

**DIRECTIVE GM-MD N° 5.175, OF DECEMBER 15TH, 2021.**

Approves the Norms for Abroad Purchases of the Brazilian Navy Command, Brazilian Army Command, and Brazilian Aeronautical Command.

The MINISTER OF DEFENSE, in the use of the powers granted to him by art. 87, sole paragraph, items I and II, of the Federal Constitution, in view of the provisions of art. 1, § 2, of Law No. 14,133, of April 1, 2021, and considering what is stated in Process No. 60000.006091/2019-37, resolves:

Art. 1 It is hereby approved:

I - the Regulation for Purchases Abroad of The Brazilian Navy Command, in the form of Annex I;

II - Regulation for Purchases Abroad of The Brazilian Army Command, in the form of Annex II; and

III - Regulation for Purchases Abroad of The Brazilian Aeronautical Command, in the form of Annex III.

Art. 2° The Commanders of the Navy, Army and Aeronautics may issue complementary acts necessary for the enforcement of this Directive within their respective Commands.

Art. 3rd This Rule comes into force on July 1st, 2022.

WALTER SOUZA BRAGA NETTO

ANNEX III

REGULATION FOR PURCHASES ABROAD OF THE BRAZILIAN AERONAUTICAL  
COMMAND

CHAPTER I

PRELIMINARY PROVISIONS

Art. 1°. The purpose of this regulation is to regulate, within the scope of the Brazilian Air Force, art. 1, § 2, of Law No. 14,133, of April 1, 2021, to set down administrative bidding and contracting regulations executed abroad by the Brazilian Aeronautical Commissions (BAC).

Sole Paragraph. The Brazilian Aeronautical Commissions (BACs), on this date, are the Brazilian Aeronautical Commission in Washington (CABW), in Washington D.C. - United States of America, and the Brazilian Aeronautical Commission in Europe (CABE), in London - United Kingdom of Great Britain and Northern Ireland.

Art. 2°. In the bidding process or direct contracting, the Commissions must follow the Brazilian legislation, where applicable, the legal provisions of the country where the Commission is located or the Military Defense Attaché Office, as well as those arising from the normative structure of the Air Force Command (COMAER) that rules the Foreign Trade System of the Air Force Command (SISCOMAER).

Art. 3°. The terms of waiver or unenforceability, the drafts of bidding notices, as well as those of contracts, agreements, covenant, similar and/or related instruments, must be previously examined and approved by the Legal Counsel within the Air Force Command (COJAER).

§ 1 If there is a legal manifestation applicable to the object, then an individualized prior analysis of COJAER is waived.

§ 2 For the preparation of a legal statement, the following requirements must be observed:

I - the volume of cases on identical and recurring matters if it justifiably impacts the performance of the advisory board or the speed of administrative services; and

II - the juridical activity is restricted to the verification of compliance of legal requirements starting from a simple conference of documents.

§ 3 For expenses exclusively related to the overhead cost of the Commissions and Attaché Offices abroad running, whereby the object can only be bided and provided at the headquarters of the Military Organization (MO) or Defense Attaché Office, a prior analysis by COJAER may be waived, as long as there is a legal manifestation.

Art. 4. If the requesting Military Organization (MO) or Commissions deems it pertinent, it may, within reason, contract local legal study, in addition to COJAER's evaluation, in order to meet the need to comply with the legal peculiarities of that country.

Sole Paragraph. In the event that the local legal study suggests substantial changes to the analyzed drafts, the process must be forwarded again to COJAER for analysis and approval.

## CHAPTER II

### PRINCIPLES

Art. 5. All bidding and contracting fulfilled by the Commissions overseas must observe the constitutional principles and the basic principles of Law No. 14.133, of 2021, listed below, and those related to them:

I - isonomy;

II – awarding the most advantageous proposal for the Administration;

III - legality;

IV - impersonality;

V - morality;

VI - publicity;

VII - efficiency;

VIII - equality;

IX – public interest;

X - planning;

XI - transparency;

XII - efficacy;

XIII – segregation of duties;

XIV - motivation;

XV – administrative probity;

XVI – bond to the public notice;

XVII – unbiased judgement;

XVIII – legal certainty;

XIX - reasonableness;

XX – competitiveness;

XXI - proportionality;

XXII - celerity; and

XXIII - economy.

### CHAPTER III

#### LOCAL PECULIARITIES

Art. 6. The bidding and contracting processes carried out by the Commissions, including those carried out to meet the administrative and operational needs of the Defense Attaché Office, as well as those that may be carried out by them, shall observe local peculiarities, including local legislation, regarding:

I – to the supplier register;

II – the qualification of suppliers;

III – to the Administration forum;

IV – legislation of international trade laws;

V – to the INCOTERMS (International Commercial Terms);

VI – the disclosure of acts and acquisition processes;

VII – application of penalties;

VIII – equivalence in the contractual relationship between Administration and suppliers;

IX - the means used for market research; and

X – to payment methods.

Art. 7. In cases where any provision of this regulation cannot be applied due to impossibilities arising from the local peculiarities provided for in this article, especially with regard to administrative sanctions, the executing MO must provide a duly motivated justification to be included in the case file.

### CHAPTER IV

#### INTERDICTIONS

Art. 8. BAC, Military Defense Attaché Office and other public offices, which may be linked within the scope of COMAER, cannot establish differentiated treatment of any nature, between Brazilian and foreign companies, including in regard the currency and place of payment, even when funding from international agencies is involved.

Art. 9. The bids will be carried out at the place where the BAC or Military Defense Attaché Office are located, considering the respective areas of jurisdiction, except for reasons of public interest, duly motivated.

Art. 10. The government employee cannot participate, directly or indirectly, in the bidding or in the execution of the contract, and it must be observed, in the terms of the Brazilian law. The agent part of the entity bidding or contracting, and the situations that may constitute a conflict of interests in the current or post position of the employee in question.

Sole Paragraph. The following may not compete for a bid or participate in the execution of a contract, directly or indirectly:

I - author of the preliminary project, the basic project or the executive project, individual or legal entity, when the bidding deals with work, services or supply of goods related thereto;

II - company, alone or in a consortium, responsible for the preparation of the basic project or the executive project, or company of which the author of the project is a director, manager, controller, shareholder or holder of more than 5% (five percent) of the capital with the right to vote, technical manager or subcontractor, when the bidding deals with work, services or supply of goods necessary for it;

III - individual or legal entity that, at the time of the bidding, is unable to participate in the bidding as a result of the sanction imposed on him;

IV - anyone who maintains a technical, commercial, economic, financial, labor or civil relationship with a director of the contracting agency or entity or with a public agent who performs a role in the bidding or acts in the inspection or management of the contract, or who is their spouse, partner or relative collateral or by affinity, up to the third degree, and this prohibition must be expressly included in the bidding notice;

V - controlling, controlled or affiliated companies, under the terms of Law No. 6,404, of December 15, 1976, competing among themselves, in a bidding process; and

VI - individual or legal entity that, within 5 (five) years prior to the publication of the notice, has been sentenced in court, with a final and unappealable decision, for child labor, for submitting workers to conditions similar to slavery or for contracting adolescents in cases prohibited by labor legislation.

Art. 11. The prohibitions stated in art. 10 are extended to a third party who assists in carrying out the contract as a member of a support team, specialized professional or employee or representative of a company that provides technical assistance.

Art. 12. The provisions of this Chapter do not prevent the bidding or contracting of works or services that include the elaboration of an executive project as a charge of the contracted party or for the price previously fixed by the Administration.

Art. 13. Indirect participation is considered, for the purposes of the provisions of art. 10, sole paragraph, the existence of any linkage of a technical, commercial, economic, financial or labor nature between the author of the project, an individual or legal entity, and the bidder or person responsible for the services, supplies and works, including supplies of goods and services needed by them.

Art. 14. The provisions of art. 13 applies to the employee or holder of a position on COMAER commission, to the members responsible for the bidding, inspection, receipt and payment of the contracted object.

Art. 15. The government employee designated to act in the area of bidding and contracts is prohibited, except in the cases provided by law:

I – admit, foresee, include or tolerate, in the acts performed, situations that:

a) compromise, restrict or frustrate the competitive nature of the bidding process, including in cases of participation by cooperative societies;

b) establish preferences or distinctions based on the place of birth, headquarters or domicile of the bidders; and

c) are impertinent or irrelevant to the specific object of the contract;

II - to oppose unjustified resistance to the progress of the proceedings and, unduly, to delay or fail to perform the act, or to perform it against an express provision by law; and

III - initiate a bidding process without the proper characterization of its object, under penalty of nullity of the act and responsibility of whoever gives rise to it.

Art. 16. The provisions of this chapter are also applied in cases of waiver and unenforceability of bidding for work execution purposes and for service provision.

## CHAPTER V

### CONTRACTING ABROAD REGULATION

Art. 17. The BACs and, eventually, the Defense Attaché Offices are responsible for the acquisition and contract of war and military goods and services abroad intended for the final use of the COMAER Military Organizations, that are not manufactured or repaired by companies based in the national territory.

§ 1 For the purposes of what is stated in the caput, these are war and military goods, and services intended for the final use of COMAER Military organizations: the acquisition of aircraft, armaments, ammunition, equipment, spare parts and accessories, and services related to the Air Defense system and airspace control, including those aimed at support activities, as well as other materials and services applied to naval, aerospace and land resources for the private use of the Armed Forces and intended for the use of their activities, are war and military goods, and services intended for the final use of COMAER Military Organizations.

§ 2° The acquisition or contracts abroad will also be allowed if the goods or services in the country do not have sufficient technical requirements to meet the standards of equivalent application and adequate specifications for the purpose for which they are intended, or still, if the production capacity is less than the quantity to be purchased or contracted or does not meet the required delivery deadlines.

§ 3 The contracts carried out by the BACs abroad will be intended to meet the demands of the bodies that are part of the Air Force Command, with the exception of individual and exceptional authorization from the President of the Republic for contracts in the exclusive interest of other bodies or entities.

Art. 18. Materials and services of interest to COMAER, existing in the country, may also be acquired and contracted abroad, when the prices charged by national suppliers exceed by more than 30% (thirty percent) the price of foreign products and services, observing the provisions of art. 17, § 1, of this rule, in which case there must be justification in the records by the requesting Military Organization.

Sole paragraph. In the case of the caput, the participation of a Brazilian company will not prevent the continuation of the bid process.

Art. 19. The BACs are also responsible for the acquisition and contracting, outside the country, of materials and services of interest to the performance of their routine activities, and for reasons of public interest, duly justified, of the Defense Attaché Offices.

Art. 20. The asset disposals may be processed, in an exceptional way, by the BACs, after the proper assessment of the asset by the Requesting MO, provided that the existence of public interest with a view to increasing competitiveness and greater economic consideration remains.

§ 1. The asset disposal executed abroad by the BACs will, exceptionally, always be in the concurrence bidding modality.

§ 2. In the public interest, duly justified by the competent authority, the material available to be exchanged may enter as part of the payment of another to be acquired, a condition that must be included in the bidding notice.

## CHAPTER VI

### REGISTRATION RECORDS

Art. 21. The BACs will maintain an approved and updated register of suppliers, which will serve as a basis for publicizing the bidding processes.

Sole paragraph. The public call for registration must be widely publicized abroad and on the website of the respective BAC and must be permanently open to interested parties, with the BAC being obliged to carry out the public call on the internet, at least annually, to update existing records and for the entry of new interested parties.

Art. 22. When requesting, at any time, registration or update in the register, the interested party will provide the necessary elements required for qualification according to this regulation.

Sole paragraph. The interested party will provide the necessary elements required for qualification according to this regulation, being able to participate in the bidding process until the Administration's decision, and the execution of the contract will be conditioned to the issuance of the certificate, which will be provided to the registrant, being renewable whenever the registration is updated.

Art. 23. At any time, the registration of a registrant who fails to meet the requirements determined by this regulation may be changed, suspended or canceled.

Art. 24. In case of total or partial non-compliance with the Terms and Conditions of the Electronic Purchasing System, BACs abroad may, guaranteeing the right to full defense and adversarial proceedings, apply the sanctions stated in Chapter XXI of this regulation.

Art. 25. The registration, its alteration, suspension or cancellation, will be processed and judged by a commission appointed in an act published in the organization's internal bulletin or in the Official Diary of the Union. The members of the commission should only serve for a maximum of one year. However, if necessary, they can be reappointed only for another period of one year, whose members will be liable for all acts performed by the commission, unless a divergent individual position is recorded in the minute drawn up at the meeting at which the decision was taken.

## CHAPTER VII

### JUDGMENT CRITERIA

Art. 26. The judgment of the proposals will be objective. The Administration must carry out it in accordance with the bidding modalities, the criteria previously established and the factors

exclusively referred in the call notice, in order to enable its assessment by the bidders and by the control bodies.

Art. 27. The judgment of proposals will be carried out according to the following criteria:

I - lowest price;

II - greater discount;

III - best technique or artistic content;

IV - technique and price;

V - highest proposal, in the asset disposal processes; and

VI - greater economic return

§ 1 Judging by the lowest price or highest discount and, when applicable, by technique and price, will consider the lowest expenditure for the Administration, matching the minimum quality prerequisites defined in the bidding notice.

§ 2 The judgment for best technique or artistic content will exclusively consider the technical or artistic proposals presented by the bidders, and the public notice must define the prize or remuneration that will be attributed to the winners.

§ 3 The judgment by technique and price will consider the highest score obtained from the weighting, according to objective factors provided for in the public notice, of the scores attributed to the technical and price aspects of the proposal.

§ 4 The judgment for greater economic return, used exclusively for the execution of an efficiency contract, will consider the greatest savings for the Administration, and the remuneration must be fixed in a percentage that will be proportional to the savings actually obtained in the execution of the contract.

## CHAPTER VIII

### BIDDING MODALITIES

Art. 28. The bidding modalities for contracting carried out abroad are as follows:

I – Bidding Process - Concurrence;

II – Bidding Process - Reverse Auction;

III – Bidding Process - Invitation For Bidding (IFB); and

#### IV - Bidding Process - Competitive Dialogue.

§ 1 The bidding modalities contained in this regulation are similar forms to those of the same name used in national territory, adapted to the local peculiarities of foreign markets, with no absolute identity between them.

§ 2 The Invitation for Bidding modality (IFB) may be used until the deadline set forth in art. 193, item II, of Law No. 14,133, of 2021.

Art. 29. The modality will be determined by the BACs depending on the nature of the object to be acquired, observing the following criteria:

I – Concurrence - type of bidding for contracting goods and services and engineering works and services, as well as for disposal processes;

II – Reverse auction - type of bidding for the acquisition of common goods and services, whose judgment criterion may be the lowest price or the highest discount;

III – Invitation For Bid - bidding modality between interested parties in the field relevant to its object, registered, chosen and invited in a minimum number of 3 (three) by the administrative unit, which will post, in an appropriate place, a copy of the invitation to bid and extend it to the others registered in the corresponding specialty who express their interest up to 48 (forty-eight) hours in advance of the submission of proposals; and

IV – Competitive dialogue - bidding modality for contracting works, services and purchases in which the Public Administration carries out dialogues with bidders previously selected according to objective criteria, with the aim of developing one or more alternatives capable of meeting their needs, and the bidders must present a final proposal after the closing of the dialogues.

Art. 30. Once the bidding modality is defined, the following criteria will be observed at the same time:

I - the reverse auction modality may be carried out in electronic form when the electronic system certified by COMAER is available, capable of operating the data in a secure, transparent and impersonal manner;

II - when the characteristics of the bidding and local peculiarities allow the application of more than one form (in person or electronically) or modality, priority will be given to the one that makes the process more transparent; and

III - when opting for the face-to-face form, the due justification must be included in the process.

Art. 31. The bidding notice for price registration shall observe the general rules of this regulation, especially art. 69, and should provide for:

I - the specifics of the bidding and its object, including the maximum quantity of each item that may be purchased and the minimum quantity for each order;

II - the minimum quantity to be quoted of units of goods or, in the case of services, of units of measurement;

III - the possibility of predicting different prices:

a) when the object is carried out or delivered to different locations;

b) on account of the form and place of packaging;

c) when a variable quotation is admitted due to the size of the lot; and

d) for other reasons justified in the process;

IV - the possibility of the bidder offering or not a proposal in a quantity lower than the maximum foreseen in the public notice, being bound within its limits;

V - the criterion for judging the bidding, which will be the lowest price or the highest discount on the price list practiced in the market;

VI - the conditions for changing registered prices;

VII - in case the first place declines its proposal in the contest, the second place may be inquired about the possibility of delivering the item at the price of the first place, seeking the greatest advantage for the Administration;

VIII - the registration of more than one supplier or service provider, since they accept to quote the object at a price equal to that of the winning bidder, ensuring the preference of contracting according to the classification order;

IX - the prohibition of the participation of the body or entity in more than one price registration minute with the same object within the validity period of the one in which it has already participated, except in the minute that have registered a quantity lower than the maximum foreseen in the public notice; and

X - the hypotheses of cancellation of the minute of price registration and its consequences.

Art. 32. The term of validity of the price registration minute will be 1 (one) year and may be extended for an equal period, since the advantageous price is proven.

Sole paragraph. The contract resulting from the price registration minute will have its validity established in accordance with the provisions contained therein.

Art. 33. The works, services and purchases carried out by the BACs and the Additions will be divided into as many installments as are technically and economically viable, proceeding with the bidding with a view to better use of available resources in the market and to increase competitiveness without losing the economy of scale.

Art. 34. Publicity of the awarded contracts will be given to interested parties, by means of notification or publication, on the institutional website of the BACs and Aditancias.

Art. 35. When the bidding takes place in electronic form, all companies registered in the field of service provision or supply of respective goods may be invited.

## CHAPTER IX

### CONCURRENCE

Art. 36. In the concurrence bidding modality, any interested parties previously registered, or who meet all the conditions required for registration up to 72 (seventy-two) hours before the submission of proposals, may participate.

Art. 37. The public notice containing the summary of the summons must be published in the Official Diary of the Union, and published on the website of the respective BAC and on the National Public Contracting Portal (PNCP), when available and compatible with the electronic system and with the purchase system in use at BAC, maintaining this disclosure until the date of receipt of the proposals.

Sole paragraph. The deadlines for the submission of proposals and bids, counted from the date of publication of the bidding notice, are:

I - for the acquisition of goods:

- a) 8 (eight) business days, when the lowest price or highest discount judgment criteria are adopted; and
- b) 15 (fifteen) business days, in cases not covered by sub-item "a" of this item;

II - in the case of services and construction:

- a) 10 (ten) business days, when the lowest price or highest discount judgment criteria are adopted, in the case of common services and construction and common engineering services;
- b) 25 (twenty-five) business days, when the lowest price or highest discount judgment criteria are adopted, in the case of special services and construction and special engineering services;
- c) 60 (sixty) business days, when the execution regime is integrated contracting; and
- d) 35 (thirty-five) business days, when the execution regime is semi-integrated contracting or in cases not covered by items "a", "b" and "c" of this item;

III - for asset disposals, in which the highest bid judgment criterion is adopted, 15 (fifteen) business days; and

IV - for bids in which the criterion of judgment of technique and price or of the best technique or artistic content is adopted, 35 (thirty-five) business days.

Art. 38. Any change in the public notice and its annexes requires disclosure in the same way as the original text, reopening the initially established deadline, at least once, except when the change unquestionably does not affect the formulation of the proposals.

## CHAPTER X

### REVERSE AUCTION

Art. 39. The Reverse Auction is the bidding modality for the acquisition of goods and contracting of common services, including common engineering services, and may be implemented, in the electronic form, among the bidding modalities executed by BAC, through a certified electronic system by COMAER, guaranteeing users the certainty of transparency regarding the acts performed, publicity, impersonality, morality and efficiency in contracting.

Art. 40. Common goods and services are those whose performance and quality standards can be objectively defined by the public notice, through usual market specifications.

Art. 41. Common engineering services are considered to be any engineering service whose object is actions, objectively standardizable in terms of performance and quality, maintenance, adequacy and adaptation of movable and immovable assets, preserving the original characteristics of the assets

Art. 42. The notice containing the summary of the convening instrument of the reverse auction shall be published in accordance with the deadlines provided on art. 37, sole paragraph, and art. 38 thus, through the publication of the public notice on the Official Diary of the Union, on the National Public Contracting Portal, PNCP (Portal Nacional de Contratações Públicas), when available, and on the BAC's website, in compliance with the principles of transparency and free competition.

Art. 43. The competent authority of the organ promoting the bidding, the auctioneer, the members of the support team and the bidders, who participate in the reverse auction in electronic form, must be previously accredited to the provider of the electronic system.

Art. 44. Bidding in the electronic form of auction does not apply to contracting construction engineering, non-common goods and services, as well as real estate leases and disposals in general.

Art. 45. Any change in the public notice and in its annexes requires disclosure in the same way as the original text, reopening the initially established deadline, except when the change unquestionably does not affect the formulation of the proposals.

Art. 46. After the public notice is published on the website, bidders will submit, exclusively by electronic means, together with the qualification documents required in the public notice, a

proposal with the description of the object offered and the price, until the date and time established for opening of the public session.

Art. 47. For the judgment and classification of proposals, the criterion of lowest price or highest discount will be adopted, observing the deadlines for supply, the technical specifications and minimum parameters of performance and quality defined in the invitation to bid.

## CHAPTER XI

### INVITATION FOR BIDDING - IFB

Art. 48. The Invitation For Bidding (IFB) modality may be used until the deadline provided on art. 193, item II, of Law No. 14,133, from 2021.

Art. 49. In the IFB modality, the process will be carried out with an unlimited number of participants, being considered valid when there is a minimum number of three valid proposals from companies in the field relevant to the object of the bidding, previously registered and invited by the BAC.

Sole paragraph. When, due to market limitations or the obvious lack of interest of the participants, it is impossible to obtain the minimum number of valid proposals required in the caput, these circumstances must be duly justified in the process, under penalty of repetition of the IFB.

Art. 50. Uninvited companies may participate in the event as long as they express interest up to 24 (twenty-four) hours in advance of the submission of proposals.

Art. 51. The invitation For Bidding must be published on the website of the respective BAC, at least 5 (five) business days before the date scheduled for the opening of the proposals, maintaining this disclosure until the date of receipt of the proposals.

Art. 52. Any modification to the public notice and its annexes requires disclosure in the same way as the original text, reopening the period initially established.

## CHAPTER XII

### COMPETITIVE DIALOGUE

Art. 53. Competitive dialogue is the bidding modality for contracting construction services, services and purchases in which the Public Administration dialogues with previously selected bidders according to objective criteria, in order to develop one or more alternatives capable of meeting their needs, where the bidders must submit a final bid after the closing of the dialogues.

Art. 54. The competitive dialogue modality is restricted to contracts in which the Administration:

I - aims to contract an object that involves the following conditions:

- a) technological or technical innovation;
- b) impossibility for the agency or entity to have its needs met without adapting solutions available on the market; and
- c) inability for the technical specifications to be defined with sufficient precision by the Administration; and

II - verify the need to define and identify the means and alternatives that can satisfy their needs, with emphasis on the following aspects:

- a) the most appropriate technical solution;
- b) the technical requirements able to implement the already defined solution; and
- c) the legal or financial structure of the contract.

Art. 55. In the competitive dialogue modality, the following provisions will be observed:

I - the Administration will state, on the occasion of the publication of the notice on the official website, its needs and the requirements already defined and will establish a minimum period of 25 (twenty-five) business days for the expression of interest in participating in the bidding;

II - the criteria used for the pre-selection of bidders must be provided in the public notice, and all interested parties who fulfill the established objective requirements will be admitted;

III - the disclosure of information in a discriminatory manner that may imply an advantage for any bidder will be prohibited;

IV - the Administration will not be able to reveal to other bidders the proposed solutions or the confidential information communicated by a bidder without its consent;

V - the dialogue phase may be maintained until the Administration, in a reasoned decision, identifies the solution or solutions that meet its needs;

VI - the meetings with the pre-selected bidders will be recorded in minutes and recorded using audio and video technological resources;

VII - the public notice may foresee successive phases; in which case each phase may restrict the solutions or proposals to be discussed;

VIII - the Administration shall, upon declaring that the dialogue has been concluded, add to the files of the bidding process the records and recordings of the dialogue phase, start the competitive phase with the publication of a public notice containing the specification of the solution that meets its needs and the objective criteria to be used for the selection of the most advantageous proposal. Followed by the start of a deadline, not less than 60 (sixty) business

days, for all bidders pre-selected in the form of item II of this article to present their proposals, which must contain the necessary elements for carrying out the project;

IX - the Administration may request clarifications or adjustments to the proposals presented, as long as they do not imply discrimination or distort competition between the proposals;

X - the Administration will define the winning proposal in accordance with criteria disclosed at the beginning of the competitive phase, ensuring the most advantageous contract as a result; and

XI - the competitive dialogue will be conducted by a hiring commission composed of at least 3 (three) civilian employees or federal employees belonging to the permanent staff of the Administration, admitted to the hiring of professionals for technical advice of the commission.

## CHAPTER XIII

### EXEMPTION AND UNENFORCEABILITY OF BIDDING

Art. 56. It is unnecessary to bid abroad for:

I - contracting lower than US\$ 100,000.00 (one hundred thousand US dollars), in case of engineering works and services or maintenance services for motor vehicles and aircraft;

II - contracting lower than US\$ 50,000.00 (fifty thousand American dollars), in case of other services and purchases;

III - contracting whose object is products of research and development, limited to contracting, in case of engineering works and services, in the amount of US\$ 300,000.00 (three hundred thousand American dollars); and

IV – any other cases of waiver of bidding provided for in Brazilian legislation, when applicable to acquisitions executed abroad.

Art. 57. purchase of engineering works or services contracting are also exempt from bidding when the disclosure of their location, need, characteristic of their object, specification or quantity jeopardizes national security objectives, and is related to:

I - acquisition of naval, terrestrial and aerospace military resources;

II - contracting of specialized technical services in the area of projects, research and scientific technological development; and

III - acquisition of equipment and contracting of specialized technical services for areas such as:

a) intelligence;

b) information security;

c) cyber security;

d) communications security;

e) cyber defense; and

f) launch of space vehicles and the respective contracting of the Union's goods and services for their operationalization.

§ 1° Bidding by value waiver processes, aiming the acquisition of materials and contracting of services related to the overhead expenses, to the operational obtainments, referred to in art. 17, § 1°, of this regulation and the contracting of engineering services, should preferably be executed electronically.

§ 2° the exemption process, applicable to items I and II of art. 56 of this regulation, it will be executed, whenever possible, and justified in case of impossibility, consulting with a minimum number of three companies in the field relevant to the object of the bidding, previously registered by the BACs.

Art. 58. Bidding abroad is unenforceable when competition is unfeasible, especially in cases of:

I - hiring either a natural or legal person to perform specific training courses and staff improvement or enrollment in courses; and

II - other cases of unfeasibility of competition, pursuant to art. 74 of Law No. 14,133, of 2021, when applicable.

Art. 59. The direct contracting process, which includes cases of unenforceability and waiver of bidding, must be instructed with the following documents:

I – a demand formalization document and, if applicable, preliminary technical study, risk analysis, term of reference, basic project or executive project;

II - expenditure estimate;

III - legal opinion and technical opinions, if applicable, that demonstrate compliance with the required requirements;

IV - demonstration of the intention to fulfill the contract in the budget;

V - proof that the contracted party meets the necessary eligibility and qualification requirements;

VI - reason for the contractor's choice;

VII - price justification; and

VIII - authorization from the competent authority.

## CHAPTER XIV

### ELIGIBILITY

Art. 60. In order to qualify for biddings, interested parties will be required to provide documentation concerning to:

I - legal qualification;

II - technical qualification; and

III - economic-financial qualification.

Art. 61. Documentation related to legal qualification, as applicable, will consist of:

I - the supplier's constitutive act or document corresponding to the local peculiarity;

II – the supplier's identification document or the representative or agent of the company;

III - corporate telephone and e-mail to send questions and inquiries;

IV - operating license, commercial registration or compatible document authorizing the supplier's operation; and

V - certificate or document of incorporation of the company, in the applicable cases.

Art. 62. Documentation related to the technical qualification, as the case may be, will consist of:

I - proof of aptitude demonstrated by a document required in the invitation to bid, for the performance of relevant activity and compatible in characteristics, quantities and deadlines with the object of the bidding; and

II - recommendation letters, good performance or guarantees provided by authorities or entities that regulate the corresponding commercial activity.

Art. 63. Proof concerning to economic-financial qualification, as applicable, will consist of demonstrating the financial capacity of the bidder with a view to the commitments it will have to assume.

Sole paragraph. The proof of financial capacity, alternatively, can be obtained by the BACs on official websites, public or private websites, with notorious expertise.

Art. 64. In the event of an unfeasibility local peculiarity, the requirement of the documentation stated in art. 60, the BAC's Expense Officer may waive compliance, clarifying the reasons and bringing the process to an end.

Art. 65. Unless otherwise justified in the bidding process, a legal entity may participate in a consortium bidding, subject to the following rules:

I - proof of public or private commitment to form a consortium, signed by the consortium members;

II - indication of the leading company of the consortium, which will be responsible for its representation before the Administration;

III - admission, for the purpose of technical qualification, of the sum of the quantities of each consortium member and, for the purpose of economic and financial qualification, of the sum of the values of each consortium member;

IV - impediment for the consortium company to participate, in the same bidding, in more than one consortium or in isolation; and

V - joint liability of the members for the acts performed in a consortium, both in the bidding stage and in the execution of the contract.

Sole paragraph. The public notice shall establish for the consortium an addition of 10% (ten percent) to 30% (thirty percent) on the amount required from an individual bidder for economic and financial qualification, unless justified.

Art. 66. Companies, foreign or not, that have any tax or labor restrictions with the Brazilian Government will be disqualified, except for those classified as micro-companies or small companies under Brazilian legislation.

Art. 67. The winning bidder is obliged to promote, before the conclusion of the contract, the constitution and registration of the consortium, under the terms of the commitment referred to in item I of art. 65 of this rule.

## CHAPTER XV

### THE PREPARATORY PHASE OF THE BIDDING PROCESS ABROAD

Art. 68. The internal phase of the process, intended for the preparatory acts for the realization of the bidding process, will observe the following minimum formalization, under the responsibility of the requesting MO:

I - detailed request for the object or service, containing technical specifications, projects or other documents required by the applicant;

II - preliminary technical study that characterizes the public interest involved and most suitable contracting solution through a bidding process abroad, pointing out and demonstrating specific circumstances of the process abroad, respecting the propositions contained in this regulation, based on technical surveys, diligences, market research or publication of a notice in the Official Diary of the Union;

III – estimated price

IV - authorization from the competent authority for the contracting;

V - invitation to bid and its annexes;

VI - analysis of the draft of the invitation to bid by COJAER, observing the provisions of art. 3 of this regulation; and

VII - eventually, a contracted legal study, aiming to meet the need to observe the local legal peculiarities, in case BAC or the requesting MO deems it pertinent, observing the provisions of art. 4 of this regulation.

Art. 69. The public notice shall contain in the preamble, the order number in an annual series, the name of the department interested and its sector, the modality, the execution regime and bidding type, the legislation which will be governed, the place, date and time for receiving the documentation and proposal, as well as for opening of the envelopes, and must indicate the following:

I - object of the bidding process, in a concise and clear description;

II - term and conditions for signing the contract or withdrawing the instruments, for execution of the contract and for delivery of the object of the bidding process;

III - sanctions in case of default;

IV - place where the basic project can be examined and acquired;

V - if there is an executive project available on the date of publication of the public notice and the place where it can be examined and acquired;

VI - conditions to participate in the bidding process and how to submit proposals;

VII - criteria for judgment of proposals, with clear provisions and objectives;

VIII - locations, times and access codes of the remote communication in which elements, information and clarifications will be provided regarding the bid and the conditions for the fulfillment of the obligations required for the performance of its object; and

IX - the criterion of acceptability of unitary and global prices, as the case may be, allowing the maximum prices fixing and prohibited the minimum prices fixing, statistical criteria or ranges of variation in relation to reference prices.

Sole paragraph. The public notice and the contract terms will appear in the records in the language in which they are signed and in Portuguese, by means of a simple translation, and published in both languages.

Art. 70. Based on documents formalizing demands, the bodies responsible for planning will be able to prepare an annual hiring plan, with the objective of rationalizing the contracting of bodies and entities under their competence.

Art. 71. The administration may convene at least eight (8) business days in advance, a public hearing, in person or virtual, in electronic form, about the bidding process it intends to execute, with prior availability of any relevant information, including a preliminary technical study and elements of the bidding notice, with the possibility of manifestation of all interested parties.

## CHAPTER XVI

### THE EXTERNAL PHASE OF THE BIDDING PROCESS ABROAD

Art. 72. The external phase of the bidding process will begin with the disclosure of the summary of the public notice and will end with the approval and award of the object of the bidding process to the winner, observing the following phases:

- I - disclosure of the summary of the public notice;
- II - judgment of the proposals, and the form of presentation will be stipulated in the public notice;
- III - eligibility and qualification of bidders;
- IV - appeal phase of qualification and judgment of proposals;
- V - award of the object of the bidding process to the winner;
- VI – homologation of the bidding process; and
- VII - formalization of the contract, when applicable.

Art. 73. The external phase of the bidding process executed in the electronic system will begin with the registration of companies by the BACs and will end with the approval and award of the object of the bidding process to the winner, observing the following sequence:

- I - registration (qualification) of bidders;
- II - disclosure of the public notice;
- III - electronic submission of proposals;
- IV - technical interaction and judgment of proposals;
- V – adjudication of the object of the bidding process to the winner;
- VI – appeal;
- VII - homologation of the bidding process; and
- VIII - formalization of the contract, when applicable.

Art. 74. The information concerning the bidding process, including the respective invitations to bid, as well as the information of the contracts signed must be disclosed on the BAC's website, in accordance with Law No. 12,527, of November 18, 2011.

## CHAPTER XVII

### PROCEDURE AND JUDGMENT

Art. 75. The bidding will be processed and judged by a hiring agent or commission, designated by the competent authority, among military personnel, to make decisions, monitor the bidding process, provide impetus to the bidding process and perform any other necessary activities to a consistent progress from the bidding process to approval.

Art. 76. The hiring agent will be assisted by a support team and will be responsible for the acts performed, except when induced to error by the team's performance.

Art. 77. The hiring agent may be replaced by a hiring commission formed by at least 3 (three) members, who will be liable for all acts performed by the commission, except for the member who expresses a divergent individual position registered in the minute drawn up at the meeting where the decision was taken.

Art. 78. When carried out in person or electronically, the bidding process will begin with the opening of an administrative process, duly notified, filed and numbered, containing the respective authorization, a concise indication of its purpose and the appropriate resources for the expense, and to which will be added opportunely:

I - public notice and respective annexes, when applicable;

II - proof of publication of the summarized public notice or delivery of the invitation, which may be in electronic form;

III - designation act of the bidding agent or the person responsible for the invitation;

IV – hard copy of the proposals and supporting documents

V - minutes, reports and deliberations of the Judging Committee;

VI - technical or legal opinions issued about the bidding process, waiver or unenforceability;

VII - acts of adjudication of the object of the bidding process and its homologation;

VIII - appeals presented eventually by the bidders and respective manifestations and decisions;

IX - order of annulment or revocation of the bidding process, when applicable, with detailed reasons;

X - term of contract or equivalent instrument, as the case may be;

XI - other proof of publications; and

XII - other related documents to the bidding process.

Art. 79. The in-person bidding process will be processed and judged in compliance with the following procedures:

I – opening of the envelopes containing the documentation related to the qualification of the bidders and their evaluation, and the non-registered bidders, in the qualification phase, may present all the registration documentation for the analysis of the commission;

II - return of the sealed envelopes to disqualified bidders, containing the respective proposals, provided that there has been no appeal or after their denial;

III - opening of the envelopes containing the proposals of qualified bidders, provided that the deadline has passed without filing an appeal, or the withdrawal there has been expressed, or after the appeals has been judged;

IV - verification of the conformity of each proposal with the requirements of the public notice and, as the case may be, with the current prices in the market or fixed by the competent official body, or with those included in the price registration system, which must be duly registered in the judgment minutes, promoting the disqualification of non-conforming or incompatible proposals;

V - judgment and classification of proposals according to the evaluation criteria contained in the public notice; and

VI - deliberation of the expense authorizing officer regarding the approval and award of the object of the bidding

Art. 80. The biddings will be carried out preferably in electronic form, use of face-to-face method is allowed, as long as it is authorized, the public session must be registered in minutes and recorded in audio and video.

§ 1 The bidding process will observe the following phases, in sequence:

I - preparatory

II - disclosure of the bidding notice;

III - submission of proposals and bids, when applicable

IV – judgement;

V - qualification;

VI - appeal; and

VII - of approval.

§ 2 The phase referred to in item V of §1 may, by means of a motivated act with explanation of the resulting benefits, precede the phases referred to in items III and IV of the referred paragraphs, as long as they are expressly foreseen in the bidding notice.

Art. 81. The opening of the envelopes containing the documentation for qualification and the proposals will always take place in a previously appointed public act, of which a detailed minute will be drawn up and signed by the bidders present, the bidding agent, or the Commission.

Art. 82. All documents and proposals for in-person bids will be initialed by the bidders present, the bidding agent or the Commission.

Art. 83. The bidding agent, the Commission or the higher authority, at any stage of the bidding process, are allowed to carry out due diligence aimed to clarify or complement the instruction of the process, the inclusion of documents or information that should have originally appeared in the proposal is forbidden.

Art. 84. After the qualification phase, the proposal cannot be withdrawn, except for good cause arising from a supervening fact accepted by the bidding agent or the Commission.

Art. 85. When judging the proposals, the bidding agent or the Commission will take into account the objective criteria defined in the invitation to tender, which must not contradict the rules and principles established in this regulation.

Art. 86. Proposals will be disqualified when:

I - contain irremediable errors;

II - do not comply with the technical specifications detailed in the public notice;

III - present unfeasible prices or remain above the estimated budget for the contracting;

IV - do not have their feasibility demonstrated, when required by the Administration; and

V – present irreconcilable non-conformity with any other requirements of the public notice.

Art. 87. Regarding the provisions of item III of art. 86 of this regulation, in the case of bids for the lowest price for engineering works and services, proposals whose values are less than 75% (seventy-five percent) of the value budgeted by the administration are considered unenforceable.

Sole Paragraph. In contracts for engineering works and services, an additional guarantee will be required from the winning bidder whose proposal is less than 85% (eighty-five percent) of the amount budgeted by the Administration, equivalent to the difference between the budget and the value of the proposal, without loss to the other required guarantees stated in this regulation.

Art. 88. When all bidders are disqualified or all proposals are disqualified, the administration may establish a period of eight (8) working days for the bidders to submit new/reviewed documentation and/or proposals.

Art. 89. It is forbidden the use of any confidential, secret, subjective or reserved element, criterion or factor that may even indirectly elude the principle of equality among the bidders.

Art. 90. It will not be considered any offer of advantage not stated in the public notice, including subsidized or non-refundable financing, nor price or advantage based on the offers of the other bidders.

Art. 91. It will not be admitted a proposal that presents global or unit prices that are symbolic, derisory or of zero value, incompatible with the prices of market and salaries, added the respective charges, even if the call for bid has not established minimum limits, except when they refer to materials and installations owned by the bidder itself, for which it renounces part or all of the remuneration.

Art. 92. In case of a tie between two or more proposals, the following tie-breaking criteria will be used, in this order:

I - final dispute, in which case the tied bidders may submit a followed-up proposal;

II - evaluation of the previous contractual performance of the bidders, for which shall be used preferably records for purposes of attesting to compliance with obligations under these regulations; and

III - public lottery, on a date and time established by the Administration, to which all bidders will be summoned.

Art. 93. The bidding will not be secret, and the acts of its procedure are public and accessible to the public, except for the contents of the proposals, until the respective opening.

§ 1 Exceptions to the rule in the caput are the cases of information whose secrecy is essential to the security of society and of the State.

§ 2 Publicity is deferred regarding the contents of the bids, until the respective opening, and regarding the Administration's budget.

Art. 94. The BAC's Expense Authorizing Officer, who is the competent authority for the approval of the procedure, may only revoke the bid for reasons of public interest resulting from a supervening fact duly proven, pertinent and sufficient to justify such conduct, and must cancel it by illegality, whether ex officio or by the provocation of third parties, by means of a written and duly grounded notice.

Art. 95. The cancelation of the bidding procedure for illegality does not generate an obligation of indemnity, subject to the provisions of art. 98, § 3, of this regulation.

Art. 96. The nullity of the bidding procedure induces that of the contract, subject to the provisions of art. 96 § 98 of this regulation. PAREI AQUI

Art. 97. The provisions of arts. 95 and 96 of this regulation also apply to acts of the procedure for waiving and unenforceability of bids.

Art. 98. The declaration of nullity of an administrative contract requires prior analysis of the public interest involved, and will operate retroactively, preventing the legal effects that the contract should ordinarily produce and voiding those already produced.

§ 1 If it is not possible to return to the previous factual situation, the nullity will be resolved by compensation for losses and damages, without loss to the determination of liability and application of applicable penalties.

§ 2 When declaring the nullity of the contract, the authority, contemplating to the continuity of the administrative activity, may decide that it will only be effective in a future time, sufficient to create a new contracting, for a period of up to 6 (six) months, extendable only once.

§ 3 Nullity will not exempt the Government from the duty to indemnify the contractor for what it has performed up to the date it is declared or made effective, as well as for other losses that are regularly proven, as long as it is not imputable to the contractor, and the liability will fall on whoever has caused the loss.

## CHAPTER XVIII

### CONTRACTS

Art. 99. The process of contracting is obligatory, except in the following hypotheses, in which the Administration may substitute it by another suitable instrument, such as a letter of contract, financial commitment note, purchase authorization or service execution order:

I - waiver of bidding due to value; and

II - purchases with immediate and integral delivery of the goods acquired and which do not result in future obligations, including technical assistance, regardless of their value.

Art. 100. The contracts must clearly and precisely establish the conditions for their execution, expressed in provisions that define the rights, obligations and responsibilities of the parties, in conformity with the terms of the public notice and those of the winning proposal, or with the terms of the act that authorized direct contracting and those of the respective proposal.

Art. 101. Contracts resulting from waiver or ineligibility of bidding must comply with the terms of the act that authorized them and the respective proposal.

Art. 102. The minute of the future contract, when required, shall be part of the public notice or call for bid act.

Art. 103. Provisions establishing the following are required in every contract

I - the object and its specific elements;

II - the binding to the public notice and to the winning bidder's proposal or to the act that authorized the contracting and to the respective proposal;

III - the legislation applicable to the execution of the contract, including omissions;

IV - the execution regime or the supply method;

V - the price and payment terms, the criteria, base date, and periodicity for price readjustment, and the criteria for monetary adjustment between the date of fulfillment of the obligations and the date of actual payment;

VI - the measurement criteria and periodicity, when this is the case, and the deadline for settlement and payment;

VII - the deadlines for the beginning of the execution stages, conclusion, delivery, observation, and definitive receipt, when this is the case;

VIII - the credit through which the expense will be incurred, indicating the functional programmatic classification and the economic category

IX - the risk matrix;

X - the deadline for replying to the request for price renegotiation, when this is the case;

XI - the deadline for responding to the request to reestablish the economic-financial balance, when this is the case;

XII - the guarantees offered to ensure their full execution, when required, including those offered by the contracted party in the case of anticipation of amounts for payment;

XIII - the minimum warranty period of the object, in compliance with the minimum periods established in this regulation and in the applicable technical standards, and the conditions of maintenance and technical assistance, where applicable;

XIV - the rights and responsibilities of the parties, the appropriate penalties and the amounts of fines and their bases of calculation;

XV - the import conditions, the date and exchange rate for conversion, when this is the case;

XVI - the contractor's obligation to maintain, throughout the execution of the contract, in compatibility with the obligations undertaken, all the conditions required for qualification in the bidding, or for qualification, in direct contracting;

XVII - the contract management model, following the requirements defined in the regulation;

XVIII - cases of extinction; and

XIX - the forum, giving preference to that of the place of conclusion of the contract.

Art. 104. The basic project must be attached to the contract to be signed with the winning bidder, of which it is part.

Art. 105. The provision of a financial guarantee may be required in the contracting of services and the acquisition of goods, at the criteria of the Public Administration, in each case, and as long as it is stated in the public notice or in the document that waived or deemed the bidding unenforceable.

Art. 106. Under the terms of the notice, the contractor will choose one of the following types of financial guarantee:

I – Cash deposit;

II – Insurance provided by a reputable institution;

III – Bail provided by a reputable institution; and

Art. 107. In the execution of the contract and without loss to contractual and legal responsibilities, the contractor may subcontract parts of the work, service or supply up to the limit authorized, in each case, by the Administration.

Sole paragraph. The contractor will present to the Administration documentation that proves the technical skills of the subcontractor, which will be evaluated and attached to the records of the process.

Art. 108. The inspection, regarding the contractual execution, will be carried out by public agents, formally designated for the functions of Contract Inspector, according to the procedure defined in the normative act of COMAER.

Art. 109. The execution of the contract must be monitored and supervised by 1 (one) or more inspectors of the contract, specially designated representatives of the Administration, or by their respective substitutes, once allowed the hiring of third parties inspectors to assist and subsidize them with relevant information.

Art. 110. The representative of the Administration will note in its own record all occurrences related to the execution of the contract, determining what is necessary to regularize the absences or defects observed.

Art. 111. Decisions and measures that go beyond the competence of the representative must be requested from their superiors in a timely manner for the implementation of appropriate measures.

Art. 112. The contractor must maintain an agent, accepted by the administration, to represent him in the execution of the contract.

Art. 113. The contracted party will be obliged to repair, correct, remove, rebuild or replace, at its own expense, in whole or in part, the object of the contract in which defects or inaccuracies, resulting from its execution or from materials used, are found.

Art. 114. The total or partial non-performance of the contract may lead to its termination, with the applicable contractual, legal and regulatory consequences, in compliance with the legislation of the locality where the contract was signed and the provisions contained in the public call for the bidding process.

Art. 115. The duration of the contracts governed by this regulation will be the one stated in the public notice, and it must be observed, at the time of contracting and in each fiscal year, the availability of budget surplus as well as the forecast in the pluriannual plan, when it exceeds 1 (one ) financial year.

§ 1 The Management may execute contracts with a term of up to 5 (five) years in the event of continuous services and supplies, observing the following guidelines:

I - the competent authority of the contracting body or entity shall attest to the greatest economic advantage envisaged as a result of the pluriannual contracting;

II - the Administration must certify, at the beginning of the contracting and of each fiscal year, the existence of budgetary credits linked to the contracting and the advantage in its maintenance; and

III - the Administration will have the option to terminate the contract, free of charge, when it does not have budget surplus for its continuity or when it understands that the contract is no longer advantageous.

§ 2 The termination mentioned in item III of § 1 will only occur on the next anniversary date of the contract and may not occur within a period of less than 2 (two) months, counted from that date.

§ 3 The provisions of this article apply to the rental of equipment and the use of computer programs.

§ 4 The contracts for services and continuous supplies may be extended, respecting the maximum ten-year term, provided that there is a provision in the public notice and that the competent authority certifies and proves that the conditions and prices remain advantageous for

the Administration, allowing negotiation with the contracted party or the contractual termination at no cost to any of the parties.

§ 5 The Administration may execute contracts with a term of up to 10 (ten) years in the cases stated in items "f" and "g" of item IV and in items V, VI, and XVI of the caput of art. 75 of Law No. 14,133, of 2021.

§ 6 The Administration may consider an indefinite validity in contracts of public service offered under a monopoly regime, once proved, in each financial year, the existence of budgetary surplus linked to the contract.

§ 7 In the contract that generates revenue and in the efficiency contract that generates savings for the Administration, the terms will be:

I - up to 10 (ten) years, in contracts without investment; and

II - up to 35 (thirty-five) years, in contracts with investment, thus considered those that imply the elaboration of permanent improvements, carried out exclusively at the expense of the contracted party, which will revert to the Public Administration's assets at the end of the contract.

§ 8 In the contract clearly stating a conclusion of a predefined scope, the term will be automatically extended when its object is not completed within the period established in the contract.

§ 9 When the non-completion of the contract is due to the fault of the contractor:

I - the contracted party will be in arrears, with the respective administrative sanctions applicable to him; and

II - Management may choose to terminate the contract and, in this case, will adopt the measures permitted by law for the continuity of the contractual execution.

§ 10 The contractual terms provided for in this regulation do not exclude or revoke the contractual terms provided for in a special law.

§ 11 The contract signed under the regime of supply and provision of associated service will have its maximum term defined by the sum of the term related to the initial supply or delivery of the work with the term related to the operation and maintenance service, this limited to 5 ( five) years from the date of receipt of the initial object, with an extension authorized pursuant to this regulation.

§ 12 The contract that provides for the continued operation of structuring information technology systems may have a maximum term of 15 (fifteen) years.

§ 13 The deadlines for starting the execution, completion and delivery stages may be extended, maintaining the other clauses of the contract and ensuring the maintenance of its economic and financial balance, provided that any of the following reasons occur, duly notified in the process:

I - alteration of the project or specifications, motivated by the interest of the Administration;

II - the occurrence of an exceptional or unforeseeable fact, foreign to the will of the parties, which fundamentally alters the conditions of execution of the contract;

III - interruption of the execution of the contract or reduction of the work pace by order and in the interest of the Administration;

IV - increase in the quantities initially stated in the contract, within the limits allowed by Law No. 14,133, of 2021, motivated by the interest of the Administration;

V - impediment of execution of the contract due to a fact or act of a third party recognized by the Administration in a document contemporaneous to its occurrence; and

VI - omission or delay of measures under the responsibility of the Administration, including the expected payments that directly result in impediment or delay in the execution of the contract, without loss to the legal sanctions applicable to those responsible.

§ 14 Any extension of time must be justified in writing and previously authorized by the competent authority to execute the contract.

§ 15 In the case of an extension of the contractual term, it must become operative by means of an addendum, with prior legal analysis by COJAER.

§ 16 In the case of mere extension of execution stages, provided that it does not exceed the contractual term, it may become operative by means of an apostille or equivalent instrument.

## CHAPTER XIX

### CHALLENGES AND REQUESTS FOR CLARIFICATIONS

Art. 116. All those who participate in the bidding promoted by the bodies or entities referred to in art. 1 of this regulation have a subjective public right to faithful observance of the relevant procedure established in this regulation, and any interested party may follow its development, provided that it does not interfere in a way to disturb or prevent the performance of the works.

Art. 117. The bidding procedure provided for in this regulation characterizes a formal administrative act, practiced in any sphere of Public Administration.

Art. 118. Any person is a legitimate party to challenge the bidding notice terms for irregularities in the application of this Law or to request clarification on its terms, and must file the request up to 3 (three) business days before the opening date of the event.

Art. 119. The bidder who fails to do so by the second business day prior to the opening of the public session will lose the right to challenge the terms of the bidding notice before the Administration.

Art. 120. The appeal and the request for reconsideration will have a suspensive effect on the act or decision appealed from until a final decision is issued by the competent authority.

## CHAPTER XX

### ADMINISTRATIVE RESOURCES

Art. 121. Any person is a legitimate party to challenge the bidding notice for irregularity in the application of this regulation or to request clarification on its terms, and must file the request up to 3 (three) business days before the opening date of the event, and the response to the challenge or request for clarification will be published on an official website within a period of up to 3 (three) business days, limited to the last business day prior to the opening date of the bidding process.

Art. 122. The acts of the Administration resulting from the application of this regulation may be appealed within 3 (three) business days from the subpoena of the act or the drawing up of the minute, in the cases of:

I - an act that grants or rejects a request for pre-qualification of the interested party or for registration in the cadastral register, its alteration or cancellation;

II - judgment of proposals;

III - act of qualification or disqualification of the bidder;

IV - annulment or revocation of the bidding; and

V - termination of the contract, when determined by a unilateral and written act of the Administration.

Sole paragraph. It will also be possible to request a reconsideration, within a period of 3 (three) business days, counted from the date of subpoena, in relation to an act for which there is no hierarchical appeal.

Art. 123. The answer to the challenge or the request for clarification will be published on the official website within a period of up to 3 (three) business days, limited to the last business day prior to the opening date of the bidding.

Art. 124. No period of appeal, representation or request for reconsideration begins or runs without the case files being open to the interested party.

Art. 125. In the reverse auction, once the winner has been declared, any bidder may, immediately during the period granted in the public session, immediately, in the system's own space, express his intention to appeal.

§ 1 The reasons for the appeal mentioned in the caput must be presented within three days.

§ 2 The deadline for filing counter-arguments will be the same as for the appeal and will begin on the date of the personal summons or disclosure of the filing of the appeal.

§ 3 Regarding the appeal stated in items II and III of art. 122 of this regulation, the following provisions shall be observed:

I - the intention to appeal must be manifested immediately, under penalty of estoppel, and the deadline for the presentation of the reasons for the appeal will begin on the date of summons or drawing up of the qualification or disqualification minute or, in the event of adoption of the foreseen inversion of phases in art. 80, § 2, of this rule, of the judgment minute; and

II - the appraisal will take place in a single phase.

§ 4 Acceptance of the appeal will imply invalidation only of an unusable act.

## CHAPTER XXI

### ADMINISTRATIVE SANCTIONS

Art. 126. The administrative sanctions to be included in the bidding processes and signed contracts must observe the basic principles of the Brazilian bidding law, respecting local peculiarities.

Sole paragraph. The bidder or contractor will be held administratively liable for the following infractions:

I - partial non-performance of the contract;

II - partial non-performance of the contract that causes serious damage to the Administration, to the functioning of public services or to the collective interest;

III - the total non-performance of the contract;

IV - fail to deliver the documentation required for the contest;

V – the inability to maintain the proposal, except as a result of a duly justified supervening fact;

VI - not entering into the contract or not delivering the documentation required for the contract, when summoned within the validity period of its proposal;

VII - delaying the execution or delivery of the object of the bidding without justifiable reason;

VIII - submit a false declaration or documentation required for the bidding process or provide a false declaration during the bidding process or the execution of the contract;

IX - defraud the bidding or perform a fraudulent act in the execution of the contract;

X - behave in a disreputable manner or commit fraud of any nature; and

XI - practice illicit acts with a view to frustrating the objectives of the bidding process.

Art. 127. Unjustified delay in the performance of the contract will subject the contracted party to a late payment fine, as provided for in the notice of call or in the contract.

Art. 128. For the total or partial non-execution of the contract, the Administration may, guaranteeing the prior defense, apply the following sanctions to the contracted party:

I - warning;

II - fine;

III - impediment to bidding and contracting; and

IV - declaration of unsuitability to bid or contract.

§ 1 The application of warning sanctions, fines and impediment to bidding and contracting, may be appealed within 15 (fifteen) business days, counted from the date of the subpoena.

§ 2 The appeal referred to in § 1 will be addressed to the authority that issued the contested decision, which, if it does not reconsider it within 5 (five) business days, will forward the appeal to the higher authority, which shall render its decision within a maximum period of 20 (twenty) business days, counted from the receipt of the records.

§ 3 Regarding the application of the penalty of fine and declaration of unsuitability for bidding or contracting, only a request for reconsideration may be submitted within 15 (fifteen) working days, counted from the date of the subpoena, and decided within a maximum period of 20 (twenty) business days from the date of receipt.

Art. 129. The sanction established in item IV of art. 128 of this regulation is the exclusive competence of the Minister of Defense, as the case may be, the defense of the interested party in the respective process being allowed, within 15 (fifteen) business days, counted from the date of its subpoena.

§ 1 The sanction provided for in item III of art. 128 of this regulation will be applied to those responsible for the administrative infractions provided for in items II, III, IV, V, VI and VII of the sole paragraph of art. 126, when the imposition of a more severe penalty is not justified, and

will prevent the responsible party from bidding or contracting within the scope of the direct and indirect Public Administration of the federative entity that has applied the sanction, for a maximum period of 3 (three) years.

§ 2 The sanction provided for in item IV of art. 128 of this regulation will be applied to those responsible for the administrative infractions provided for in items VIII, IX, X and XI of the sole paragraph of art. 126, as well as for the administrative infractions provided for in items II, III, IV, V, VI and VII of this regulation, when the imposition of a more severe penalty is not justified, and will prevent the responsible party from bidding or contracting within the scope of the Administration Direct and indirect public of all federative entities, for a minimum period of 3 (three) years and a maximum of 6 (six) years.

## CHAPTER XXII

### FINAL DISPOSITIONS

Art. 130. In the BACs abroad, the instrument that enables the operation of bidding procedures, following the bidding modalities stated in this regulation and the peculiarity of the location, is called "Bidding Process", as it is the term that best fit the understanding of international suppliers.

Art. 131. For the operationalization of bidding procedures abroad and better identification in the international market, BAC will use its own electronic system.

Art. 132. This regulation will be applicable only to processes started after its effective date.

Art. 133. This regulation will be made available in Portuguese and English on the BAC website.

## APPENDIX

### GLOSSARY

**ADMINISTRATION AGENT** - Is any individual who, invested with attributions and responsibilities defined in a specific act, performs administrative activities of budgetary, financial, accounting, property and human resources management. The administration agent is a public agent, military, or civilian who works in COMAER. The term administration agent, mentioned in this regulation, also encompasses, when not specified, managers in general and civilians.

**ASSET DISPOSAL** - It is any transfer of ownership or administration, whether onerous or free, in the form of sale, exchange, donation, return to the donor, payment in kind, legitimation of possession or concession of domain or reversion to the Patrimony Secretary of the State.

**PRICE REGISTRATION MINUTE** - Document that has the effect of commitment and responsibility, that is, bidders will be obliged to comply with the conditions offered and those stipulated in the Public Notice.

**BIDDING PROCESS** - Specific Administrative Procedure, adopted by Brazilian Aeronautical Commissions based abroad, in some of their contracting of material goods or services. The term in question is the one that best fits the understanding of the bidding process under consideration by international suppliers, given the local commercial peculiarities.

**AIR FORCE COMMAND (COMAER)** - Administrative structure that the Air Force uses to manage its business, within the scope of the Executive, exercising the Defense function as determined by the Constitution.

**BRAZILIAN AERONAUTICAL COMMISSION (BAC) ABROAD** - It is the Organization of the Air Force Command whose purpose is to centralize, within its area of operation, the logistical activities of support and services, the administration of agreements, adjustments and contracts, as well as other that are determined, all of the interest and responsibility of COMAER.

**BIDDING COMMITTEE** - These are Administration Agents, appointed by the competent authority, who receive, in a commission, the temporary and specific attribution, defined in a specific act, to coordinate, control, book, receive, examine and judge all documents and procedures related to the registration of bidders, qualification and judgment of bids, in compliance with the legislation dealing with the matter and the guidelines issued by the competent spheres.

**BRAZILIAN AIR FORCE** – Set of organizations, installations, equipment and personnel engaged in the fulfillment of the military mission assigned to the Air Force Command.

**INCOTERMS** - It is the abbreviation of International Commercial Terms, which in Portuguese means "Termos Internacionais de Comércio". These are standardized rules that regulate various aspects of international trade, having as their main role the definition for the allocation of risks, costs and obligations between the buyer and the seller in a contract for the purchase and sale of goods.

**APPLICANT ORGANIZATIONS** – Military Organizations that, supported by one of the BACs, entry requests for acquisition abroad when the need arise for goods and/or services.

**REVERSE AUCTION AGENT**- It is the agent of the Administration, designated by the competent authority, who receives the temporary and specific attribution for the conduction of in-person, electronic auctions and price records.

**PRICE REGISTRATION** - It is a contracting system where, at the end of the bidding, the winning company signs a Price Registration Minute.

**REQUISITION** - It is the formalization of a need through its issuance through the insertion of the necessary data in a computerized system to obtain a supply item or contract a service.

SISCOMAER - Foreign Trade System of the Aeronautics Command is a corporate system that aims to integrate and coordinate procedures, guidelines and routines, in order to provide an efficient functioning of all activities related to foreign trade within the scope of COMAER.

ELECTRONIC PURCHASING SYSTEM - Acquisition method in which procedural acts are recorded and made available electronically.

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