

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON



TERMS AND CONDITIONS

REPAIR

(Electronic Reverse Auction – e-RA)



MINISTRY OF DEFENSE
AIR FORCE COMMAND
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON

TERMS AND CONDITIONS – REPAIR

All bids conducted electronically by the Brazilian Aeronautical Commission in Washington (BACW), through the CABW Electronic Bidding System, for the repair or overhaul of aircraft items, will be governed by these “Terms and Conditions”, being carried out in the form of an Electronic Reverse Auction (“e-RA”), through the BACW Electronic Bidding System, under the regime of indirect execution, with the award criteria of lowest price per item, under the terms of paragraph 2 of article 1 of Law No. 14133, of April 1, 2021, and Ordinance GM-MD No. 5,175 of December 15th, 2021.

All phases of the process will be carried out in the light of the Brazilian public interest and in search of the most advantageous proposal for the Air Force Command, and the rules applicable to the bidding process will always be interpreted in favor of expanding the dispute among the stakeholders, safeguarding the Administration’s interest, the equality among bidders, and the purpose and security of the contract.

The proposals submitted to the BACW will be regulated, interpreted, and evaluated based on paragraph 2 of article 1 of Law No. 14133, of April 1, 2021, and the provisions of Ordinance GM-MD No. 5,175/2021, in conformity with the principles of isonomy, selection of the most advantageous proposal for the Administration, legality, impersonality, morality, publicity, efficiency, equality, public interest, planning, transparency, effectiveness, segregation of duties, motivation, administrative probity, binding to the invitation instrument, objective judgment, legal security, reasonableness, competitiveness, proportionality, celerity, and economy.

The participation of the bidders in each tender is voluntary and the responsibility for contractual compliance is understood as a priority for the Brazilian Air Force. By submitting its proposal, the bidder declares to be aware of the commitment undertaken, ratifies full acceptance of all articles of these “Terms and Conditions”, especially regarding compliance with the specifications, conditions and delivery deadlines and the possibility of administrative sanctions for non-compliance with the obligations undertaken or the conditions of these “Terms and Conditions” and the “Purchase Orders” (PO) issued.

These “Terms and Conditions” do not apply to other modality than Electronic Reverse Auction.

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1. OBJECT

- 1.1.**The object of the bid will be described in the Request for Quote (RFQ), in accordance with the Requisitions available in the BACW Electronic Bidding System. The conditions and general information are described and defined in these “Terms and Conditions” and its annexes, including the RFQ.
- 1.2.**At BACW's discretion, basic projects, technical specifications or other documents deemed necessary to guide the bidders may be included in the RFQ/Requests.

2. PARTICIPATION

- 2.1.**The bids may be participated in by the business entities legally constituted, in the area of activity of the object of the bid, that meet the pre-established requirements and conditions for the accreditation with BACW and registration in the BACW Electronic Bidding System, and meet the requirements of legal qualification, technical qualification and economic and financial qualification defined in each RFQ.
- 2.2.**The registration of suppliers with BACW is open to all interested parties who meet the established requirements and is open throughout the year. The detailed requirements and guidelines for qualification, as well as the application form for registration are available at www.fab.mil.br/cabw.
- 2.3.**Cannot participate in the bids:
- a) corporate entity, individually or as part of a consortium or joint venture, that is also participating in the same bidding process as a member, shareholder, consultant, controller or agent of another bidder;
 - b) corporate entity, individually or as part of a consortium or joint venture, that has in its staff natural or legal persons serving as employees, agents, or consultants of another bidder;
 - c) individuals or legal entities that have been impeded, suspended, or declared ineligible to contract with the Brazilian Public Administration or with the Government of the United States of America;
 - d) the authors, either natural or legal entities, of preliminary projects, basic projects or executive projects of works, services, or the supply of goods when the bidding has an object related to them;
 - e) those who maintain ties of a technical, commercial, economic, financial, labor, or civil nature with the Head of BACW or with public agents who perform functions in the bidding or act in the supervision or management of the contract, or who are their spouse, partner or relative in a direct, collateral or by affinity, up to the third degree.
- 2.4.**In cases of repair and/or overhaul of aviation equipment or parts, the bidder must be a manufacturer or repairer whose shops are authorized to perform repair activities on

aeronautical material in accordance with approval issued by a competent governmental regulatory agency certified as FAA, EASA or equivalent.

- 2.5.**Business entities registered in the BACW Electronic Bidding System, with active status, will automatically be accredited to participate in the tenders. Accreditation with the BACW implies the responsibility of the bidder or its legal representative and the presumption of its technical capacity to carry out the transactions inherent in the bidding process.
- 2.6.**The bidder is exclusively and formally responsible for the transactions carried out on its behalf, and assumes as firm and true its proposals and bids, including acts carried out directly or by its representative, excluding the responsibility of the system provider or the body or entity promoting the bidding process for any damages arising from improper use of access credentials, even by third parties.
- 2.7.**It is the responsibility of the registered business entity to check the accuracy of its registration data in the BACW Electronic Bidding System and to keep them up to date with BACW, and it must immediately correct or amend the records as soon as it identifies any inaccuracies or if they become out of date. Incorrect or outdated records may result in disqualification.

3. PRICE PROPOSALS

- 3.1.**The bidder must submit the proposal in response to an RFQ, through the BACW Electronic Bidding System, by the date and time established in the RFQ.
- 3.2.**The bidders registered in the BACW Electronic Bidding System must include their proposals directly in it, using an access password.
- 3.3.**Eventually, upon motivated decision of the BACW Contracting Agent, proposals sent by e-mail or by physical delivery to the BACW's protocol may be accepted, provided they are sent by the date and time established for the receipt of proposals.
- 3.3.1.** If not defined otherwise by the Head of BACW, the Contracting Agent for acquisitions conducted electronically, through the BACW Electronic Bidding System, will be the Head of the Logistics Division.
- 3.4.**The proposals must indicate the complete description of the material, the quantity offered, the unit price, the total price, the supply unit, the condition of the material offered, and the delivery time. In the "Description" field, the bidder can add information deemed relevant or specifics of the submitted proposal.
- 3.5.**The proposal must comply with the specifications required in the respective RFQ. Changes in description, quantity, condition, unit of supply and/or part number (PN) must be fully explained in the "Additional Information/Description" field of the proposal. Variations in specifications or quantities may result in disqualification of the proposal by BACW, as its sole and absolute discretion.
- 3.6.**Proposals with information or conditions that typify disclaimer, such as susceptibility to prior sale, minimum order requirements, lower than required item condition, delivery dates later

than specified in the RFQ or establishment of minimum invoicing, may lead to disqualification, at BACW's sole and absolute discretion.

- 3.7.** Proposals must be presented in an objective manner. Situations or information other than those contained in these "Terms and Conditions" and in the RFQ may lead to disqualification. Conditions for starting the delivery period and the indication of values to be added after submission of the proposal (such as, but not limited to, handling, packing, shipping, storage and/or import/export fees) may lead to the disqualification of proposals, at BACW's sole and absolute discretion.
- 3.8.** All fields of the proposals will be considered final (prices, deadlines, conditions, etc.), and the bidder must be concerned to foresee eventualities, according to an adequate risk management, to avoid losses for both parties.
- 3.9.** The condition of the service offered in the proposal must be indicated in the field Condition ("Cond"), and must be the same or superior of the requested in the RFQ.
- 3.10.** Proposals that present services in different conditions from those requested in the RFQ will have their acceptance analyzed by BACW, being up to the bidder to prove that they fully comply with the specifications of the RFQ.
- 3.11.** In processes where the object is the repair and/or overhaul of aircraft equipment, bidders must pay attention to the following aspects:
- a) the proposal price shall include return transportation of the equipment to the BACW Warehouse, all materials, services and tests necessary for the complete operation of the equipment, customs clearance fees and taxes, when applicable;
 - b) in the price of the proposal must be highlighted, in the field "Additional Information", the value of the evaluation of the services required to repair the item and the value of the repair service, including parts and items used in the service;
 - c) proposals whose evaluation fees are higher than 30% of the total value of the service may be disqualified, at the discretion of the Administration, which will perform this analysis considering the fixed costs involved and, also, based on a risk management policy; and
 - d) the bidder must inform, in the "Additional Information" field, the FAA repair station and/or the EASA certificate number, approved by the competent Governmental Regulatory Agency, as well as the warranty coverage.
- 3.12.** The lack of the information in the previous item will lead to the declassification of the proposals.
- 3.13.** The items to be repaired will be sent to the bidder's workshop for initial verification. The bidder will then issue a report of the services to be performed, with their costs. This report will be reviewed by BACW and the Requesting Military Organization – MO (end user). The repair services will only be performed after evaluation and approval of the report by the Requesting MO and BACW. If the services are not authorized, the materials must be returned by the winning bidder to the BACW Warehouse. In this situation, the winning bidder will be paid

only the amounts referring to the evaluation, after the return of the item to the BACW Warehouse.

- 3.14.** In case of loss or damage to the equipment to be repaired, while it is under the responsibility of the winning bidder, the latter shall replace the material, at its own expense, in whole or in part, at the discretion of BACW, in quality and quantity equal to or greater than the original item, being, further, subject to the application of sanctions provided for in these “Terms and Conditions”.
- 3.15.** If in the object of bidding there is the provision of hiring courses or technical assistance in Brazil, the bidder must include in its final price all costs with the issuance of passports, visas or other documents, consular fees, airline tickets and other values directly related to the performance of the contracted service, considering the compliance with the deadlines established for the performance of the service in Brazil.
- 3.16.** All prices quoted must consider that the material sold will be exported. Supplier will be considered USPP (United States Principal Party of Interest) and responsible for application and payment of duties and taxes for export licenses, when applicable.
- 3.17.** All proposals must have a minimum validity of 60 (sixty) days, from the date of its entry in BACW Electronic Bidding System. If the bidder presents a proposal with a validity of less than 60 days, it must insert such information in the “Additional Information” field, being aware that this situation may lead to the disqualification of its proposal, at BACW’s sole and absolute discretion.
- 3.18.** Proposals must be submitted in US dollars, unless otherwise specified in the RFQ.
- 3.19.** The prices proposed by the bidders must include all ordinary expenses, direct or indirect, arising from the performance of the object, including, but not limited to, fees, taxes, social contributions, labor, social charges, fiscal and commercial values that are overdue, administrative fees, cost for issuing or evaluating expenses, cost of transportation (including costs of shipping material to the contracting party, customs clearance, material consumption costs, insurance, and all other fees necessary for the full compliance of the contracted object).
- 3.20.** The proposals submitted cannot be altered after the closing date and time for their presentation.
- 3.21.** BACW may perform diligences and request clarifications on the proposals submitted, as well as request the physical or electronic submission of supporting documentation or the prices offered.

4. OPENING OF PROPOSALS AND AUCTION PHASE

- 4.1.** Bids will be opened in a public session, through the BACW Electronic Bidding System, on the date, time and place indicated in each RFQ.
- 4.2.** On the date and time previously established, the system will open the bids submitted by the bidders, automatically sorting them in descending order of prices.

- 4.3. Next, the auction phase will begin, in which bidders will be able to submit auction bids for all items, exclusively through the electronic system, being immediately informed of their receipt and of the amount recorded.
- 4.4. The auction phase will be open for a period of 24 hours, counted from the opening of the proposals. After the closing of the auction phase, the bidding will enter into random closing and will be closed in a maximum time of 60 minutes.
- 4.5. Bidders may offer successive rounds of bids, observing the time fixed for opening the session and the rules set out in these Terms and Conditions and in the RFQ. The bidder may offer a lower value offer than the last one offered by it and registered by the system.
- 4.6. A minimum value interval may be established in the BACW Electronic Bidding System between the bids to be offered, according to the value of the RFQ.
- 4.7. Two or more bids of the same value will not be accepted, the one that is registered first prevailing.
- 4.8. Bidders will be informed, in real time, of the value of the lowest registered bid, without the identification of the bidder who provided the best offer.
- 4.9. The BACW Contracting Agent and its support team may exclude bids that lead to derisory proposals.
- 4.10. If the bidder does not submit a bid, it will compete with the value submitted in its proposal initially registered in the system.
- 4.11. In the event of system disconnection due to technical problems, the auction phase may be extended at the discretion of the BACW Contracting Agent.
- 4.12. At the end of the auction phase, the closed phase will begin, in which bidders will have the opportunity to make their Best and Final Offer – BAFO.
- 4.13. Will participate in the closed phase the author of the most advantageous proposal and those with values up to 10% higher.
- 4.14. In addition, to ensure competition in the closed phase, the system will allow the participation of the authors of the best subsequent values, until reaching 5 companies to offer a final closed bid.
- 4.15. Once the auction phase is closed, during the judging of the bids, the BACW Contracting Agent may negotiate with the lowest proposal, already taking into account the registered bids, with the aim of reducing the value of the offer.

5. PRICE PROPOSALS JUDGEMENT

- 5.1. The judgment of the proposals will be made by the BACW Contracting Agent, in conjunction with the Requesting MO (military organization)/End User, verifying the adequacy of the proposals to the criteria, conditions, specifications and prices established in these “Terms and Conditions” and in the respective RFQs.

5.2.BACW will disqualify proposals:

- a) with irreparable defects and that do not comply with the requirements set forth in these “Terms and Conditions” (including the RFQ and its attachments);
- b) that do not comply with the technical specifications provided in the RFQ;
- c) with values higher than the Administration’s reference price;
- d) with prices manifestly unfeasible, derisory, symbolic or of zero value, incompatible with market prices or that do not have their feasibility demonstrated, when required by the BACW;
- e) with advantages not provided for in these “Terms and Conditions”; and
- f) that are subsidized by financing or that present advantages based on proposals from other bidders.

5.3.The reasons for eventual declassification of proposals will be registered in a specific field of the BACW Electronic Bidding System.

5.4.For engineering services (overhaul of items and components), bids whose values are less than 75% of the amount budgeted by the Administration are considered manifestly unfeasible.

5.5.In analyzing the feasibility of submitted proposals, BACW and the Requesting MO will not limit themselves to examining the percentage of the proposal values in relation to the reference price. The declaration of unfeasibility will be preceded by an analysis of the bid, by giving the bidder the opportunity to demonstrate the viability and safety of the prices offered. For this purpose, the bidders may be requested to submit the cost and price formation spreadsheet, the detailing of brands or products to be delivered, the presentation of conditions or reasons that led to the peculiar formation of prices or other measures deemed necessary. After the analysis of such information, the justification for acceptance or rejection of the proposal submitted will be presented, with the formal record of the reasons for the decision.

5.6.The proposals will be classified in ascending order by the proposed prices, being declared winner the one that presents the lowest value and meets the criteria and specifications of these “Terms and Conditions” and the respective RFQ.

5.7.In the event of a tie between two or more bids, the following tie-breaking criteria will be used, in this order:

- a) final dispute, in which case the tied bidders may submit a new bid in a continuous act of classification;
- b) evaluation of the bidders’ previous contractual performance, for which registration records should preferably be used for the purpose of attesting compliance with obligations to deliver materials to the BACW; and
- c) public draw of lots, on a date and time established by the Administration, to which all bidders will be summoned.

5.8. Once the bids have been analyzed and judged, the BACW Contracting Agent will verify any aspects of the qualification of the first-placed bidder.

6. QUALIFICATION

6.1.LEGAL QUALIFICATION

6.1.1. To be considered legally qualified, the company must meet the following criteria:

- a) Have a *CAGE Code* or a *NATO CAGE Code* (DLA / SAM registration);
- b) Telephone contact number;
- c) Corporate email address; and
- d) At least two years of existence.

6.1.2. If the company does not have an active CAGE Code/NCAGE Code, it must provide the following proof:

- a) memorandum of association or Taxpayer Identification Number (TIN);
- b) identification document / power of attorney for the representative or agent;
- c) operating license, commercial registration or compatible document authorizing the supplier to operate; and
- d) the company's operating certificate.

6.1.3. The above proofs will be carried out by registering on the BACW Electronic Bidding System, and supplemented, where applicable, by consulting specialized electronic sites such as Open Corporates.

6.2.TECHNICAL QUALIFICATION

6.2.1. Depending on the case, and at CABW's sole and absolute discretion, the following proofs may be required:

- a) proof of aptitude demonstrated by a document required in the call for tenders, to perform an activity that is pertinent and compatible in characteristics, quantities and deadlines with the object of the bid; and
- b) letters of recommendation, good performance or guarantees provided by authorities or entities that regulate the corresponding commercial activity.

6.2.2. When technical qualifications are required, this information will be included in the Request (RFQ) Description.

6.3.ECONOMIC AND FINANCIAL QUALIFICATION

6.3.1. To be considered economically and financially qualified, the company must meet the following criteria:

- a) Minimum annual revenue of U\$ 25,000.00 (Twenty-five thousand US dollars);
- b) DUNS number (Data Universal Numbering System - Issued by Dun&Bradstreet), with an Overall Business Risk Level equal to or less than moderate-high, if available on the Credit Report.

6.4. Once the winning bidder has been declared, the BACW Contracting Officer will award the contract to it, and the bidding process will be submitted to the Head of the CABW for approval.

7. APPEALS AND IMPUGNATIONS

7.1. Any person is entitled to impugn these “Terms and Conditions” due to irregularity in the application of the legal rules or to request clarification on its terms.

7.2. Such request must be filed until 3 working days before the opening date of each bid. Therefore, the right to impugn the terms of the invitation to bid shall decline to the bidder that does not do so until the third working day preceding the opening of the public session.

7.3. The answer to the challenge or request for clarification will be posted on the BACW website within 3 working days, limited to the last working day before the date of the opening of the bid.

7.4. Appeals may be filed, within 3 working days of the notification of the act, in the cases of:

- a) acceptance or rejection of the request for pre-qualification of the interested party or for inscription in the cadastral register, or its alteration or cancellation;
- b) judgment of the proposals;
- c) qualification or non-qualification of a bidder;
- d) annulment or revocation of the bidding process; and
- e) contract termination, when determined by a unilateral and written act of the Administration.

7.5. Once the winning bidder has been declared, any bidder may, during the period granted by the Contracting Agent in the public session, in a proper field of the BACW Electronic Bidding System, express its intention to appeal. The reasons for appeal must then be submitted, in the BACW Electronic Bidding System, within a maximum of 3 days from the date of the drawing up of the minutes of judgment and qualification. Failure to manifest the intention to appeal during the public session will lead to the preclusion of such right.

7.6. Once the appeal is filed, it will be informed to the other bidders so that they can submit their counterarguments within 3 days.

7.7. Appeals will be reviewed by the BACW Contracting Agent and forwarded to the Head of BACW for decision.

8. CONTRACT

8.1. The contracts originated from bidding processes governed by these “Terms and Conditions” will be replaced by a “Purchase Order” (PO).

8.2. The POs will be sent to the contracted party (bidder) through BACW Electronic Bidding System, and the execution deadlines will start with the registration of the “acknowledgment” by the contracted party in that system.

8.3. The POs issued will state the object, prices, and delivery time and place.

8.4. In case of partial or total breach of the Purchase Order or of the provisions of these “Terms and Conditions”, BACW may unilaterally terminate the contract, promoting the annulment of the PO. In cases of non-compliance, the provisions of sub-item 9.5 of these “Terms and Conditions” must be observed.

8.5. In cases of cancellation of the POs, when typified a contract termination motivated by the contracted party (bidder), an Administrative Proceeding for Investigation of Irregularities will be instituted, which, after ensuring the right to contradictory and ample defense, may culminate in the application of administrative sanctions to the contracted party (bidder).

9. RECEIVING

9.1. The repaired/revised item, object of the contract, may be delivered at any of the locations available at the link <https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf>, and the bidder must take responsibility for this information when entering the proposal in the BACW Electronic Bidding System.

9.1.1. Is authorized the change of the place of delivery at any stage of the process, provided there is a request from the bidder, and such information must be apostilled to the PO originally issued.

9.2. All materials must be delivered accompanied by an invoice and a packing list, in accordance with the data of the PO issued.

9.3. The objects will be received:

- a) provisionally, by documentary receipt in the BACW Warehouse; and
- b) definitively, by the receiving commission (COMREC) of the Requesting MO (end user) in Brazil, after verification of the quality and quantity of the delivered material.

9.4. The delivery, packing, and transport must follow the rules established in Clause 16 of these “Terms and Conditions” and in the respective RFQ.

9.5. Services done in non-compliance with the specifications provided in these “Terms and Conditions” and the RFQ must be replaced by the contracted party (bidder). If the delivered material is rejected on the definitive receipt, the registration of “credit memo” will not be accepted, and the item must be replaced or the amount refunded to BACW.

10. PAYMENTS

10.1. Payments will be made by BACW to the contracted party (bidder) within 30 days from the delivery of the material at the BACW Warehouse, provided that the delivery has occurred in accordance with the provisions of these “Terms and Conditions”, and there are no pending documents.

10.1.1. When the material is shipped to other location (as per link <https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf>), the payment deadline will start after receipt of copy of the invoice in BACW Warehouse, duly signed by the person responsible for the receipt of the item.

10.2. The payment will be made by wire transfer to a bank account in the name of the contracted party (bidder), being forbidden the payment in third party accounts, except in cases where there is a link between the companies, proven by documents and accepted by BACW.

10.3. Occasionally, BACW may send payments by check, if the contracted party formally requests this method of payment.

10.4. Payments will be made in US dollars unless otherwise provided in the RFQ and PO.

10.5. BACW will not cover any fees charged by the bidder's banks for the receipt of wire transfers.

11. SUPERVISION

11.1. The execution of the contracted objects will be supervised by the Head of the Material Section of the BACW or by other military personnel or local assistants designated by the Head of the BACW.

12. PRICE READJUSTMENT

12.1. The prices proposed are firm, fixed (FFP) and non-adjustable, allowed, however, rebalancing, additions and suppressions, as per Clauses 13 and 14 below.

13. REBALANCING

13.1. The values presented in the repair/overhaul proposals may be adjusted up or down after the item is analyzed by the repair shop, since the item was not made available for previous inspection by the bidder.

- 13.2.** To this end, before the execution of the service, the company must present the teardown report (TDR), a document that details the costs of all necessary services and all parts (part numbers) that need to be replaced and/or purchased.
- 13.3.** After receiving the item, the company must provide the TDR within 45 (forty-five) days, informing the result of the evaluation.
- 13.4.** The unjustified failure to meet this deadline may result in the company being held liable, with the possibility of applying the penalties provided for in these “Terms and Conditions”.
- 13.5.** The TDR must inform the deadline for delivery of the repaired material to BACW and the warranty period of the service performed.
- 13.6.** The service can only start upon receipt of BACW’s written approval, which depends on the TDR to occur.
- 13.7.** Once the TDR is in possession, after analysis by the BACW and the Requesting MO (end user), the value of the proposal may be readjusted to reestablish the relation that the parties initially agreed upon between the charges of the contract and the fair retribution of the Administration for the repair service, aiming at the maintenance of the initial economic-financial balance of the contract.
- 13.8.** The items whose rebalancing is greater than 30% of the initially contracted value will be considered “beyond economic repair” (BER).
- 13.9.** Similarly, items whose value of service is greater than 70% of the appraised and/or registered value of the item in question will be classified as BER.
- 13.10.** BER items must be returned to the BACW Warehouse without the performance of any repair or overhaul services, in the same condition and in the same condition in which they were received by the BACW.
- 13.11.** In cases of return of an item in BER, the contracted party (bidder) will be due the value of the evaluation fee for the item, according to the values informed at the time of submission of the proposal.
- 13.11.1.** By virtue of the provisions of the previous paragraph, the value presented as “evaluation fee” will be fixed and non-adjustable.
- 13.12.** Payment of the appraisal fee is also applicable upon return of the item in “beyond physical repair” (BPR) condition or when the contractor (BACW and/or end user) causes the return.
- 13.13.** When there is unilateral rescission by the contracted party (bidder), the item must be returned, but there will be no payment of the evaluation fee, unless there is a justification formally accepted by the Administration.
- 13.14.** The evaluation fee will not be due for the materials that are returned to the Administration without the TDR having been previously provided.

13.15. The evaluation fee shall include the operational costs of analyzing the item, such as, but not limited to, the number of man-hours employed, the fixed costs of the workshop, and the costs of shipping the material back to the BACW.

14. ADDITIONS AND SUPPRESSIONS

14.1. The contracted party (bidder) is obligated to accept additions or suppressions in the quantity of the contracted items, up to a limit of 25%.

14.2. In the specific cases of overhaul, as they are, technically, engineering services, the additions and suppressions are limited to 50%.

14.3. Additions and suppressions cannot be mistaken for contract rebalancing, as per clause 13 above. On the contrary, this instrument is applicable when, in fact, **needs occur that alter the quantities initially contracted**. As an example, it can be cited components that are part of the equipment, object of the contract, whose repairs had not been indicated as necessary or, similarly, are no longer necessary.

14.4. This instrument is also applicable when the Administration decides to provide spare parts to the contracted party (bidder), to reduce the total amount estimated for the service, which can be applied to any type of service, but is particularly important for BER/BPR cases, enabling the contracted services to be performed.

14.5. The additions dealt with in this clause will not be considered for the classification of the item in BER, since they are an addendum to the equipment initially sent.

15. PENALTIES

15.1.1. The contracted party (bidder) may be held administratively responsible for the following infractions:

- a) cause the partial non-execution of the contract;
- b) cause partial non-performance of the contract that causes serious damage to the Administration, to the operation of public services or to the collective interest;
- c) cause the total non-execution of the contract;
- d) failing to deliver the documentation required for the tender;
- e) does not maintain the proposal, except as a result of a supervening fact duly justified and accepted by BACW;
- f) refuses to receive the purchase order or does not deliver the documentation required for the contracting, when summoned within the validity term of its proposal;
- g) cause the delay in the execution or delivery of the bid object without a justified reason;
- h) present false declaration or documentation required for the bidding or provide false declaration during the bidding or the execution of the purchase order;

- i) defraud the bidding or practice fraudulent act in the execution of the purchase order;
 - j) behave dishonestly or commit fraud of any nature;
 - k) practice illicit acts aiming at frustrating the bidding objectives;
 - l) deliver material different from the Part Number (PN) and National Stock Number (NSN) specified in the PO; and
 - m) change the place of delivery, the quantities, the condition, the price or the description specified in the PO.
- 15.2.** Unjustified delay in the execution of the contract will subject the contracted party (bidder) to a late payment fine, as provided for in these “Terms and Conditions”.
- 15.3.** In case of total or partial non-compliance with any item of these “Terms and Conditions”, BACW may apply the penalties listed below:
- a) warning;
 - b) fine, as established in these “Terms and Conditions”;
 - c) impediment to bidding and contracting, for a period of up to 3 years; and
 - d) declaration of ineligibility to bid or contract, for the minimum period of 3 years and maximum of 6 years.
- 15.4.** The following fines may be applied:
- a) fine of 0.2% (two tenths percent) of the value of the item in the PO, per calendar day of delay, up to the limit of 30 (thirty) days of the expected date for delivery;
 - b) fine of 0.4% (four tenths’ percent) of the value of the item in the PO, per calendar day of delay, between the 31st (thirty-first) day to the 60th (sixtieth) day of the expected delivery date;
 - c) fine of 5% of the value of the item, in case of delivery of materials in disagreement with specifications and the conditions provided for in the PO and in this “Terms and Conditions”; and
 - d) fine of 10% of the value of the item in the PO, when the contracted party (bidder) causes its cancellation.
- 15.5.** The fines provided for in letters “c” and “d” of sub-item 15.4 may be applied in conjunction with the fines for late delivery.
- 15.6.** The sanctions provided in letters “a”, “c” and “d” of sub-item 15.3 may be applied in conjunction with the fines provided in these “Terms and Conditions”.
- 15.7.** The amount of the fines imposed must be collected by the sanctioned company in the bank account indicated by the BACW within 5 working days from the receipt of the communication of the imposition of the fine. If the payment is not made within this period, the amounts will be withheld by the Finance Section from future payments due to the contracted party (bidder), even if they refer to other POs or contracts.

- 15.8.** The administrative sanction of warning will be applied when the contracted party (bidder) infringes, for the first time, obligations related to the delay in delivery, substitution of goods or of incorrect invoices, by not complying with supervision guidelines, within 48 hours, and, at the discretion of the Head of BACW, for other infractions considered minor.
- 15.9.** The application of penalties will comply with the provisions of Ordinance GM-MD No. 5,175/2021, and, where applicable, the Aeronautics Command Instruction (ICA) 12-23.
- 15.10.** The application of the sanction of declaration of ineligibility for bidding or contracting is of the exclusive competence of the Minister of Defense of the Federative Republic of Brazil.
- 15.11.** The infractions will be verified by means of an Administrative Process of Investigation of Irregularity, being guaranteed to the contracted party (bidder) the contradictory and full defense.
- 15.12.** The penalties of warning, impediment to bidding and contracting, and declaration of ineligibility to bid or contract will be registered in the SISCAB.
- 15.13.** The application of administrative penalties does not exempt the contracted party (bidder) from the repair of eventual damages, losses and injuries caused to BACW and the Requesting MO/End User.
- 15.14.** Appeals are possible within 15 (fifteen) working days, counted from the date of notification, in cases of application of the penalties provided for in these “Terms and Conditions”.

16. SHIPPING AND EXPORT COMPLIANCE

16.1. Applicable INCOTERMS 2020

- 16.1.1.** For the delivery of materials relating to services purchased through these “Terms and Conditions” the applicable INCOTERMS 2020 are **FCA**, whether the materials come from the USA or other countries, and are sent to BACW at any of the addresses listed in the link <https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf>.
- 16.1.2.** The use of any other INCOTERMS 2020, different from **FCA**, must be requested to BACW, through the e-mail smat.cabw@fab.mil.br, and may be accepted or denied, at BACW's discretion.

16.2. Packaging

- 16.2.1.** Boxes cannot contain in their interior items from more than one PO. Each PO must be packaged separately.
- 16.2.2.** Wooden boxes, packages and pallets must be submitted to proper treatment (heat or fumigation with chemicals), in accordance with the “International Phytosanitary Standards” (ISPM 15). Such containers must be marked with the stamps proving that the treatment was carried out.

- 16.2.3.** Boxes must be properly identified with the INVOICE (referring to a single Purchase Order), PACKING LIST and EXPORT LICENSE documents attached **outside** the package. A copy of the documents must also be placed inside the box, along with the delivered item. **Invoices and/or packing lists from third parties will not be accepted.**
- 16.2.4.** Materials exceeding 7,000 pounds and/or 82 inches cannot be delivered in BACW Warehouse. In these cases, the contracted party (bidder) must contact BACW at smat.cabw@fab.mil.br, to define how and where the material will be delivered.
- 16.2.5.** The non-compliance of one of these rules will imply in the return or refusal of the item, and/or may lead to delays in the payment.
- 16.2.5.1.** Eventual late payments caused by non-compliance with the packaging procedures are solely responsibility of the contracted party (bidder).

16.3. Exporting procedures

- 16.3.1.** Contracted party (bidder) **MUST** provide BACW with all Export Licenses required for the export of the products from the United States to Brazil. These may be obtained through the State Department and/or the Commerce Department of the United States of America. The contracted party (bidder) will be liable for any failure to comply with the US Export Regulations.
- 16.3.2.** All items originating from countries other than the USA will be exported under the responsibility of the contracted party (bidder), in accordance with local federal regulations.
- 16.3.3.** Whenever is the case, the contracted party (bidder) must notify BACW, before exportation, by the e-mail smat.cabw@fab.mil.br, providing a copy of the HAWB/BL, invoice and packing list.
- 16.3.4.** All the documentation that has to accompany the item must be delivered by freight forwarder, along with the cargo. The documentation must also show the name of the contracted party (bidder) and the BACW Purchase Order number. Invoices and/or packing lists from third parties will not be accepted.
- 16.3.5.** It is the responsibility of the contracted party (bidder) to specify the place of delivery in its proposal, observing the applicable INCOTERMS 2020 (FCA).
- 16.3.6.** All deliveries to BACW Warehouse, at 4601 Beech Road, Temple Hills, MD, 20748, phone (301) 423-2515, must occur from Monday through Friday, between 7:30 AM to 12:00 PM and 1:00 PM to 3:00 PM, except on American and Brazilian national holidays.
- 16.3.7.** Items sent in non-compliance with the rules provided in these “Terms and Conditions” will not be accepted.

16.4. Exporting documentation

16.4.1. The export documentation listed below must be provided by the contracted party (bidder) and attached to the shipment, with one copy inside the box and the original outside the box:

- a) invoice;
- b) packing list; and
- c) SED (Shipper's Export Declaration).

16.4.2. The invoice must contain:

- a) final destination:

*Ministério da Defesa – Comando da Aeronáutica
Centro de Transporte Logístico da Aeronáutica
Estrada Alfredo Rocha, 495 – Ilha do Governador – RJ
CEP 21941-580 – Brasil
CNPJ 00.394.429/0045-21 – Jurisdição Fiscal 7.93.34.01-6
Contato: apoioddad.ctla@fab.mil.br / (21)2138-4188*

- b) Schedule B number (10 Digits) / harmonized code;
- c) NSN class;
- d) purchase order (PO) number; and
- e) Export License number (when applicable).

16.4.3. The packing list must include the following information, in addition to all necessary data to identify the part number (PN) and shipped quantity:

- a) purchase order (PO) number;
- b) weight; and
- c) dimensions.

16.4.4. Packaging and documentation must comply with federal export regulations.

16.5. Any delivery procedure different from the one established in these “Terms and Conditions” must be requested to BACW, through the e-mail smat.cabw@fab.mil.br, and may be accepted or denied, at BACW's discretion.

16.6. Late payments eventually caused by non-compliance with the any of the shipping and exporting procedures provided for in this section will be considered solely responsibility of the contracted party (bidder).

17. SUSTAINABILITY CRITERIA AND PRACTICES

- 17.1.** The contracted party (bidder) must return the repaired/revised material, preferably, packaged in appropriate individual packages, with the smallest possible volume, using recyclable material, in order to ensure maximum protection during transportation and storage.

18. PROHIBITIONS AND PERMITIONS

- 18.1.** The SERVICE PROVIDER is prohibited from interrupting the execution of the services under allegation of default by the CONTRACTING PARTY, except in the cases provided for in the law.

19. GENERAL PROVISIONS

- 19.1.** BACW may revoke or cancel the bidding processes governed by these “Terms and Conditions”, in which case an appeal is guaranteed within 3 (three) working days from the date of notification of the act or from the signature of the minutes.
- 19.2.** The annulment of the bidding procedure due to illegality does not generate obligation to indemnify.
- 19.3.** The participation in the bidding process implies the acceptance of the conditions specified in this “Terms and Conditions” and in the RFQ, with complete submission to the rules contained therein.
- 19.4.** The venue for resolving issues related to these “Terms and Conditions” will be the United States District Court in Washington, DC, to the exclusion of any other. The acts related to the contracting shall be interpreted in accordance with the principles of Brazilian Law No. 8,666/1993 and Ordinance GM-MD No. 5,175/2021, and shall also be governed in accordance with the laws of the District of Columbia.
- 19.5.** Physical documents relating to these “Terms and Conditions” must be sent to the Brazilian Aeronautical Commission in Washington, 1701 22nd Street N.W., Washington, DC, 20008.

20. REFERENTIAL ADVISORY

- 20.1.** The Draft of these “Terms and Conditions” was submitted to the legal analysis of the Adjunct Legal Counsel of the Aeronautics Command, an organization of the General Counsel of the Union, and its approval was obtained through the REFERENTIAL ADVISORY N. 00003/2023/COJAER/CGU/AGU, of July 26, 2023.

Washington, DC, United States of America, (date as stated in the signature).

LEANDRO LUIZ DA SILVA VELOSO Lt Col
Head of Logistics Division / Contracting Agent

Revised by:

MICHELE DE SOUZA SIQUEIRA Lt Col
Head of Fiscal Division

Approved by:

WILSON PAULO CORRÊA MARQUES Col
Head of BACW