (together the "Omega Consortium," as noted above).

34. Thanks to Omega U.S.'s bonding capacity, solid financials, track record, project portfolio, and other specifications customarily used by project owners to evaluate bid proposals, this arrangement allowed Mr. Rivera to bid for larger Panamanian projects. Mr. Rivera's ultimate objective was to replicate this strategy in other jurisdictions by expanding Omega U.S.'s presence until it became a regional, and ultimately a global, competitor.⁵⁴

IN THE MATTER OF AN ARBITRATION
IN ACCORDANCE WITH THE ARBITRATION RULES OF THE INTERNATIONAL CENTRE
FOR SETTLEMENT OF INVESTMENT DISPUTES

OMEGA ENGINEERING LLC
AND
MR. OSCAR RIVERA
CLAIMANTS

v.

THE REPUBLIC OF PANAMA
RESPONDENT

CLAIMANTS' MEMORIAL

Counsel for Claimants

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25 JUNE 2018

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon Does Not Value Omega Panama

Assessment of Losses of Omega Engineering LLC and Mr. Oscar

Rivera's In

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Sup

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May 27, 2019

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon Does Not Value Omega Panama

INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES				
Case No. ARB/16/42				
OMEGA ENGINEERING LLC and MR. OSCAR RIVERA				
THE REPUBLIC OF PANAMA	Summary Table	Bids	Won	Lost
	Omega Panama	41	10	31
	Omega Panama w/ Partner	31	10	21
	<i>Omega Panama w/ Both Omega US & Third Party</i>	19	5	14
	Omega Panama w/ Third Party Only (excl. Omega US)	3	0	3
	<i>Omega Panama w/ Omega US Only (excl. Third Party)</i>	9	5	4
SECOND EXPERT REPORT	Omega Panama w/o Partner	10	0	10
Daniel Flores and Ryan McCann				
15 November 2019				
 QUADRANT Economics 1445 New York Avenue NW, Floor 6 Washington, DC 20005				

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon's Future Contract Valuation is Grossly Overstated

Figure 2
Nominal Value from Cash Flows in a DCF Analysis
A Graphical Perspective⁴¹

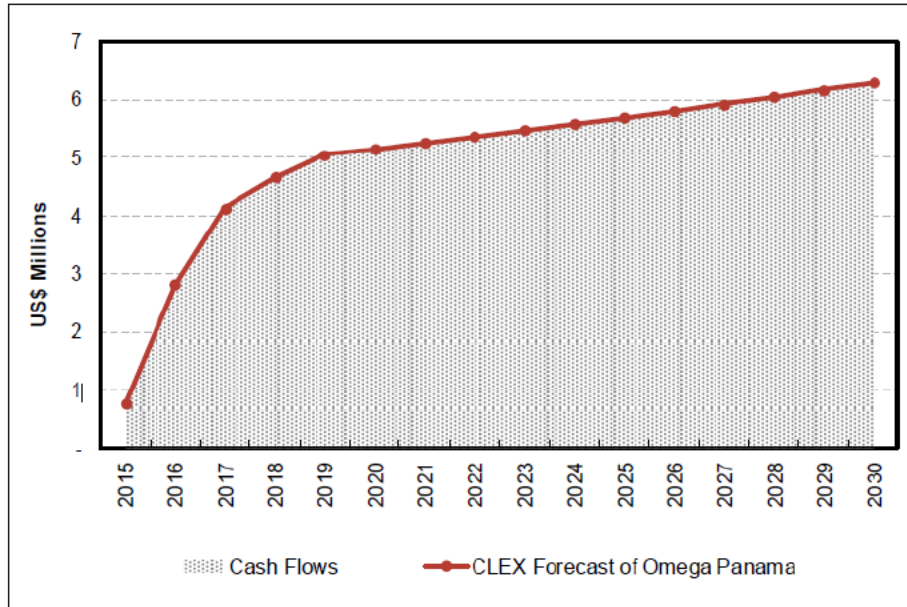
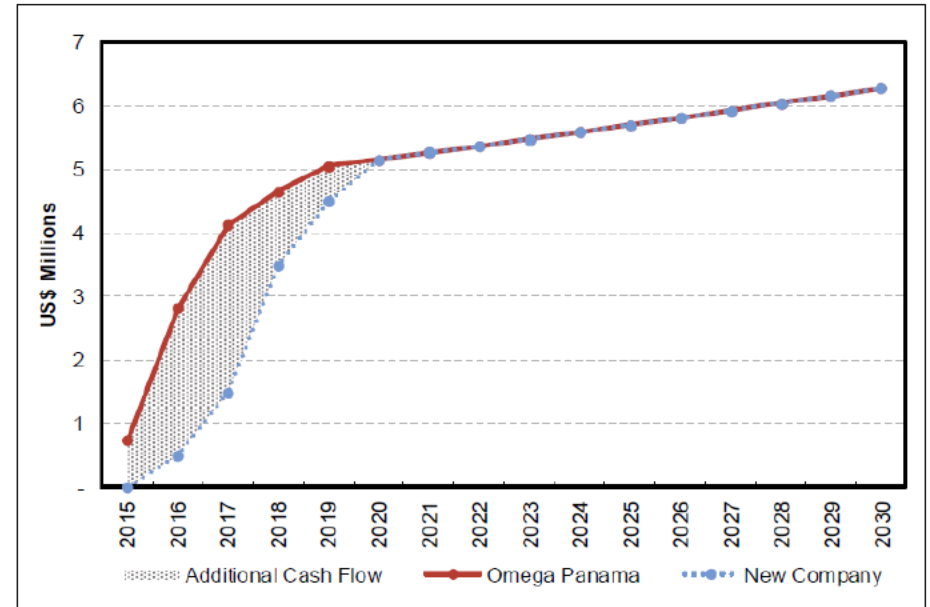


Figure 3
A Willing Buyer's View of Omega Panama's Value⁵¹



THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

	Claimants (as of 12/31/2014)	Panama
Losses on Existing Contracts	US\$ 8.69 million	US\$ 3.8 million

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

Compass Lexecon Overstates the Compensation Due on Existing Contract Claims


FLAWS IN COMPASS LEXECON'S ANALYSIS

Figure 16
Summary of Corrections to the Existing Contracts Claim²⁷²

	Impact of Correction (US\$ Millions)	Cumulative Damages
	(1)	(2)
1. Compass Lexecon		8.7
Corrections to CLEX's Existing Contracts Claim		
2. Nominal Value of Advances	(1.0)	7.7
3. Kuna Yala Addendum No. 4 Supersedes Addendum No. 3	(0.5)	7.2
4. Unendorsed Addenda	(2.7)	4.5
5. Remove CoE Update to Unpaid Progress Billings	(0.3)	4.2
6. Discount Rate (18%-23%)		
<i>Lower Range</i>	(0.3)	3.9
<i>Midpoint</i>	(0.1)	3.8
<i>Upper Range</i>	(0.1)	3.7

- Applies an update factor to unpaid progress billings that compensates for risks to which those amounts were not subject
- Discounts expected future cash flows using a Cost of Equity that does not properly measure the risks to which those amounts were subject
- Discounts the value of advance payments as though they were received in the future instead of prior to the Valuation Date
- Includes amounts that were not due and payable under Panamanian law

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

	Claimants (as of 12/31/2014)	Panama
Moral Damages		US\$ 0

THE CLAIMANTS' QUANTUM CLAIMS ARE UNSUPPORTED

The Claimants' Moral Damages Fails for Three Principal Reasons

Not Properly Before the Tribunal

- No specific request for moral damages in Claimants' Memorial
- Generic references to moral damages were unquantified

Not Provided for in the BIT or TPA

- Claimants seek moral damages to compensate for injuries to them as investors
- The treaty claims asserted by Claimants protect investments – not investors

Not Supported By the Facts

- Extraordinary remedy that may be invoked only in exceptional circumstances
- Evidence shows that Omega US' reputation was materially harmed by its own failures and problems in Puerto Rico
- Mr. Burke confirms that Mr. Rivera's reputation and employability is entirely intact



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