

**ANNEX III**

**BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON D.C.**



**CONTRACT [CT]/CABW/2020**

**INVITATION FOR BID [NUMBER]/CABW/2020  
PAG 67102.[NUMBER].2020-[DD]**



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PAG N°: 67102.[NUMBER]/2020-[DD]  
CONTRACT N° [CT#]/CABW/2020

CONTRACTING OF A SPECIALIZED COMPANY FOR THE SERVICES OF **CUSTODIAL AND RELATED SERVICES** AT THE BRAZILIAN AERONAUTICAL COMMISSION'S FACILITIES LOCATED IN WASHINGTON D.C. AND TEMPLE HILLS, MD, 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, with main offices located at **1701 22<sup>nd</sup> 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 NUMBER], and bearing in mind the content of PAG n° 67102.[NUMBER]/2020-[DD], and the final result of the **Invitation for Bid n° [NUMBER]/CABW/2020**, based on the principles of Law n° 8,666/93, Decree n° 2.271, of 1997, and 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. ACCEPTANCE - “Acceptance” means a Receiving Commission (COMREC) of the CONTRACTED PARTY has inspected and agreed that the work meets all requirements of the contract, to include documentation requirements;

1.1.2. ACTS OF GOD - These are unanticipated grave natural disasters or other natural phenomenon of an exceptional, inevitable, and irresistible character; the effects of which could not have been prevented or avoided by the exercise of due care or foresight;

1.1.3. APPROVAL - “Approval” means the CONTRACTED PARTY has reviewed submittals, deliverables, and administrative documents (e.g., insurance certificates, installation schedules, planned utility interruptions, etc.) and has determined the documents conform to contract requirements. Government approval shall not relieve the Contractor of responsibility for complying with Federal, State, and local laws and regulations;

1.1.4. COMAER - Brazilian Aeronautical Command;

1.1.5. COMREC - Goods and Services Receiving Commission;

1.1.6. CONTRACTED PARTY - The natural person or legal entity contracted to perform the services;

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

1.1.8. CUSTODIAL - A reference to ‘custodial’ is interchangeable with ‘janitorial’. Custodial and related services can include cleaning, window washing, trash removal, snow and ice removal, elevator maintenance, burglary alarm monitoring, and HVAC routine maintenance.

1.1.9. ICA - Aeronautical Command Directive;

1.1.10. MO -Military Organization;

1.1.11. 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;

1.1.12. NEGLIGENCE- “Negligence” is the failure to use due care under the circumstances. It is the doing of some act which a person of ordinary prudence would not have done under similar circumstances or failure to do what a person of ordinary prudence would have done under similar circumstances;

1.1.13. PAG - Administrative Management Process;

1.1.14. TERM OF RECEIPT - Document issued by the COMREC attesting and accepting services performed.

## 2. CLAUSE – OBJECT



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**2.1.** The Contracting of a specialized company to perform the services of **custodial and related services** at the Brazilian Aeronautical Commission's facilities located in Washington D.C. and Temple Hills, MD, for a contractual period of 12 months, with the possibility of extensions of up to an aggregate of 60 months, seeking the fulfillment of the BACW's needs.

**2.2.** The description of the services and the specification of each building shall be found on the BASIC PROJECT, Annex I of this INVITATION FOR BID (IFB).

**2.2.1.** The address of each building can be verified below:

Facility	Address
Headquarters	1701 22nd St. N.W. Washington, DC 20878
Warehouse	4601 Beech Road, Temple Hills MD 20748

**2.3.** It is noted that the services related to this INVITATION FOR BID must comply with all the laws and regulations set forth by the U.S. Federal Government, the district and the state in which the facilities are located.

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

**2.5.** 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 Unit Price.

**3.2.** The CONTRACT may undergo quantitative increases or decreases in the estimated demands and values. However, such increases may not exceed 25% of initial contract amount.

### **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.



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## 6. CLAUSE – OBLIGATIONS

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 yearly cost for services described as STANDARD SERVICES shall be US\$ [AMOUNT].
- 8.1.2.** The SERVICE CALL fee for HVAC, Elevator, and 24h Monitoring shall be:
  - 8.1.2.1.** HVAC SERVICE CALL - US\$ [AMOUNT].
  - 8.1.2.2.** ELEVATOR SERVICE CALL - US\$ [AMOUNT].
  - 8.1.2.3.** 24H MONITORING SYSTEM SERVICE CALL - US\$ [AMOUNT].
- 8.1.3.** In order to cover ABOVE STANDARD SERVICES, SERVICE CALLS, and REPAIRS, the CONTRACTING PARTY has allocated **US\$ 00,000.00 as a contingency budget per 12 months of contract performance.**
- 8.1.4.** The price per range of snow removal for ABOVE STANDARD SERVICES - SNOW AND ICE REMOVAL FOR AREAS REQUIRING HEAVY EQUIPMENT shall be:

Location	Full Chemical Application	Range 1	Range 2	Range 3	Range 4
	Fixed Cost per Application	3-4.99"	5-6.99"	7-8.99"	9-10.99"





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MD					
DC					

## 9. CLAUSE - SUBCONTRACTING

9.1. In case there is sub-contracting, it shall abide by the following guidelines:

9.1.1. Sub-contracting may be authorized by the BACW's Chief, through the CONTRACT MONITOR.

9.1.2. Sub-contractor shall prove having the technical qualification to perform the services, even though, the responsibility for the quality of such services lies on the CONTRACTED PARTY.

9.1.3. In the event of sub-contracting, the CONTRACTED PARTY shall still bear full responsibility for full performance of the Contract, being responsible for supervising and coordinating the activities of the sub-contractor, as well as responding before the CONTRACTING PARTY for strict compliance with the Contract agreements related to the object that was subcontracted.

## 10. CLAUSE - TERMS

10.1. Term of Validity

10.1.1. 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.

10.1.2. 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.

10.2. Term of Execution

10.2.1. The period of execution of the CONTRACT shall be 12 months period, starting at the SERVICE ORDER issuance.

10.3. Acceptance Timeframe

10.3.1. The services performed must be accepted by the Administration through an adequately qualified Commission, referred to as COMREC by means of a Term of Receipt.

10.4. Payment Processing Time

10.4.1. The payment processing time shall be up to 30 days, starting on the date on which the Term of Receipt is issued.

## 11. CLAUSE - FINANCIAL GUARANTEE

11.1. The provision of a Contract guarantee shall be required from the CONTRACTED PARTY, in the amount of 5% (five) percent of the total maximum amount of the Contract, within 10 business days of the signature of the Contract, in order that the Service Order may be signed,



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and consequently, the execution of the Contract can begin. The CONTRACTED PARTY can provide the Contract guaranty in the following modalities in the discretion of the CONTRACTING PARTY:

**11.1.1.** Security Deposit in the form of monies or bonds;

**11.1.2.** Bank guaranty.

**11.1.2.1.** A guaranty that does not cover all the possible risks and losses associated with the performance of the Contract shall not be accepted.

**11.2.** A guaranty that is provided as bank guaranty or insurance guaranty must be valid throughout the term of the Contract.

**11.3.** If the amount of the guaranty is used, in whole or in part, by the CONTRACTING PARTY, as compensation for any losses caused by the CONTRACTED PARTY's conduct during the performance of the Contract, the CONTRACTED PARTY shall proceed to replenish that respective amount within five (5) business days, from the date it is notified.

**11.4.** After the completion of the Contract, when regular compliance of all obligations of the CONTRACTED PARTY is verified, the guaranty provided by the CONTRACTED PARTY shall be released and returned.

## **12. CLAUSE - CHANGES TO THE CONTRACT**

**12.1.** 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.

**12.1.1.** 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.

**12.1.2.** 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.

## **13. CLAUSE - PRICE ADJUSTMENT**

**13.1.** 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.

**13.2.** 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.

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



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

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

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

**13.7.** 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*).

**13.8.** 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.

#### **14. CLAUSE - MONITORING**

**14.1.** The MONITOR must be an Administrative employee, specifically appointed by the Administration, in accordance with the precepts established by Law Nº 8.666/1993, of ICA nº 65-8/2009, and of ICA nº 12-23/2014, so as to monitor and inspect the fulfillment of the contract to be executed.

**14.2.** Monitoring of contractual fulfillment consist in verifying the conformity of the services and the allocation of the necessary resources, thereby ensuring the perfect application of adjustment, and it must be performed by the MONITOR.

**14.3.** The CONTRACTING PARTY'S representative must have the necessary experience to monitor and oversee the performance of the Contract.

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

**14.5.** Contractual performance must be monitored and inspected through oversight instruments such as reports, including monitoring of the fulfillment of the obligations arising from this agreement.

**14.6.** The MONITOR shall note in his records all events related to the performance of the Contract, taking the necessary measures for the complete fulfillment of contractual clauses. The measures exceeding his competence must be notified to the relevant authority in a timely manner.

**14.7.** 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.

#### **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. The payment will occur as follows:

**15.1.1.** Upon presentation of the INVOICE with the required documentation as follows:

**15.1.1.1.** CONTRACTED PARTY Quality Control Monthly Report.



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**15.1.1.2.** Inspection forms from the CONTRACTING PARTY with its corrective actions.

**15.1.1.3.** Receipt signed by the MONITOR stating the amount of time and range to be billed in case of SNOW AND ICE REMOVAL FOR AREAS REQUIRING HEAVY EQUIPMENT.

**15.1.1.4.** Description of any SERVICE CALL performed in the billed period.

**15.1.1.5.** Report from HVAC PREVENTIVE MAINTENANCE stating the execution of the HVAC PREVENTIVE MAINTENANCE and/or any services to be performed.

**15.1.2.** Term of Receipt issued by COMREC after appraisal and acceptance of the required documents specified in this BASIC PROJECT.

**15.1.3.** INVOICES, in U.S. dollars, must be forwarded to the COMREC with the proper documentation attached to it.

**15.1.4.** INVOICES forwarded to the COMREC without proper documentation as requested above **shall not be paid**. The time for the CONTRACTED PARTY to furnish the documentation will not implicate in delay in payments by the CONTRACTING PARTY. The INVOICES will only be accepted by COMREC with the requested documentation.

**15.1.5.** The CONTRACTING PARTY may hold the monthly payment so the CONTRACTED PARTY may correct the unacceptable performance.

## **16. CLAUSE - RECEIPT OF THE OBJECT**

**16.1.** The services that are the object of the CONTRACT shall be received by the Receiving Commission (COMREC) in accordance with the specifications set forth in the BASIC PROJECT, Annex I of this Bid Announcement.

**16.2.** It is the responsibility of the RECEIVING COMMISSION to:

**16.2.1.** Ensure that the CONTRACTED PARTY meets all requirements for the service objects, which are described in this BASIC PROJECT:

**16.2.2.** Accept or reject services according to the specifications set forth in the BASIC PROJECT within 10 (ten) consecutive days:

**16.2.3.** Once approved, the INVOICES shall be sent to the BACW's Contract Department, together with an Acceptance Receipt within 5 (five) days. If there is any discrepancy, the INVOICE must be returned to the CONTRACTED PARTY, so that the necessary corrections may be made, with a letter explaining the reasons for its return; and

**16.2.4.** During the performance of the CONTRACT, all proposals, questions, discrepancies, causing difficulties or requiring evaluation must be submitted to the MONITOR. If necessary, the MONITOR may submit all proposals, questions, discrepancies, causing difficulties or requiring evaluation for the purpose of receiving approval and/or issue of opinion by the BACW'S Chief.

## **17. CLAUSE - ACTS OF GOD OR FORCE MAJEURE**



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**17.1.** 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.

**17.2.** 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).

## **18. CLAUSE – TERMINATION**

**18.1.** Pursuant to the provisions of Article 78 of Lei nº 8,666/93 (Brazil), the following are causes for terminating this Contract:

- 18.1.1.** Failure to comply with CONTRACT clauses, specifications, projects and deadlines;
- 18.1.2.** Inappropriate compliance with CONTRACT clauses, specifications, projects and deadlines;
- 18.1.3.** Slowness in its compliance which may lead the CONTRACTING PARTY to find it impossible to complete the services within the established deadlines;
- 18.1.4.** Unjustifiable delay in initiating service;
- 18.1.5.** Stoppage in the service, without cause, and without providing previous notice to the CONTRACTING PARTY;
- 18.1.6.** Failure to comply with orders from the authority designated to follow up and supervise the performance of services, or higher authorities;
- 18.1.7.** Repeatedly making errors in the performance of services, duly recorded pursuant to § 1 of Article 67 of Law nº 8,666/93 (Brazil);
- 18.1.8.** Bankruptcy;
- 18.1.9.** Dissolution of company or death of the CONTRACTED PARTY;
- 18.1.10.** Corporate change or alteration of purpose or business of the CONTRACTED PARTY that hinders the performance of the CONTRACT;
- 18.1.11.** 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;
- 18.1.12.** 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;
- 18.1.13.** 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;
- 18.1.14.** Failure of the CONTRACTING PARTY to release the object for the performance of services within the established deadlines;



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**18.1.15.** Acts of God or force majeure that prevents performance of the CONTRACT, which is to be duly demonstrated;

**18.1.16.** Violation of the provisions of items V of Article 27 of Law n° 8,666/93 (Brazil), notwithstanding the applicable criminal sanctions.

**18.2.** Termination will be formally recorded under the law, with the right of due process and ample defense ensured.

**18.3.** Termination of this CONTRACT may be:

**18.3.1.** Decided unilaterally and in writing by the CONTRACTING PARTY in the event listed under in items 1 to 10, and 16, of this CLAUSE;

**18.3.2.** Agreeable, through an agreement between the parties, entered as an addendum in the process, provided it is convenient to the CONTRACTING PARTY; and

**18.3.3.** Judicially, pursuant to applicable legislation.

**18.4.** The Administrative or agreeable termination shall be preceded by written and well-grounded authorization by the appropriate authority.

**18.5.** 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.

**18.6.** 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.

**18.7.** The term of terminations shall include, as appropriate:

**18.7.1.** Assessment of contract services provided and those that have been fully completed;

**18.7.2.** List of payments made and payments due; and

**18.7.3.** Indemnifications and fines.

## **19. CLAUSE - BUDGETARY ALLOCATION**

**19.1.** The expenses arising from this contract shall be paid with resources of the item 33.90.39, Action 2000, Work Program: 05.122.2108.2000.00001 received by the BACW from the Plan of Action of the Aeronautical Command, based in the Brazilian General Budget for the fiscal year.

## **20. CLAUSE – VIOLATIONS AND ADMINISTRATIVE SANCTIONS**





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**20.1.** For the application of administrative sanctions it should be considered the following: the seriousness of the offense; recidivism; damage to the public interest; and the injury to the Administration.

**20.2.** Failure to comply with the CONTRACT in whole or in part or any breach of the obligations contained in the CONTRACT and in this bidding document will subject the CONTRACTED PARTY, without prejudice to other civil and criminal penalties, to any and all damages and remedies available to hereby CONTRACTING PARTY under the CONTRACT or applicable law, ensure due process, the following penalties:

**20.2.1.1.** Warning is the administrative penalty imposed when the CONTRACTED PARTY infringe, for the first time, obligations related to delayed contractual terms or invoice presentation for mistakes, or for breach of supervision guidelines within 48 (forty eight) hours from the date of notification of the MONITOR. For the purposes of warning one PAAI should be instructed.

**20.2.1.1.1.** The warning should not be proposed for recurrence in the same kind of failure cases.

**20.2.1.2.** Fines referred to in item II of Art. 87 (fine for total or partial non-performance of CONTRACT) of Federal Law n° 8.666 / 93 (Brazil) may be defined and implemented as follow:

**20.2.1.2.1.** A fine may be applied for partial non-performance in the amount of 0.2% of the total amount of the CONTRACT if the CONTRATED PARTY fails to comply with any condition set in the CONTRACT; and

**20.2.1.2.2.** If the CONTRACTED PARTY causes termination of the contract, a fine will be imposed, for non-performance, in the amount of 10% (ten percent) of the current value of the CONTRACT, subject to late-payment penalty or other sanctions pursuant to art. 87 of Federal Law 8.666/93 (Brazil).

**20.3.** Provided prior defense of the person concerned within five (5) business days, the fine for the total or partial non-performance of the CONTRACT, referred to in item II of art. 87 of Federal Law n° 8.666/93 (Brazil), may be applied along with other administrative sanctions provided for in items I, III and IV of art. 87 of Federal Law n° 8.666/93 (Brazil).

**20.4.** BACW must inform the CONTRACTED PARTY the amount to be collected, exhausted all administrative remedies and the right to legal defense, should the CONTRACTED PARTY discount the value of future payments.

**20.4.1.** If payment of the preceding items is not satisfied, the fines will be deducted from the financial guarantee.

**20.5.** After the actions mentioned in the previous items, if it persists the denial of payment of the fine, the Expenses Authority (holder or delegate) of BACW, as appropriate, will be forward the process to the Brazilian Attorney General of the National Treasury (PGFN) for analysis and description of the company sanctioned in Active Debt of the Union (DAU) and / or initiate the judicial execution, depending on the amount involved.

**20.6.** The fine will not relieve the CONTRACTED PARTY of repairing the damages caused to the Administration, nor rule out the possibility of the imposition of other administrative penalties.

**20.7.** The application of the fines provided for in the preceding items may be appealed within 5 (five) business days, as provided in item "f", I, art. 109 of Federal Law n° 8.666/93 (Brazil).



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**20.8.** The temporary suspension of participation in bidding processes and the prohibition to contract with the Administration, pursuant to subsection III of Article 87 of Federal Law nº 8.666/93 (Brazil), combined with Article 9 of Federal Law nº 10.520/2002 (Brazil), will be applied in MOs under the jurisdiction of the COMAER, with the following:

**20.8.1. For up to 30 (thirty) days:**

**20.8.1.1.** In noncompliance of the deadline for taking corrective measures during the application of the warning sanction; and

**20.8.1.2.** The disruption of any act of public bidding session.

**20.8.2. For up to three 3 (three) months:**

**20.8.2.1.** The withdrawal of the proposal, without just cause due to supervening fact;

**20.8.2.2.** The complaint of the unenforceability of the prices presented; and  
In presentation of frivolous appeal.

**20.8.3. For up to six (6) months:**

**20.8.3.1.** The refusal of the winning bidder, convened within the period of validity of its proposal, to sign or accept the contract or withdraw any equivalent instrument;

**20.8.3.2.** The absence of financial guarantee submission under this Invitation for Bid;

**20.8.3.3.** The recurrence of punishable illicit practice in the form of letters "25.8.1" and "25.8.2" of this item, in less than 24 (twenty four) months;

**20.8.3.4.** The application of the second administrative sanction accompanied by a fine;

**20.8.3.5.** The implementation of two administrative sanctions warning and a fine under the COMAER with in 12 (twelve) months, unless the supplier has taken corrective action within the period determined by the Administration; and

**20.8.3.6.** The implementation of two administrative sanctions fine under the COMAER with in 12 (twelve) months, unless the supplier has taken corrective action within the period determined by the Administration;

**20.8.4. For up to twelve (12) months:**

**20.8.4.1.** When the CONTRACTED PARTY delays unreasonably the execution of the service, which implies termination;

**20.8.4.2.** When the CONTRACTED PARTY does not pay the fine within the period prescribed in situations where you cannot discount the value of collateral or receivables from performed installments; and

**20.8.4.3.** The recurrence of punishable default practice in the form of the letter "25.8.3" of this item, within less than 36 (thirty six) months.

**20.8.5. Up to 24 (twenty four) months:**

**20.8.5.1.** In the commission of an unlawful act, seeking to frustrate the objectives of this Bidding, such as the formation of collusion or cartel;

**20.8.5.2.** In the presentation of "fraudulent" documents "adulterated", "false" or "fake";





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- 20.8.5.3.** In the issue of "false declaration";
- 20.8.5.4.** In the definitive conviction for willful practice of tax fraud in the collection of taxes related to the CONTRACT;
- 20.8.5.5.** In the shutdown of the service without good cause and without prior notice to the Administration;
- 20.8.5.6.** In the delivery of material "fake" or "adulterated", using trickery to deceive the Administration;
- 20.8.5.7.** In the contractual non-performance resulting in serious damage to the Administration; and
- 20.8.5.8.** In the recurrence of punishable default practice in the form of item "25.8.4" term of less than 48 (forty eight) months.

**20.9.** For the purposes of this INVITATION FOR BID, as regards to the application of the administrative penalty of temporary suspension of participation in bidding and obstruction to CONTRACT with the Administration, the term "Administration" refers to the COMAER.

**20.10.** It is understood by failure in the performance of the CONTRACT, means to not complete the provision of the service in accordance with the technical specifications contained in this CONTRACT.

**20.11.** It is understood by disreputable behavior, means the intentional conduct of trying to deceive or corrupt the Administration, or any of its agents, to obtain undue advantage.

**20.12.** The PAAI application of declaration of unfitness will be forwarded to the State Defense Minister, through the chain of command and the opinion of COJAER, given the exclusive competence of the sanction by the Minister of State. The application of this penalty will occur in any of the situations below:

- 20.12.1.** The CONTRACTED PARTY has suffered definitive conviction for tax fraud;
- 20.12.2.** A business or professional committed unlawful act aimed at frustrating the objectives of the tender;
- 20.12.3.** The Administration may find that the company or professional does not have competence to be hired because of committed unlawful acts; or
- 20.12.4.** Finding, by the Court of the Union, the occurrence of fraud in connection with the Bid.

**20.13.** The criteria to revoke the Certificate Good Standing, which may not exceed 5 (five) years under the current legislation, will be defined by the Ministry of Defense. Rehabilitation for this sanction may be required by the person concerned after the expiry of two (2) years of its application.

**20.14.** In the event the Certificate of Good Standing is revoked, it will be suggested the application of the penalty which should indicate in their PAAI to the purpose of to provide rehabilitation of the amount to be reimbursed, with due legal charges and any obligations.

## **21. CLAUSE – LINKAGE**

**21.1.** This Contract is hereby linked to Invitation to Bid n° [NUMBER]/CABW/2020, and the Commercial Proposal of the CONTRACTED PARTY, submitted by company [COMPANY'S NAME] to BACW.



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**22. CLAUSE – JURISDICTION AND CHOICE OF LAW**

**22.1.** 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.

**22.2.** 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.

**22.3.** 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.

**23. CLAUSE – CORRESPONDENCE AND NOTIFICATION**

**23.1.** 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:**

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON

Attn: Bidding and Contracts Division

1701 22<sup>nd</sup> Street NW, Washington, D.C. 20008 - USA

Phone: 202/518-7359

Fax: 202/483-4684

E-mail: [chf.dlc.cabw@fab.mil.br](mailto: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:

**24. CLAUSE – NUMBER OF THE COPIES**



**-----MINUTA / CONTRACT DRAFT-----**

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

- 24.1.1.** (One) original for the CONTRACTING PARTY; and
- 24.1.2.** (One) original for the CONTRACTED PARTY.

**24.2.** 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 DC, **MM/DD/2021.**

**For the CONTRACTING PARTY:**

\_\_\_\_\_  
Roberto Martire Pires, Col  
Chief of BACW

**For the CONTRACTED PARTY:**

\_\_\_\_\_  
NAME

**WITNESSES:**

\_\_\_\_\_  
Rodrigo Otavio Correa Sampaio, Lt Col  
Chief of BACW Internal Control

\_\_\_\_\_  
NAME  
CONTRACT MONITOR

**WITNESSES for the CONTRACTED PARTY:**

\_\_\_\_\_  
NAME: .....ID n° .....



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## **ANNEX A**

## **BASIC PROJECT**



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**ANNEX B**

**PRICE PROPOSAL**



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**ANEXO C**  
**PHYSICAL AND FINANCIAL SCHEDULE**

<b>PHASE</b>	<b>DESCRIPTION</b>	<b>VALUE (US\$)</b>	<b>TERM FOR EXECUTION</b>	<b>TERM FOR PAYMENT</b>
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
<b>TOTAL</b>		<b>XXXXXX</b>		