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ORDINANCE GM-MD No. 5,175, OF DECEMBER 15, 2021

Approves the Norms for Purchases Abroad for the Navy, Army and Air Force Commands.

THE MINISTER OF STATE FOR DEFENSE, in the use of the powers conferred on him by art. 87, sole paragraph, items I and II, of the Federal Constitution, in view of the provisions of art. 1, § 2, of Law No. 14,133, of April 1, 2021, and considering what is contained in Process No. 60000.006091/2019-37, resolves:

Art. 1 The following are approved:

I - the Rules for Purchases Abroad by the Navy Command, in the form of Annex I;

II - the Rules for Purchases Abroad by the Army Command, in the form of Annex II; and

III - the Rules for Purchases Abroad by the Air Force Command, in the form of Annex III.

Art. 2nd The Commanders of the Navy, Army and Air Force may edit additional acts necessary to comply with this Ordinance within the scope of the respective Commands.

Art. 3 This Ordinance enters into force on July 1, 2022.

WALTER SOUZA BRAGA NETTO

ANNEX III STANDARDS FOR INTERNATIONAL PURCHASES OF THE AERONAUTICAL COMMAND

CHAPTER I PRELIMINARY PROVISIONS

Art. 1 ° This norm has the regulatory purpose within the Brazilian Air Force art. 1º, § 2º, of Law No. 14,133 of April 1st 2021, to regulate administrative bids and contracts carried out abroad by the Brazilian Aeronautical Commissions (CAB).

Single paragraph. The CAB, on this date, are the Brazilian Aeronautical Commission in Washington (CABW), in Washington D.C. - United States of America, and the Brazilian Aeronautical Commission in Europe (CABE) in London - United Kingdom of Great Britain and Northern Ireland.

Art. 2º In the bidding or direct contracting process, the CAB must observe the Brazilian law, comply with the applicable, the legal provisions of the host country of the Commission or the Military Attaché Office, as well as those from the normative structure of the Air Force Command (COMAER) governing the Foreign Trade Of The Air Force Command (SISCOMAER).

Art. 3 - The terms of exemption or non-enforceable, draft tender notices, as well as contracts, agreements, similar instruments and related instruments, must be previously examined and approved by the Deputy Legal Consultancy with the Air Force Command (COJAER).

§ 1 - The prior individualized analysis of COJAER is waived provided that there is a legal manifestation reference applicable to the subject matter.

§ 2 - For the preparation of a legal manifestation reference, the following requirements must be observed:

I - the volume of proceedings in identical and recurrent matters has a justified impact on the advisory body or the speed of administrative services; and

II - the legal activity carried out is restricted to the verification of compliance with the legal requirements based on the simple document check.

§ 3 - For expenses related exclusively to the cost of vegetative life of CAB and Attaché Offices abroad, the object of which can only be tendered and rendered at the military organization's head office (OM) or the Attaché Offices, the prior analysis of COJAER may be waived, provided that there is a manifestation of the reference law.

Article 4) If the requesting Military Organization (OM) or the CAB deems it relevant, it may hire a local legal study, in addition to the opinion of COJAER, in order to meet the need to comply with the legal peculiarities of that country.

Single paragraph. In the event that the local legal study suggests substantial changes in the drafts, the process should be referred back to COJAER for analysis and approval.

CHAPTER II OF THE PRINCIPLES

Article 5 ° Bids and contracts made abroad by the CAB must comply with the constitutional principles and the basic principles of Law No. 14,133 of 2021, listed below, and those related to them:

I - isonomy;

II - selection of the most advantageous proposal for management;

III - legality;

IV - impersonality;

V - morality;

VI - advertising;

VII - efficiency;

VIII - equality;

IX - public interest;

X - planning;

XI - transparency;

XII - efficacy;

XIII - segregation of functions;

XIV - motivation;

XV - administrative probity;

XVI - binding to the convocation instrument;

XVII - objective judgment;

XVIII - legal certainty;

XIX - reasonableness;

XX - competitiveness;

XXI - proportionality;

XXII - celerity; and

XXIII - economy.

CHAPTER III OF LOCAL PECULIARITIES

Article 6 The bidding and procurement processes carried out by the CAB, including those to meet the administrative and operational needs of the Attaché Offices, as well as those which may be carried out by them, it will observe the local peculiarities, including the local legislation, related to:

I - the register of suppliers;

II - the qualification of suppliers;

III – administrative law;

IV - international trade legislation;

V - INCOTERMS (International Commercial Terms);

VI - the disclosure of acts and acquisition processes;

VII - the application of penalties;

VIII - equivalence in the contractual relationship between administration and companies;

IX - the means used for market research; and

X - payment methods.

Art. 7 In cases where any provision of this norm cannot be applied by impossibilities arising from the local peculiarities provided for in this article, particularly with regard to administrative sanctions, the executing OM should provide the duly motivated justification in the file of the process.

CHAPTER IV OF THE PREVENTIONS

Art. 8. The CAB, the Military Attaché Offices and other public offices, which may exist within the COMAER, may not establish differentiated treatment of any kind, between Brazilian and foreign companies, including with regard to the currency and place of payment, even when funding from international agencies is involved.

Art. 9 ° Bids will be made at the place where the CAB or the Military Attaché Offices are located, respective areas of jurisdiction, except for reasons of public interest, duly motivated.

Art. 10. It cannot participate, directly or indirectly, in the bidding process or in the execution of the contract, any public agent of a bidding or contracting body or entity. Furthermore, it must be observed the situations that may constitute a conflict of interest in the exercise or after the exercise of the position or employment, in the terms of Brazilian law.

Single paragraph. The following may not compete for tender or participate in the performance of a contract, directly or indirectly:

I - author of the preliminary draft, basic project or executive project, person or company, when the bidding relates to work, services or supply of goods related to them;

II - company, alone or in consortium, responsible for the preparation of the basic project or executive project, or company of which the project author is a manager, controller, shareholder or holder of more than 5% (five percent) of the voting capital, technical officer or subcontractor, when the bidding deals with the work, services or supply of goods necessary to it;

III – individual or legal entity that is, at the time of bidding, unable to participate the bid as a result of the penalty imposed on them;

IV - one who maintains a technical, commercial, economic, financial, labor or civil service with a director of the contracting body or entity or with a public agent who play a role in the bidding process or act in the supervision or management of the contract, or who are spouse, partner or relative in a direct, collateral or affinity line, up to the third degree, and this prohibition is expressly stated in the bidding notice;

V - parent companies, subsidiaries or affiliates, pursuant to Law No. 6,404, of 15th December 1976, competing against each other in the bidding process; and

VI - individual or legal entity that, in the 5 (five) years prior to the publication of the public notice, has been sentenced in court, with final judgment, for the exploitation of child labor, for submission of workers to conditions analogous to slavery or by hiring teenagers in prohibited cases by labor legislation.

Art. 11. The preventions of Art. 10 extend to a third party that assists in the conduct of the hiring as a support team member, specialized professional or employee or representative of a company providing technical advice.

Art. 12. The provisions of this Chapter do not prevent the bidding or contracting of a work or service that include the preparation of an executive project as a obligation of the contractor or at the price previously fixed by the Administration.

Art. 13. It is considered Indirect participation, for the purposes of the provisions of Article 10, the single paragraph of this norm, the existence of any link of a technical, commercial, economic, financial or financial nature, between the author of the project, individual or legal entity, and the bidder or responsible for the services, supplies and works, including supplies of goods and services to them.

Art. 14. The provisions of Article 13 apply to the public agent, employee or occupant of a position in COMAER committee, to the members responsible for bidding, inspection, receipt and payment of the contracted object.

Art. 15. Apart from those cases provisioned by Law, the public agent designated to act in the area of bids and contracts is not allowed to:

I - admit, predict, include or tolerate, in the acts you practice, situations that:

a) compromise, restrict or frustrate the competitive nature of the bidding process, including in cases of participation of cooperatives;

(b) make preferences or distinctions on account of the birth place, headquarter or domicile of the bidders; and

(c) are impertinent or irrelevant to the specific subject-matter of the contract;

II - to oppose unjustified to the progress of proceedings and, unduly, to delay or cease to practice an act of office, or to practice it against provision expressed by law; and

III - initiate bidding procedure without the proper characterization of its object, under penalty of nullity of the act and responsibility of whoever gives it cause.

Art. 16. The provisions of this Chapter shall also apply, in the case of exemption or non-enforceable bidding for the execution of works and for the provision of services.

CHAPTER V OF THE CHANCES OF HIRING ABROAD

Art. 17. The CAB and, where appropriate, the Attaché Offices are responsible for the acquisitions and contracting, outside the country, of military goods and services intended for the final use of COMAER Military Organizations that are not manufactured or repaired by companies based in the national territory.

§ 1 - For the purposes of the provisions of the caput, are military goods and services intended for the use of the COMAER Military Organizations, the provisions relating to aircraft acquisitions, armaments, ammunition, equipment, spare parts and accessories and services relating to the Defence system and control of airspace, including those focused on support activities, as well as other materials and services applied to the sea, aerospace and land means of private use of the armed forces and intended for the use of their activities.

§ 2 - The acquisition or contracting abroad shall also be permitted if the goods or services in the country do not have sufficient technical requirements to meet the standards of equivalent

application and specifications for the purpose for which they are, or if the production capacity is less than the quantity to be purchased or contracted or does not meet the required delivery times.

§ 3 - The contracts made by the CAB abroad will be intended to meet the demands of the bodies of the Air Force Command, with the reservation of individualized and exceptional authorization from the President of the Republic for contracts in the exclusive interest of other bodies or entities.

Art. 18. Materials and services existing in the country may also be purchased and contracted abroad of interest of COMAER when the prices charged by the national suppliers exceed by more than 30% (thirty percent) the price of foreign products and services, observing the article 17, § 1, of this rule, in which case there must be justification in the case-made by the requesting body.

Single paragraph. In the case of caput, the participation of a Brazilian company will not prevent the continuity of the event.

Art. 19. CAB are also responsible for acquisitions and contracts, outside the country, in materials and services of interest to the performance of their routine activities, and for reasons of justified public interest by the Attaché Offices.

Art. 20. Disposals may be processed, exceptionally, by the CAB's, after due assessment of the goods by the Requesting OM, provided that the existence of a public interest in view of increasing competitiveness and greater economic counterpart.

§ 1 - The sale carried out, exceptionally, abroad by the CAB shall always be in the competition.

§ 2 - In the public interest, duly justified by the competent authority, the material available to be exchanged may enter as part of the payment of another to be acquired, condition this should be included in the bidding process.

CHAPTER VI OF THE REGISTRATION RECORDS

Art. 21. The CAB will maintain an approved and up-to-date registration of suppliers, which will serve as data base to advertise the bidding processes.

Single paragraph. The public call for registration should be widely disclosed abroad and on the website of the respective CAB and should be permanently open to interested parties, requiring the CAB's to make the public call over the internet, at least annually, to update existing records and to join new stakeholders.

Art. 22. By applying, at any time for registration or its updating, the interested party shall provide the necessary elements required for the qualification provided for in this norm.

Single paragraph. The interested party shall provide the necessary elements required for the qualification of provisions of this regulation, and may participate in the bidding process until the decision of the Administration. The conclusion of the contract shall be conditional on the issuance of the certificate, which will be provided to the registrant, renewable every time the register is updated.

Art. 23. At any time may be changed, suspended or canceled the registration of the registrant who ceases to satisfy requirements determined by this regulation.

Art. 24. In case of total or partial non-compliance with the Terms and Conditions of the Electronic Purchasing System, the CAB abroad may apply penalties provided for in Chapter XXI of this norm while guarantying the right of the broad defense and the contradictory,

Art. 25. Registration in the supplier data base, its alteration, suspension or cancellation, will be processed and judged by a Commission appointed in an act published in the organisation's internal bulletin or in the Official Gazette of the Union, and shall act for a maximum of one

year, and may, in the need of the service, be redirected only for another period of one year, the members of which shall be jointly and severally liable for acts carried out by the Commission, unless the divergent individual position is duly recorded in minutes drawn up at the meeting at which the decision was taken.

CHAPTER VII OF THE JUDGING CRITERIA

Art. 26. The judgment of the proposals will be objective, and the Administration shall carry it out in accordance with the bidding modalities, the criteria previously established in the advert and in accordance with the factors exclusively referred to therein, in order to enable its bidders and control bodies.

Art. 27. The judgment of the proposals will be carried out according to the following criteria:

I - lower price;

II - higher discount;

III - best technique or artistic content;

IV - technique and price;

V - greater proposal, in the processes of alienation; and

VI - higher economic return.

§ 1 - The judgment for lower price or higher discount and, when it fits, by technique and price will consider the lowest expenditure for the Administration, meeting the minimum quality parameters defined in the tender notice.

§ 2 - The judgment for better technique or artistic content shall exclusively consider the technical or artistic proposals submitted by the bidders, and the notice shall define the prize or remuneration that will be awarded to the winners.

§ 3 - The judgment by technique and price shall consider the highest score obtained from the according to objective factors provided for in the notice, of the notes attributed to the technical and price of the proposal.

§ 4 - The judgment for greater economic return, used exclusively for the celebration of efficiency contract, will consider the greatest savings for the Administration, and the remuneration should be percentage which will focus proportionally on the economy actually achieved in the implementation of the contract.

CHAPTER VIII BIDDING MODALITIES

Art. 28. The bidding modalities for contracts made abroad are the Following:

I - competition;

II – Auction;

III - invitation; and

IV - competitive dialogue.

§ 1 - The bidding arrangements contained in this regulation are similar forms of those of same name used in national territory, adapted to the local peculiarities of the foreign markets, and there is no absolute identity between them.

§ 2 - The Invitation modality may be used until the advent of the period provided for in Art. 193, ii of Law No. 14,133 of 2021.

Art. 29. The modality shall be determined by the CABs depending on the nature of the object to be acquired, observing the following criteria:

I - competition - bidding modality for the contracting of goods and services and works and engineering services, as well as for disposal processes;

II - Auction - bidding modality for the acquisition of common goods and services, whose criterion of judgment may be the lowest price or the highest discount;

III - invitation - bidding modality between interested parties of the branch relevant to its object, registered, chosen and invited in a minimum number of three (3) by the administrative unit, which will post, in an appropriate place, a copy of the convocation instrument and extend it to the others registered in the specialty who express their interest in advance of up to 48 (forty-five eight) hours of the submission of proposals; and

IV - competitive dialogue - bidding modality for the contracting of works, services and purchases in which the Public Administration conducts dialogues with previously selected bidders based on specific criteria, in order to develop one or more alternatives capable of meeting their needs, and bidders must submit a final proposal after the end of the dialogues.

Art. 30. After the bidding modality is defined, the following criteria must be observed:

I - the auction modality may be carried out, in electronic form, when the COMAER certified electronic system is able to operate the data in a safe, transparent and impersonal manner;

II - where the characteristics of the bid and local peculiarities allow the application of more than one way (face-to-face or electronic) or modality, it will be a priority to enable the greatest transparency to the process; and

III - when choosing the face-to-face form, the appropriate justification should be included in the process.

Art. 31. The tender notice for price registration will observe the general rules of this norm, in particular article 69, and should provide for:

I - the specificities of the bid and its object, including the maximum quantity of each item which can be purchased and the minimum quantity for each application;

II - the minimum quantity to be quoted of units of goods or, in the case of services, of measure;

III - the possibility of predicting different prices:

(a) when the object is carried out or delivered in different locations;

(b) on the grounds of the shape and place of packaging;

(c) when variable quotation is allowed due to the size of the lot; and

(d) for other justified reasons in the proceedings;

IV - the possibility of the bidder to offer or not a proposal in a quantity lower than the maximum provided for in the notice, obliging itself within its limits;

V - the criteria of judgment of the bid, which will be the lowest price or the highest discount on price list practiced in the market;

VI - the conditions for changing prices registered;

VII - if the first place bidder declines its proposal at the event, the second place bidder may be asked to match first place proposal, seeking the highest advantage for the Administration;

VIII - the registration of more than one supplier or service provider, provided that they agree to quote the object at a price equal to that of the winning bidder, ensuring the preference of contracting in accordance with the sort order;

IX - the prevention of the participation of the body or entity in more than one price registration with the same object within the period of validity of that in which it has already participated, except in the case of which has recorded a quantity below the maximum provided for in the notice; and

X - the chances of cancellation of the price registration and its consequences.

Art. 32. The term of the price registration shall be one (1) year and may be extended for the same period, provided that the advantageous price is proven.

Single paragraph. The contract arising from the price registration will be valid for accordance with the provisions contained therein.

Art. 33. The works, services and purchases made by the CAB and the Attaché Offices will be divided into as many parcels as are technically and economically viable, and the bidding of the with a view to better harnessing the resources available on the market and expanding the competitiveness without loss of economy of scale.

Art. 34. The contracts made will be given publicity to the interested parties by notification or publication, on the website of the CAB and the Attaché Offices.

Art. 35. When the bidding is carried out in electronic form, all companies registered in the field of service provision or supply of respective goods can be invited.

CHAPTER IX COMPETITION

Art. 36. In the competition modality, any interested parties may participate in advance of the registered, or that meet all the conditions required for registration up to 72 (seventy-two) hours before the submission of proposals.

Art. 37. The notice containing the summary of the calling instrument shall be published in the (DOU) and published on the website of the respective CAB and on the National Public Procurement System (PNCP), when it is available and compatible with the electronic system and with the purchasing system in use at CAB, maintaining this disclosure until the date of receipt of the Proposals.

Single paragraph. The minimum deadlines for submitting proposals and bids, counted from the date of disclosure of the tender notice, are:

I - for the acquisition of goods:

(a) 8 (eight) working days, when the criteria of lower price or higher judgment are adopted discount; and

(b) 15 (fifteen) working days in the cases not covered by point "a" of this paragraph;

II - in the case of services and works:

(a) 10 (ten) working days, when the criteria of judgment of lower price or higher price are adopted discount, in the case of common services and common engineering works and services;

(b) 25 (twenty-five) working days, when the lowest-priced judgment criteria are adopted or of greater discount, in the case of special services and special engineering works and services;

(c) 60 (sixty) working days, when the performance model is of integrated contracting; and

(d) 35 (thirty-five) working days, when the performance model is semi-integrated or in the cases not covered by points "a", "b" and "c" of this paragraph;

III - for disposals, in which the highest bid judgment criterion is used, 15 (fifteen) days useful; and

IV - for bids in which the criterion of judgment of technique and price or best artistic content, 35 (thirty-five) working days.

Art. 38. Any modification to the notice and its annexes requires disclosure in the same way the original text, reopening the period initially established at least once, except for when the amendment does not affect the formulation of the proposals.

CHAPTER X OF THE TRADING FLOOR

Art. 39. The Auction is the modality of bidding for the acquisition of goods and contracting of common services, including common engineering services, and may be adopted, in electronic form, among the bidding modalities executed by CAB, through an electronic

system certified by COMAER, ensuring to the users transparency about the acts performed, advertising, impersonality, morality and efficiency in hiring.

Art. 40. Common goods and services are considered, those whose performance standards and objectively defined by the notice, by means of the common market specifications.

Art. 41. Common engineering services are considered to be every engineering service that has as its object standard terms of performance and quality, maintenance, and adequacy and adaptation of movable and immovable property, preserving the original characteristics of the goods

Art. 42. The notice containing the summary of the instrument calling the Auction shall be published in accordance with the time limits set forth in Articles 37, sole paragraph, and Art. 38 of this norm, through the publication of the notice in the DOU, in PNCP, when available, and on the CAB website, meeting the principles of transparency and free competition.

Art. 43. They must be previously accredited to the electronic system provider the competent authority of the bidding body, the auctioneer, the members of the support team and the bidders participating in the electronic bidding form.

Art. 44. The bidding in the form of an electronic auction does not apply to engineering works, non-ordinary goods and services, as well as real estate leases and disposals in general.

Art. 45. Any modification to the notice and its annexes requires disclosure in the same way the original text, reopening the period initially established, except where, unquestionably, the amendment does not affect the formulation of the proposals.

Art. 46. After the announcement of the notice on the website, the bidders will forward, exclusively by electronic means, together with the qualification documents required in the proposal with the description of the object offered and the price, up to the date and time established for opening of the public session.

Art. 47. For judging and ranking the proposals, the lowest price criterion will be adopted or the one with the biggest discount, observing the maximum terms for supply, the technical specifications and minimum performance and quality parameters defined in the invitation to bid.

CHAPTER XI OF THE INVITATION

Art. 48. The Invitation modality may be used until the advent of the period laid down in Article 193, ii of Law No. 14,133 of 2021.

Art. 49. In the invitation mode, the process will be carried out with an unlimited number of participants being considered valid when there is a minimum number of three valid proposals for companies relevant to the object of the bidding, previously registered and invited by the CAB.

Single paragraph. Where, by market limitations or disinterest of bidders, it is impossible to obtain the minimum number of valid proposals required in the caput, those circumstances justified in the proceedings, under penalty of repetition of the invitation.

Art. 50. Uninvited companies may participate in the event as long as they express their 24 (twenty-four) hours before the submission of proposals.

Art. 51. The invitation instrument shall be disclosed on the website of the respective CAB, at least five (5) working days before the scheduled date for the opening of the proposals, while maintaining disclosure until the date of receipt of the proposals.

Art. 52. Any modification to the notice and its annexes requires disclosure in the same way the original text, reopening the period initially established.

CHAPTER XII

COMPETITIVE DIALOGUE

Art. 53. Competitive dialogue is the modality of bidding for the contracting of works, services and purchases in which the Public Administration conducts dialogues with previously selected bidders criteria, in order to develop one or more alternatives capable of meeting their needs, and bidders must submit a final proposal after the end of the dialogues.

Art. 54. The competitive dialogue modality is restricted to contracts in which the Administration:

I – aim to hire object involving the following conditions:

- (a) technological or technical innovation;
- b) impossibility for the body or entity to have its need met without the adaptation of solutions available on the market; and
- (c) the technical specifications are not possible to be defined precisely by the Administration; and

II - check the need to define and identify the means and alternatives that may meet your needs, with emphasis on the following aspects:

- (a) the most appropriate technical solution;
- (b) the technical requirements capable of implementing the solution already defined; and
- (c) the legal or financial structure of the contract.

Art. 55. In the competitive dialogue mode, the following provisions will be observed:

I - the Administration will present, at the time of the disclosure of the notice on an official website, requirements already defined and shall establish a minimum period of 25 (twenty-five) working days for expression of interest in the participation of the bid;

II - the criteria used for pre-selection of bidders must be provided for in a notice, and all interested parties who meet the objective requirements laid down will be admitted;

III - the disclosure of information in a discriminatory manner which may imply an advantage for any bidder will be not be allowed;

IV - the Administration may not disclose to other bidders the proposed solutions or the confidential information communicated by a bidder without their consent;

V - the dialogue phase may be maintained until the Administration, in a reasoned decision, identify the solution or solutions that meet your needs;

VI - meetings with pre-selected bidders will be recorded in minutes and recorded through the use of audio and video technology resources;

VII - the notice may provide for the holding of successive phases, in which case each phase may restrict the solutions or proposals to be discussed;

VIII - the Administration shall, when declaring that the dialogue has been concluded, add to the bidding process the documents and recordings of the dialogue phase, start the competitive phase with the disclosure of notice containing the specification of the solution that meets the needs and the criteria objectives to be used for the selection of the most advantageous tender and to open a deadline of not less than 60 (sixty) business days, for all bidders pre-selected in the form of item II of this article submit their proposals, which should contain the elements necessary for the implementation of the project;

IX - the Administration may request clarifications or adjustments to the proposals submitted, provided that they do not imply discrimination or distort competition between tenders;

X - the Administration will select the winning proposal according to criteria disclosed at the beginning of the competitive phase, ensuring the most advantageous contracting as a result; and

XI - the competitive dialogue will be conducted by a contracting committee composed of at least three (3) full-time employees or public servants belonging to the permanent staff of the Administration, allowed the hiring of professionals for technical advice of the committee.

CHAPTER XIII

EXEMPTION AND UNENFORCEABILITY OF BIDDING

Art. 56. Bidding abroad is exempt for:

I - hiring involving amounts below US\$ 100,000.00 (one hundred thousand U.S. dollars), in the case of works and services of engineering or maintenance services for motor vehicles and aircraft;

II - hiring that involves amounts below US\$ 50,000.00 (fifty thousand dollars in the case of other services and purchases;

III - contracts that have as their object products for research and development, limited to contracting in the case of engineering works and services, at the value of US\$ 300,000.00 (three hundred thousand U.S. dollars); and

IV - the other cases of exemption from bidding provided for in Brazilian legislation, when applicable acquisitions made abroad.

Art. 57. The purchase and contracting of works or services are also exempted from bidding when the disclosure of its location, need, characteristic of its object, specification or quantity affect national security objectives, and are related to:

I - acquisition of marine, terrestrial and aerospace war resources;

II - contracting of technical services specialized in the area of projects, research and scientific and technological development; and

III - acquisition of equipment and contracting of specialized technical services for the areas from:

a) intelligence;

b) information security;

c) cybersecurity;

(d) security of communications;

e) cyber defense; and

(f) launching of space shuttles and their contracting of goods and services for the operationalization.

§ 1 - The bidding exemption processes by value, aimed at the acquisition of materials and contracts for the cost of vegetative life, operations, referred to in Art. 17, § 1st, of this norm and to the contracting of engineering services, should preferably be carried out electronically.

§ 2 - The exemption procedure, applicable to articles I and II of Art. 56 of this norm, shall be carried out, where possible, and justified in any impossibility, with consultation with a minimum number of three companies in the relevant area of expertise of the object of the bidding, previously registered by the CAB.

Art. 58. Bidding abroad is unenforceable when there is unfeasibility of competition, in especially in cases of:

I - hiring individual or legal entity to teach training courses and staff development or enrollment in open courses; and

II - the other cases of non-feasibility of competition, pursuant to Article 74 of Law No. 14,133, 2021, when appropriate.

Art. 59. The process of direct contracting, which comprises cases of unenforceability and exemption from bidding must be instructed with the following documents:

I - demand formalization document and, if applicable, preliminary technical study, analysis of risks, term of reference, basic project or executive project;

II - estimated expenditure;

III - legal opinion and technical opinions, if applicable, demonstrating the service requirements are met;

IV - demonstration of the compatibility of the budget resource forecast with the commitment to be made;

- V - proof that the contractor meets the minimum qualification requirements;
- VI - reason for the choice of the contractor;
- VII - price justification; and
- VIII - authorization of the competent authority.

CHAPTER XIV HABILITATION

Art. 60. For the qualification of tenders, the interested parties will be required to provide documentation of:

- I - legal qualification;
- II - technical qualification; and
- III - economic and financial qualification.

Art. 61. The legal qualification documentation, as the case may be, shall consist of:

- I - constitutive act of the supplier or document corresponding to the local peculiarity;
- II - identification document of the supplier or representative or company head;
- III - corporate telephone and e-mail for questions and queries regarding the hiring;
- IV - operating license, commercial registration or compatible document authorizing the operation of the supplier; and
- V - certificate or document of incorporation of the company, in the applicable cases.

Art. 62. The documentation on technical qualification, as the case may be, shall consist of:

- I - proof of aptitude demonstrated by a document required in the convening instrument for the performance of relevant activity and compatible in characteristics, quantities and time limits with the object of the bidding; and
- II - letters of recommendation, good performance or guarantees provided by authorities or entities regulating the corresponding business activity.

Art. 63. The proof of economic and financial qualification, as the case may be, will consist of in demonstrating the bidder's financial capacity with a view to the commitments it will have to assume.

Single paragraph. Proof of financial capacity, alternatively, can be obtained by CAB on official websites, public or private, with notorious specialization.

Art. 64. In the event that the local peculiarity makes it unfeasible to present the documents according to the art.60, the Head of CAB's may waive compliance with it, clarifying the reasons on the process.

Art. 65. Unless duly justified in the bidding process, a legal entity may participate in a consortium bid, in compliance with the following standards:

- I - proof of public or private commitment to the establishment of a consortium, subscribed to by the consortia;
- II - indication of the consortium's leading company, which will be responsible for it before the Administration;
- III - admission, for the purpose of technical qualification, of the sum of the amounts of each and, for the purpose of economic and financial qualification, the sum of the values of each company;
- IV - preventing the contracted company from participating, in the same bid, in more than one consortium or in isolation; and
- V - joint liabilities of the members for the acts performed in consortium, both in the bidding process and the execution of the contract.

Single paragraph. The notice should establish for the consortium an increase of 10% (ten percent) to 30% (thirty percent) on the required value of individual bidder for financial economic qualification, or otherwise it must be justified.

Art. 66. Companies, foreign or not, will be disqualified if they have any tax or labor restrictions with the Brazilian Government, apart from those framed as micro-enterprises or small businesses in the form of Brazilian legislation.

Art. 67. The winning bidder is obliged to promote, prior to the conclusion of the contract, the constitution and registration of the consortium, pursuant to the commitment referred to in item I of Art. 65 of this norm.

CHAPTER XV

THE PREPARATORY PHASE OF THE PROCUREMENT PROCESS ABROAD

Art. 68. The internal phase of the procedure, intended for preparatory tasks for the implementation of the bidding process will observe the following minimum formalization, according to the requesting Military Organization:

I - detailed request of the object or service, containing technical specifications, projects or other documents required by the applicant;

II - preliminary technical study that characterizes the public interest involved and that the best contracting solution will be the bidding abroad, pointing out and proving the specific hypothesis of remittance of the process abroad, respecting the hypotheses contained in this normative, based on technical surveys, diligences, market consultations or publication of a notice in Official Gazette;;

III - estimate of the value;

IV - authorization of the competent authority for the contracting;

V - convening instrument and its annexes;

VI - analysis of the draft of the convening instrument by COJAER, observing what establishes Art. 3 of this norm; and

VII - occasionally, a contracted legal study, in order to meet the need to observe the local legal peculiarities, if the CAB or the requesting OM deems it relevant, observing what establishes article 4 of this norm.

Art. 69. The notice shall contain in the preamble the annual serial order number, the name of the interested sector, the modality, the implementation regime and the type of the bid, mention the legislation to which it will be governed, the place, day and time to receive the documentation and proposal, as well as the opening of the envelopes, and shall indicate the following:

I - object of the bidding, in brief and clear description;

II - period and conditions for signing the contract or withdrawing the instruments, for execution contract and for delivery of the object of the tender;

III - sanctions for default;

IV - place where the basic project can be examined and acquired;

V - if there is an executive project available on the date of publication of the tender notice and the place where can be examined and acquired;

VI - conditions for participation in the bidding and way of submitting proposals;

VII - criterion for judgment, with clear provisions and objective parameters;

VIII - locations, times and access codes of the distance media in which they will be provided elements, information and clarifications relating to the bidding and the conditions for compliance with the obligations necessary to fulfill its object; and

IX - the criterion of acceptability of unit and overall prices, as the case may be, allow fixing maximum pricing and not allow fixing minimum prices, statistical criteria or bands of variation in relation to reference prices.

Single paragraph. The notice and the term of contract shall appear in the file in the language in which they have been agreed and in Portuguese, by simple translation, and should be published in both languages.

Art. 70. Based on documents formalizing demands, the bodies responsible for the planning will be able to draw up an annual contracting plan, with the aim of rationalizing the contracts of the bodies and entities under their competence.

Art. 71. The Administration may convene, at least eight (8) working days in advance, public hearing, face-to-face or distance, in electronic form, about the bidding that it intends to hold, with prior provision of relevant information, including preliminary technical study and elements of the tender notice, and with the possibility of manifestation of all interested parties.

CHAPTER XVI

FROM THE EXTERNAL PHASE OF THE OVERSEAS PROCUREMENT PROCESS

Art. 72. The external phase of the bidding process will begin with the publication of the summary of the convening instrument and will end with the approval and award of the object of the bidding to the winner of the competition, observing the following phases:

I - advertisement of the summary of the convocation instrument;

II - judgment of the proposals and the form of presentation will be stipulated in the convocation instrument;

III - qualification of bidders;

IV - appeal phase of the qualification and judgment of proposals;

V - award of the object of the bid to the winner of the event;

VI - approval of the bid; and

VII - formalization of the contract, when applicable.

Art. 73. The external phase of the bidding procedure carried out in the electronic system will begin with the registration of the companies by the CAB and will be closed with the approval and award of the bid to the winner of the event, observing the following sequence:

I - registration (qualification) of bidders;

II - advertisement of the convocation instrument;

III - electronic presentation of proposals;

IV - technical interaction and judgment of proposals;

V - award of the object of the bid to the winner of the event;

VI - appeal;

VII - approval of the bid; and

VIII - formalization of the contract, where applicable.

Art. 74. Information relating to bidding procedures, including the respective instruments, as well as the data of the contracts concluded, should be disclosed in the cab's website, in accordance with Law No. 12,527 of November 18, 2011.

CHAPTER XVII

PROCEDURE AND JUDGMENT

Art. 75. The bid will be processed and judged by a contracting agent or commission, designated competent authority, between effective servants or military officials, to make decisions, to monitor the bidding procedure, give impetus to the bidding procedure and perform any other activities necessary for the proper progress of the event until approval.

Art. 76. The hiring agent will be assisted by a support team and will respond individually for the acts they practice, except when misled by the team's performance.

Art. 77. The hiring agent may be replaced by a Permanent Tender Commission formed by the at least three (3) members, who will be jointly liable for all acts performed by the commission, with the reservation of the member expressing divergent individual position registered in the minutes drawn up at the meeting at which the decision has been taken.

Art. 78. When performed in the face-to-face or electronic form, the bidding procedure will be initiated with the opening of administrative process, duly filed and numbered, containing the respective authorization, the brief indication of its subject matter and the own resource for the expenditure, and to which the following will be joined in due course:

I – bidding process and its annexes, when applicable;

II - proof of the publications of the summary notice or the delivery of the invitation that may be in electronic form;

III - act of designation of the bidding agent or the person responsible for the invitation;

IV - original of the proposals and documents instructing them;

V - minutes, reports and deliberations of the Judging Committee;

VI - technical or legal opinions issued on bidding, exemption or non-enforceable;

VII - acts of award of the object of the tender and its approval;

VIII - any appeals submitted by the bidders and their manifestations and decisions;

IX - order for cancellation or revocation of the bid, where appropriate, reasoned circumstantially;

X - contract term or equivalent instrument, as the case may be;

XI - other proof of publications; and

XII - other documents relating to bidding.

Art. 79. The face-to-face bidding will be processed and judged in compliance with the following procedures:

I - opening of envelopes containing documentation relating to the qualification of competitors and assessment, and unregistered bidders may, in the qualification phase, present the entire registration documentation for the Commission's analysis;

II - return of the closed envelopes to the disqualified competitors, containing the respective proposals, provided that there has been no appeal or after their denial;

III - opening of envelopes containing the proposals of the qualified competitors, provided that the period has elapsed without an appeal, or there has been express withdrawal, or after the judgment of appeals brought;

IV - verification of the conformity of each proposal with the requirements of the notice and, according to the current prices on the market or fixed by a competent official body, or with the relevant price registration system, which must be duly recorded in the minutes of judgment, promoting the disqualification of non-compliant or incompatible proposals;

V - judgment and classification of proposals according to evaluation criteria of the notice; and

VI - deliberation of the head of the organization in regards to the approval and award of the subject matter of the bidding.

Art. 80. Bids will be made preferably in electronic form, allowed the use of the face-to-face form, provided it is motivated, and the public session must be recorded in minutes and recorded in audio and video.

§ 1 - The bidding process shall follow the following phases:

I - preparatory;

II - advertisement of the tender notice;

III - submission of proposals and bids, where applicable;

IV - judgment;

V - qualification;

VI - appeal; and

VII - award.

§ 2 - By means of a motivated act explain the benefits arising, the phase of paragraph (V) §1° may precede the phases referred to in paragraphs III and IV of that paragraph, provided that expressly provided for in the tender notice,

Art. 81. The opening of envelopes containing the qualification documentation and the proposals will always be carried out in a previously designated public act, from which detailed minutes will be drawn up, signed by the bidders present, by the bidding agent or by the Commission.

Art. 82. All documents and proposals for face-to-face bids will be initialled by the bidders present, by the bidding agent or by the Commission.

Art. 83. The bidding agent, the Permanent Tender Commission or the higher authority shall be provided in any the bidding phase, the promotion of due diligence aimed at clarifying or complementing the process. However it is not allowed the subsequent inclusion of a document or information that should originally be included in the proposal.

Art. 84. After the qualification phase, there is no place to withdraw a proposal, except for a fair reason resulting in a fact and accepted by the bidding agent or the Permanent Tender Commission.

Art. 85. In the judgment of proposals, the bidding agent or the Permanent Tender Commission shall take into consideration the criteria defined in the convening instrument, which should not be contrary to the norms and principles set out in this Regulation.

Art. 86. It will be disqualified the proposals that:

I - contain uncorrectable error;

II - do not comply with the technical specifications detailed in the notice;

III - have unenforceable prices or remain above the estimated budget for the hiring;

IV - do not have their feasibility demonstrated, when required by the Administration; and

V - do not comply with any other requirements of the notice, provided that it is uncorrectable.

Art. 87. For the purposes of paragraph III of Article 86 of this norm, it is considered manifestly unenforceable, in the case of lower-priced bids for engineering works and services, proposals whose values are less than 75% (seventy-five percent) of the amount budgeted by the administration.

Single paragraph. In the contracting of engineering works and services, a guarantee will be required of the winning bidder whose bid is less than 85% (eighty-five percent) of the budgeted amount management, equivalent to the difference between the latter and the value of the tender, without affecting the other guarantees required in accordance with this norm.

Art. 88. When all bidders or proposals are disqualified the administration may set bidders the period of eight (8) working days for the submission of new documentation or other proposals cleared of the causes that led to its disqualification.

Art. 89. It is not allowed the use of any element, criterion or secret or subjective factor which may even indirectly dissuade the principle of equality between bidders.

Art. 90. No offer of advantage not provided for in the instrument shall be considered, including subsidized or lost fund financing, nor price or advantage based on the offers of the other bidders.

Art. 91. No proposal will be accepted that presents symbolic, derisory or zero value global or unit prices, incompatible with the prices and wages of the market, plus the respective tax, even if the invitation to tender has not established minimum limits, except where it refers to materials and facilities owned by the bidder himself, for which he declines part or all of the remuneration.

Art. 92. In the event of a tie between two or more proposals, the following criteria will be used for tiebreaker, in this order:

I - final dispute, hypothesis in which the tied bidders may submit a new bid in continuous act to classification;

II - evaluation of the prior contractual performance of bidders, for which the registration records should preferably be used for the purpose of attesting to compliance with obligations regulation; and

III - public draw, on a date and time established by the Administration, for which all bidders will be summoned.

Art. 93. The bidding will not be confidential, and the acts of its procedure are available to the public, except for the content of the proposals, until they are opened.

§ 1 - Exceptions from the caput rule are the cases of information whose secrecy is essential to the security of society and the State, in the form of Brazilian legislation.

§ 2 - Advertising shall be deferred as to the content of the proposals until they are opened, and management's budget.

Art. 94. The Head of CAB, which is the competent authority for the approval of the procedure, may only revoke the bidding for reasons of public interest arising from supervision duly proven, relevant and sufficient to justify such conduct, and shall be annulled by illegality by written opinion and duly reasoned.

Art. 95. The annulment of the bidding procedure on grounds of illegality does not create an obligation to indemnify, with the reservation of the provisions of Article 98, § 3, of this norm.

Art. 96. The nullity of the bidding procedure leads to the nullity of the contract, except for the provisions of art. 98 of this norm.

Art. 97. The provisions of arts. 95 and 96 of this norm also applies to the acts of the exemption and unenforceability procedures of bidding.

Art. 98. The declaration of nullity of the administrative contract will require prior analysis of the public interest involved, and will operate retroactively, preventing the legal effects that the contract should produce ordinarily and sorting those already produced.

§ 1 If it is not possible to return to the previous factual situation, the nullity will be resolved by the compensation for losses and damages, without affecting the determination of responsibility and application of the applicable penalties.

§ 2º When declaring the nullity of the contract, with a view to the continuity of the administrative activity, the authority may decide that it will only be effective at a future time, sufficient to effect a new contract, for a period of up to 6 (six) months, extendable only once.

§ 3 The nullity will not exempt the Administration from the duty to indemnify the contracted party for what executed until the date on which it is declared or made effective, as well as for other damages regularly substantiated, provided that the contracted party attributable to it, and accountability of whoever caused it will be sought.

CHAPTER XVIII OF CONTRACTS

Art. 99. The contract instrument is mandatory, except in the following cases, in which the Administration may replace it with another suitable instrument, such as a contract letter, purchase order, purchase authorization or service execution order:

I - exemption from bidding on grounds of value; and

II - purchases with immediate and full delivery of the goods acquired and which do not result in future obligations, including for technical assistance, regardless of its value.

Art. 100. Contracts must clearly and precisely establish the conditions for their execution, expressed in clauses that define the rights, obligations and responsibilities of the parties, in accordance with the terms of the bidding notice and those of the winning bid or with the terms of the act that authorized the direct contracting and those of the respective proposal.

Art. 101. Contracts resulting from exemption or unenforceability of bidding must comply with the terms of the act that authorized them and the respective proposal.

Art. 102. The draft of the future contract, when required, will be part of the public notice or convening instrument of the bidding.

Art. 103. It is necessary on all contracts clauses that establish:

I - the object and its characteristic elements;

II - the link to the bidding notice and to the proposal of the winning bidder or to the act that has authorized direct contracting and the respective proposal;

III - the legislation applicable to the performance of the contract, including in the case of omissions;

IV - the execution regime or the form of supply;

V - the price and payment terms, the criteria, the base date and the frequency of the price readjustment and monetary adjustment criteria between the date of performance of the obligations and the effective payment;

VI - the criteria and frequency of measurement, when applicable, and the period for settlement and for payment;

VII - the deadlines for the beginning of the stages of execution, conclusion, delivery, observation and definitive receipt, when applicable;

VIII - the credit through which the expense will be incurred, indicating the programmatic functional classification and economic category;

IX - the risk matrix;

X - the deadline for responding to the price renegotiation request, when applicable;

XI - the deadline for responding to the request to restore economic and financial balance, when it's the case;

XII - the guarantees offered to ensure its full execution, when required, including that is offered by the contractor in the event of advanced amounts as payment;

XIII - the minimum guarantee period of the object, observing the minimum periods established in this applicable law and technical norms, and the maintenance and technical assistance conditions, when applicable. case;

XIV - the rights and responsibilities of the parties, the applicable penalties and the values of the fines and their calculation bases;

XV - the import conditions and the date and exchange rate for conversion, when the case;

XVI - the contracted party's obligation to maintain, throughout the performance of the contract, in compatibility with the obligations assumed by him, all the conditions required for qualification in the bidding, or for qualification, in direct contracting;

XVII - the contract management model, observing the requirements defined in the regulation;

XVIII - cases of extinction; and

XIX - the jurisdiction, giving preference to that of the place of execution of the contract.

Art. 104. The basic project must be annexed to the contract to be signed with the bidding winner, being part of it.

Art. 105. Provision of a financial guarantee may be required in contracting services and acquisition of goods, at the discretion of the Public Administration, in each case, and provided that it is mentioned in the instrument notice or in the instrument that exempted or deemed the bidding unenforceable.

Art. 106. It will be up to the contractor, under the terms of the notice, to choose one of the following types of financial guarantee:

I - cash deposit;

II - insurance, provided by a reputable institution; and

III - surety, provided by a reputable institution.

Art. 107. In the performance of the contract and without affecting contractual and legal responsibilities, the contractor may subcontract parts of the work, service or supply up to the authorized limit, in each case by the Administration.

Single paragraph. The contractor will present to the Administration documentation that proves the technical capacity of the subcontractor, which will be evaluated and added to the records of the corresponding process.

Art. 108. The inspection, regarding the contractual execution, will be carried out by public agents, formally designated for the functions of Contract Inspector, according to the procedure defined in the act COMAER regulations.

Art. 109. The performance of the contract must be monitored and supervised by 1 (one) or more contract inspectors, specially designated representatives of the Administration, or by the respective substitutes, allowing the hiring of third parties to assist them and assist them with information relevant to that assignment.

Art. 110. The Administration representative will record in his own file all occurrences related to the performance of the contract, determining what is necessary to regularize issues observed.

Art. 111. Decisions and measures that go beyond the competence of the representative shall be requested from their superiors in a timely manner for the adoption of appropriate measures.

Art. 112. The contractor must maintain an agent, accepted by the Administration, to represent them in the performance of the contract.

Art. 113. The contractor will be obliged to repair, correct, remove, rebuild or replace, at its expense, in whole or in part, the object of the contract in which there are defects or inaccuracies resulting from its execution or from materials used in it.

Art. 114. The total or partial non-performance of the contract may give rise to its termination, with the applicable contractual, legal and regulatory consequences, respecting the local legislation where the contract and the forecasts contained in the invitation to bid for the bidding process were signed.

Art. 115. The duration of the contracts governed by this rule will be that provided for in the public notice, and must be observed, at the time of contracting and each financial year, the availability of credits budgets, as well as the forecast in the multiannual plan, when it exceeds 1 (one) financial year.

§ 1 The Administration may enter into contracts with a term of up to 5 (five) years in the cases of services and continuous supplies, observing the following guidelines:

I - the competent authority of the contracting body or entity must attest to the greatest economic envisaged due to the multiannual contracting;

II - the Administration must certify, at the beginning of the contracting and of each fiscal year, the existence of budget credits linked to the contracting and the advantage in its maintenance; and

III - the Administration will have the option to terminate the contract, free of charge, when it does not have budget credits for its continuity or when it understands that the contract no longer offers advantage.

§ 2 the extinction mentioned in item III of § 1 will only occur on the next anniversary date of the contract and may not occur within a period of less than 2 (two) months, counted from the aforementioned date.

§ 3 the provisions of this article apply to the rental of equipment and the use of programs of informatics.

§ 4 The contracts for services and continuous supplies may be extended successively, respecting the maximum ten-year term, provided that there is a forecast in the public notice and that the competent authority certifies and proves that the conditions and prices remain

advantageous for the Administration, It is allowed negotiation with the contracted party or contractual termination without affecting any of the parties.

§ 5 The Administration may enter into contracts with a term of up to 10 (ten) years in the cases provided for in items "f" and "g" of item IV and in items V, VI, and XVI of the caput of art. 75 of Law No. 14,133, of 2021.

§ 6 The Administration may establish the validity for an indefinite period in the contracts in that is common of public service offered under a monopoly regime, provided that it is proven, at each financial year, the existence of budget credits linked to the contracting.

§ 7 In the contracting that generates revenue and in the efficiency contract that generates savings for the Administration, the deadlines will be:

I - up to 10 (ten) years, in contracts without investment; and

II - up to 35 (thirty-five) years, in contracts with investment, thus considered those that imply the elaboration of permanent improvements, carried out exclusively at the expense of the contracted, which will be reverted to the assets of the Public Administration at the end of the contract.

§ 8 In the contract that provides for the conclusion of a predefined scope, the term will be automatically extended when its object is not completed within the period established in the contract.

§ 9 When the non-completion is due to the fault of the contractor:

I - the contracted party will be in arrears, with the respective administrative sanctions applicable to them; and

II - the Administration may choose to terminate the contract and, in this case, will adopt the necessary measures permitted by law for the continuity of contractual performance.

§ 10. The contractual terms provided for in this norm do not exclude or revoke the contracts terms provided for in a special law.

§ 11. The contract signed under the regime of supply and provision of associated service will have its maximum term defined by the sum of the period related to the initial supply or delivery of the work with the term related to the operation and maintenance service, which is limited to 5 (five) years from the date of receipt of the initial object, the extension being authorized in the form of this regulation.

§ 12. The contract that provides for the continued operation of information technology structuring systems may be valid for a maximum period of 15 (fifteen) years.

§ 13. The deadlines for starting the stages of execution, completion and delivery allow extension, maintaining the other clauses of the contract and ensuring the maintenance of its balance economic and financial, provided that one of the following reasons occurs, duly notified in process:

I - alteration of the project or specifications, motivated by the interest of the Administration;

II - occurrence of an exceptional or unforeseeable fact, outside the will of the parties, which fundamentally change the conditions of performance of the contract;

III - interruption of the execution of the contract or reduction of the rhythm of work in order and in the interest of the Administration;

IV - increase in the quantities initially provided for in the contract, within the limits allowed by Law No. 14,133, of 2021, motivated by Administration's interest;

V - impediment to the performance of the contract due to a fact or act of a third party recognized by the Administration in a document contemporary to its occurrence; and

VI - omission or delay of measures in charge of the Administration, including as for the payments due that directly result in impediment or delay in the execution of the contract, without affecting the legal sanctions applicable to those responsible.

§ 14. Any extension of time must be justified in writing and previously authorized by the competent authority that signs contract.

§ 15. In the case of an extension of the contractual term, it must be officialised through amendment, with prior legal analysis by COJAER.

§ 16. In the case of mere extension of stages of execution, provided that it does not exceed the contractual term, may be effected by means of an apostille or equivalent instrument.

CHAPTER XIX

CHALLENGES AND REQUESTS FOR CLARIFICATIONS

Art. 116. All those who participate in the bidding promoted by the bodies or entities to which refers to art. 1 of this rule have a subjective public right to faithfully comply with the relevant procedure established in this norm, and any interested party may follow its development, provided that do not interfere in such a way as to disturb or prevent the work from being carried out.

Art. 117. The bidding procedure provided for in this norm characterizes a formal administrative act, whether it is practiced in any sphere of Public Administration.

Art. 118. Any person is a legitimate party to challenge the bidding notice for irregularity in the application of this Law or to request clarification on its terms, having to file the request up to 3 (three) business days before the opening date of the bidding.

Art. 119. The right to challenge the terms of the bidding notice before the Administration will be rejected to the bidder who fails to do so by the second business day preceding the opening of the public session.

Art. 120. The appeal and the request for reconsideration will have suspensive effect on the act or decision appealed until a final decision by the competent authority is reached.

CHAPTER XX

ADMINISTRATIVE RESOURCES

Art. 121. Any person is a legitimate party to challenge the bidding notice for irregularity in the application of this regulation or to request clarification on its terms, having to file the request up to 3 (three) business days before the opening date of the bidding, and the response to the challenge or the request for clarification will be published on the official website within a period of up to 3 (three) business days, limited to the last working day prior to the opening date of the event.

Art. 122. The acts of the Administration resulting from the application of this norm can be appealed, in the period of 3 (three) business days from the date of notification of the act or the drawing up of the minutes, in the cases of:

I - an act that grants or rejects a request for pre-qualification of the interested party or for registration in the supplier database, its alteration or cancellation;

II - judgment of proposals;

III - act of qualification or disqualification of the bidder;

IV - annulment or revocation of the bidding; and

V - termination of the contract, when determined by a unilateral and written act of the Administration.

Single paragraph. It will also be possible to request a reconsideration, within 3 (three) business days, counted from the date of subpoena, in relation to an act for which there is no hierarchical appeal.

Art. 123. The answer to the challenge or request for clarification will be published on the official website within a period of up to 3 (three) business days, limited to the last business day prior to the opening date of the right.

Art. 124. No period of appeal, representation or request for reconsideration begins or runs without the case file being open to the interested party.

Art. 125. In the auction, once the winner has been declared, any bidder may, during the period granted in the public session, immediately, in the system's own field, express your intention to appeal.

§ 1 The reasons for the appeal mentioned in the caput must be presented within three days.

§ 2 The deadline for filing counter-arguments will be the same as for the appeal and will begin on the date of personal subpoena or disclosure of the filing of the appeal.

§ 3 Regarding the appeal presented due to the provisions of items II and III of art. 122 of this rule, the following provisions will be observed:

I - the intention to appeal must be manifested immediately, under penalty of estoppel, and the deadline for sub

mitting the reasons for appeal will begin on the date of subpoena or drawing up of the minutes of qualification or disqualification or, in the event of adoption of the inversion of phases provided for in art. 80, § 2, of this norm, of the judgment minutes; and

II - the appraisal will take place in a single phase.

§ 4 The acceptance of the appeal will imply invalidation only of an act incapable of use.

CHAPTER XXI

ADMINISTRATIVE SANCTIONS

Art. 126. Administrative sanctions to be included in bidding processes and contracts signed shall observe the basic principles of the Brazilian bidding law, respecting the local peculiarities.

Single paragraph. The bidder or contractor will be held administratively responsible for the following infractions:

I - give cause for partial non-performance of the contract;

II - give cause for partial non-performance of the contract that causes serious damages to the Administration, to the functioning of public services or the collective interest;

III - give cause for the total non-performance of the contract;

IV - fail to deliver the documentation required for the bidding;

V - not maintain the proposal, except as a result of a duly justified supervening fact;

VI - not entering into the contract or not delivering the documentation required for contracting, when summoned within the validity period of its proposal;

VII - to delay the execution or delivery of the object of the bidding without justified reason;

VIII - submit a false declaration or documentation required for the bidding or provide false declaration during bidding or contract performance;

IX - defraud the bidding or perform a fraudulent act in the execution of the contract;

X - behave in a disreputable manner or commit fraud of any nature; and

XI - practice illicit acts with a view to frustrating the objectives of the bidding process.

Art. 127. Unjustified delay in the performance of the contract will subject the contractor to a late payment fine, as provided for in the invitation to tender or in the contract.

Art. 128. For the total or partial non-performance of the contract, the Administration may, guaranteed the prior defence, apply the following sanctions to the contractor:

I - warning;

II - fine;

III - impediment to bidding and contracting; and

IV - declaration of unsuitability to bid or contract.

§ 1 The application of warning sanctions, fines and impediment to bidding and contracting, appeal will be possible within 15 (fifteen) business days from the date of the subpoena.

§ 2 The appeal referred to in § 1 will be addressed to the authority that issued the decision, which, if they do not reconsider it within 5 (five) business days, will forward the appeal with

its motivation to the higher authority, which must render its decision within a maximum period of 20 (twenty) days working days, counted from the receipt of the records.

§ 3 The application of fine and declaration of unsuitability to bid or contract, only request for reconsideration will be allowed, which must be submitted within 15 (fifteen) business days, counted from the date of the subpoena, and decided within a maximum period of 20 (twenty) business days, counted from its receipt.

Art. 129. The sanction established in item IV of art. 128 of this norm is of exclusive competence of the Minister of State for Defence, as the case may be, with the defence of the interested party being allowed in the respective process, within 15 (fifteen) business days, counted from the date of its subpoena.

§ 1 The sanction provided for in item III of art. 128 of this norm will apply to the person responsible for administrative infractions provided for in items II, III, IV, V, VI and VII of the sole paragraph of art. 126 of this norm, when the imposition of a more serious penalty is not justified, and will prevent the person responsible from bidding or contract within the scope of the direct and indirect Public Administration of the federative entity that has applied the sanction, for a maximum period of 3 (three) years.

§ 2 The sanction provided for in item IV of art. 128 of this norm will apply to the person responsible for administrative infractions provided for in items VIII, IX, X and XI of the sole paragraph of art. 126 of this norm, as well as for the administrative infractions provided for in items II, III, IV, V, VI and VII of the same provision, when the imposition of a more serious penalty is not justified, and will prevent the person responsible from bidding or contract within the scope of the direct and indirect Public Administration of all federative entities, for the period minimum of 3 (three) years and maximum of 6 (six) years.

CHAPTER XXII FINAL DISPOSITIONS

Art. 130. In CABs headquartered abroad, the instrument that enables the operation of the bidding procedures, following the bidding modalities provided for in this regulation, in whatever is applicable in the locality of the event, is called "Bidding Process", as it is the term that best favours the understanding of the bidding process by foreign suppliers, given the local commercial peculiarities.

Art. 131. For the operationalization of bidding procedures abroad and better identification in the international market, CAB will use its own electronic system.

Art. 132. This norm will be applicable only to cases assessed after its entry into force.

Art. 133. This regulation will be made available in Portuguese and English on the CAB website.

APPENDIX GLOSSARY

ADMINISTRATION AGENT - Any individual who, invested with attributions and responsibilities defined in its own act, performs administrative activities of budget management, financial, accounting, patrimonial and human resources. The Administration Agent is a kind of Public Agent, military or civil servant, who works in COMAER. The term administration agent, treated in this Regulation, includes, when not specified, managers in general and civil servants civilians.

ALIENATION - It is any transfer of ownership or administration, onerous or free, under the form of sale, exchange, donation, return to the donor, payment, legitimation of possession or concession of domain or reversion to the relevant Secretariat of the Union.

PRICE REGISTRATION MINUTES - Document that has the effect of commitment and liability, that is, bidders will be obliged to comply with the conditions offered and those stipulated in the Notice.

BIDDING PROCESS - Specific Administrative Procedure, adopted by the Brazilian Aeronautic Commissions headquartered abroad in some of their contracting of goods or services. The term in question is the one that best favours the understanding of the bidding process in question by foreign suppliers, given the local commercial peculiarities.

AERONAUTICS COMMAND (COMAER) - Administrative structure that the Air Force uses to manage its business within the scope of the Executive, exercising the Defence function as determined by the Constitution.

BRAZILIAN AERONAUTICAL COMMISSION (CAB) ABROAD - It is the Organization of the Aeronautical Command whose purpose is to centralize, within its area of operation, the logistics activities of support and services, the administration of agreements, adjustments and contracts, as well as others that may be determined, all in the interest and responsibility of COMAER.

PERMANENT TENDER COMMISSION - These are Administration Agents, appointed by the authority, who receive, in commission, the temporary and specific attribution, defined in a specific act, to coordinate, control, record, receive, examine and judge all documents and procedures relating to the registration of bidders, qualification and judgment of bids, in compliance with the legislation dealing with the matter and guidelines issued by the competent spheres.

BRAZILIAN AIR FORCE - Set of organizations, facilities, equipment and of personnel committed to fulfilling the military mission assigned to the Air Force Command.

INCOTERMS - It is the abbreviation of the English (International Commercial Terms), which in Portuguese stands for "International Terms of Commerce". These are standardized norms that regulate aspects of international trade, having as main role the definition for the allocation of risks, costs and obligations between the buyer and seller in a contract for the purchase and sale of goods.

REQUESTING ORGANIZATIONS - OM whose need for a good and/or service gave rise to a request for acquisition abroad, supported by one of the CABs.

AUCTIONEER - It is the agent of the Administration, designated by the competent authority, who receives the temporary and specific assignment for conducting face-to-face, electronic auctions and registration of prices.

PRICE REGISTRATION - It is a contracting system where, at the end of the bidding, the company winner signs a Price Record Minute.

REQUEST - It is the formalization of a need through its issuance through the insertion of the necessary data in a computerized system to obtain an item or of contracting a service.

SISCOMAER - Foreign Trade System of the Air Force Command is a system that aims to integrate and coordinate procedures, guidelines and routines in order to provide an efficient operation of all activities related to foreign trade within the scope of COMAER.

ELECTRONIC PURCHASING SYSTEM - Acquisition method in which procedural acts are registered and made available electronically.

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