



**BRAZILIAN AERONAUTICAL COMMISSION**  
**1701 22<sup>nd</sup> Street, NW, Washington D.C. 20008**

INVITATION FOR BID N° 190102/CABW/2019

### **ANNULMENT'S ANALYSIS**

#### **OBJECTIVE**

Brazilian Aeronautical Commission's Analysis on the ANNULMENT request presented by **AEL SISTEMAS** regarding the Bidding n. 190102/CABW/2019 to be awarded based on the LOWEST GLOBAL PRICE for the provision of services of installation and integration, with the supply of equipment for the composition of **40 (forty) avionics systems for the aircraft T-27 TUCANO (EMB-312)**, including the necessary consumables materials, as per technical specifications and quantities provided in the Invitation For Bid

#### **ANALYSIS**

First and foremost, it is mister to restate that, the BIDDING PROCESS shall follow the principles of Law N° 8.666/93 (Brazil), in addition to the recommendations on MCA 176-1, updated on December 6, 2017, as well as other requirements set forth in Invitation for Bid and its Attachments. Additionally, proposals submitted to the BACW shall be interpreted, evaluated and ranked in accordance with the principles contained in Articles 3 and 123 of Law N° 8,666 of 06/21/1993, pertaining to legality, fairness, morality, equality and transparency, as provided in the preamble of the Invitation For Bid.

On March 1, 2019 the interested company **AEL SISTEMAS** filled an **ANNULMENT request** based on the following rationale:

*"1.As already brought into attention by this Company, the Brazilian Bid Law (Law n° 8.666/93), as a general rule, prohibits the execution of a bidding process in which are specifically defined the brands of the equipment that shall be supplied (art. 7º, §5º) in order to avoid an undue restriction of the bid process competitiveness, unless there are an adequate technical justification for such definition.*

*On the present case this Commission has established specific brands for all avionic equipment systems to be supplied by the Contracted Party, including but not limited to the glass cockpit avionic equipment, however did not inserted on the bidding process the relevant technical justification for choosing such equipment.*

*This technical justification was requested by AEL SISTEMAS on February 14th, 2019 and on February 21st, 2019, but no document in this regard was sent for the Company analysis. This situation was informed to CELOG, which also failed to provide an answer.*



*Taking into account that the brand definition presented on this Invitation for Bid comes without a technical justification, which is expressly prohibited by the applicable law, the consequence which arises from this situation is that this whole process shall be deemed NULL once that is in direct violation of Article 7º, §5º of Law 8.666/93, as well as it violates the competitiveness principle, the legality principle and the publicity principle, all inserted on Art. 3rd of the same legislation.*

*2. Also, it's mandatory to notice that this Invitation for Bid lacks of critical information for the presentation of a GLOBAL PRICE proposal by the competing companies, as requested item 14.1 of the Invitation for Bid document.*

*First of all, as described in the technical questions sent by this Company, in our view, there is a contradiction between the Invitation for Bid Object and the SOW tasks in terms of scope to be performed by supplier whilst the SOW states activities of a development program and not only installation and integration of equipment as provided by the Bid object, which was not clarified by this Commission on its answer to the relevant question.*

*More than that, in the answers provided today (only 1 (one) business day before the proposals presentation) by this Commission it was informed in several items (questions) that the information requested by the Companies in order to form the price proposals are contained in the Program's executive project which was not disclosed to any of the competitors, thus preventing these entities to present a secure and accurate GLOBAL PRICE proposal."*

*(E-mail received on March 1, 2019 at 3:54pm (EST) from AEL SISTEMAS)*

BACW has evidenced all the efforts to increase the universe of interested companies by answering and publicizing an aggregated amount of 79 (seventy-nine) answers distributed in 3 (three) documents called: "Questions and Answers".

Moreover, the 1<sup>st</sup> point presented by the Bidder regards to the brand choice made by the Brazilian Air Force. The question was answered on the document Question and Answers #2, published on BACW's website on February 21, 2019, as follows:

**“27. Question:** *In light of the Brazilian Bid Law principles of legality and publicity, this Company hereby REQUESTS to receive justification of Brand determination for its analysis.*

**Answer:** *The justification of the solicitation is provided on item 2 of the Basic Project.”*

In addition to the aforementioned, and in accordance with the item 34.17. of the IFB,

*“34.17 The records for this bidding process shall be available to interested parties at the address below, on business days, between the hours of 8:30 a.m. and 11:30 a.m., and from 1:30 p.m. to 3:00 p.m. (US Eastern Standard Time), after scheduling an appointment”*

Based on that, this Commission refuses the argument that the Bidding Commission did not provide the technical justification for the solicitation as the documents that support the Basic



Project and justify the solicitation are provided in the Bid File (PAG) in which all facts and records of this Bidding Process are being recorded.

For the record, the technical arguments were attached in the Bid file, by the message Fax 7/OPIA/4982, dated 01/17/2019, from CELOG to CABW. This document have a annex (name Nota Explicativa da Administração 002/OPIA/2019) about the technical motivation for the brand GARMIN.

The 2<sup>nd</sup> point presented by the company regarding the Executive Project was also answered by BACW on Question and Answer #3, as ratified by AEL SISTEMAS on its request.

Moreover, the The Preliminar Executive Project and the Executive Project refer to the preliminary description of the system presented on Annex E and Annex F to the Basic Project.

Based on that, since the company AEL SISTEMAS, among other companies, provided information during the internal phase of this solicitation for the achievement of the ESTIMATED BUDGET presented on item 23 of the Basic Project, and since the questions and concerns were timely answered, this Commission also refused the argument that the Invitation for Bid lacks of critical information for the presentation of a GLOBAL PRICE proposal.

### **CONCLUSION**

Even though the company AEL SISTEMAS did not present an ANNULMENT request in a timely manner, as foreseen on item 34.1 of the Invitation For Bid, this Commission considered the arguments submitted, the Brazilian Aeronautical Commission in Washington understands that untimely request of any bidder company cannot be accepted, in order to ensure the principles of isonomy between all the companies.

Above that, I declare that the date and time for receiving qualification documents and price proposals shall be maintained as March 4, 2019 at 9 a.m. (EST) at BACW.

Washington DC, March 1, 2019

LEONARDO GUEDES Col  
Expenses Supervisor – BACW's Chief