

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON



TERMS AND CONDITIONS

REPAIR SERVICES AND ACCESS TO TECHNICAL PUBLICATIONS

(Electronic Auction - *ELECTRONIC REVERSE AUCTION - e-RA*)

VERSION: JANUARY/2025



MINISTRY OF DEFENSE
AERONAUTICS COMMAND

BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON

TERMS AND CONDITIONS - REPAIR SERVICES AND ACCESS TO TECHNICAL PUBLICATIONS

All bidding processes carried out electronically by the Brazilian Aeronautical Commission in Washington (CABW), through the CABW Electronic Bidding System, for the repair or general overhaul of aeronautical items and access to technical publications related to navigation and the actual operation of aircraft, will be governed by these "Terms and Conditions", and will be carried out in the form of an *Electronic Reverse Auction*, under the indirect execution regime, with the lowest price per item judgment criterion, under the terms of paragraph 2 of article 1 of Law 14.133, of April 1, 2021, and Ordinance GM-MD No. 5.175, of December 15, 2021.

All phases of the process will be carried out in the light of the Brazilian public interest and in search of the most advantageous proposal for the Aeronautic Command, with the rules applicable to the bidding process always being interpreted in favor of broadening the dispute between interested parties, safeguarding the interest of the Administration, equality between bidders, the purpose and security of the contract.

The proposals submitted to CABW will be regulated, interpreted and evaluated based on paragraph 2 of article 1 of Law No. 14.133 of 2021 and the provisions of Ordinance GM-MD No. 5.175, 2021, in accordance with the principles of equality, selection of the most advantageous proposal for the Administration, legality, impersonality, morality, publicity, efficiency, equality, public interest, planning, transparency, effectiveness, segregation of duties, motivation, administrative probity, binding to the invitation instrument, objective judgment, legal certainty, reasonableness, competitiveness, proportionality, speed and economy.

The participation of the bidders in each bidding process is voluntary and responsibility for contractual compliance is understood to be a priority for the Brazilian Air Force. By submitting its bid, the bidder declares that it is aware of the commitment made, ratifies full acceptance of all the articles of these "Terms and Conditions", especially with regard to compliance with the specifications, delivery conditions and deadlines and the possibility of administrative sanctions for non-compliance with the obligations assumed or the conditions of these "Terms and Conditions" and the "*Purchase Orders*" (PO) issued.

These "Terms and Conditions" do not apply to any mode other than the *Electronic Reverse Auction*.

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1. OBJECT

- 1.1. The subject of the bidding process will be described in the *Request for Quote* (RFQ), in accordance with the Requisitions available on the CABW's Electronic Tendering System. The conditions and general information are described and defined in these "Terms and Conditions" and its annexes, including the RFQ.
- 1.2. At CABW's discretion, basic designs, technical specifications or other documents deemed necessary to guide bidders may be included in RFQs/Requests.

2. PARTICIPATION

- 2.1. Business entities that are legally constituted, in the field of activity of the bidding object, and that meet the pre-established requirements and conditions for registration with the CABW and registration in the CABW's Electronic Bidding System, as well as meeting the requirements for legal qualification, technical qualification and economic-financial qualification defined in each RFQ, may participate in the bidding process.
- 2.2. Supplier registration with CABW is open to all interested parties who meet the established requirements and is open all year round. The requirements and detailed guidelines for qualification, as well as the registration application form, are available at www.fab.mil.br/cabw.
- 2.3. Interested parties not permitted to take part in the bidding process:
 - a) Individuals or legal entities who have been debarred, suspended or declared ineligible to have a contract with the Brazilian Public Administration or the Government of the United States of America;
 - b) the authors, whether individuals or legal entities, of preliminary, basic or executive projects for works, services or the supply of goods when the bidding has a related object;
 - c) those who have a technical, commercial, economic, financial, labor or civil relationship with the Head of the CABW or with public agents who perform functions in the bidding process or act in the supervision or management of the contract, or who are their spouse, partner or relative in a direct, collateral or affinity line, up to the third degree.
- 2.4. In the case of repair and/or overhaul of aeronautical equipment or items, the bidder must submit in its proposal the name and FAA/EASA/Equivalent Certificate of the repair shop qualified and authorized to carry out the repair service of the object of the RFQ, as well as the address of the shop where the service will be carried out. Exclusive distributors ("*sole distributor*"/"*repair manager*") of the manufacturer of the material must present their formal authorization, through a letter of representation or similar document issued by the manufacturer.
- 2.5. Business entities registered in CABW's Electronic Bidding System, with active status, will automatically be accredited to participate in the bidding processes. Accreditation with CABW implies the responsibility of the bidder or its legal representative and the presumption of its technical capacity to carry out the transactions inherent in the bidding process.
- 2.6. The bidder is solely and formally responsible for the transactions carried out in its name and assumes as firm and true its proposals and bids, including acts carried out directly or by its representative, excluding the responsibility of the system provider or the body or entity promoting the bid for any damages arising from improper use of access credentials, even by third parties.

2.7. It is the responsibility of the registered business entity to check the accuracy of its registration data in the CABW's Electronic Bidding System and to keep it up to date with CABW, and it must immediately correct or amend the records as soon as it identifies any inaccuracies or if they become out of date. Incorrect or outdated records may result in disqualification.

3. PRICE PROPOSALS

3.1. The bidder must submit the bid in response to an RFQ, through CABW's Electronic Bidding System, by the closing date and time of the *Initial Proposal* Phase.

3.2. Bidders registered in the CABW's Electronic Bidding System must include their bids directly in this system, using their password.

3.3. If necessary, by reasoned decision of the CABW's Contracting Agent, bids sent by e-mail or by physical delivery to CABW's protocol may be accepted, provided that they are sent by the date and time established for the receipt of bids.

3.4. The condition of the service offered in the proposal must be indicated in the *Material Condition* field and must be the same or higher than that requested in the RFQ.

3.5. Bids must be submitted to the currencies available for selection in the system. For bids in currencies other than the one shown in the reference value of the Requisition, the conversion rate of the day prior to the closing of the Closed Bidding phase will be used, taken from the Central Bank of Brazil's website at <https://www.bcb.gov.br/conversao>.

3.6. For repair/overhaul services, the bids must indicate the total price (including, for example, the evaluation fee and the cost of transportation from the repairer to the selected depot). In the "Additional Information" field, the bidder must state:

- a) **the FAA or EASA certificate number or similar and the up-to-date *Capability* list of the repairer who will carry out the requested service, as well as the address and Point of Contact (name, telephone number and e-mail address) of the repairer.**

NOTE 1: The certificate and capacity list provided must prove that the repairer is competent to carry out the service in the P/N of the requisition.

NOTE 2: The bidder will be responsible for carrying out the service, even if it uses a third-party repairer.

- b) **the fixed material evaluation fee**, which must include the evaluation of the material and any and all costs necessary for the return of the material to the CABW warehouse;
- c) **length of service guarantee;**
- d) for *Exchange* processes, the *Serial Number* (SN) and the condition of the material.

NOTE: The *Exchange* unit must be in equal or better condition.

3.7. Failure to provide the information listed above may result in the tenders being disqualified.

3.8. The proposal must comply with the specifications required in the respective RFQ. Changes to the type of service, quantity, condition, unit of supply, *Part Number* (PN) or *Serial Number* (SN) must be fully explained in the "Additional Information/Description" field of the bidding process. Variations in specifications or quantities may result in the bid being disqualified by CABW at its sole and absolute discretion.

- 3.9.** All bids must be valid for at least 60 (sixty) days from the closing date of the electronic auction on CABW's Electronic Bidding System. If the bidder submits a bid that is valid for more than 60 days, it must enter this information in the "Additional Information" field, being aware that a shorter validity may lead to the disqualification of its bid, at CABW's sole and absolute discretion.
- 3.10.** All prices quoted must take into account that the repaired item will be exported. The supplier will be considered USPPI (*United States Principal Party of Interest*) and responsible for the application and payment of fees and taxes for export licenses, when applicable.
- 3.11.** The prices proposed by the bidders must include all ordinary expenses, direct or indirect, arising from the performance of the object, including, but not limited to, fees, taxes, social contributions, labor, social charges, tax and commercial values that are due, administrative fees, cost for issuing or evaluating expenses, export licenses, transportation cost (including costs of shipping material to the contractor, customs clearance, material consumption costs, insurance, and all other fees necessary for the full compliance of the contracted object).
- 3.12.** Proposals with information or conditions that characterize a disclaimer, such as susceptibility to previous sale, minimum order requirements, item condition lower than that required, delivery dates later than those specified in the RFQ or establishment of minimum invoicing may lead to their disqualification, at the sole and absolute discretion of CABW.
- 3.13.** Proposals must be presented objectively. Proposals presenting conditions or information different from those contained in these "Terms and Conditions" and the RFQ may be disqualified. Conditions for the start of the delivery period and the indication of values to be inserted after the proposal has been submitted (such as, but not limited to, handling, packaging, shipping, storage and/or import/export fees) may lead to the disqualification of proposals, at the sole and absolute discretion of CABW.
- 3.14.** All the areas of the proposals will be considered final (prices, deadlines, conditions, etc.), and the bidder must take care to foresee eventualities, in accordance with appropriate risk management, in order to avoid losses for both parties.
- 3.15.** The items to be repaired will be sent to the bidder's workshop for an initial assessment. The bidder will then issue a *Teardown Report* (TDR) within 45 (forty-five) days. If the TDR cannot be sent within 45 (forty-five) days, the company must state the reason for the delay no later than 10 (ten) days before the deadline and formally request an extension of the deadline.
- 3.16.** The TOR must contain:
- a) the result of the material assessment, with a clear description of all the services and tests carried out;
 - b) a list of all the PNs that need to be replaced or purchased, with their individual prices and the quantities required to carry out the *repair/overhaul* service;
 - c) the warranty for the *repair/overhaul* service (the same as stated in the bidder's proposal);
 - d) the total price of the service offered, which must include the appraisal fee, the services to be carried out and any and all fees for returning the material to the CABW warehouse, as well as the relevant taxes and duties;
 - e) the deadline for delivery of the material after authorization of the service;
 - f) the validity of the TDR; and
 - g) the fixed appraisal fee (the same as stated in the bidder's proposal).

NOTE: the flat-rate evaluation fee must be reported separately in the TOR observation field.

- 3.17. The TOR will be analyzed by CABW and the Requesting OM (end user). Repair/overhaul services will only be carried out after CABW has assessed and authorized them in writing. If the services are not authorized, the materials must be returned by the winning bidder to CABW's Warehouse. In this situation, the winning bidder will only be paid for the evaluation after the item has been returned to CABW's Warehouse.
- 3.18. Any return of material to the CABW warehouse must be authorized in writing in advance.
- 3.19. In the event of loss or damage to the equipment to be repaired, while it is under the responsibility of the winning bidder, the latter must replace the material, at its own expense, in whole or in part, at CABW's discretion, in a quality and quantity equal to or greater than that of the original item, and will also be subject to the sanctions provided for in these "Terms and Conditions."

NOTE: None of the Brazilian Air Force material may be destroyed without prior written authorization from CABW.

- 3.20. If the object of the bid is to acquire a contract for courses or technical assistance in Brazil, the bidder must include in its final price all the costs of issuing passports, visas or other documents, consular fees, airline tickets and other amounts directly related to the performance of the contracted service, taking into account compliance with the deadlines established for the performance of the service in Brazil.
- 3.21. CABW may carry out due diligence and request clarifications on the bids submitted, as well as request the physical or electronic submission of supporting documentation or the prices offered. Requests for clarification must be answered within the deadline specified, and the bidding process may be disqualified if this deadline is not met.

4. BIDDING STAGES

4.1. The Bidding Process will consist of three phases:

- a) Phase 1: *Initial Proposal Phase*;
- b) 2nd Phase: *Reverse Auction Bidding Phase*;
- c) 3rd Phase: *Best and Final Offer Phase*.

4.2. **Phase 1, the Initial Bid Phase**, begins on the day the bidding process is published in the Federal Official Gazette (DOU) and lasts at least 8 (eight) working days. This is the phase that allows bidders to participate in the bidding process by submitting their initial proposals. The closing date/time for this phase will be displayed on CABW's Electronic Bidding System for each Request. It will not be possible to participate in the bidding process if there is no bid received in Phase 1.

4.3. The bids received in Phase 1 are hidden by the system. No one has access to the bids, the identification of the bidders or the number of bids received.

4.4. At the end of Phase 1, the system will show the lowest bid received, without identifying the bidder who submitted it. At this point the **2nd Phase, Open Auction**, begins, in which the participating bidders will be able to place bids with values lower than those indicated in the system. The system will display, in real time, the value of the lowest registered bid, without identifying the bidder who provided the best bid. This phase lasts 24 (twenty-four) hours.

- 4.5. At the end of Phase 2, the system enters the inter-phase period, in which it is still possible to submit bids until it closes, which occurs randomly within 60 (sixty) minutes.
- 4.6. After the end of the inter-phase period, the **3rd Phase, Closed Bidding**, begins, in which all bidders whose bids are up to 10% higher than the best price or the next 5 (five) bidders, if there are not five bidders in this condition, will participate. In this phase, also lasting 24 (twenty-four) hours, the system will display the lowest value received and participants will be able to submit their best offer (*Best And Final Offer* - BAFO). The system will not update the value submitted and the bids received will be hidden.
- 4.7. All phases will take place in a public session, through CABW's Electronic Bidding System, on the date, time and place indicated in each RFQ.
- 4.8. CABW's Electronic Bidding System may establish a minimum value interval between the bids to be offered, according to the value of the RFQs.
- 4.9. If no bids are submitted in the 2nd or 3rd Phase, the bidder will compete with the value presented in its bid submitted in the 1st Phase and registered in the system.
- 4.10. In the event of system disconnection due to technical problems, the phases may be extended at the discretion of the CABW Contracting Agent.
- 4.11. At the end of Phase 3, the system will present all participating bidders and their bids to CABW's Contracting Officer and his support team for assessment.
- 4.12. The CABW Contracting Officer and his support team may exclude bids that lead to derisory proposals.

5. ACCESSMENT OF PRICE PROPOSALS

- 5.1. The bids will be judged by CABW's Contracting Agent, in conjunction with the Requesting OM/end user, verifying the suitability of the bids to the criteria, conditions, specifications and prices established in these "Terms and Conditions" and in the respective RFQs.
- 5.2. During the assessment of the bids, CABW's Contracting Agent may open a due diligence in the system to clarify any doubts about the bid submitted or to negotiate with the bidder who offered the lowest bid, already taking into account the registered bids, with the aim of reducing the value of the bid. If the bidder does not respond to the diligence in the system within the proposed deadline, its bid may be disqualified, at the discretion of CABW's Contracting Agent.
- 5.3. CABW will disqualify bidding following processes:
 - a) with insanitary defects and which do not comply with the requirements set out in these Terms and Conditions (including the RFQ and its annexes);
 - b) that do not comply with the technical specifications set out in the RFQ;
 - c) with values higher than the Administration's reference price;
 - d) with prices that are manifestly unfeasible, derisory, symbolic or of zero value, incompatible with market prices or that do not have their feasibility demonstrated, when required by CABW;
 - e) with advantages not provided for in these "Terms and Conditions"; and

- f) that are subsidized by financing or that present advantages based on the proposals of other bidders.
- 5.4. The grounds for any disqualification of bids will be recorded in a specific field of CABW's Electronic Bidding System.
- 5.5. In order to analyze the feasibility of the bids submitted, CABW and the Requesting OM should not limit themselves solely to analyzing the percentage of bid values in relation to the reference price. Declaring a bid unfeasible will be preceded by an analysis of the bid, giving the bidder the opportunity to demonstrate the feasibility and security of the prices offered. To this end, bidders may be asked to submit a cost and pricing spreadsheet, details of brands or products to be delivered, the presentation of conditions or reasons that led to the peculiar pricing or other measures deemed necessary. After analyzing this information, a justification for accepting or rejecting the bid will be presented, with a formal record of the reasons for the decision.
- 5.6. The proposals will be ranked in ascending order by the prices proposed, and the winner will be the one that presents the lowest value, after the three phases of the bidding process, and meets the criteria and specifications of these "Terms and Conditions" and the respective RFQ.
- 5.7. In the event of a tie between two or more bids, the following tie-breaking criteria will be used, in that order:
- a) in which case the tied bidders will be able to submit a new bid at the same time as the ranking;
 - b) evaluation of bidders' previous contractual performance, for which registration records should preferably be used for the purpose of certifying compliance with obligations to deliver materials to CABW; and
 - c) public draw, on a date and time set by the Administration, to which all bidders will be invited.
- 5.8. Once the bids have been analyzed and judged, CABW's Contracting Agent will verify any aspects of the first-place bidder's eligibility.

6. QUALIFICATION

6.1. LEGAL QUALIFICATION

- a) To be considered legally qualified, the company must meet the following criteria:
 - a) Have a *CAGE Code* or *NATO CAGE Code* (DLA / SAM registration);
 - b) Contact telephone number;
 - c) Corporate contact e-mail; and
 - d) At least two years of existence.
- b) If the company does not have an active CAGE Code/NCAGE Code, it must provide the following proof:
 - a) constitutive act or Tax Payer Identification Number (TIN);
 - b) identification document / power of attorney for the representative or agent;

- c) operating license, commercial registration or compatible document authorizing the supplier to operate; and
 - d) company operating certificate.
- c) The above checks will be carried out through CABW's electronic bidding system, and supplemented, where applicable, by consultation of specialized electronic sites, such as *Open Corporates*.

6.2. TECHNICAL QUALIFICATIONS

- a) Depending on the case, and at the sole and absolute discretion of the CABW, the following evidence may be required:
 - a) proof of aptitude, demonstrated by the document required in the call for bids, to carry out activities that are pertinent and compatible in characteristics, quantities and deadlines with the object of the bid; and
 - b) letters of recommendation, good performance or guarantees provided by authorities or entities that regulate the corresponding commercial activity.
- b) When technical qualifications are required, this information will be included in the Requisition Description.

6.3. ECONOMIC AND FINANCIAL QUALIFICATION

- a) To be considered economically and financially qualified, the company must meet the following criteria:
 - a) Minimum annual revenue of US\$ 25,000.00 (Twenty-five thousand U.S. dollars);
 - b) DUNS number (*Data Universal Numbering System - Issued by Dun&Bradstreet*), with an *Overall Business Risk Level* equal to or less than *moderate-high*, if available in the *Credit Report*.

6.4. Once the winning bidder has been declared, it will be awarded the contract by CABW's Contracting Officer, and the bidding process will be submitted for approval by the Head of CABW.

7. APPEALS AND OBJECTIONS

- 7.1.** Once the winning bidder has been declared, any person may, during the period granted by the Contracting Officer in the public session, in the appropriate field of CABW's Electronic Bidding System, express their intention to appeal. Reasons for appeal must then be submitted in CABW's Electronic Bidding System within a maximum of 3 (three) days from the date of judgment and qualification. Failure to express an intention to appeal during the public session will result in the right to appeal being forfeited.
- 7.2.** Once the appeal has been lodged, bidders will have 3 (three) days to submit their counter-appeals in a specific field of the CABW's Electronic Bidding System.
- 7.3.** Appeals will be reviewed by CABW's Contracting Officer and forwarded to the Head of CABW for decision.

8. CONTRACT

- 8.1. The contracts originating from the bidding processes governed by these "Terms and Conditions" will be replaced by a "*Purchase Order*" (PO).
- 8.2. POs will be sent to contractors via the CABW's Electronic Tendering System, and execution deadlines will begin when the contractor registers the "*acknowledgment*" in the system.
- 8.3. The POs issued will contain the object, prices, deadline and place of delivery.
- 8.4. In the event of partial or total non-compliance with the *Purchase Order* or the provisions of these Terms and Conditions, CABW may unilaterally terminate the contract and cancel the PO. In cases of non-compliance, the provisions of sub-item 8.5 of these "Terms and Conditions" shall be observed.
- 8.5. In the event of the annulment of the POs, which characterizes a contractual termination motivated by the contractor, an Administrative Irregularity Investigation Process will be initiated, which, after guaranteeing the bidder the right to an adversarial proceeding and a full defense, may culminate in the imposition of administrative sanctions on the contractor.

9. MATERIAL RECEIVED

- 9.1 The repaired and/or overhauled item, which is the subject of the contract, can be delivered to any of the locations available on the link https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf, and the contractor must take responsibility for this information when entering the bid in the CABW's Electronic Bidding System.
 - a) It is authorized to change the place of delivery at any stage of the process, as long as the contracted party requests, and this information must be recorded by means of an addendum to the PO originally issued.
 - b) All deliveries must go through customs.
- 9.2. All items must be delivered with an *invoice* and a *packing list* in accordance with the PO data issued.
- 9.3. The objects will be received:
 - a) provisionally, by means of documentary receipt at CABW's Warehouse; and
 - b) permanently by the receiving commission (COMREC) of the Requesting OM (end user) in Brazil, after checking the quality and quantity of the material delivered.
- 9.4. Delivery, packaging and transportation must follow the rules set out in Clause 15 of these "Terms and Conditions" and in the respective RFQs.
- 9.5. Services provided in breach of the conditions and specifications set out in these "Terms and Conditions" and in the RFQ must be replaced by the contracted party. In the case of deliveries of materials that are rejected on final receipt, the *credit memo* will not be accepted, and the material must be replaced or the amount returned to CABW.

10. PAYMENTS

- 10.1.** Payments will be made by CABW to the contractor within a maximum of 30 days of delivery of the item to CABW's Warehouse, provided that delivery has taken place in accordance with these "Terms and Conditions" and there are no outstanding documents.
- a) When the item is sent to a location other than the CABW Warehouse (according to the link <https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf>), the payment period will begin upon receipt of a copy of the invoice at the CABW Warehouse, duly signed by the person responsible for receiving the item.
- 10.2.** Payment will be made by *wire transfer* to a bank account in the name of the contractor, and payment to third-party accounts is prohibited, except in cases where there is a link between the companies, proven by documentary evidence and accepted by CABW.
- 10.3.** From time to time, CABW may send payments by check if the contractor formally requests this method of payment.
- 10.4.** Payments will be made in US dollars, unless another currency is provided for in the RFQ and PO.
- 10.5.** CABW will not cover any fees charged by the contractor's banks for receiving *wire transfers*.

11. SUPERVISION

- 11.1.** The execution of the contracted items will be supervised by the Head of the Material Section of CABW or by other military personnel or local auxiliaries designated by the Head of the CABW.

12. ECONOMIC AND FINANCIAL REBALANCING

- 12.1.** The values presented in the repair/overhaul proposals may be adjusted upwards or downwards after the item has been analyzed by the repair shop, given that the item has not been made available for prior inspection by the offeror.
- 12.2.** To this end, before carrying out the service, the company must submit the "*Teardown Report*" (TDR), a document detailing the costs of all the services required and all the parts ("*Part Numbers*") that need to be replaced and/or purchased.
- 12.3.** Upon receipt of the item, the company must provide the TOR within 45 (forty-five) days, informing the result of the evaluation.
- 12.4.** Unjustified failure to comply with this deadline may result in the company being held responsible, with the possibility of the penalties being applied for in these "Terms and Conditions".
- 12.5.** The TOR must state the deadline for delivery of the repaired material to CABW and the warranty period for the service performed.
- 12.6.** The service can only be started upon receipt of CABW's written approval, which depends on the TOR.
- 12.7.** Once the TOR has been submitted, after analysis by CABW and the Requesting OM (end user), the bid price may be adjusted to re-establish the relationship that the parties initially agreed between the contract charges and the Administration's fair remuneration for the repair service, with the aim of maintaining the initial economic and financial balance of the contract.

- 12.8. *Beyond Economical Repair*" (BER) will be those items whose service value is greater than 70% of the appraised and/or registered value of the item in question.
- 12.9. BER items must be returned to the CABW Depot without any repair or refurbishment work having been carried out, in the same state and condition as they were received by the contractor.
- 12.10. In the event of the item being returned to BER, the contracted party will be owed the amount of the item's valuation fee, in accordance with the values informed at the time of submitting the bid.
- a) Pursuant to the provisions of the previous paragraph, the amount presented as the "evaluation fee" shall be fixed and not adjustable.
- 12.11. The evaluation fee also applies when the item is returned in "*Beyond Physical Repair*" (BPR) condition or when the contracting party provides the reason for the return.
- 12.12. In the event of unilateral termination by the contractor, the item must be returned, but the evaluation fee will not be paid, unless there is a justification formally accepted by the Administration.
- 12.13. The evaluation fee will not be due for materials returned to the Administration without the TDR having been previously provided.
- 12.14. The evaluation fee must include the operational costs of analyzing the item, such as, but not limited to, the number of man-hours employed, the fixed costs of the workshop and the costs of sending the material back to the contracting party.

13. ADDITIONS AND REMOVALS

- 13.1. The contracted party is also obliged to accept additions or deletions to the contracted services, up to a limit of 25%.
- 13.2. In specific cases of *overhaul*, as they are technically engineering services, the contractor is obliged to accept additions or deletions/removals up to a limit of 50%.
- 13.3. Additions and deletions cannot be confused with the rebalancing of the contract, as per clause 12 above. On the contrary, this instrument is applicable when **needs arise that alter the quantities initially contracted**. Examples include components that are part of the equipment that is the subject of the contract, the repairs of which have not been indicated as necessary or, similarly, are no longer necessary.
- 13.4. This instrument is also applicable when the Administration decides to supply "*spare parts*" to the contracted party, with the aim of reducing the total amount budgeted for the service, which can be applied in any type of situation, but is particularly important in cases of BER, enabling the contracted objects to be executed.
- 13.5. The additions referred to in this clause will not be considered when classifying the item in BER, as they are an addition to the equipment initially sent.

14. PENALTIES

- 14.1. The application of penalties will observe the provisions of GM-MD Ordinance No. 5,175, of December 15, 2021, and will also, whenever possible, use the principles of Law No. 14,133, of April 1, 2021, and GABAER Ordinance No. 623/GC4, of November 20, 2023, of the Air Force Command, which contain the definitions of the terms used in this item.

14.2. Infringements will be investigated by means of an Administrative Irregularity Investigation Process (PAAI), with bidders/contractors being guaranteed the right to an adversarial hearing and a full defense.

14.3. The bidder or contractor may be held administratively liable for the following infractions:

- a) giving rise to partial non-performance of the contract;
- b) giving rise to partial non-performance of the contract that causes serious damage to the Administration, to the operation of public services or to the collective interest;
- c) giving rise to total non-performance of the contract;
- d) fails to maintain its bid, except in the event of a supervening event duly justified and accepted by CABW;
- e) refuses to take delivery of the *purchase order* or fails to provide the documentation required for the contract, when called upon within the period of validity of its bid;
- f) delay the execution or delivery of the object of the bid without justifiable reason;
- g) submitting a false declaration or documentation required for the tender or making a false declaration during the tender or the execution of the *purchase order*;
- h) defrauding the bidding process or committing a fraudulent act in the execution of the *purchase order*;
- i) behave in an inappropriate manner or commit fraud of any kind;
- j) committing unlawful acts with a view to frustrating the objectives of the tender;
- k) promising, offering or giving, directly or indirectly, an undue advantage to a public official or a third party related to them;
- l) demonstrably finance, fund, sponsor or in any way subsidize the commission of the unlawful acts provided for in these Terms and Conditions;
- m) can be proven to have used an intermediary natural or legal person to conceal or disguise their real interests or the identity of the beneficiaries of the acts carried out;
- n) frustrate or defraud, by means of an arrangement, combination or any other expedient, the competitive nature of a public bidding procedure;
- o) prevent, disturb or defraud the performance of any act of a public bidding procedure;
- p) driving away or seeking to drive away a bidder by means of fraud or offering an advantage of any kind;
- q) defrauding public tenders or contracts arising from them;
- r) fraudulently or irregularly creating a legal entity in order to participate in a public bidding process or enter into an administrative contract;
- s) obtaining an undue advantage or benefit, fraudulently, from modifications or extensions of contracts entered into with the public administration, without authorization by law, in the public bid invitation or in the respective contractual instruments;
- t) manipulating or defrauding the economic and financial balance of contracts entered into with the public administration;
- u) hinder the investigation or inspection activities of public bodies, entities or agents, or intervene in their activities, including within the scope of regulatory agencies and national financial system inspection bodies.
- v) deliver material other than the *Part Number (PN)* and *National Stock Number (NSN)* specified in the PO without proper coordination and authorization (in the case of alternate or superseding material); and

- w) change the place of delivery, quantities, condition, price or description specified in the PO.
- 14.4.** In the event of total or partial non-compliance with any item of these "Terms and Conditions", CABW may apply the penalties listed below:
- a) warning;
 - b) compensatory fine;
 - c) moratorium fine;
 - d) impediment to bidding and contracting with the Federal Public Administration; and
 - e) declaration of ineligibility to bid or contract.
- 14.5.** The application of sanctions will take into account:
- a) the nature and seriousness of the offense committed;
 - b) the peculiarities of the specific case;
 - c) aggravating or mitigating circumstances;
 - d) the damage caused to the Public Administration by the infraction;
 - e) the implementation or improvement of an integrity program, in accordance with the rules and guidelines of the control bodies.
- 14.6.** The application of any sanctions listed in item 14.4 does not, under any circumstances, exclude the obligation to make full reparation for the damage caused to the Administration.
- 14.7.** Warning:
- a) The administrative penalty of a warning will be applied when the contractor infringes, for the first time, obligations relating to late delivery, replacement of goods or incorrect *invoices*, failure to comply with supervisory instructions, within 48 hours, and, at the discretion of the Head of CABW, for other infractions considered minor.
- 14.8.** The fine:
- a) The total amount of the fine imposed may not be less than 0.5% (five tenths of a percent) or more than 30% (thirty percent) of the **value of the PO**, in which case the default and compensatory fines shall be applied concurrently;
 - b) The compensatory fine can be applied together with the default fine;
 - c) The amount of the fines imposed must be paid by the sanctioned party into the bank account indicated by CABW within five (5) working days of receipt of the notice of imposition. If payment is not made within this period, the amounts will be withheld by the Finance Section from future payments due to the contractor, even if they relate to other POs or contracts.
- 14.9.** The Compensatory Fine:
- a) 0.5% (five tenths of a percent) of the **value of the item in the PO**, in the event that the bid submitted in the tender is not upheld;
 - b) 2% (two percent) of the **value of the item in the PO**, in the event of rejection of receipt of the PO, issued within the validity of the tender, or in the event of delaying delivery without justifiable reason;
 - c) 5% (five percent) of the **value of the item included in the PO**, in the event of causing partial non-performance of the PO, in the event of delivery of materials in disagreement with the specifications and conditions provided for in the PO and in these "Terms and Conditions", presenting false documentation or declarations during the bidding process or

during the execution of the PO, or also committing the harmful acts listed in letters "l" to "v" of item 14.3; and

- d) 10% (ten percent) of the **value of the item included in the PO**, in the event of causing total or partial non-performance of the PO when it results in serious damage to the Administration, fraud, behaving in an inappropriate manner or practicing illicit acts with a view to frustrating the objectives of the bid.

14.10. Moratorium fines:

- a) 0.5% (five tenths of a percent) of the **value of the PO**, per calendar day of delay, up to a limit of 3 (three) days from the scheduled delivery date;
- b) 0.2% (two tenths percent) of the **PO value**, per calendar day of delay, between the 4th (fourth) and 30th (thirtieth) day of the scheduled delivery date;
- c) 0.4% (four tenths percent) of the **PO value**, per calendar day of delay; between the 31st (thirty-first) day and the 60th (sixtieth) day of the scheduled delivery date;
- d) A delay of more than 60 (sixty) calendar days will be considered as total non-performance of the PO;
- e) If the amount of the fine calculated does not reach the minimum stipulated in letter "a" of item 14.8, the amount calculated must be set aside and a fine of 0.5% (five tenths of a percent) of the **value of the PO** must be applied.

14.11. Impediment from bidding and contracting with the Federal Public Administration:

- a) The application of the administrative sanction of impediment to bidding and contracting will prevent the person responsible from bidding or contracting within the direct and indirect Federal Public Administration, for a maximum period of 3 (three) years.

14.12. Declaration of unfitness:

- a) The declaration of ineligibility to bid or contract 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;
- b) The Minister of Defense of the Federative Republic of Brazil is exclusively responsible for applying the sanction of being declared unfit to bid or contract.

14.13. The sanctions provided for in letters "a", "d" and "e" of item 14.4 may be applied together with the fines provided for in letters "b" and "c" of item 14.4 of these "Terms and Conditions".

14.14. The penalties of a warning, being barred from bidding or contracting and being declared unfit to bid or hire will be recorded in CABW's Electronic Bidding System.

14.15. An appeal may be lodged within 15 (fifteen) working days from the date of notification in the event of the application of the penalties provided for in these "Terms and Conditions".

15. SHIPPING AND EXPORT COMPLIANCE

15.1. INCOTERMS 2020

- a) For the delivery of materials relating to services purchased through these "Terms and Conditions" the applicable INCOTERMS 2020 are **FCA**, whether the materials come from the USA or other countries and sent to CABW to any of the addresses listed in the link < https://www2.fab.mil.br/cabw/images/PDF/Shipping_Information.pdf>.
- b) The use of any other INCOTERMS 2020, other than **FCA**, must be requested to CABW, through the email smat.cabw@fab.mil.br, and may be accepted or denied, at CABW's discretion.

15.2. Packaging

- a) Boxes must be duly identified with INVOICE (referring to a single Purchase Order), *PACKING LIST* and EXPORT LICENSE attached to **the outside of** the package. A copy of the documents must also be placed inside the box, together with the item delivered. **Third party invoices and/or packing lists will not be accepted.**
- b) Boxes may not contain items from more than one PO. Each PO must be packed separately.
- c) Boxes, packages and wooden pallets must be subjected to appropriate treatment (heat or fumigation with chemicals), in accordance with the "International Phytosanitary Standards" (ISPM 15). Such containers must be marked with seals proving that the treatment has been carried out.
- d) Materials exceeding 7,000 pounds and/or 82 inches cannot be delivered to the CABW Warehouse. In such cases, the contractor must contact CABW at smat.cabw@fab.mil.br to determine how and where the material will be delivered.
- e) Failure to comply with one of these rules will result in the item being returned or refused, and/or may lead to delays in payment.
- a) Any delays in payment caused by non-compliance with the packaging procedures are the sole responsibility of the contractor.

15.3. Export procedures

- a) The contractor **MUST** provide CABW with all necessary export licenses for the export of products from the United States to Brazil. These can be obtained through the Department of State and/or the Department of Commerce of the United States of America. The contractor will be responsible for any failure to comply with the U.S. Export Regulations.
- b) All items originating in countries other than the USA will be exported under the responsibility of the contractor, in accordance with local federal regulations. In these cases, the export license will be from the country of the selected warehouse to Brazil.
- c) Where applicable, the contractor must notify CABW prior to export by emailing smat.cabw@fab.mil.br, providing a copy of the HAWB/BL, invoice and packing list.
- d) All documentation that must accompany the item must be delivered by the freight forwarder together with the cargo. The documentation must also show the name of the contractor and the CABW Purchase Order number. Invoices and/or packing lists from third parties will not be accepted.
- e) It is the contractor's responsibility to specify the place of delivery in its tender, observing the applicable INCOTERMS 2020 (FCA).
- f) All deliveries to the CABW Warehouse at 4601 Beech Road, Temple Hills, MD, 20748, telephone (301) 423-2515, must take place Monday through Friday, between 7:30 a.m. and 12:00 p.m. and 1:00 p.m. and 3:00 p.m., except on U.S. and Brazilian national holidays.
- g) Items sent in breach of the rules set out in these "Terms and Conditions" will not be accepted.

15.4. Export documentation

- a) The export documentation listed below must be provided by the contractor and attached to the shipment, with a copy inside the box and the original outside the box:
 - a) invoice;
 - b) packing list; and
 - c) SED ("*Shipper's Export Declaration*").
- b) The invoice must contain:
 - a) final destination:

Ministério da Defesa – Comando da Aeronáutica
Centro de Transporte Logístico da Aeronáutica
Estrada Alfredo Rocha, 495 – Ilha do Governador – RJ
CEP 21941-580 – Brasil
CNPJ 00.394.429/0045-21 – Jurisdição Fiscal 7.93.34.01-6
Contact: apoioddad.ctla@fab.mil.br / +55 (21) 2138-4188

- b) Schedule B" number (10 Digits) / harmonized code;
 - c) NSN class;
 - d) *Purchase Order* (PO) number; and
 - e) export license number (where applicable).
 - c) The packing list must include the following information, in addition to all the data necessary to identify the *Part Number* (PN) and the quantity shipped:
 - a) *Purchase Order* (PO) number;
 - b) weight; and
 - c) dimensions.
 - d) Packaging and documentation must comply with applicable federal export codes.

15.5. Any delivery procedure other than those set out in these "Terms and Conditions" must be requested from CABW by emailing smat.cabw@fab.mil.br and may be accepted or denied at CABW's discretion.

15.6. Any delays in payments caused by non-compliance with any of the shipping and export procedures set out in this section shall be considered the sole responsibility of the contractor.

16. SUSTAINABILITY CRITERIA AND PRACTICES

16.1. The CONTRACTED PARTY must return the repaired/revised material, preferably in suitable individual packaging, with the smallest possible volume, using recyclable material, in order to guarantee maximum protection during transportation and storage.

17. PROHIBITIONS AND PERMISSIONS

17.1. The CONTRACTED PARTY is prohibited from interrupting the execution of services on the grounds of default by the CONTRACTING PARTY, except in the cases provided for by law.

18. GENERAL PROVISIONS

18.1. CABW may revoke or annul the bidding processes governed by these "Terms and Conditions", in which case an appeal is guaranteed within three (3) working days of being notified of the act or the drawing up of the minutes.

18.2. The annulment of a tender procedure for reasons of illegality does not generate an obligation to pay compensation.

18.3. Participation in the bidding process implies acceptance of the conditions specified in these "Terms and Conditions" and in the RFQ, with complete submission to the rules contained therein.

18.4. The forum for settling questions relating to these "Terms and Conditions" shall be the United States District Court in Washington, DC, to the exclusion of any other. Acts related to contracting shall be interpreted in accordance with the principles of Law No. 8.666, of 1993 and Ordinance GM-MD No. 5.175, of 2021, and shall also be governed in accordance with the laws of the District of Columbia.

18.5. Physical documents related to this "Terms and Conditions" should be sent to the Brazilian Aeronautical Commission in Washington, 1701 22nd Street N.W., Washington, DC, 20008.

19. REFERENCIAL ADVISORY

19.1. The draft of these "Terms and Conditions" was submitted for legal analysis by the Air Force Command's Deputy Legal Counsel, a body belonging to the Union's General Counsel, and was approved by means of REFERENT OPINION No. 00003/2023/COJAER/CGU/AGU, dated July 26, 2023 and NOTE No. 00492/2024/COJAER/CGU/AGU, dated June 28, 2024.

Washington, DC, United States of America, (date as per signature).

BRUNO LUIZ SANTANA DE ARAUJO Lt Col Av
Head of Logistics Division / Contracting Officer

Reviewed by:

MICHELE DE SOUZA SIQUEIRA Lt Col Int
Internal Control Agent

Approved by:

JANO FERREIRA DOS SANTOS Col.
Head of CABW