



**MINISTRY OF DEFENSE**  
**AERONAUTICAL COMMAND**  
**BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON**

**TERM OF REFERENCE 002/SMAT/2024**

**Legal Basis:** Prepared based on the premises contained in article 1<sup>st</sup> of Annex III of Ordinance GM-MD No. 5,175, of December 15<sup>th</sup>, 2021.

**INDEX**

1. PREAMBLE.....	2
2. DEFINITIONS .....	2
3. OBJECT .....	3
4. JUSTIFICATION AND OBJECTIVE OF THE CONTRACTION .....	5
5. ESTIMATED BUDGET .....	6
6. BUDGET ALLOCATION .....	7
7. FORM AND CRITERIA FOR SELECTING THE SUPPLIER AND PERFORMANCE REGIME .....	7
8. CLASSIFICATION OF SERVICES .....	8
9. ENVIRONMENTAL SUSTAINABILITY CRITERIA .....	8
10. SPECIFICATION OF SERVICES .....	9
11. METHODOLOGY FOR EVALUATING THE EXECUTION OF SERVICES.....	9
12. PERFORMANCE OF SERVICES AND RECEIPT.....	9
13. OBLIGATIONS .....	10
14. SUBCONTRACTING .....	11
15. SUBJECTIVE CHANGE .....	12
16. MONITORING .....	12
17. ADMINISTRATIVE SANCTIONS .....	12
18. PAYMENT .....	14
19. TERM .....	14

## **1. PREAMBLE**

- 1.1. The purpose of this Term of Reference is to present the set of necessary and sufficient elements, with an adequate level of precision, to characterize the specifications for the contracting of a specialized transport company, for the transport of materials, from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA), to Guarulhos International Airport (GRU), by air, with the rights and obligations of the parties being governed by the CPT (Carriage Paid to) INCOTERMS 2020, for a period of twelve (12) months, with the possibility of extensions up to a limit of ten (10) years.
- 1.2. These Term 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. AWB – Bill of lading that makes up the cargo manifest. Document issued by the forwarding agent or by the transport company itself. It indicates the owner of the exported cargo and its consignee. This document contains the following information: the consignee, the consignee to whom the arrival of the cargo must be notified, the type of cargo, the quantity, the weight, the type of packaging, the seal number, the declaration that it has been loaded on board, the method of payment of the freight, among other information.
  - 2.1.4. BACW – Brazilian Aeronautical Commission in Washington.
  - 2.1.5. CPT (Carriage Paid to) – The seller pays the freight to the named place of destination; the buyer assumes the burden of risk for loss and damage from the moment the carrier takes custody of the goods. INCOTERMS 2020.
  - 2.1.6. COMAER – Aeronautical Command.
  - 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. IATA Declaration or IATA DGD – This is a document issued by the seller (BACW Seller) to certify that the hazardous material (HAZMAT) has been packaged, identified and declared in accordance with international transport regulations.
  - 2.1.10. 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).
  - 2.1.11. DOT – Department of Transportation.
  - 2.1.12. HAZMAT – Material is classified as HAZMAT when it is governed by specific control regulations, such as biological, chemical, radioactive and physical items or agents that can potentially cause harm to humans, animals or the ecosystem, either

by themselves or through interaction with other factors. Dealing with this type of material includes all life cycle management from planning to new product development, production, distribution, storage, transportation, use, cleaning and disposal.

2.1.13. INCOTERMS 2020 – International Commercial Terms – International sales terms with the purpose of allowing standardization regarding cost and risk responsibilities, signed between exporters and importers.

2.1.14. INVOICE – Document that formalizes a purchase or service provision transaction.

2.1.15. OM – Military Organization.

2.1.16. PAG – Administrative Management Process.

2.1.17. SHEDULE B NUMBER – ten (10) digit number used, in the United States to classify materials destined for Export.

2.1.18. US CENSUS BUREAU – American government agency in charge of the census in the United States.

2.1.19. 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 specialized transport company to transport materials from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to Guarulhos International Airport (GRU), by air, with the rights and obligations of the parties being governed by the CPT (Carriage Paid to), INCOTERMS 2020.

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 **transport non-hazardous cargo by air** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to Guarulhos Airport, located in the State of São Paulo, Brazil, under INCOTERMS 2020, CPT (Carriage Paid to); and

**Module 2:** hiring a company to **transport hazardous cargo by air** from the BACW's Warehouse (4601 Beech Road, Temple Hills, Maryland, 20748, USA) to Guarulhos Airport, located in the State of São Paulo, Brazil, under INCOTERMS 2020, CPT (Carriage Paid to) modality.

3.3. In cases where, due to unforeseeable circumstances, force majeure or adverse events, the material cannot be sent to Guarulhos Airport, the contracted party must formalize the change of destination by submitting a request to the contracting party. The contracting party will analyze and formalize whether or not to accept the change of destination, this change should not result in an increase in the amount to be paid by the CONTRACTING PARTY.

3.4. The insurance of cargo to be transported, in the country of origin, i.e. on the route from the BACW Warehouse to boarding the aircraft, as well as insurance after boarding the

aircraft. after boarding the aircraft, will be borne by BACW, by means of a specific contract for this purpose

- 3.5. Due to the need to transport the cargo of Military Materials acquired from the Government (FMS), BIDDERS must present, in the qualification phase of the qualification phase of the bidding process, a document proving that the company has company is authorized by the U.S. government to transport this material.
- 3.6. The estimated quantity for twelve (12) months of contractual activity, respectively for the modules mentioned, is based on the services carried out in recent activities (2021 to 2023) and expected future demand. There is therefore no right on the part of the contracted party that this quantity will be complied with. The CONTRACTING PARTY will only pay for the services rendered.
- 3.7. Using a simple arithmetic average of the weights transported in the aforementioned years, an average of **11,132 kilograms** of material is estimated to be transported via commercial air modal each year.
- 3.8. When formulating proposals, companies must include the costs of ground transportation, cargo handling, as well as other ancillary costs already diluted in the prices quoted for each transportation range, as per item 3.10 of these Term of Reference.
- 3.9. When submitting their proposals, Bidding Companies must state the amount of the fee to be charged per BU transported by cargo or passenger aircraft, in the case of a HAZMAT cargo transportation mission, already diluted in the prices quoted for each transportation range, as per item 3.10 of this Term of Reference.
- 3.10. For logistical purposes of the intended modal, the object of this Term of Reference should be divided between shipments of HAZMAT or NON-HAZMAT materials, by weight range, between passenger and cargo aircraft, according to the transport regulations and table below:

CARGO TYPE	AIRCRAFT TYPE	Fixed Price per Shipment	WEIGHT RANGE (US\$/Kg per freight)				
		< 45 Kg	45 - 100 Kg	101 - 300 Kg	301 - 500 Kg	501 - 1000 Kg	> 1000 Kg
NON-HAZMAT	PASSENGER	Range 1 (R1)	Range 2 (R2)	Range 3 (R3)	Range 4 (R4)	Range 5 (R5)	Range 6 (R6)
	CARGO	Range 7 (R7)	Range 8 (R8)	Range 9 (R9)	Range 10 (R10)	Range 11 (R11)	Range 12 (R12)
HAZMAT	PASSENGER	Range 13 (R13)	Range 14 (R14)	Range 15 (R15)	Range 16 (R16)	Range 17 (R17)	Range 18 (R18)
	CARGO	Range 19 (R19)	Range 20 (R20)	Range 21 (R21)	Range 22 (R22)	Range 23 (R23)	Range 24 (R24)

- 3.11. Each (Rn) represents the price range in US\$ per kilogram.
- 3.12. Fixed prices must be submitted for the weight ranges <45 Kg (R1, R7, R13 and R19) and for the other ranges, the price (US\$) per kilogram.
- 3.13. The values must be those shown by band, according to the weights in kilograms of the material to be transported.

- 3.14. The basis for calculating commercial air freight is obtained from the actual weight or volumetric weight, whichever provides the greater value.
- 3.15. To find out whether to use actual weight or volumetric weight, the IATA (International Air Transport Association) ratio should be used.
- 3.15.1. IATA ratio (weight/volume): 1 kg = 6000 cm<sup>3</sup> or 1 ton 6 m<sup>3</sup>.
- 3.16. The unit of measurement of weight for this contract shall be kilograms (kg). Therefore, if it is necessary to convert kilograms (kg) into pounds (lbs.), the following equivalence will be used: 1 lb. = 0.4536 kg.
- 3.17. It is important to emphasize that during the execution of the CONTRACT the amounts to be to be paid must be those shown by band (Rn), according to the weights in kilograms of the material to be transported.
- 3.18. The methodology used to obtain the reference UNIT PRICE by price range (US\$) was the final average of the prices obtained in the market price survey for each price survey for each range, as per item 3.9.1.1 of the Preliminary Study, summarized in the table below:

3.18.1. Table 1

CARGO TYPE	AIRCRAFT TYPE	Fixed Price per Shipment	WEIGHT RANGE (US\$/Kg per freight)				
		< 45 Kg	45 - 100 Kg	101 - 300 Kg	301 - 500 Kg	501 - 1000 Kg	> 1000 Kg
NON-HAZMAT	PASSENGER	US\$ 301.33	US\$ 10.76	US\$ 8.81	US\$ 4.35	US\$ 4.11	US\$ 3.73
	CARGO	US\$ 407.33	US\$ 9.29	US\$ 5.83	US\$ 5.05	US\$ 4.96	US\$ 4.86
HAZMAT	PASSENGER	US\$ 460.00	US\$ 12.68	US\$ 8.17	US\$ 5.08	US\$ 4.81	US\$ 4.60
	CARGO	US\$ 513.00	US\$ 15.96	US\$ 12.95	US\$ 8.40	US\$ 8.15	US\$ 7.65

- 3.19. The Bidding Process will be carried out by item (range), based on the lowest unit price (price/kg) for each range. For ranges **1, 7, 13** and **19**, the lowest unit price will be used.
- 3.20. The winning bid will be the one offering the **LOWEST UNIT PRICE**.
- 3.21. The period of validity of the service provision will be twelve (12) months, and may be extended for up to 10 (ten) years, at the discretion of the administration within the terms of terms of §4 of article 115 of Annex III of Ordinance GM-MD No. 5,175/2021.

#### **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 air transport services for hazardous materials classified as HAZMAT and non-hazardous material, from the BACW to the Military Organizations (OM) in Brazil, through Guarulhos Airport - SP. It should be noted that the purpose of sending material by commercial air transport is to provide greater speed in the transportation of emergency items 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 the commercial air modal, according to demand and priority established by the 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 the commercial air modal (destination: Guarulhos Airport - SP), in the interests of the Administration, for an initial period of twelve (12) months, from the date of execution of the contract, which may be extended for 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 CONTRACTED PARTY 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. Using historical average amounts (2021 to 2023), the estimated maximum value of the contract will be **USD 131,611.43** (one hundred and thirty-one thousand, six

hundred and eleven US dollars and forty-three cents), according to the preliminary study and market research included in the Administrative Management Process.

- 5.2. As the demand for transport depends on the volume of business that BACW carries out, consumption was estimated for the period 2021 to 2023, which was considered to be adequate for the usual demand.

YEAR	SPENDING AMOUNT US\$
2021	269,677.42
2022	69,339.35
2023	55,817.52

Source: SISCABW

- 5.3. The table below represents the expected utilization based on the average average annual utilization by weight range over the last three (3) years (2021 to 2023), taken from SISCABW:

	WEIGHT RANGE					
	< 45 Kg	45 - 100 Kg	101 - 300 Kg	301 - 500 Kg	501 - 1000 Kg	> 1000 Kg
QTD MANIFEST (ea)	4	3	12	8	5	1

Source: SISCABW

- 5.4. The CONTRACTED PARTY will be obliged to accept, under the same contractual conditions, additions or suppressions in the quantities of up to 25% (twenty-five percent) initially contracted, in accordance with article 125 of Law 14,133/21.
- 5.5. 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.
- 5.6. The amounts may be adjusted, respecting the annual period and the index provided for the contract.
- 5.7. 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 PROCESS procedure, in the form of a REVERSE AUCTION, with the judging criterion being the LOWEST UNIT PRICE.

## 7.2. Execution regime

7.2.1. The execution regime of the contract will be BOUND BY UNIT PRICE, except for lanes 1, 7, 13 and 19, which will be executed by GLOBAL PRICE BOUND.

## 7.3. Qualification requirements

7.3.1. In view of the complexity of the mode of transport, as well as the guarantee of the integrity and safety of the public good, the CONTRACTED PARTY shall be required to have the necessary qualifications, which shall include the presentation of the proofs listed below:

- 7.3.1.1. Copy of the Certificate of Incorporation or similar document, in the name of the bidder.
- 7.3.1.2. Declaration issued by the bidder itself, declaring that it has the following:
  - 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. 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 five (5) years, due to violation of customs and commercial export and import legislation.
- 7.3.1.4. Declaration issued by third parties (logistics operator, private company or public entity) informing that the bidder has already carried out a relevant activity that is compatible with the characteristics of this Term of Reference.
- 7.3.1.5. Declaration issued by the bidder itself stating that it has a license to handle material purchased from the FMS.

## 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 December 26<sup>th</sup>, 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 August 3<sup>rd</sup>, 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 materials will be picked up by the CONTRACTED PARTY at the CONTRACTING PARTY's warehouse located at 4601 Beech Road, Temple Hills, Maryland, 20748, USA, and transported by the CONTRACTED PARTY to Guarulhos International Airport - SP, Brazil, 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 Term of Reference.

## **11. METHODOLOGY FOR EVALUATING THE EXECUTION OF SERVICES**

- 11.1. The CONTRACTED PARTY shall deliver copies of the AWB to the CONTRACTING PARTY within three (3) calendar days of the aircraft's departure.
- 11.2. The CONTRACTED PARTY must send the CONTRACTING PARTY the INVOICE relating to the execution of the service no later than seven (7) calendar days after the departure of the aircraft.

## **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 twelve (12) months from the date it is signed. The validity may be extended, by agreement between the parties, for an additional period of twelve (12) months, if it is in the CONTRACTING PARTY's interest, up to a maximum of ten (10) years, within the terms of §1º of article 115 of Annex III of Ordinance GM-MD No. 5,175/2021.
- 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<sup>th</sup>, 2011.
- 12.4. The services may be rejected, in whole or in part, when they do not comply with the specifications contained in these Term of Reference and in the proposal, and must be corrected/repared/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 Term 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 Term of Reference.
  - 12.6.2. Receive or reject the services according to the specifications described in the Term of Reference within fifteen (15) calendar days.
  - 12.6.3. Once approved, the invoices will be sent to the BACW Contracts Division, accompanied by the Statement of Receipt within five (5) 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 transport up to three (3) business days in advance by e-mail. In exceptional and emergency cases, this call may be made in a shorter period of time, provided it is duly justified. In this case, the CONTRACTED PARTY must make every effort to ship the material, but will be exempt from fines or warnings if it is unsuccessful.
  - 13.1.2. The CONTRACTED PARTY shall be contacted by e-mail.
  - 13.1.3. The CONTRACTING PARTY shall send the CONTRACTED PARTY an e-mail describing the type of cargo to be shipped, as well as its weight and cubage.
  - 13.1.4. The CONTRACTING PARTY shall be responsible for registering the EEI with the AES and supplying the ITN.
  - 13.1.5. Supervision of services by agents of the Administration officially designated for this purpose.
  - 13.1.6. Notify the CONTRACTED PARTY in writing of the occurrence of any irregularities during the execution of the services and set a deadline for their correction.
  - 13.1.7. Pay the CONTRACTED PARTY the amount due for the services rendered, as established in the CONTRACT, upon receipt and acceptance of the invoices issued.
  - 13.1.8. The CONTRACTING PARTY, through CTLA, will be responsible for clearance at the airport of destination.
  - 13.1.9. The CONTRACTING PARTY, through the CTLA, shall be responsible for the payment of fees and taxes levied by the airport of arrival, provided that such costs were not caused by delays, errors or faults on the part of the CONTRACTED PARTY. Otherwise, they shall be borne by the CONTRACTED PARTY.

13.1.10. 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. Perform the services in accordance with the specifications provided in the Term of Reference and in its proposal, with the resources necessary for full compliance with the provisions of the contract in question.

13.2.2. Bear civil liability for any and all materials and damages caused by action or omission by contracted party employees, workers, agents or representatives of the CONTRACTED PARTY.

13.2.3. Assume responsibility for all tax and work-related obligations connected to the subject matter of the CONTRACT.

13.2.4. Maintain, throughout the term of the CONTRACT, consistency with the obligations assumed and all the eligibility and qualification conditions required in the bid.

13.2.5. Be responsible for any costs resulting from errors made in calculating the quantity of items in its bid.

13.2.6. Provide information and clarifications of a technical nature, when requested by the SURVEILLANCE.

13.2.7. Failure to partially or totally fulfill the responsibilities assumed by the CONTRACTED PARTY may result in the application of administrative sanctions, established in the CONTRACT, including fines, and may culminate in the termination of the CONTRACT.

13.2.8. Be responsible for all labor, social and tax obligations, as well as any other rights and obligations provided for in specific legislation. Violation of any of these obligations does not imply the transfer of these responsibilities to the CONTRACTING PARTY.

13.2.9. The material must be loaded onto the aircraft within 5 (five) calendar days of its delivery to the CONTRACTED PARTY.

13.2.10. Customs clearance at the shipping terminal will be the responsibility of the CONTRACTED PARTY.

13.2.11. The air transportation of the material will be the responsibility of the CONTRACTED PARTY.

13.2.12. The CONTRACTED PARTY shall deliver copies of the AWB to the CONTRACTING PARTY within three (3) calendar days of the aircraft's departure.

13.2.13. The CONTRACTED PARTY shall send to the CONTRACTING PARTY the INVOICE relating to the execution of the service within seven (7) calendar days of the aircraft's departure.

13.2.14. All costs related to damages to third parties and the FAB, during the preparations and/or execution of the service object of these Term of Reference, will be under the responsibility of the CONTRACTED PARTY.

## 14. SUBCONTRACTING

- 14.1. Partial subcontracting of the object is permitted, up to a limit of 70% (seventy percent) of the total value of the contract.
- 14.2. Land/air transportation may be subcontracted in full.
- 14.3. Subcontracting the whole or the main part of the obligation is prohibited.
- 14.4. Subcontracting does not release the CONTRACTED PARTY from any of the obligations set out in this 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. MONITORING**

- 16.1. The MONITOR 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. 65-8/2024 and ICA No. 12-23/2023, 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 MONITOR.
- 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 Term 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 contracted party 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 contracted party.
- 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 § 4<sup>th</sup> of article 115 of Annex III of Ordinance GM-MD No. 5,175/2021.

Washington, DC, *digitally dated*.

*digitally signed*  
**GIOVANI FERREIRA DE OLIVEIRA** Maj.  
Chief of SMAT

**Reviewed by:**

*digitally signed*  
**MICHELE DE SOUZA SIQUEIRA** Lt. Col.  
Chief of Fiscal Division

I, JANO FERREIRA DOS SANTOS, Orderly of Expenses of the Brazilian Aeronautical Commission in Washington, DC, **approve** these Term of Reference, since the file contains all the necessary documents, and draw up this declaration, which is signed by me.

*digitally signed*  
**JANO FERREIRA DOS SANTOS** Col.  
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 GIOVANI FERREIRA DE OLIVEIRA no dia 21/05/2024 às 19:30:37 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Ten Cel Int RONALD WILLIAM TURQUE DE ARAUJO no dia 21/05/2024 às 19:37:26 no horário oficial de Brasília.

Assinado via ASSINATURA CADASTRAL por Ten Cel Int MICHELE DE SOUZA SIQUEIRA no dia 21/05/2024 às 20:02:16 no horário oficial de Brasília.