



MINISTRY OF DEFENSE
AERONAUTICAL COMMAND
BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON

TERM OF REFERENCE 001/SMAT/2023

Legal Basis: Prepared based on the premises contained in Art. 1st of Annex III of Ordinance GM-MD No. 5,175, of December 15, 2021.

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1. PREAMBLE

- 1.1. The purpose of this Term of Reference is to provide the set of necessary and sufficient elements, with an adequate level of precision, to characterize the specifications for hiring a transport company to move BACW material to Brazil by sea, for a period of twelve (12) months, with the possibility of extensions up to ten (10) years.
- 1.2. These Terms of Reference were drawn up on the basis of preliminary indications to ensure technical viability, estimate costs, define deadlines and forms of execution, as well as guide and discipline the relationship between the future CONTRACTING PARTY and the CONTRACTED PARTY.

2. DEFINITIONS

- 2.1. With the aim of facilitating the understanding of terminologies and simplifying the text, the abbreviations that follow as well as the expressions were adopted, followed by their subsequent definitions:
 - 2.1.1. AES – Automated Export SYSTEM.
 - 2.1.2. ANSI – American National Standards Institute.
 - 2.1.3. BL (Bill of Landig) – Document issued by the forwarding agent or by the transport company itself. It indicates the owner of the exported cargo and its consignee.
 - 2.1.4. BACW – Brazilian Aeronautical Commission in Washington.
 - 2.1.5. CFR (Cost and Freight) – It defines that once within the main transport, the risks arising from the merchandise become entirely the responsibility of the contractor, including the contracting of Cargo Insurance. INCOTERMS 2020.
 - 2.1.6. CAPACITY – Cargo movement activity in port facilities.
 - 2.1.7. COMREC – Reception Committee.
 - 2.1.8. CTLA – Air Force Logistics Transport Center. Located at Estrada Alfredo Rocha, 495 – Ilha do Governador – Rio de Janeiro – RJ – Brazil, CEP 21941-580.
 - 2.1.9. DDTC or Directorate of Defense Trade Controls – American Government body responsible for controlling the Import and Export of defense materials and services, which are included in the USML (United States Munitions List).
 - 2.1.10. DEMURRAGE – Fine for delay in returning the container. It is applied by the SHIPPER to the customer who is using a container, during the import process.
 - 2.1.11. DOT – Department of Transportation.
 - 2.1.12. EADI – Interior Customs Station or Porto Seco.
 - 2.1.13. IMO – International Maritime Organization.

- 2.1.14. INCOTERM 2020 – International Commercial Terms – International sales terms with the purpose of allowing standardization regarding cost and risk responsibilities, signed between exporters and importers.
- 2.1.15. INVOICE – Document that formalizes a purchase or service provision transaction.
- 2.1.16. SHEDULE B NUMBER – ten (10) digit number used, in the United States to classify materials destined for Export.
- 2.1.17. US CENSUS BUREAU – American government agency in charge of the census in the United States.
- 2.1.18. USML or UNITED STATES MUNITIONS LIST – American Government list listing articles, services and technologies designated for use in defense and space.

3. OBJECT

- 3.1. Hiring a transportation company to move material from the BACW to Brazil by sea.
- 3.2. This Term of Reference presents the set of necessary and sufficient elements, with the appropriate level of precision, to characterize the hiring of a company, with the purpose of performing the continued services described below, **for a period of twelve (12) months with the possibility of extension up to ten (10) years:**

Module 1: hiring a company to carry out the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERM 2020, CFR modality, in **40 feet containers**, of the **High Cubage** type (**40' HC**) – The estimated quantity for 12 months will be **50 (fifty) units;**

Module 2: hiring a company to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, in a Terminal to be defined by the **CONTRACTING PARTY**, using the maritime mode, in INCOTERM 2020, CFR modality, in **40 feet containers**, of the **High Cubage** type (**40' HC**) – The estimated quantity for 12 months will be **10 (ten) units;**

Module 3: hiring a company, to perform the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Rio de Janeiro**, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERM 2020, CFR modality, in **40 feet containers**, of the **High Cubage** type (**40' HC**) – The estimated quantity for 12 months will be **50 (fifty) units;**

Module 4: hiring a company, to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills,

Maryland, 20748, USA) to the **Port of Rio de Janeiro**, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the modal maritime, in INCOTERM 2020, CFR modality, in **40 feet containers**, of the **High Cubage type (40' HC)** – The estimated quantity for 12 months will be **10 (ten) units**;

Module 5: hiring a company, to perform the **land/sea transportation service of non-dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the **Port of Santos**, located in the State of São Paulo, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the maritime mode, in INCOTERM 2020, CFR modality, in **40 feet containers, Open Top** type – The estimated quantity for 12 months will be **08 (eight) units**; and

Module 6: hiring a company, to perform the **land/sea transportation service of dangerous cargo** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to the Port of Rio de Janeiro, located in the State of Rio de Janeiro, Brazil, **in a Terminal to be defined by the CONTRACTING PARTY**, using the modal maritime, in INCOTERM 2020, CFR modality, in **40 feet containers, Open Top** type – The estimated quantity for 12 months will be **03 (three) units**.

- 3.3. The destination port to be used, Santos or Rio de Janeiro, will be defined by the CONTRACTING PARTY, taking into account the logistical aspects of interest of the Administration.
- 3.4. The CONTRACTED PARTY shall include in its proposal a minimum period of 10 (ten) days for unloading at the port of destination, in relation to DEMURRAGE.
- 3.5. The estimated quantity for 12 months of contractual activity, respectively for the mentioned modules, is based on the services performed in recent activities and expected future demand. Therefore, there is no right to the contracted party that this quantity will be fulfilled. The CONTRACTING PARTY will only pay for the services provided.
- 3.6. Bidders must present their price proposals in the form of GLOBAL VALUE, separately for each MODULE, as follows:

Description	Estimated Quantity of CONTAINER for 12 months	Maximum Unit Value per Container	Maximum Global Value (unit value x container qty)
MODULE 1	50 Containers 40ft - HC	\$ 3,400.61	\$ 170,030.50
MODULE 2	10 Containers 40ft - HC	\$ 3,856.68	\$ 38,566.80
MODULE 3	50 Containers 40ft - HC	\$ 3,411.81	\$ 170,590.50
MODULE 4	10 Containers 40ft - HC	\$ 3,875.48	\$ 38,754.80
MODULE 5	8 Containers 40ft - Open Top	\$ 4,465.41	\$ 35,723.28

MODULE 6	3 Containers 40ft - Open Top	\$ 4,551.61	\$ 13,654.83
TOTAL			\$ 467,320.71

- 3.7. The GLOBAL VALUE for each of the MODULES will be calculated by multiplying the estimated quantity for 12 months by the unit value of each service in each MODULE.

4. JUSTIFICATION AND OBJECTIVE OF THE CONTRACTION

- 4.1. Transportation is one of the main logistical functions of the supply chain and its importance is basically linked to schedules and the choice of location. From the beginning, the transport of goods was carried out to make products available where the potential demand is, within a time frame suitable for the needs of the end user - Military Organizations of the Brazilian Air Force.
- 4.2. Even with technological improvements, which allow information to be exchanged in real time, transportation remains indispensable in fulfilling the logistics objective, which is to have the right product, in the right quantity, at the right time, in the right place, at the lowest possible cost (principles of cost-effectiveness and convenience).
- 4.3. Within this range, as defined by ROCA 21-5/2020, the objective of the Brazilian Aeronautical Commissions (BAC) abroad, of the Aeronautical Command Organizations (COMAER) is to centralize, in their operational field, service and support logistics activities, among them, the activities of purchasing and acquiring goods and services related to logistical operations for aeronautical material, material of military relevance and for receiving and delivering purchased items.
- 4.4. During its seventy-eight years of existence, the Brazilian Aeronautical Commission in Washington has become a key component in the Brazilian Air Force Logistics Command, helping the Brazilian Air Force (FAB) maintain its assets in their best operational condition.
- 4.5. In order to maintain the fleet in an operational state, to avoid interruptions in the transport of material, the need arose to hire a company with the capacity to provide maritime transport services for hazardous materials classified as HAZMAT and non-hazardous material, from BACW to Organizations Military (OM) in Brazil, through the Ports of Santos - SP and Rio de Janeiro - RJ. It should be noted that sending this type of material may be subject to special requirements and that carrying out this activity exclusively by Brazilian Air Force aircraft would be very costly for the Administration.
- 4.6. Therefore, taking into account the principle of cost-effectiveness and in order to keep the fleet operational, it is necessary to hire a company with the capacity to provide adequate transportation for hazardous material and non-hazardous material, using maritime mode. According to demand and priority established by BACW.
- 4.7. The objective of this Term of Reference is to present the set of necessary and sufficient elements, with the necessary degree of precision, to define the service, OBJECT required by the Administration, which must be incorporated into the

Administrative Management Process (PAG) addressing the hiring of logistical transportation services of goods, from BACW (Brazilian Aeronautical Commission in Washington, DC), from the Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748 USA) to Brazil, using maritime mode (destination: Port of Santos- SP or Rio de Janeiro - RJ), according to the Administration's interest, for an initial period of 12 (twelve) months, from the date of execution of the contract, which can be extended up to ten (10) years.

- 4.8. The estimated duration of 12 (twelve) months of contractual activity is based on services performed in recent years, as well as estimated future demand. However, such estimate does not imply any right for the CONTRACTOR to carry out the entire estimated quantity, if the CONTRACTING PARTY's order, within 12 months, is lower than the estimated value. Only services that are truly necessary for the CONTRACTING PARTY's Logistics Support will be requested and payment will be made to the CONTRACTED PARTY upon completion of each service.

5. ESTIMATED BUDGET

- 5.1. The estimated value of the contract will be **USD 467,320.71** (four hundred and sixty-seven thousand, three hundred and twenty US dollars and seventy-one cents), according to the preliminary study and market research contained in the Administrative Management Process.
- 5.2. As the demand for consultations carried out depends on the volume of business that BACW carries out, consumption was estimated based on the period from 2017 to 2022, which was considered adequate to the commonly existing demand.
- 5.3. The CONTRACTED PARTY shall be obliged to accept, under the same contractual conditions, increases or reductions in the quantities of up to 25% (twenty five percent) initially contracted, in accordance with the provisions of Article 125 of Law 14.133/21.
- 5.4. Increases may never exceed 25% (twenty five percent) and deletions may be greater than 25% (twenty five percent), considering the possibility of execution being less than the amount estimated by this Term of Reference.
- 5.5. The amounts may be adjusted, respecting the annual period and the index provided for the contract.
- 5.6. The presentation of the proposal for adjustment or economic-financial rebalancing by the CONTRACTED PARTY does not require acceptance by the CONTRACTING PARTY, who may choose not to extend the contract for the next 12 (twelve) months.

6. BUDGET ALLOCATION

- 6.1. To contract the service, Action 2048 will be used – “Maintenance and Supply of Aeronautical Material”, Nature of Expense 339039 – or any other Programs and Actions that can provide this support, as the transport service in question will serve all Systems of the Brazilian Air Force.

7. FORM AND CRITERIA FOR SELECTING THE SUPPLIER AND PERFORMANCE REGIME

7.1. Form of selection and criteria for judging the proposal

7.1.1. The supplier will be selected by means of a BIDDING procedure, in the form of a REVERSE AUCTION, with the judging criterion being the LOWEST OVERALL PRICE.

7.2. Execution regime

7.2.1. The contract will be executed on a unit-price basis.

7.3. Qualification requirements

7.3.1. For technical qualification purposes, the bidder must prove the following requirements:

- 7.3.1.1. Copy of the Certificate of Incorporation or similar document, in the name of the bidder (MODULES 1 to 6).
- 7.3.1.2. Original Declaration issued by the bidder itself, declaring that it has the following (MODULES 1 to 6):
 - a) Integrated Management System, to manage and control services;
 - b) Within its framework, personnel responsible for quality and technical personnel in adequate quantities to perform the service; and
 - c) Occupational Health and Safety Management Program for its employees, in compliance with American labor legislation.
- 7.3.1.3. Original Declaration issued by the bidder itself declaring that it has not been cited in administrative or judicial proceedings, in Brazil or the USA, in the last 5 (five) years, due to violation of customs and commercial export and import legislation (MODULES 1 to 6).
- 7.3.1.4. Original Declaration issued by the bidder itself or Copy of the registration certificate with the DDTC, allowing the handling of materials listed in the USML (MODULES 1 to 6).
- 7.3.1.5. Original statement issued by third parties (logistics operator, private company or public entity) informing that the bidder has already performed a relevant and compatible activity in characteristics (sea transport of non-dangerous cargo), with the service described in the module (MODULES 1, 3, 5 and 6).
- 7.3.1.6. Original statement issued by third parties (logistics operator, private company or public entity) informing that the bidder has already performed a relevant and compatible activity (maritime transport of dangerous cargo) with the service described in the module (MODULES 2 and 4).
- 7.3.1.7. Original declaration issued by the bidder itself stating that it has a license to handle material purchased from the FMS (MODULES 1 to 6).

8. CLASSIFICATION OF SERVICES

- 8.1. The service to be contracted is a common service, of a continuous nature and without the provision of labor on an exclusive dedication basis, since it is a transport service to be activated according to the demand for cargo handling to be carried out by BACW.
- 8.2. It is important to note that continuous services are those whose interruption could compromise the performance of the institutional mission and, therefore, need to be executed on an uninterrupted basis in order to keep the fleet operational.

9. ENVIRONMENTAL SUSTAINABILITY CRITERIA

- 9.1. Any installation, equipment or process, located in a fixed location, that releases or emits matter into the atmosphere, by punctual or fugitive emission, used in the performance of the contract, must respect the maximum limits of emission of pollutants allowed in CONAMA Resolution No. 382, of 26/12/2006, and related legislation, according to the pollutant and the type of source, if located in Brazil, or related legislation, if located abroad.
- 9.2. In the contractual execution, as the case may be, the emission of noise cannot exceed the levels considered acceptable by Standard NBR-10.151 - Noise Assessment in Inhabited Areas aiming at the comfort of the community, of the Brazilian Association of Technical Standards - ABNT, or those established in NBR-10.152 - Noise Levels for acoustic comfort, from the Brazilian Association of Technical Standards - ABNT, pursuant to CONAMA Resolution No. 01, of 03/08/1990, or related legislation, if located abroad.

10. SPECIFICATION OF SERVICES

- 10.1. The CONTRACTED PARTY shall perform the service using the materials and equipment necessary for the perfect execution of the services to be rendered.
- 10.2. The containers will be transported by the CONTRACTED PARTY to the CONTRACTING PARTY's premises, at the Warehouse located at 4601 Beech Road, Temple Hills, Maryland, 20748, USA, and will then be removed and transported by the CONTRACTED PARTY to the ports of Santos - SP or Rio de Janeiro - RJ, according to the CONTRACTING PARTY's needs.
- 10.3. Compliance in the provision of the service shall be verified in accordance with the provisions of these terms of reference.

11. METHODOLOGY FOR EVALUATING THE EXECUTION OF SERVICES

- 11.1. If the container malfunctions during the performance of the service, the CONTRACTED PARTY shall endeavor to replace it immediately.
- 11.2. The CONTRACTED PARTY must make the container available in a clean and well-maintained condition.

12. PERFORMANCE OF SERVICES AND RECEIPT

- 12.1. The execution of the services will begin as soon as the contract is signed.
- 12.2. The contract shall be valid for 12 (twelve) months from the date it is signed. The validity may be extended, by agreement between the parties, for an additional

period of 12 months, if it is in the CONTRACTING PARTY's interest, up to a maximum of ten (10) years.

- 12.3. The term of validity may exceed the financial year, provided that the expenses relating to the contract are fully committed by December 31st, for the purposes of recording in accounts payable, in accordance with AGU Normative Guideline No. 39, of December 13, 2011.
- 12.4. The services may be rejected, in whole or in part, when they do not comply with the specifications contained in these Terms of Reference and in the proposal, and must be corrected/repaired/replaced within the period set by the contract supervisor, at the expense of the CONTRACTED PARTY, without prejudice to the application of penalties.
- 12.5. The services which are the subject of the contract must be received by COMREC in accordance with the specifications set out in the Terms of Reference.
- 12.6. It is the responsibility of the RECEIPT COMMISSION (COMREC) to:
 - 12.6.1. Ensure that the CONTRACTED PARTY follows the description of all the services that are the object of the Terms of Reference.
 - 12.6.2. Receive or reject the services according to the specifications described in the Terms of Reference within 15 (fifteen) calendar days.
 - 12.6.3. Once approved, the invoices will be sent to the BACW Contracts Division, accompanied by the Statement of Receipt within 5 (five) days. If there are any discrepancies, the invoice must be returned to the CONTRACTED PARTY so that the necessary corrections can be made, with a letter explaining the reasons for the return.
 - 12.6.4. All proposals, questions, discrepancies and difficulties encountered during the execution of the contract or which require evaluation must be submitted for inspection.

13. OBLIGATIONS

13.1. OBLIGATIONS OF THE CONTRACTING PARTY:

- 13.1.1. The **CONTRACTING PARTY** must request the container 7 (seven) calendar days in advance. In exceptional and emergency cases, this activation may be carried out within a shorter period, as long as it is duly justified. In this case, the **CONTRACTED PARTY** must make efforts to load the container, but will be exempt from fines or warnings if unsuccessful.
- 13.1.2. The **CONTRACTING PARTY** must contact the **CONTRACTED PARTY** via email, informing the date and time necessary for the arrival of the container at the BACW Warehouse.
- 13.1.3. The **CONTRACTING PARTY** must send the **CONTRACTED PARTY** an email describing the type of cargo that will be loaded into the container.
- 13.1.4. The **CONTRACTING PARTY** will be responsible for approving and registering the IEE with the AES.
- 13.1.5. The **CONTRACTING PARTY** will have 3h (three hours) to load the container.

- 13.1.6. The container will be finished and will receive a seal, provided by the **CONTRACTING PARTY** and this number must appear on the BL.
- 13.1.7. The **CONTRACTING PARTY** will have up to 2 (two) calendar days, counting from the date of delivery of the container, to send the IEE records to the **CONTRACTED PARTY**, for the purpose of customs clearance.
- 13.1.8. The **CONTRACTING PARTY**, through CTLA, will be responsible for clearance at the port of destination.
- 13.1.9. The **CONTRACTING PARTY**, through the CTLA, will be responsible for paying fees and taxes charged by the port disembarkation terminal, provided that such costs have not occurred due to delays, errors or failures of the **CONTRACTED PARTY**. Otherwise, they will be paid for by the **CONTRACTED PARTY**.
- 13.1.10. If the demurrage period exceeds 10 (ten) days, the **CONTRACTING PARTY**, through the CLTA, will be responsible for the excess number of days, provided that such costs have not occurred due to delays, errors or failures of the **CONTRACTED PARTY**. Otherwise, they will be paid for by the **CONTRACTED PARTY**.
- 13.1.11. The **CONTRACTING PARTY** must pay the INVOICE within 30 (thirty) calendar days after receiving the invoice.

13.2. OBLIGATIONS OF THE CONTRACTED PARTY:

- 13.2.1. The confirmation of the container reservation will be made by the **CONTRACTED PARTY** and must be sent via email, accompanied by a copy of the reservation confirmation (booking).
- 13.2.2. The containers provided by the **CONTRACTED PARTY** must be in good hygiene and cleaning conditions, as well as without holes and with the doors in working order, allowing the closure and placement of the seal. If these conditions do not occur, the **CONTRACTING PARTY** may refuse and return the container. In this case, the return costs will be borne by the **CONTRACTED PARTY** and the deadlines for supplying a new container and loading the cargo will be maintained, according to the initial planning.
- 13.2.3. The land movement of the container to the BACW Warehouse and from there to the port terminal of shipment will be the responsibility of the **CONTRACTED PARTY**.
- 13.2.4. The container transport vehicle must be of sufficient height and width to enable OVATION through the Warehouse's dock doors, which have the following dimensions: width of 7.8 ft (seven point eight feet) and height of 9.5 ft (nine point five feet).
- 13.2.5. If the container transport vehicle does not have the necessary measurements for OVATION through the Warehouse's dock doors, the **CONTRACTING PARTY** may refuse and return the container. The return costs will be borne by the **CONTRACTED PARTY** and the deadlines for supplying and loading the cargo will be maintained, according to the initial planning.

- 13.2.6. The **CONTRACTED PARTY** will be responsible for the safekeeping and security of the container until it is boarded on the ship.
- 13.2.7. The **CONTRACTED PARTY** must ensure that the container is available at the BACW Warehouse at 8:00 AM (eight am) on the scheduled day.
- 13.2.8. After completion, the container will be moved to the Port or another area determined by the **CONTRACTED PARTY**, remaining under its custody and responsibility, for legal and insurance purposes, until it is loaded onto the ship.
- 13.2.9. The container must be loaded onto a ship within 5 (five) calendar days, after delivery to the **CONTRACTED PARTY**.
- 13.2.10. Customs clearance at the boarding terminal will be the responsibility of the **CONTRACTED PARTY**.
- 13.2.11. The **CONTRACTED PARTY** shall be responsible for the cost of ensuring the cargo until it is loaded onto the ship, including insurance for road transportation and storage in waiting yards at the port terminal of shipment.
- 13.2.12. Maritime transportation of the container will be the responsibility of the **CONTRACTED PARTY**.
- 13.2.13. The **CONTRACTED PARTY** must deliver copies of the BL and HBL to the **CONTRACTING PARTY**, within 7 (seven) calendar days, counted after the ship's departure.
- 13.2.14. The **CONTRACTED PARTY** must deliver the originals of the BL and HBL to the **CONTRACTING PARTY**, at most 7 (seven) calendar days in advance of the ship's arrival at the destination port.
- 13.2.15. The **CONTRACTED PARTY** must send the **CONTRACTING PARTY** the INVOICE regarding the execution of the service, within 7 (seven) calendar days, after the ship's departure.
- 13.2.16. The **CONTRACTED PARTY** must guarantee a minimum period of 10 (ten) days of free demurrage at the port of destination.
- 13.2.17. All costs relating to losses to third parties and FAB, during the preparations and/or execution of the service covered by this Term of Reference, will be the responsibility of the **CONTRACTED PARTY**.

14. SUBCONTRACTING

- 14.1. Subcontracting does not release the **CONTRACTED PARTY** from any of the obligations set out in these Term of Reference.

15. SUBJECTIVE CHANGE

- 15.1. The fusion, spin-off or incorporation of the contracted party with/into another legal entity is admissible, provided that all the qualification requirements demanded in the original bidding process are observed by the new legal entity, the other clauses and conditions of the contract are maintained, there is no prejudice to the execution of the agreed object and there is the express consent of the Administration to the continuity of the acquisition.

16. SURVEILLANCE

- 16.1. The FISCAL must be an employee of the Administration, specifically appointed by the Administration, in accordance with the precepts established by Law No. 14.133/2021, ICA No. 65-8/2009 and ICA No. 12-23/2019, in order to monitor and inspect compliance with the contract to be executed.
- 16.2. The supervision of contractual execution consists of verifying the conformity of the services and the availability of resources, ensuring the perfect application of the adjustments, to be carried out by the FISCAL.
- 16.3. The contracting party's representative must have the necessary experience to monitor and supervise the performance of the Contract.
- 16.4. Adequate verification of contractual performance must be carried out based on the criteria established in the Terms of Reference and in accordance with the contractual terms.
- 16.5. Contract performance must be monitored and inspected, including monitoring compliance with the obligations arising from the contract.
- 16.6. The inspectorate must record in its records all events related to the execution of the contract, taking the necessary measures to ensure full compliance with the contractual clauses. Measures which exceed its remit must be notified to the competent authority in good time.
- 16.7. The CONTRACTING PARTY's monitoring and supervision of the contractual performance does not eliminate the CONTRACTED PARTY's liability, including to third parties, for any irregularities, even those arising from technical imperfections, faults or improper use of the equipment. In the event of such incidents, they do not imply shared responsibility on the part of the CONTRACTING PARTY, its representatives or employees.

17. ADMINISTRATIVE SANCTIONS

- 17.1. The administrative sanctions to be included in the bidding processes and contracts signed must comply with the basic principles of Brazilian bidding law, respecting local peculiarities.
- 17.2. The bidder or contractor will be held administratively responsible for the following infractions:
 - I - giving rise to partial non-performance of the contract;
 - II - giving rise to partial non-performance of the contract which causes serious damage to the Administration, to the operation of public services or to the collective interest;
 - III - giving rise to total non-performance of the contract;
 - IV - fails to deliver the documentation required for the tender;
 - V - fails to maintain the bid, except as a result of a duly justified supervening event;
 - VI - does not sign the contract or does not deliver the documentation required for the contract, when summoned within the validity period of its bid;
 - VII - delay the execution or delivery of the bid without justifiable reason;

- VIII - submitting a false declaration or documentation required for the bidding process or making a false declaration during the bidding process or the execution of the contract;
- IX - defraud the bidding process or commit a fraudulent act during the execution of the contract;
- X - behave in an unfit manner or commit fraud of any kind; and
- XI - practicing illicit acts with a view to frustrating the objectives of the bidding process.
- 17.3. Unjustified delay in the performance of the contract shall subject the CONTRACTED PARTY to a late payment fine, as provided for in the invitation to tender or in the contract.
- 17.4. For total or partial non-performance of the contract, the Administration may, with prior defense guaranteed, apply the following sanctions to the CONTRACTED PARTY:
- I - warning;
 - II - fine;
 - III - debarment from bidding and contracting; and
 - IV - declaration of ineligibility to bid or contract.
- 17.5. Appeals may be lodged against the imposition of warning, fine and impediment to bidding and contracting sanctions within 15 (fifteen) working days from the date of notification.
- 17.6. The appeal referred to in subitem 17.5 shall be addressed to the authority that issued the decision under appeal, which, if it does not reconsider it within 5 (five) working days, shall forward the appeal with its reasons to the higher authority, which shall issue its decision within a maximum of 20 (twenty) business days from receipt of the case file.
- 17.7. Only a request for reconsideration may be made against the imposition of a fine and a declaration of suitability to bid or contract, which must be submitted within 15 (fifteen) working days from the date of notification and decided within a maximum of 20 (twenty) working days from receipt.
- 17.8. The sanction established in subitem 17.4. is the exclusive competence of the Minister of State for Defense, as the case may be, with the interested party being allowed to defend himself in the respective process, within 15 (fifteen) working days, counting from the date of his summons.
- 17.9. The sanction provided for in subitem 17.4 will be applied to the person responsible for the administrative infractions provided for in items II, III, IV, V, VI and VII of subitem 17.2, when the imposition of a more serious penalty is not justified, and will prevent the person responsible from bidding or contracting within the scope of the direct and indirect Public Administration of the federative entity that applied the sanction, for a maximum period of 3 (three) years.
- 17.10. The sanction provided for in subitem 17.4. will be applied to the person responsible for the administrative infractions provided for in items VIII, IX, X and XI of subitem 17.2, as well as for the administrative infractions provided for in items II, III, IV, V, VI and VII of the same provision, when the imposition of a more serious penalty is not justified, and will prevent the person responsible from bidding or contracting within the direct and indirect Public Administration

of all federative entities, for a minimum period of 3 (three) years and a maximum of 6 (six) years.

18. PAYMENT

- 18.1. Payment will be made within 30 days of receipt of the invoice, having been certified by the designated Commission.
- 18.2. Payment will be made by bank transfer, to be credited to the bank, branch and current account indicated by the contractor.
- 18.3. The date of payment shall be deemed to be the day on which the bank transfer for payment is issued.

19. TERM

- 19.1. The term of the validity will be 12 (twelve) months, and may be extended at the discretion of the administration for up to ten (10) years under the terms of § 4th of article 115 of Annex III of Ordinance GM-MD No. 5,175/2021.

Washington, DC, *digitally dated*.

digitally signed

LUCIANO BARBOSA DOS SANTOS Maj QOE SUP
Head of SMAT

Reviewed by:

digitally signed

MICHELE DE SOUZA SIQUEIRA Ten Cel Int
Head of Internal Control Advisory

I, Col Av WILSON PAULO CORRÊA MARQUES, Orderly of Expenses of the Brazilian Aeronautical Commission in Washington, DC, **approve** these Term of Reference and Annexes, since the file contains all the necessary documents, and draw up this declaration, which is signed by me.

digitally signed

WILSON PAULO CORRÊA MARQUES Cel Av
Head of CABW



MINISTÉRIO DA DEFESA
COMANDO DA AERONÁUTICA

CONTROLE DE ASSINATURAS ELETRÔNICAS DO DOCUMENTO

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Este documento foi assinado e conferido eletronicamente com fundamento no artigo 6º, do Decreto nº 8.539 de 08/10/2015 da Presidência da República pelos assinantes abaixo:

Assinado via ASSINATURA CADASTRAL por Major LUCIANO BARBOSA DOS SANTOS no dia 04/12/2023 às 15:06:11 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Ten Cel Int ROBERTA GRAZIELLY COSTA SOUZA no dia 05/12/2023 às 08:19:37 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Ten Cel Int MICHELE DE SOUZA SIQUEIRA no dia 05/12/2023 às 08:42:04 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Cel WILSON PAULO CORREA MARQUES no dia 05/12/2023 às 13:43:38 no horário oficial de Brasília.

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