

ANNEX C

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON D.C.



CONTRACT No. [CT]/CABW/2020

**INVITATION FOR BID No. 205031/CABW/2020
PAG No. 67102.205031/2020-30**



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PAG N°: 67102.205031/2020-30
CONTRACT N° [CT#]/CABW/2020

CONTRACTING OF A SPECIALIZED COMPANY FOR THE PROVISION OF UP TO **XXX FLIGHT SIMULATOR TRAINING HOURS**, WITHOUT INSTRUCTOR (DRY), AND **SIMULATOR OPERATORS TRAINING (IOS)** FOR XX INSTRUCTORS WHICH THE BRAZILIAN GOVERNMENT HEREBY ENTERS INTO, THROUGH THE BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON, AND THE COMPANY **[COMPANY'S NAME]**.

The Brazilian Government, through the Brazilian Aeronautical Commission in Washington, DC, with main offices located at **1701 22nd St N.W. Washington, D.C. 20008**, represented herein by **Col ROBERTO MARTIRE PIRES**, in the use of his legal attributions, as per Directive n° 50, issued by the Ministry of Aeronautics on January 29, 1953, and as per Art.61 of Brazilian Federal Law n° 8,666/93, hereinafter referred to as the CONTRACTING PARTY, and the company **[COMPANY'S NAME]**, with main offices located at **[CITY]**, ZIP **[POSTAL CODE]**, in the Municipality **[STATE/MUNICIPALITY]**, hereinafter the CONTRACTED PARTY, represented herein by Mr. **[LEGAL REPRESENTATIVE'S NAME]**, bearer of ID n° **[ID NUMER]**, and bearing in mind the content of PAG n° **67102.205031/2020-30**, and the final result of the **Invitation for Bid n° 205031/CABW/2020**, based on the principles of the Brazilian Federal Law n° 8,666/93, the Decree n° 2.271, of 1997, and the Normative Instruction SLTI/MPOG n° 2, of April 30, 2008, and related legislation, hereby decide to enter into this agreement and execute this instrument, in accordance with the following terms and conditions:



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1. DEFINITIONS

1.1. In order to facilitate the comprehension of terminology and to simplify text composition, the following abbreviations and expressions were adopted, followed by their definitions hereafter:

1.1.1. ANAC – Brazilian Government Civil Aviation National Agency;

1.1.2. CELOG – Aeronautics Logistics Center;

1.1.3. COMAER – Brazilian Aeronautical Command;

1.1.4. COMREC - Goods and Services Receiving Commission;

1.1.5. CONTRACTED PARTY – The natural person or legal entity contracted to perform the services;

1.1.6. CONTRACTING PARTY- Brazilian Aeronautical Commission in Washington, DC (BACW);

1.1.7. DOU – Brazilian Federal Gazette (“Diário Oficial da União”);

1.1.8. EXPENSE CONTRACT or CONTRACT- The Agreement which the Public Administration (CONTRACTING PARTY), acting as such, signs with a private person or other Administrative Entity (CONTRACTED PARTY), for the performance of the services in question and under the conditions set forth by the Public Administration itself.

1.1.9. EXPENSES SUPERVISOR - Administration Agent with the authority to perform acts resulting in funds citations, authorize payment, supply of funds, estimate approval, among other actions;

1.1.10. FAB / BAF – Brazilian Air Force;

1.1.11. GABAER – Office of the Aeronautics Commander;

1.1.12. GTE – Special Transportation Group;

1.1.13. ICA – Aeronautical Command Directive;

1.1.14. INVOICE – Commercial document formalizing an act of purchase and sale abroad, which must contain- among other information- the following data: supply quantity, supply unit, price, payment terms, taxes, duties and FAB Purchase Order Number;

1.1.15. LAW No. 8,666/1993 – Brazilian Federal Law that establishes general rules and regulations on public bids and contracts related to constructions, services, including advertising, purchases, disposals and leases within the scope of the Brazilian Federal Government, the States, the Federal District and the Municipalities.

1.1.16. MO - Military Organization;

1.1.17. MONITOR - The individual or commission representing the CONTRACTING PARTY before the CONTRACTED PARTY, appointed to systematically monitor the fulfillment of contractual terms and complementary orders issued by the Government, in all their aspects;

1.1.18. PAAL – Formal internal administrative procedure which consists in the registration of all acts to determine the administrative facts necessary to clarify and review judgments of the competent authority, allowing due process, which will culminate in the implementation or not of the administrative sanctions provided for in the Law (ICA 12-23);



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1.1.19. PAG – Administrative Management Process;

1.1.20. BASIC PROJECT- As per Brazilian Law 8.666, dated June 21, 1993, the set of necessary and sufficient elements, with the necessary degree of precision, to define the project, service or body of work, which will constitute the Bid Subject. It is drafted based on the suggestions drawn from preliminary technical studies, which ensure technical feasibility and adequate treatment of the project's environmental impact, as well as evaluating the project or service's costs, defining the methods and terms for its performance;

1.1.21. TERM OF RECEIPT – Document issued by the COMREC attesting and accepting services performed.

2. CLAUSE – OBJECT

2.1. The object of this Bidding Process is the contracting of **224 (two hundred and twenty-four) “DRY” Training Hours** in the **VC-2 (EMB 190) Aircraft Flight Simulator** and the **Training for 04 (four) Simulator Operator Instructors (SIMOP)**, with availability exclusively to the COMAER pilots, aiming to fulfill the COMAER needs, in accordance with the terms, quantities, and other requirements in the Technical Specifications, BASIC PROJECT PLAN, Annex A:

2.2. The estimates detailed in this CONTRACT do not imply any obligation by the CONTRACTING PARTY.

2.3. The following annexes are integral parts of this contract, regardless of whether or not they are herein transcribed:

ANNEX A – BASIC PROJECT;

ANNEX B - PRICE PROPOSAL FROM THE CONTRACTED PARTY; and

ANNEX C - PHYSICAL AND FINANCIAL SCHEDULE.

3. CLAUSE – PERFORMANCE

3.1. The CONTRACT shall be performed on the basis of indirect execution of LOWEST GLOBAL PRICE.

4. CLAUSE – LANGUAGE

4.1. It is hereby agreed by the parties that the language of this CONTRACT, for the purpose of documentation, correspondence, and any other interests shall be English.

5. CLAUSE – CONDITIONS TO PROVIDING SERVICE

5.1. The services shall be performed by the CONTRACTED PARTY as described herein and in accordance with the BASIC PROJECT, Annex A.

5.2. The CONTRACTED PARTY shall maintain all the conditions for qualification during the bidding process throughout the validity of this CONTRACT.

6. CLAUSE – OBLIGATIONS



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6.1. In addition to that set forth in the BASIC PROJECT, the **CONTRACTED PARTY** shall be required to:

- 6.1.1.** Perform services in accordance with the specifications in the BASIC PROJECT and its proposal with the resources necessary for full compliance with the provisions of the CONTRACT;
- 6.1.2.** Strictly observe specifications and instructions contained in the Invitation for Bid;
- 6.1.3.** Take full responsibility for the performance of the contracted services;
- 6.1.4.** Ensure supply of all material and equipment required for full and perfect fulfillment of contractual obligations;
- 6.1.5.** Take responsibility for the selection, qualification, transportation, meals, lodging, contracting and termination of its employees, as well as for their legal situation with labor, transit, insurance, health and welfare authorities. The CONTRACTED PARTY's failure to fulfill the obligations set forth herewith does not make the CONTRACTING PARTY responsible for payment;
- 6.1.6.** Take responsibility, furthermore, for damages directly caused to the CONTRACTING PARTY, arising from the performance of services by CONTRACTED PARTY'S employees or appointed agents;
- 6.1.7.** Provide all clarification requested by the CONTRACTING PARTY, immediately addressing any complaints;
- 6.1.8.** Replace, at no cost to the CONTRACTING PARTY, all material or equipment provided suffering from any type of damage caused by poor use by its employees, or which has been rejected during inspection tests;
- 6.1.9.** The CONTRACTED PARTY is prohibited from disclosing to third parties any information regarding the nature or progression of service performance contemplated by this Contract, as well as from notifying the written or oral press, including television and/or any other means of public disclosure, except with explicit consent of the CONTRACTING PARTY.
- 6.1.10.** Bear all civil liability for each and every performed services and for damages caused by action or omission on the part of CONTRACTED PARTY'S employees, workers, agents, or representatives, whether intentionally or not, before the Brazilian Government (Brazilian Air Force Command) and other third parties;
- 6.1.11.** Use qualified employees who have essential knowledge of the services that will be performed in accordance with the rules and regulations in effect;
- 6.1.12.** Be responsible for all labor, social, and tax obligations, as well as for any other duties or obligations provided for under specific legislation, the violation of which shall not carry a liability to the CONTRACTING PARTY;
- 6.1.13.** Instruct its employees on the need to follow the guidelines provided by the CONTRACTING PARTY, including with regard to CONTRACTING PARTY'S internal regulations, if any;
- 6.1.14.** Maintain throughout the term of the Contract, consistent with the obligations assumed, all conditions of eligibility and qualification required in the bidding process;



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6.1.15. Not transfer to third parties, in any way, not even partially, any of the responsibilities assumed without the express prior written approval of the BACW in accordance with the terms of this CONTRACT;

6.1.16. Be responsible for any costs resulting from any possible mistakes made in calculating the quantitative items in its proposal, including with regard to variable costs associated with future and uncertain facts, being responsible for covering those items should what was initially provided for in its proposal not be enough to perform the object of the bidding process.

6.1.17. All services performed by the CONTRACTED PARTY shall be the responsibility of the CONTRACTED PARTY and shall be performed in accordance with the CONTRACT;

6.1.18. The CONTRACTED PARTY shall not perform any extra service without first providing an estimated budget, which is to be formally authorized by the CONTRACTING PARTY;

6.1.19. The CONTRACTED PARTY shall appoint a Manager for the purpose of overall management of the activities/services, following up on the CONTRACT and representation with the CONTRACT MONITOR;

6.1.20. Comply with all the CONTRACTING PARTY's requirements, especially those related to deadlines, performance and conclusion of the contracted services, as well as the requirements related to the services under special deadline, priority and emergency;

6.1.21. Abide by BACW's business hours, and according to its convenience or need for any change, communicate the change to the CONTRACT MONITOR, with at least 24 (twenty four) hours in advance;

6.1.22. Be responsible for any claims and financial burden that may arise from any law suits, or damage caused directly or indirectly by the CONTRACTED PARTY, and that may possibly be argued against BACW, by third parties;

6.1.23. Promptly communicate, in writing to BACW, any and all information related to any errors, mistakes or flaws found in the BASIC PROJECT;

6.1.24. Use of adequate equipment and tools, to allow for proper execution of the services, and utilize efficient and safe work methods;

6.2. The CONTRACTING PARTY shall be required to:

6.2.1. The CONTRACTING PARTY, through the assistance of the CONTRACT MONITOR, duly designated for that function, shall:

6.2.1.1. Appoint a RECEIVING COMMISSION (COMREC), through internal document, to carry out receipt of the qualitative and quantitative object of the CONTRACT;

6.2.1.2. Provide all the conditions for the CONTRACTED PARTY to be able to perform its services in accordance with the provision of the CONTRACT, the Invitation to Bid and its Annexes, and particularly the BASIC PROJECT;



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6.2.1.3. Require compliance with all obligations assumed by the CONTRACTED PARTY in accordance with the provisions of the CONTRACT and the terms and conditions of its proposal;

6.2.1.4. Provide monitoring of services by an official specifically designated for that purpose, who shall record in his own log any flaws found;

6.2.1.5. Notify the CONTRACTED PARTY in writing of the occurrence of any irregularities during the performance of services, and establish a deadline for their correction;

6.2.1.6. Pay the CONTRACTED PARTY the amount due for the provision of services, as established in the CONTRACT through the receipt and acceptance of an INVOICE; and

6.2.1.7. See to it that, throughout the term of the CONTRACT, all conditions of eligibility and qualifications required in the bidding process are maintained, consistent with the obligations assumed by the CONTRACTED PARTY.

7. CLAUSE – DISCRIMINATION OF SERVICE

7.1. The CONTRACT shall be performed by the CONTRACTED PARTY as described herein and in the BASIC PROJECT, Annex A.

8. CLAUSE – AMOUNT OF THE CONTRACT

8.1. The maximum total amount of the CONTRACT is US\$ [AMOUNT], being initially provided the value of US\$ [AMOUNT] through the Purchase Order No. [PO NUMBER], being the remaining US\$ [AMOUNT], the complement for the above mentioned Purchase Order.

8.1.1. The price per hour of the object of this contract is US\$ [AMOUNT], in accordance with the Price Proposal, Annex B

8.1.2. The price per instruction of Simulator Operators Training (IOS) is US\$ [AMOUNT], in accordance with the Price Proposal, Annex B

9. CLAUSE - BUDGETARY ALLOCATION

9.1. Financial resources shall be drawn from Program 6012 – National Defense, Action 21A0 – Readiness of Forces, Expenditure Item 33.90.39. (services), as outlined on item 6 in the BASIC PROJECT PLAN, Annex A.

10. CLAUSE - SUBCONTRACTING

10.1. Sub-contracting is not authorized under this CONTRACT.

11. CLAUSE - TERMS

11.1. Term of Validity

11.1.1. The Contract's period of validity shall be 12 (twelve) months, starting on the date of its Signature, including its performance time, acceptance time and term established for the final payment.



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11.1.2. The validity may be extended by mutual agreement between the parties for an additional equal period of 12 months, if it is in the CONTRACTING PARTY's interest, up the overall limit of 60 months.

11.2. Term of Execution

11.2.1. The period of execution of the CONTRACT shall be 11 months for the first 12 months period, starting at the SERVICE ORDER issuance.

11.3. Acceptance Timeframe

11.3.1. The services shall be definitively received by COMREC, through a TERM OF RECEIPT, signed by the parties within 10 (ten) days of written notification by the CONTRACTED PARTY.

11.3.2. Final acceptance does not exclude civil responsibility for the reliability and safety of the service, or ethical/professional responsibility for the perfect performance of the contract.

11.4. Payment Processing Time

11.4.1. Payment processing time for Commercial Invoices shall not exceed 30 consecutive days, starting on the date on which the TERM OF RECEIPT is issued, signed by COMREC.

11.4.2. This term shall renew automatically for a 10 (ten) business days if there is any discrepancy noted by the MONITOR and mandatorily notified in writing to the CONTRACTED PARTY.

12. CLAUSE - FINANCIAL GUARANTEE

12.1. The provision of a performance guarantee is not required for this contracting.

13. CLAUSE - CHANGES TO THE CONTRACT

13.1. Pursuant to Article 65, § 1, of Law nº 8.666/93 (Brazil), a CONTRACTED PARTY is required to accept, under the same terms and conditions, any changes involving addition or subtraction the amount of the demand for the services, that may be necessary, at the discretion of BACW, up to the limit of twenty-five percent (25%) of the original total amount of the Contract.

13.1.1. Since the demands are estimated due to the characteristics of the OBJECT of this CONTRACT, reductions in the amount that exceeds the limit of twenty-five percent (25%) of the Contract may occur during the performance of the CONTRACT at CONTRACTING PARTY'S sole discretion.

13.1.2. The set of increases and the set of decreases shall be calculated based on the original shipments of, or services to be provided under, the Contract, on a case by case basis, without any sort of compensation up to the limits established above.

14. CLAUSE - PRICE ADJUSTMENT

14.1. After the first 12 (twelve) months of contract performance, in case of being renewed for additional 12 (twelve) months, an adjustment may be applied, to reestablish the financial relation initially agreed upon between the parties at contract signature, thus ensuring adequate compensation for services, if and only if the increase in input costs associated with BID Object is proved to the satisfaction of the BACW Chief.



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14.2. When requesting the price adjustment, after 12 (twelve) months period, the CONTRACTED PARTY must supply within a rationale proving the cost variation by means of cost analysis and appropriated spreadsheets individually by each services of operation with supporting documentation.

14.3. The deadline for requesting price adjustment is aligned with the contract expiration date.

14.4. If the contract period has been extended, new price adjustment can only be pleaded after the new course of twelve (12) months.

14.5. Inclusion of unanticipated benefits not foreseen in the initial proposal at the bidding process is forbidden, except when they become compulsory under legal instrument.

14.6. The CONTRACTING PARTY may perform diligences in order to assure the cost variation proposed by the CONTRACTED PARTY.

14.7. Should the CONTRACTED PARTY not submit other factors without proper justification, the maximum adjustment amount shall be equivalent to CPI variation (*Customer Price Index, issued by the Bureau of Labor Statistics – BLS*).

14.8. Submission of an adjustment proposal by the CONTRACTED PARTY does not imply its acceptance by the CONTRACTING PARTY, which may choose not to renew the contract for the next 12-month period.

15. CLAUSE - PAYMENT

15.1. The deadline for payment shall be within thirty (30) calendar days from the date the term of receipt is issued by the Receipt Commission

15.2. An Invoice shall be issued by the CONTRACTED PARTY in accordance with the following procedures:

15.2.1. Payment shall only be made, after the appropriate official's "approval" of the Invoice provided by the CONTRACTED PARTY.

15.2.2. The "approval" of the Invoice is contingent upon verification of compliance of the Invoice submitted by the CONTRACTED PARTY with the services that were actually performed;

15.2.2.1. The CONTRACTED PARTY must submit with its invoice, the proof of training containing at least:

15.2.2.1.1. The Equipment in which the training was performed;

15.2.2.1.2. Amount of training hours;

15.2.2.1.3. Squadron which performed the training

15.2.2.1.4. Date and Time of training;

15.2.2.1.5. Signature of the officers who performed training;

15.3. In the event of any mistake in submitting any of the documents required under the previous sub-items or of a situation that prevents fees from being paid, the payment shall remain pending until the CONTRACTED PARTY takes steps to remedy the situation. In this case, the deadline for payment shall take effect after it is verified that the situation has been solved, without any costs to the CONTRACTING PARTY.



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15.4. Payment shall be made through a bank order of credit, deposit in a bank account, at the branch or bank agency indicated by the CONTRACTED PARTY, or through any other means provided for under the legislation in effect.

15.5. The date of payment shall be considered the date when the bank order of payment is actually made.

16. CLAUSE - MONITORING

16.1. The MONITOR must be an agent or agents of the Administration, specifically appointed by the Administration, in accordance with the precepts established by Law N° 8.666/1993 (Brazil), ICA n° 65-8/2009 (Attributions of MONITOR and Receiving Commission), and of ICA n° 12-23/2014 (Inspection and Receiving Goods, Services and Administrative Sanctions Application), so as to monitor and inspect the fulfillment of the contract to be executed.

16.2. Monitoring of contractual fulfillment consist in verifying the conformity of the services and the allocation of the necessary resources.

16.3. Verification of adequate contractual fulfillment must be performed based on the criteria established in the BASIC PROJECT and in accordance with contractual terms.

16.4. Contractual performance must be monitored and inspected through oversight instruments including monitoring of the fulfillment of the obligations arising from this CONTRACT.

16.5. The MONITOR shall note in his records all events related to the performance of the Contract.

16.6. The monitoring of contractual performance carried out by the CONTRACTING PARTY does not eliminate the CONTRACTED PARTY'S responsibility, also before third parties, due to any irregularity, even if arising from technical imperfections, flaws or inadequate use of equipment, and when these incidents occur, they do not imply shared responsibility by the CONTRACTING PARTY, its representatives or employees.

16.7. For the purposes of this CONTRACT, events shall be considered unforeseeable or caused by force majeure if they fit to legal description provided in single paragraph of article 393 of the Brazilian Civil Code, or terms of line II, §1º, Art. 57 of Federal Law n° 8.666/93 (Brazil).

16.8. The MONITOR should, additionally, abide by the following processes:

16.8.1. Observe and perform, when applicable, all procedures established in ICA 65-8/2009 and ICA 12-23/2014;

16.8.2. Monitor the development of all services requests issued to the CONTRACTED PARTY;

16.8.3. Monitor the development of all services until their receipt by CTLA and CABW:

16.8.4. Submit for evaluation by the EXPENSE SUPERVISOR all proposals, questioning, discrepancies and difficulties encountered during contractual performance or those requiring approval and/or decision;

16.8.5. Receive INVOICES, compare them with the amounts established in the CONTRACT, certify them and forward them to the EXPENSE SUPERVISOR for approval:

16.8.6. All INVOICES must be service invoices, detailing- at the very least- unit and total amounts for each cost, duty amounts charged, PROCESSING costs and



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discounts offered, cargo weight and volume and FAB's request number. All supporting documentation must be attached to the INVOICE for validation by COMREC;

16.8.7. If there are other inputs which may influence cost, these must be detailed;

16.8.8. Issue, until the fifth day of the following month, a Contract Status Report, in accordance with 65-8/2009 and ICA 12-23 for the Administration.

17. CLAUSE - RECEIPT OF THE OBJECT

17.1. The services that are the object of the CONTRACT shall be received by the Receiving Commission in accordance with the specifications set forth in the BASIC PROJECT, Annex A of this Bid Announcement.

17.2. It is the responsibility of the RECEIVING COMMISSION to:

17.2.1. Ensure that the CONTRACTED PARTY will follow the description of all the services that are the object of the BASIC PROJECT;

17.2.2. Receive services or reject them according to the specifications set forth in the BASIC PROJECT, in up to ten (10) calendar days;

17.2.3. Once approved, the invoices are sent to BACW's Contract Department, and

17.2.4. All proposals, questions, discrepancies and difficulties encountered during the execution of the CONTRACT, or that require an evaluation shall be presented to the CONTRACT MONITOR for approval and/or a determination must be approved by the Chief of BACW.

18. CLAUSE - ALTERATION TO CONTRACTED'S PARTY

18.1. It is admissible the merger, divestiture, or incorporation of the CONTRACTED PARTY with/within another entity provided that all the qualifications set forth in the solicitation continue to be satisfied, all the Contract clauses are maintained, there is no prejudice to the contract execution, and the CONTRACTING PARTY in its discretion formally accepts the acts in order to continue with the contract execution.

19. CLAUSE - ACTS OF GOD OR FORCE MAJEURE

19.1. Acts of God or force majeure events shall be notified in writing to the Chief of the BACW, through the MONITOR, so that he may decide appropriate course of action, provided it has been proven that such events affect the services performed in connection with the object of this CONTRACT.

19.2. For the purposes of this CONTRACT, events shall be considered unforeseeable or caused by force majeure if they fit to legal description provided in single paragraph of article 393 of the Brazilian Civil Code, or terms of line II, §1º, Art. 57 of Federal Law nº 8.666/93 (Brazil).

20. CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS

20.1. For the application of administrative sanction the following must be taken into account: gravity of flaw, the relapse, and damage caused to Public Interest, loss to Administration.



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20.2. Failure to fulfill CONTRACT in full or in part, or violation of any of the obligations contained in this CONTRACT and the related INVITATION FOR BID, shall subject the CONTRACTED PARTY, without limiting CONTRACTED PARTY'S liability to other criminal and civil penalties, and to any and all other contractual damages and recourses available to the CONTRACTING PARTY under the CONTRACT or applicable law, ensuring due legal process, to the following penalties:

20.2.1. A Warning is an administrative sanction applied when the CONTRACTED PARTY infringes, for the first time, obligations connected to delay in contractual terms or submission of a commercial invoice with an inaccuracy, or due to non-fulfillment of guidelines received from monitoring team within 48 (forty-eight) hours after notification by the MONITORING team. In order to enforce the Warning, a PAAI must be filed.

20.2.2. The Warning must not be proposed for relapse cases of the same kind as non-fulfillment of contractual obligation.

20.2.3. The FINES referenced in item II, Art. 87 (fines caused by total or partial contract non-execution), of Law nº 8.666/93, may be defined and applied:

20.2.3.1. Due to total or partial non-execution of Contract OBJECT:

20.2.3.1.1. A fine may be applied due to partial non-execution of adjustment in the amount 0.2% (point two percent) of CONTRACT amount, should the CONTRACTED PARTY not fulfill any condition established in the CONTRACT; and

20.2.3.1.2. If the CONTRACTED PARTY causes termination of the contract, a fine shall be applied for total non-execution of contract in the amount of 10% (ten percent) of updated CONTRACT amount, without excluding arrears or other sanctions addressed by Art. 87 of the Brazilian Law nº 8.666/93.

20.3. Notwithstanding the interested party's right to a fair defense, within 5 (five) business days, the fine for total or partial non-execution of CONTRACT shall be applied, together with the administrative sanctions set forth in items I, III and IV, Art. 87, of the Brazilian Law Nº 8.666/93.

20.4. The BACW must inform the CONTRACTED PARTY of the value to be collected, after all administrative recourses have been exhausted, after guaranteeing the right to ample defense, while the CONTRACTING PARTY must detract the amount for expired installments.

20.4.1. If payment is not extinguished in the form described in previous items, subtraction of the fine due shall be encouraged, activating contractual guarantee.

20.5. After the actions set forth in previous items, in case the fine is still unpaid, the Disbursement Officer (main or deputy) of the BACW, when applicable, shall forward the Process to the National Treasury's Attorney-General's Office (PGFN), for analysis and registration of sanctioned company in the Union's Active Debt [registry] (DAU) and/or enable legal action, based on relevant amount.

20.6. Application of a fine does not exempt the CONTRACTED PARTY from compensating CONTRACTING PARTY for possible damages, losses and casualties which its punishable



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action may have caused the Administration or CONTRACTING PARTY, nor does it exclude the possibility of applying other administrative penalties or fines.

20.7. The application of the fines set forth in the previous items may be appealed within 5 (five) business days.

20.8. Temporary suspension from participating in bids or debarment from contracting with the Administration shall be applied- within the COMAER's scope, with the following gradation:

20.8.1. For up to 30 (thirty) days:

20.8.1.1. Non fulfillment of scheduled deadline for taking corrective measures, upon application of warning sanction; and

20.8.1.2. In case of disruption of any action in the bid open session.

20.8.2. For up to 3 (three) months:

20.8.2.1. If the proposal is withdrawn, without the occurrence of an unforeseen event;

20.8.2.2. If it is claimed the prices offered cannot be honored;

20.8.2.3. If an appeal is submitted as an obvious delaying tactic.

20.8.3. For up to 6 (six) months:

20.8.3.1. If the winning bidder, summoned within his/her proposal's valid period, refuses to sign or accept the contract, or if he/she withdraws an equivalent instrument;

20.8.3.2. In the absence of contractual financial guarantee, in the terms of the INVITATION FOR BID;

20.8.3.3. In case of relapse in the practice of an illicit act, which may be sanctioned as per points "20.8.1" and "20.8.2" of this item during a timeframe shorter than 24 (twenty-four) months;

20.8.3.4. In the application of a second administrative sanction to this contract;

20.8.3.5. In the application of two administrative warning sanctions and one fine, within the COMAER's scope, within a 12 (twelve) month timeframe, during which time the supplier has not taken corrective measures in the terms prescribed by the Administration; and

20.8.3.6. In the application of two administrative fine sanctions within the COMAER's scope, within a 12 (twelve) month period, during which time the supplier has not taken the corrective measures prescribed by the Administration;

20.8.4. For up to 12 (doze) months:

20.8.4.1. When the CONTRACTED PARTY unduly delays service performance, resulting in contract rescission;

20.8.4.2. When the CONTRACTED PARTY does not extinguish/pay the fine within the deadline, in the situations in which it is not possible to detract its amount from the warranty or from the credit resulting from completed installments; and

20.8.4.3. In case of relapse in non-fulfillment subject to sanctions as per point "20.8.3", during a timeframe shorter than 36 (thirty-six) months;

20.8.5. For up to 24 (twenty-four) months:



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- 20.8.5.1.** In case an illicit act is committed, for the purpose of impeding Bid fruition; such as a the creation of a cartel or collusion;
- 20.8.5.2.** If “fraudulent”, “adulterated”, “fake” or “falsified” documents are submitted;
- 20.8.5.3.** In case of “false testimony”;
- 20.8.5.4.** If case of final sentencing of an illicit act of fiscal fraud in the collection of taxes related to the contract;
- 20.8.5.5.** If services are interrupted without a valid cause and without prior notification to the Administration;
- 20.8.5.6.** If “falsified” or “adulterated” material is delivered and tricks are used to deceive the Administration;
- 20.8.5.7.** If the contract is not fulfilled, causing serious damages to the Administration; and
- 20.8.5.8.** In case of relapse in non-fulfillment subject to sanction in accordance with point “**20.8.4**”, over a timeframe shorter than 48 (forty-eight) months.
- 20.9.** For the purposes of the terms set forth in this INVITATION FOR BID, as regards application of an administrative sanction temporarily suspending company from participating in bids, and entering into a contract with the Administration, the term “Administration” should be interpreted as COMAER.
- 20.10.** Failure to fulfill the contract shall be characterized as not rendering the service in accordance with the technical specifications contained in this INVITATION FOR BID.
- 20.11.** Inappropriate behavior shall be characterized as any intentional conduct aiming to trick or corrupt the Administration, or any of its employees, for the purpose of obtaining undue advantage.
- 20.12.** The Formal Internal Administrative Process [PAAI] issuing the Certificate of Unfitness shall be forwarded to the State Minister of Defense, through the appropriate chain of command after an opinion is issued by COJAER, given the State Minister’s exclusive competence to apply the sanction. The sanction shall be applied in any of the situations below:
- 20.12.1.** If the company or professional have been definitively sentenced for illicitly committing fiscal fraud in collecting any taxes;
- 20.12.2.** If the company or professional committed an illicit act for the purpose of preventing Bid fruition;
- 20.12.3.** If the Administration should find that the company or professional are not qualified to enter into a contract due illicit acts committed; or
- 20.12.4.** If proof of fraud is ascertained, by the Union’s Court of Auditors in the bid.
- 20.13.** The criteria for a Certificate of Unfitness, which may not exceed a 5 (five) year timeline, in accordance with the legislation in effect, shall be remitted to COJAER, for further forwarding to the State Minister of Defense. Rehabilitation for this sanction may be requested by the interested party after 2 (two) years have lapsed from its application.
- 20.14.** In the document containing the Certificate of Unfitness, a recommendation shall be made for the sanction, which must show, in the respective PAAI, the amount to be reimbursed for the purpose of rehabilitation, with due legal increments and possible obligations.



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21. CLAUSE – LINKAGE

21.1. This Contract is hereby linked to Invitation for Bid No. **205031/CABW/2020**, and the Commercial Proposal of the CONTRACTED PARTY, submitted by company **[COMPANY'S NAME]** to BACW.

22. CLAUSE – TERMINATION

22.1. Pursuant to the provisions of Article 78 of the Brazilian Federal Law nº 8,666/93, the following are causes for terminating this Contract:

- 22.1.1.** Failure to comply with CONTRACT clauses, specifications, projects and deadlines;
- 22.1.2.** Inappropriate compliance with CONTRACT clauses, specifications, projects and deadlines;
- 22.1.3.** Slowness in its compliance which may lead the CONTRACTING PARTY to find it impossible to complete the services within the established deadlines;
- 22.1.4.** Unjustifiable delay in initiating service;
- 22.1.5.** Stoppage in the service, without cause, and without providing previous notice to the CONTRACTING PARTY;
- 22.1.6.** Failure to comply with orders from the authority designated to follow up and supervise the performance of services, or higher authorities;
- 22.1.7.** Repeatedly making errors in the performance of services, duly recorded pursuant to § 1 of Article 67 of Law nº 8,666/93 (Brazil);
- 22.1.8.** Bankruptcy;
- 22.1.9.** Dissolution of company or death of the CONTRACTED PARTY;
- 22.1.10.** Corporate change or alteration of purpose or business of the CONTRACTED PARTY that hinders the performance of the CONTRACT;
- 22.1.11.** Reasons of public interest (Brazil) that are of high importance, broadly publicized, justified and ordered by a higher executive authority with jurisdiction over CONTRACTING PARTY, based on an administrative case referred to in the CONTRACT;
- 22.1.12.** Suspension of service, through a written order of the CONTRACTING PARTY, for more than one hundred twenty (120) days, in the event of a disasters, domestic disturbances or war, or also repeated suspensions that add up to 120 days. In addition to the required payment of indemnification to the CONTRACTED PARTY, it is also entitled in these cases to suspend complying with its obligations until normalcy is achieved;
- 22.1.13.** A delay for more than ninety (90) days in making payments due by the CONTRACTING PARTY, for services, supply and work already received and performed, except in the event of a disasters, domestic disturbances or war. The CONTRACTED PARTY shall be entitled to suspend compliance with its obligations until normalcy is achieved;
- 22.1.14.** Failure of the CONTRACTING PARTY to release the object for the performance of services within the established deadlines;
- 22.1.15.** Acts of God or force majeure that prevents performance of the CONTRACT, which is to be duly demonstrated;



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- 22.1.16.** Violation of the provisions of items V of Article 27 of Law n° 8,666/93 (Brazil), notwithstanding the applicable criminal sanctions.
- 22.2.** Termination will be formally recorded under the law, with the right of due process and ample defense ensured.
- 22.3.** Termination of this CONTRACT may be:
- 22.3.1.** Decided unilaterally and in writing by the CONTRACTING PARTY in the event listed under in items 1 to 10, and 16, of this CLAUSE;
 - 22.3.2.** Agreeable, through an agreement between the parties, entered as an addendum in the process, provided it is convenient to the CONTRACTING PARTY; and
 - 22.3.3.** Judicially, pursuant to applicable legislation.
- 22.4.** The Administrative or agreeable termination shall be preceded by written and well-grounded authorization by the appropriate authority.
- 22.5.** When termination is based on Items 11 through 15 of this CLAUSE, without fault of the CONTRACTED PARTY, it shall be entitled to receive payments due for the performance of the CONTRACT up to the date of termination. Under no circumstances shall CONTRACTED PARTY be entitled to any indirect or consequential damages, including lost profits, due to termination.
- 22.6.** Termination for failure to comply with contractual clauses shall cause warranty to be forfeited to be applied toward compensating the CONTRACTING PARTY for the fines and indemnifications that are due. Any credits arising from the CONTRACT shall be withheld up to the limits of the losses caused to the CONTRACTING PARTY, in addition to the sanctions provided for herein.
- 22.7.** The term of terminations shall include, as appropriate:
- 22.7.1.** Assessment of contract services provided and those that have been fully completed;
 - 22.7.2.** List of payments made and payments due; and
 - 22.7.3.** Indemnifications and fines.

23. CLAUSE – JURISDICTION AND CHOICE OF LAW

- 23.1.** This Contract shall be construed and interpreted in accordance with the **principles** of Brazilian Law N° 8,666/93, and shall be governed by and enforced in accordance with the laws of the District of Columbia, including the Uniform Commercial Code as adopted in the District of Columbia, without regard to any choice of law or conflict of laws doctrines that might otherwise be applied. The UN Convention on Contracts for the International Sale of Goods shall have no application to this Contract.
- 23.2.** The parties hereto agree to make a diligent, good-faith attempt to amicably resolve all disputes before either party commences litigation pursuant to this Clause 22 of this Contract.
- 23.3.** Any dispute or claim arising out of or relating to this Contract, with a breach thereof, shall be submitted to the District of Columbia Superior Court or the United States District Court for the District of Columbia, to the exclusive jurisdiction of which the parties hereby irrevocably submit.



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24. CLAUSE – CORRESPONDENCE AND NOTIFICATION

24.1. All correspondence, reports and notifications arising from the execution of this CONTRACT shall be made in writing and shall only be considered to be received by the CONTRACTING PARTY and the CONTRACTED PARTY, if delivered to the addresses indicated below by one party to the other party or to any other addresses that may be communicated by the PARTIES, throughout the term of this Contract.

CONTRACTING PARTY:

BACW - BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON DC

Attn: Bidding and Contracts Division

Address: 1701 22nd Street NW, Washington, D.C. 20008 - USA

Phone: 202/518-7359

Fax: 202/483-4684

E-mail: chf.dlc.cabw@fab.mil.br

CONTRACTED PARTY:

Name of the CONTRACTED PARTY

Attn: Mr. /Mrs. Name of Legal representative

ADDRESS 1:

ADDRESS 2:

Phone:

Fax:

E-mail:

“Intentionally left blank”



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25. CLAUSE – NUMBER OF THE COPIES

25.1. It is hereby agreed that this CONTRACT shall be issued in two (2) originals, with same content and form, as follows:

25.1.1. (One) original for the CONTRACTING PARTY; and

25.1.2. (One) original for the CONTRACTED PARTY.

25.2. In witness whereof, the parties have executed this CONTRACT in two (2) equal counterparts, of equal content, in the presence of the witnesses subscribed below.

Washington, D.C., **MM/DD/2020.**

For the CONTRACTING PARTY:

_____ *MINUTA/DRAFT* _____
Roberto Martire Pires, Col
Head of BACW

For the CONTRACTED PARTY:

_____ *MINUTA/DRAFT* _____
Company's Legal Representative's Name & Position

WITNESSES:

_____ *MINUTA/DRAFT* _____
Rodrigo Otavio Correa Sampaio, Lt Col
Chief of BACW's Fiscal Division

_____ *MINUTA/DRAFT* _____
Thiago Dellazari Melo, Lt Col
Chief of BACW's Bidding and Contracts Division

WITNESSES for the CONTRACTED PARTY:

_____ *MINUTA/DRAFT* _____
NAME:ID nº



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ANNEX A
BASIC PROJECT



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**ANNEX B
PRICE PROPOSAL**



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ANNEX C
PHYSICAL AND FINANCIAL SCHEDULE

PHASE	DESCRIPTION	VALUE (US\$)	TERM FOR EXECUTION	TERM FOR PAYMENT
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
TOTAL		XXXXXX		