

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



**BIDDING PROCESS No. 221692/CABW/2022**  
**PAG No. 67102.221692/2022-74**



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MINISTRY OF DEFENSE  
AERONAUTICAL COMMAND  
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON D.C.

**BIDDING PROCESS IFB No. 221692/CABW/2022**  
**PAG No. 67102.221692/2022-74**

Approved on: September 06, 2022.

Wilson Paulo Corrêa Marques Col  
Head of the BACW

**Legal Support:** The Brazilian Federal Government, through the Brazilian Aeronautical Commission in Washington (“BACW”), lets it be known to all who may be interested, that on the date, time and place indicated below, the BACW will carry out a Bidding Process on the basis of indirect execution, to be adjudicated based on the **LOWEST UNIT PRICE** (Letter A, Sub-item VIII of Article 6 of the Brazilian Federal Law No. 8,666/93), in accordance with this Invitation for Bid and its Annexes. This Bidding Process will follow the guidelines of the Brazilian Federal Law No. 8,666/93, its related legislation, and the other requirements provided in this Invitation for Bid and its Annexes. Furthermore, proposals submitted to the BACW will be interpreted, evaluated and judged according to the provisions contained in the articles No. 3 and No. 123 of the aforementioned law, regarding legality, impartiality, moral, equality, transparency.

|  |  |
|--|--|
| Date of Delivery and Opening of Envelopes: | <b>September 19, 2022</b>                      |
| Time:                                      | <b>10:00 a.m. (US - Eastern Standard Time)</b> |

|          |  |         |  |
|----------|--|---------|--|
| Address: | 1701 22nd St N.W.<br>Washington D.C. 20008 | Phone:  | +1 (202) 518-7348  |
|          |  | Fax:    | +1 (202) 483-4684  |
|          |  | E-mail: | <a href="mailto:chf.dlc.cabw@fab.mil.br">chf.dlc.cabw@fab.mil.br</a> |

|                |  |
|----------------|--|
| Accreditation: | <b>September 19, 2022</b>                      |
| Time:          | <b>10:00 a.m. (US - Eastern Standard Time)</b> |



## 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:

**1.1.1.1. THE ADMINISTRATION** – The Brazilian Federal Government;

**1.1.1.2. COMAER** – The Brazilian Air Force Command;

**1.1.1.3. COMREC** - Goods and Services Receiving Commission;

**1.1.1.4. CONTRACTED PARTY** – The individual or legal organization contracted to perform the required services;

**1.1.1.5. CONTRACTING PARTY** – The Brazilian Aeronautical Commission in Washington, DC (BACW);

**1.1.1.6. EXPENSE CONTRACT** or **CONTRACT** - The Agreement which the Public Administration (CONTRACTING PARTY), acting as such, signs with a private individual or other Administrative Organization (CONTRACTED PARTY), for the performance of the services required and under the conditions set forth by the Brazilian Public Administration;

**1.1.1.7. EXPENSES SUPERVISOR** – A Public Administration Agent with the authority to perform acts resulting in funds citations, payments authorization, funds supply, approvals estimation, among other duties;

**1.1.1.8. FAB** – The Brazilian Air Force;

**1.1.1.9. ICA** – The Aeronautical Command Directive;

**1.1.1.10. INVOICE** – A commercial document formalizing a purchase and sale abroad, which must contain - among other information - the following data: supply quantity, supply unit, price, payment terms, taxes, duties and the FAB Purchase Order Number;

**1.1.1.11. MO** - Military Organization;

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

**1.1.1.13. PAAI** – A 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);

**1.1.1.14. PAG** – Administrative Management Process;

**1.1.1.15. BASIC PROJECT** - As per the Brazilian Federal Law No. 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;

**1.1.1.16. TERM OF RECEIPT** – A document issued by the COMREC attesting and accepting the services performed.



## 2. OBJECT

**2.1.** The contracting of **180-hour "DRY" training services in the VH-35 (EC-135) aircraft flight simulator equipment**, in order to meet the needs of the COMAER, in accordance with the Technical Data Sheet, APPENDIX A of the BASIC PROJECT, according to the conditions, quantities and expectations established in this document, and in the table below:

| ITEM | ODGSA  | QTD OF HOURS / IOS | AIRCRAFT       | CATEGORY | GUY | REFERENCE UNIT VALUE (USD) | TOTAL REFERENCE VALUE (USD) |
|------|--------|--------------------|----------------|----------|-----|----------------------------|-----------------------------|
| 1    | GABAER | 180 hours          | EC-135 (VH-35) | D        | DRY | 1.114,76                   | 200.657,40                  |
| 2    | GABAER | 5 IOS              | EC-135 (VH-35) | D        | DRY | Free Of Charge             | Free Of Charge              |

**2.2.** The training type "DRY", presented in the Technical Data Sheet, means that the contracted company should only rent the hours in the flight simulator, because the instructors will be the own pilots of the Brazilian Air Force, after participating in the course for simulator operation, provided by the CONTRACTED COMPANY.

**2.3.** In light of the complexity of the avionics and the emergencies associated with the aircraft, the simulator for the training of pilots must be certified as Full Flight Simulator (FFS), minimum acceptable level "D". The qualification of Flight Simulator Training Devices (FSTD) aims to verify their performance and realism characteristics, as well as classify them in the various existing categories. Qualification is an activity based on technical standards issued by civil aviation regulatory agencies, which establish objective and subjective parameters of quality and realism. In the case of COMAER, FSTDs are used for training provided for in the Instruction and Operational Maintenance Programs of subordinate air units.

**2.4.** The flight simulator must be approved by either ANAC (National Civil Aviation Agency), FAA (Federal Aviation Administration) or EASA (European Union Aviation Safety Agency), aviation regulatory agencies in Brazil, in the United States and in Europe, which have a system for qualification of Flight Simulator Training Devices (FSTD – Flight Simulator Training Devices), which aims to verify its performance and realism characteristics, as well as to classify it in the various existing categories. The FSTD qualification is an activity based on technical standards issued by civil aviation regulatory agencies, which establish objective and subjective parameters of quality and realism. Only devices with a certification awarded by ANAC can be used to generate flight hours credits in pilot training services, as provided for in RBAC 61 (Brazilian Civil Aviation Regulation).

**2.5.** To ensure approval by the ANAC, the Bidder may verify its qualification through the website: <https://www.anac.gov.br/assuntos/setor-regulado/empresas/simuladores-de-voo-fstd/arquivos/Simulador.xls>.

**2.6.** To ensure approval by the FAA, the Bidder may verify its qualification through the FAA website: [https://www.faa.gov/about/initiatives/nsp/data\\_lists/](https://www.faa.gov/about/initiatives/nsp/data_lists/).



2.7. To ensure approval by the EASA, the Bidder may verify its qualification through the EASA website: <https://lisstdis.easa.europa.eu> (FSTD qualified by EASA and FSTDs qualified by the National Aviation Authority of the respective EU Member State – incl. EFTA States).

2.8. The FSTD can be approved as a means of training in an Air Operator's Operational Training Program (RBAC 121 or RBAC 135), Civil Aviation Training Center (RBAC 142), or in a Civil Aviation School Instruction Program (RBHA 141). In the case of the COMAER, the FSTD are used for training provided for in the Operational Lifting Programs of subordinate air units.

2.9. The execution of the services required in this Invitation for Bid and its related Basic Project, must comply with the laws and regulations determined by the U.S. government, the district and the state in which the buildings are located.

2.10. The following annexes are integral parts of this Invitation for Bid, regardless of whether or not they are herein transcribed:

**ANNEX I – BASIC PROJECT;**

**ANNEX II – PRICE PROPOSAL MODEL; and**

**ANNEX III – CONTRACT DRAFT.**

2.11. The estimates detailed in this Invitation for Bid do not imply any obligation by the CONTRACTING PARTY.

2.12. The services that are the object of this Invitation for Bid shall be performed on the basis of indirect execution, at the **Lowest Unit Price**.

### **3. PARTICIPATION REQUIREMENTS**

3.1. Interested companies, registered with the BACW or not, that are related to the object of this bidding may participate in this Bidding Process pursuant to the provisions of the respective acts that established the bidding. The BACW will select and invite at least three (3) companies.

3.2. Companies that are under the following conditions may not participate in the bidding:

3.2.1. Bankruptcy, legal restructuring, or extrajudicial reorganization;

3.2.2. Dissolution or liquidated;

3.2.3. Suspended from participating in bidding processes or have a note of failure on the execution of a contracting in its registration in BACW in the last 3 months;

3.2.4. Barred from participating in bidding processes and entering into a Contract agreement with the Brazilian Federal Government;

3.2.5. That are declared not to be in good standing to enter into an agreement with the Public Administration (Brazil);

3.2.6. That are part of a consortium, or joint venture that is separately participating in the bidding, or control or are controlled by another entity participating in the bidding process.

### **4. ACCREDITATION**

4.1. The bidder, or its representative shall report to the Bidding Commission at the place, date and time indicated in the preamble to this Invitation for Bid for the purpose of conducting the registration of the participants in this Bidding Process, with his/her ID card, or other identification document, along with the document granting him/her powers to express opinions during the



bidding procedures (such documents shall be made available outside of the Envelopes containing the Qualification Documents and Commercial proposals).

**4.1.1.** Failure to present any of the documents for registration or presentation of incorrect documents shall not preclude participation of the bidder. However, it will prevent its representative from expressing an opinion on behalf of the bidder.

**4.2.** The representative of a bidder shall be any qualified individual under the terms of its incorporation papers, public power of attorney document, private and notarized power of attorney document, or equivalent document.

**4.2.1.** Incorporation papers or registration as a proprietorship shall describe the authority of the representative of the bidder to represent it before third parties.

**4.2.2.** A power of attorney document shall describe all the required powers to present proposals and carry out all acts pertaining to the bidding process, and should be accompanied with incorporation papers or proprietorship registration.

**4.3.** A registered representative may only represent one bidder.

## **5. ENVELOPES WITH QUALIFICATION DOCUMENTATION AND PROPOSAL**

**5.1.** Each bidding participant shall present two (2) envelopes, one containing the Qualification Documents and the other containing the Price Proposal.

**5.2.** The sets of documents pertaining to Qualification and Price Proposal shall be delivered separately, inside sealed envelopes, with an initial on the flap and identified with the name of the bidder.

**5.3.** Bidders are strongly urged to use the following identification label format in order to identify their bids.

**ENVELOPE No. 01 – QUALIFICATION DOCUMENTS**  
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON  
INVITATION FOR BID No. 221692/CABW/2022  
[NAME OF THE COMPANY]

**ENVELOPE No. 02 – PRICE PROPOSAL**  
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON  
INVITATION FOR BID No. 221692/CABW/2022  
[NAME OF THE COMPANY]

**5.4.** The ENVELOPE No. 01 – QUALIFICATION DOCUMENTS, and the ENVELOPE No. 02 – PRICE PROPOSAL **must be included in an oversized envelope, sealed and addressed to the BIDDING COMMISSION.** The name and address of the bidder must be shown in the upper left corner of the bid envelope, and the invitation number, the date and hour of bid opening must be shown in the envelope in accordance with the following model:



**C/O BIDDING COMMISSION – BID # 221692/CABW/2022**  
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON  
1701 22nd Street N.W. Washington, DC 20008

SESSION ON **September 19, 2022 at 10:00 a.m. (EST)**  
**[NAME OF THE COMPANY]**

**5.4.1.** The envelope may be forwarded by Postal Service or other similar delivery services, with tracking capabilities, and proof of delivery receipt. The envelope must be delivered at least by the opening of the public session at **10:00 a.m.** (Eastern Standard Time) of **September 19, 2022.**

**5.4.1.1.** Bidders are strongly advised to inform the tracking number of their envelopes to the BIDDING COMMISSION by means of the e-mail [chf.dlc.cabw@fab.mil.br](mailto:chf.dlc.cabw@fab.mil.br) prior to the date and time of the opening of the public session.

**5.4.1.2.** Envelopes delayed to be delivered to the BIDDING COMMISSION due to carrier issues or improper envelope identification shall not be considered.

**5.4.1.3.** BACW shall not be responsible for mistakes due to envelopes improper identification.

**5.4.1.4.** When sending envelope by Postal Service, the bidder must include the bid number on the outside envelope, so the package can be identified when arrived at BACW. (e.g. Some carriers permit the inclusion of the Bidding Number in the REFERENCE field.)

**5.4.2.** Envelopes may also be presented in person to the Bidding Commission in the public session.

## **6. QUALIFICATIONS (ENVELOPE No. 01)**

**6.1.** Companies must deliver the following documents in its qualification envelope.

**6.2.** Legal Qualification:

**6.2.1.** Present evidence of the **Company's Federal Tax Identification Number/EIN;**

**6.2.2.** Proof that the Company has, in its Articles of Incorporation, other governing document, or Commercial License, **the description that it is specialized in Flight Simulators Training;**

**6.2.3.** Updated proof that the **company properly maintains the flight Simulator required equipment;**

**6.2.4.** Proof that the flight simulator device is **accredited by Aviation Agency**, with qualification system for Flight Simulator Training Devices (FSTD). In this case, it can be ANAC (Brazil), FAA (USA), and/or EASA (Europe).

**6.2.5.** Present a valid **Certificate of Liability Insurance** of the Company (proof of insurance);

**6.3.** The required certificates and/or statements shall be valid in cases where there are expiration dates.

**6.4.** No delivery slip or official request for documents will be accepted in lieu of the documents required in this Invitation for Bid and its Annexes.





## 7. PRICE PROPOSAL (ENVELOPE No. 02)

**7.1.** The proposal, which should be typed and written in English, must be clear and have no amendments or erasures, duly dated and signed, with all pages initialed by the bidder's representative, according to the PRICE PROPOSAL model in ANNEX II and the BASIC PROJECT in ANNEX I. The Price Proposal shall include:

**7.1.1.** The **UNIT PRICE** (hourly price) of training in the **flight simulator**.

**7.1.1.1.** In order to achieve the GLOBAL (TOTAL) PRICE, the UNIT PRICE (hourly price) shall be multiplied by the maximum number of hours estimated for flight simulator training, in accordance with item 2.1. of this Invitation for Bid.

**7.1.2.** The service quoted shall include all costs arising from the performance of the services, whether direct or indirect, including but not limited to what is described below: all inputs such as fees and/or taxes, insurance, social contributions, duties and taxes, administrative fees, permits, and all other fees necessary for full compliance with the object of the Invitation for Bid, in accordance with the BASIC PROJECT.

**7.1.3.** Costs identified as funding or other non-specific terms shall not be accepted in the price proposal.

**7.1.4.** Tax rates quoted by the bidder shall not exceed the limits established under applicable tax legislation.

**7.1.5.** The validity of the proposal shall not be less than sixty **(60) days** from the day the bidding process is officially initiated.

**7.2.** Under no circumstances shall the content of the submitted proposals be changed, neither with regard to price nor any other terms or conditions that imply any alteration to the original proposal. Exceptions are allowed only when these are formal changes intended to resolve immaterial errors or mistakes, without any alteration to the substantive content of the proposal or the aforementioned terms and conditions, and provided they will not cause any adverse impact to the other bidders.

**7.3.** Errors in filling out the proposal should not warrant disqualification of the proposal when it is possible to make adjustments without the need to increase the prices offered, and provided it is demonstrated that the amount will be sufficient to cover all costs of the Contract.

**7.3.1.** In case errors are noticed, the Bidding Commission will perform a diligence in order to assure that the adjustments to be made do not constitute a need to increase the offered prices, and/or the offered price covers the cost of the CONTRACT.

**7.3.2.** Any correction in proposals shall be duly recorded in the open session's meeting minutes.

**7.4.** The changes addressed under this item shall be submitted to the Bidding Commission for review.

**7.5.** The Bidding Commission may perform the correction of any of the above-described errors, or it can request the Bidder to submit the corrected proposal. No complaints with regard to the proposals will be admitted after they are duly recorded in the minutes.

**7.6.** After qualification, it is not possible to withdraw a proposal, unless for cause due to a supervening fact as accepted by the Commission.



7.7. The award will be made to the lowest responsive bid after qualification phase and price proposal acceptance.

7.8. The price for the services required is estimated to be a maximum of **US\$ 200,657.40 (two hundred thousand, six hundred and fifty-seven US dollars and forty cents)** for a 12-month period of contractual performance.

## **8. PROCEDURE FOR OPENING ENVELOPES**

8.1. On the date, time and place indicated in this Invitation to Bid, in a public act, before the bidders present, the Permanent Bidding Commission will receive the oversized sealed envelopes (referenced in item 5.4) containing **Envelopes nº 01 and nº 02**, and will proceed to initiate the bidding process.

8.1.1. These public acts may be attended by any person, but only the bidders and their registered representatives will be allowed to engage the Bidding Commission in conversation.

8.2. Once the deadline for delivering the documents has passed, no other documents will be received, nor will there be accepted any addendum or clarifications regarding the documentation or price proposal submitted.

8.3. After the bidders are identified, the Bidding Commission will proceed to opening Envelopes nº 01 – Qualification Documents.

8.3.1. The content of the envelopes shall be initialed by the members of the Bidding Commission and the representatives of all of the bidders present.

8.4. The qualification of the bidders will be verified, in accordance with this Invitation to Bid.

8.4.1. Should the Bidding Commission deem necessary, it could adjourn the public session, so as to analyze the documents presented by the bidders, setting, at that time, a new date and time when a new public meeting will take place, informing all bidders.

8.4.1.1. Considering the above hypothesis, all the qualification documents already initialed, and the Envelopes nº 2 – Price Proposals – initialed on the outside by the present bidders and the Bidding Commission members, will be kept by the Bidding Commission, until the qualification phase is concluded.

8.5. Disqualified bidders will have the Envelope nº 2 returned unopened after the legal period has transpired without appeal or its withdrawal, or an adverse decision on its appeal.

8.6. In case there are not 3 (three) participating bidders at the bidding meeting, the Bidding Commission will inquire to the present bidders about safeguarding their envelopes for a republishing of the IFB to be announced at later date.

8.7. After the analysis of the QUALIFICATION DOCUMENTS, it will be granted the deadline of 2 (two) business days, for the bidders to present any appeals. After that, a date for new meeting for opening the PRICE PROPOSAL will be announced.

8.7.1. The opening of PRICE PROPOSAL may occur at the same meeting in the following cases:

8.7.1.1. All bidders are declared QUALIFIED by the BIDDING COMMISSION, and the present bidders waive their right to appeal.

8.7.1.2. All the bidders are present and waive their right to appeal.



**8.7.1.3.** If the Bidding Commission consults the bidders that are not present at the meeting and they waive their right to appeal together with all bidders present.

**8.8.** In the event that one of the bidders does not withdraw the right to appeal the qualification phase, Envelopes nº 2 – Price Proposals – will be initialed by the bidders, and kept in a safe until a date is set for their opening.

**8.9.** After the qualification phase is finished and all the proposals have been opened, bidders cannot be disqualified by any reason related to the qualification process, with the exception of any supervening facts, or facts only known after the judging of the proposals.

**8.10.** The price proposals from the qualified bidders will be judged according to the requirements set forth in this Invitation For Bid.

**8.11.** If all the participants are disqualified for reason of their QUALIFICATION DOCUMENTS or otherwise, the Bidding Commission may establish a term of three (3) business days for new documentation or proposals to be submitted.

**8.12.** During all public acts, detailed minutes will be prepared and signed by the members of the Commission and the bidders' legal representatives in attendance.

## **9. REVIEWING QUALIFICATION DOCUMENTS**

**9.1.** Participants will be **DISQUALIFIED** if:

**9.1.1.** They submit documents required in this Invitation for Bid that are expired and/or not duly updated and/or not responsive to the requirements set forth in the Invitation for Bid.

**9.1.2.** They include the price proposal inside Envelope nº 01.

**9.2.** Bidders will be notified of their qualification or otherwise through publication. In the event that bidder representative attends the public meeting in which the decision was made, it will be communicated directly to the representative and recorded in the minutes.

## **10. REVIEWING THE PRICE PROPOSAL**

**10.1.** The criterion for reviewing the proposal will be the **LOWEST UNIT PRICE**.

**10.2.** It will be **DISQUALIFIED** the proposal which:

**10.2.1.** Does not comply with Item 7 (Price Proposal) of this Invitation for Bid;

**10.2.2.** Is flawed or illegible, it is not specific or presents with irregularities and flaws that hinders its review;

**10.2.3.** It is not in compliance with any requirement set forth in this Invitation for Bid or the BASIC PROJECT;

**10.2.4.** It includes advantages that are not provided for in the Invitation for Bid, including subsidized financing, lack of any required due dates, or prices or advantages that are based on offers presented by another bidder;

**10.2.5.** It presents prices that are unrealistic in the sense that their viability cannot be appropriately demonstrated through documentation that proves that the costs of input are consistent with market prices and that productivity is consistent with the performance of the object;



**10.2.5.1.** Under these circumstances, the bidder will have **two (2) business days** to demonstrate the feasibility of the prices included in its proposal, in accordance with Article 48, item II, of Law nº 8,666/93 (Brazil), under the penalty of being disqualified.

**10.3.** If there are signs of unrealistic prices in the proposal, or if it is necessary to provide additional clarification, a due diligence may be carried out by the Bidding Commission, in accordance with §3 of Article 43, Law nº 8,666/93 (Brazil).

**10.4.** Once the price proposal which does not meet the requirements of the foregoing items is disqualified, the remaining proposals will be qualified from lowest to highest.

**10.4.1.** Should there be a tie among the proposals, a draw will be conducted. The names of the bidders that are tied will be placed in a sealed box, from which they will be drawn and classified on the basis of the order in which they were drawn.

**10.4.2.** After thirty minutes, the draw will be conducted, regardless of whether the companies or their representatives are in attendance.

**10.5.** Bidders will be notified of the results of bidding through either publication in a U.S. newspaper of national circulation, BACW's website, or other means, at sole discretion of BACW.

**10.5.1.** In the event that bidder representative attends the public meeting in which the decision was made, it will be communicated directly to the representative and recorded in the meeting minutes.

## **11. HOMOLOGATION AND ADJUDICATION**

**11.1.** The bidding process will be submitted to the appropriate authority, who will proceed to ratify it and adjudicate the object to the winning bidder.

**11.2.** The adjudication will be based on the **LOWEST UNIT PRICE**.

## **12. CONTRACT**

**12.1.** After the bidding is approved, the winning bidder (the "CONTRACTED PARTY") shall have **05 (five) business days**, from the date it is notified, to sign the Contract attached hereto as ANNEX III, under the penalty of losing the right to be hired as well as being subject to the sanctions set forth in this Invitation to Bid and any other penalties or damages available under applicable law.

**12.1.1.** The term provided for in the previous sub-item may be renewed for an additional five business days if requested by the CONTRACTED PARTY with good reason and accepted by the Administration (BACW) in its sole discretion.

**12.2.** The Administration (BACW) shall have the option to contact the remaining participants if the winning bidder does not sign the CONTRACT under the terms and conditions established, in accordance with the order of classification. It may do so under the same terms and conditions proposed by the winning bidder, including with regard to updated prices, pursuant to the Invitation for Bid.

**12.3.** The BACW may also revoke the bidding process at any time without penalty, notwithstanding anything else provided for in this Invitation for Bid.

**12.4.** By signing the CONTRACT, the CONTRACTED PARTY declares its express agreement with the adequacy of the BASIC PROJECT.



**12.5.** The CONTRACTED PARTY shall maintain all the conditions for qualification required in the bidding process, throughout the performance of the Contract, in accordance with the obligations assumed.

**12.6.** The CONTRACTED PARTY shall be responsible for any and all expenses arising from the Contract.

### **13. SUBCONTRACTING**

**13.1.** Sub-contracting is not authorized under this Invitation for Bid.

### **14. TERMS**

#### **14.1. Term of Validity**

**14.1.1.** 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.

**14.1.2.** 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 to the overall limit of 60 months.

#### **14.2. Term of Execution**

**14.2.1.** The period of execution of the CONTRACT shall be 12 months, starting at the contract's signature date.

#### **14.3. Acceptance Timeframe**

**14.3.1.** The services shall be definitively received by the COMREC, through a TERM OF RECEIPT, signed by the parties within 15 (fifteen) days of written notification by the CONTRACTED PARTY.

**14.3.2.** 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.

#### **14.4. Payment Processing Time**

**14.4.1.** 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 the COMREC.

**14.4.2.** This term shall renew automatically for a 10 business-day period, if there is any discrepancy noted by the contract MONITOR and mandatorily notification in writing to the CONTRACTED PARTY.

### **15. FINANCIAL GUARANTEE**

**15.1.** The provision of a performance guarantee is not required for this contract.

### **16. CHANGES TO THE CONTRACT**



**16.1.** Pursuant to Article 65, § 1, of the 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 the BACW, up to the limit of twenty-five percent (25%) of the original total value of the Contract.

**16.1.1.** 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.

**16.1.2.** 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.

## **17. PRICE ADJUSTMENT**

**17.1.** The contracted price for the provided services is fixed and cannot be changed within the first 12 months of the Contract performance.

**17.2.** After the first 12-month period, the agreed price may be readjusted, through the request by the CONTRACTED PARTY, and the price adjustment value must be no more than the maximum variation rate indicated in the Customer Price Index for All Urban Consumers (CPI-U) – Expenditure Category – All Items, issued by the Bureau of Labor Statistics – BLS, exclusively for obligations initiated and completed after the 12-month period has taken place.

**17.3.** In the readjustments subsequent to the first one, the minimum interval of 12 months (one year) will be counted from the financial effects of the last readjustment.

**17.4.** In the event of delay or non-disclosure of the readjustment index, the CONTRACTING PARTY will pay the CONTRACTED PARTY the amount calculated by the last known variation, if it is the case, settling the corresponding difference as soon as the definitive index is released.

**17.5.** In the final measurements, the index used for readjustment will necessarily be the definitive one.

**17.6.** If the index established for readjustment becomes extinct or in any way can no longer be used, it will be adopted, in substitution, the one that will be determined by the Brazilian legislation then in force.

**17.7.** In the absence of legal provision regarding the substitute index, the parties will elect a new official index, to readjust the price of the remaining value, by means of an amendment.

**17.8.** The readjustment will be carried out by an agreement term ("*Termo de Apostilamento*") document.

**17.9.** Inclusion of unanticipated benefits not foreseen in the initial price proposal is forbidden, except when they become compulsory under legal instrument.

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

**17.11.** 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.



## **18. PAYMENT**

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

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

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

**18.2.2.** 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;

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

**18.2.2.1.1.** The Equipment in which the training was performed;

**18.2.2.1.2.** Amount of training hours;

**18.2.2.1.3.** Squadron which performed the training

**18.2.2.1.4.** Date and Time of training;

**18.2.2.1.5.** Signature of the officers who performed training;

**18.3.** 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.

**18.4.** 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.

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

## **19. MONITORING**

**19.1.** The Contract's MONITOR must be an agent or agents of the Brazilian Federal Administration, specifically appointed by the Administration, in accordance with the precepts established by the Law No. 8.666/1993 (Brazil), the ICA n° 65-8/2009 (Attributions of MONITOR and Receiving Commission), and the 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.

**19.2.** Monitoring of contractual fulfillment consists in verifying the conformity of the services and the allocation of the necessary resources.

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

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



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

**19.6.** 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 any responsibility by the CONTRACTING PARTY, its representatives or employees.

**19.7.** For the purposes of this INVITATION FOR BID, 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).

**19.8.** The Contract's MONITOR should, additionally, abide by the following processes:

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

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

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

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

**19.8.5.** All INVOICES must be service invoices, detailing- at the very least- unit and total amounts for each cost, in accordance with the Contract. All supporting documentation must be attached to the INVOICE for validation by COMREC;

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

**19.8.7.** 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.

## **20. RECEIPT OF THE OBJECT**

**20.1.** 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 I of this Bid Announcement.

**20.2.** It is the responsibility of the RECEIVING COMMISSION (COMREC) to:

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

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

**20.2.3.** Once approved, the invoices are sent to BACW's Contract Department; and

**20.2.4.** 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 Head of BACW.





## **21. ACTS OF GOD OR FORCE MAJEURE**

**21.1.** Unforeseeable events or force majeure events must be notified in writing to the Head of the BACW, through the Contract's MONITOR, so that he may decide the appropriate course of action, provided it is proven that such events affect the services/materials provided in accordance with the OBJECT of the present CONTRACT.

**21.2.** For the purposes of the present CONTRACT, events shall be considered unforeseeable or force majeure, if they fit the legal description provided in the single paragraph of Art. 393 of the Brazilian Civil Code, or according to the terms of item II, §1º, Art. 57 of the Law No 8.666/93.

## **22. OBLIGATIONS OF THE CONTRACTING PARTY AND THE CONTRACTED PARTY**

**22.1.** The obligations of the CONTRACTING PARTY and CONTRACTED PARTY are established in the, BASIC PROJECT, Annex I, the CONTRACT DRAFT, Annex III, and other obligations provided for in this Invitation to Bid.

## **23. TERMINATION OF THE CONTRACT**

**23.1.** The causes for termination of the Contract, as well as the appropriate steps in that case, are provided for in the Contract.

## **24. BUDGETARY ALLOCATION**

**24.1.** Financial resources shall be drawn from Program 2916 or similar, Expenditure Item 33.90.39.

## **25. VIOLATIONS AND ADMINISTRATIVE SANCTIONS**

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

**25.2.** Failure to fulfill CONTRACT in full or in part, or violation of any of the obligations contained in the CONTRACT and this 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:

**25.2.1.** 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.

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

**25.2.3.** The FINES referenced in item II, Art. 87 (fines caused by total or partial contract inexecution), of the Law No. 8.666/93, may be defined and applied:



**25.2.3.1.** Due to total or partial inexecution of Contract OBJECT:

**25.2.3.1.1.** A fine may be applied due to partial inexecution 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

**25.2.3.1.2.** If the CONTRACTED PARTY causes termination of the contract, a fine shall be applied for total inexecution of contract in the amount of 10% (ten percent) of updated CONTRACT amount, without excluding arrears or other sanctions addressed by Art. 87 da Lei nº 8.666/93.

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

**25.4.** 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.

**25.5.** 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.

**25.6.** Application of a fine does not exempt the CONTRACTED PARTY from compensating CONTRACTING PARTY for any and all damages, losses and casualties which it may have caused the Administration or CONTRACTING PARTY, nor does it exclude the possibility of applying other administrative penalties or fines.

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

**25.8.** 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:

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

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

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

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

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

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

**25.8.2.3.** If an appeal is submitted as an obvious delaying tactic.

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

**25.8.3.1.** 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;



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

**25.8.3.3.** In case of relapse in the practice of an illicit act, which may be sanctioned as per points “25.8.1” and “25.8.2” of this item during a timeframe shorter than 24 (twenty-four) months;

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

**25.8.3.5.** 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

**25.8.3.6.** 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;

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

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

**25.8.4.2.** 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

**25.8.4.3.** In case of relapse in non-fulfillment subject to sanctions as per point “25.8.3”, during a timeframe shorter than 36 (thirty-six) months;

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

**25.8.5.1.** In case an illicit act is committed, for the purpose of impeding Bid fruition; such as the creation of a cartel or collusion;

**25.8.5.2.** If “fraudulent”, “adulterated”, “fake” or “falsified” documents are submitted;

**25.8.5.3.** In case of “false testimony”;

**25.8.5.4.** If case of final sentencing of an illicit act of fiscal fraud in the collection of taxes related to the contract;

**25.8.5.5.** If services are interrupted without a valid cause and without prior notification to the Administration;

**25.8.5.6.** If “falsified” or “adulterated” material is delivered and tricks are used to deceive the Administration;

**25.8.5.7.** If the contract is not fulfilled, causing serious damages to the Administration; and

**25.8.5.8.** In case of relapse in non-fulfillment subject to sanction in accordance with point “25.8.4”, over a timeframe shorter than 48 (forty-eight) months.

**25.9.** 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.

**25.10.** 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.



**25.11.** 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.

**25.12.** 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:

**25.12.1.** If the company or professional have been definitively sentenced for illicitly committing fiscal fraud in collecting any taxes;

**25.12.2.** If the company or professional committed an illicit act for the purpose of preventing Bid fruition;

**25.12.3.** If the Administration should find that the company or professional are not qualified to enter into a contract due to illicit acts committed; or

**25.12.4.** Finding, by the Court of the Union, the occurrence of fraud in connection with the Bid.

**25.13.** 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.

**25.14.** 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.

## **26. APPEALS**

**26.1.** The Administration's (BACW's) actions, during this bidding process, may be subject to appeal as follows:

**26.1.1.** Appeals to the BIDDING COMMISSION (CPL) within two (2) business days, starting on the day of notification or filing of meeting minutes, in case:

**26.1.1.1.** The bidder is qualified or disqualified;

**26.1.1.2.** Judgement of proposals;

**26.1.1.3.** Annulment or revocation of Bid;

**26.1.1.4.** Rejection of entry, alteration or cancellation request in Registration Records;

**26.1.1.5.** Rescission of CONTRACT, referring to item I of Art. 79 of Law N° 8.666/93;

**26.1.1.6.** Application of warning penalties, temporary suspension or fine.

**26.2.** If a bidder files an appeal, the other bidders shall be informed so that they may submit counter-arguments within a **2 (two) business day timeframe**.

**26.3.** The appeal must be addressed to a higher-ranking authority, through the Bidding Commission, which may reconsider its decision within **5 (five) business days**.

**26.3.1.** If it does not accept the arguments presented in the submitted appeal, the higher-ranking authority must forward the appeal to the authority above it, for due assessment within a **5 (five) business day timeframe**, which shall be duly notified.



## **27. GENERAL PROVISIONS**

**27.1.** Any doubts arising from the provisions of this Invitation for Bid may be the subject of consultation, in writing, with the Bidding Commission in charge of this bidding process, up to 48 hours before the delivery of the proposals.

**27.1.1.** All questions will be consolidated and answered in writing after the deadline for consultation has elapsed. A circular communication will be posted by the Bidding Commission and forwarded to the interested parties that have provided an e-mail address.

**27.2.** The interested party shall carefully review the Invitation to Bid and its Annexes, as well as all the instructions, terms and conditions, and the BASIC PROJECT presented, and become familiar with all circumstances or details that may affect the assessment of costs and the terms involved in performing the object of this bidding process.

**27.3.** Each bidder shall be responsible for all costs associated with the preparation and presentation of its proposal. The Administration (BACW) shall not in any way be responsible for those costs, regardless of the proceedings and outcomes of the bidding process.

**27.4.** Participation in this bidding process implies full acceptance of the terms and conditions established in this Invitation for Bid and its Annexes, as well as with the requirement to comply with the provisions herein.

**27.5.** Any changes or amendments to this Invitation for Bid will require its dissemination in the same publication that the original invitation was posted, with the initial term being postponed, except when the changes do not in any way affect the formulation of proposals.

**27.6.** If it is not a business day or if there is any event that prevents the bidding process from being held on the scheduled date, the session will be automatically rescheduled to the following business day at the same time and place previously indicated, unless communicated otherwise by the Bidding Commission.

**27.7.** In any stage during the bidding process, the Bidding Commission or the Head of the BACW may promote diligence intended to clarify or complement the process, provided it does not involve the later inclusion of any document or information that should be made available at the public bidding session.

**27.8.** The approval of the outcome of this bidding process does not imply a right to being contracted.

**27.9.** The BACW reserves the right to revoke or annul the Bidding Process at any time in cases clearly in the public interest, e.g.:

**27.9.1.** Where there is no longer a requirement for the supplies or services; or

**27.9.2.** Where amendments to the invitation would be of such magnitude that a new invitation is desirable.

**27.10.** If this Invitation For bid is cancelled, bids that have been received shall be returned unopened to the bidders and notice of cancellation shall be sent to all prospective bidders to whom Invitations were issued.



**27.11.** Preservation of the integrity of the competitive bid system dictates that, after bids have been opened, award should be made to that responsible bidder who submitted the lowest responsive bid, unless there is a compelling reason to reject all bids and cancel the Invitation.

**27.11.1.** Invitations may be cancelled and all bids rejected before award but after opening, only when formally and in writing, by the Head of the BACW, in the following circumstances:

**27.11.1.1.** Inadequate or ambiguous specifications were cited in the Invitation;

**27.11.1.2.** Specifications have been revised;

**27.11.1.3.** The supplies or services being contracted for are no longer required;

**27.11.1.4.** The Invitation did not provide for consideration of all factors of cost to the Government;

**27.11.1.5.** For other reasons, cancellation is clearly in the Brazilian public's interest;

**27.12.** The terms established in this Invitation for Bid and its Annexes do not include the first day, but include the last day. Deadlines shall fall on regular business day for the Administration (BACW).

**27.13.** The rules which govern the bidding process shall always be interpreted so as to increase competition among the bidders, provided that it does not jeopardize the interest of the Administration (Brazilian Public Administration), or the principles of equal rights, the purpose and security of the contracting.

**27.14.** In the event of discrepancies between the provisions of this Invitation for Bid and the other documents of the bidding process, the Invitation for Bid will prevail, with the exception of the CONTRACT executed by the winning bidder (CONTRACTED PARTY) shall govern its relationship with the BACW.

**27.15.** The Invitation for Bid and its Annexes may be read and/or obtained at BACW at the address indicated below, during business days, from 7:15 a.m. to 3:15 p.m. (EST).

**27.16.** The records of this administrative proceeding will remain available to all interested parties at the agency located at the address below, during business days from 7:15 a.m. to 3:15 p.m. (EST), after previously scheduled time.

**1701 22<sup>nd</sup> St N.W.**

**Washington, D.C. 20008**

**Ph.: +1 (202) 518 7348**

**Fax: +1 (202) 483 4684**

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

**27.17.** The United States District Court for the District of Columbia or the Superior Court in Washington, D.C., shall be the court in which any action or proceedings that might arise in connection with the bidding process must be filed and adjudicated, and the parties irrevocably submit to the exclusive jurisdiction of such court. This Invitation for Bid and the bidding process shall be construed and interpreted in accordance with the principles of Brazilian Law N° 8,666/93 and any other applicable laws and regulations of the Federative Republic of Brazil, and shall be governed by and enforced in accordance with the laws of the District of Columbia.



**27.18.** It is hereby agreed by the parties that the language of this Invitation for Bid, for the purpose of documentation, correspondence, and any other interests shall be **ENGLISH**.

**Washington, D.C., September 06, 2022.**

\_\_\_\_\_  
Leandro Luiz da Silva Veloso, Lt. Col.  
President of the BACW's Bidding Commission

**Reviewed by:**

\_\_\_\_\_  
Roberta Grazielly Costa Souza, Lt. Col.  
Head of the BACW's Bidding and Contracts Division