

# BRAZILIAN AERONAUTICAL COMMISSION IN WASHINGTON



**TERMS AND CONDITIONS**  
**TECHNICAL PUBLICATIONS**  
**AIR NAVIGATION SUPPORT SERVICES**



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

**TERMS AND CONDITIONS – TECHNICAL PUBLICATIONS**

All bids conducted electronically by the Brazilian Aeronautical Commission in Washington (BACW), through the SISCAB system, for the acquisition of Technical Publications, will be governed by these “Terms and Conditions”, and will be conducted in the modality of Invitation for Bid, under the regime of indirect execution, with the award criteria of lowest price per item, in accordance with Article 123 of Law No. 8,666 of June 21<sup>st</sup>, 1993, and Ordinance GM-MD No. 5,175 of December 15<sup>th</sup>, 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 Air Force Command, and the rules applicable to the bidding process will always be interpreted in favor of expanding the dispute among the stakeholders, safeguarding the Administration's interest, the equality among bidders, and the purpose and security of the contract.

The proposals submitted to the BACW will be regulated, interpreted, and evaluated based on Article 123 of Law No. 8,666/1993, and the provisions of Ordinance GM-MD No. 5,175/2021, in conformity with the principles of isonomy, 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 security, reasonableness, competitiveness, proportionality, celerity, and economy.

The participation of the bidders in each tender is voluntary and the responsibility for contractual compliance is understood as a priority for the Brazilian Air Force. By submitting its proposal, the bidder declares to be aware of the commitment undertaken, ratifies full acceptance of all articles of these “Terms and Conditions”, especially regarding compliance with the specifications, conditions and delivery deadlines and the possibility of administrative sanctions for non-compliance with the obligations undertaken or the conditions of these “Terms and Conditions” and the “Purchase Orders” (PO) issued.

These “Terms and Conditions” do not apply to any other modality than Invitation for Bid.

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## **1. OBJECT**

### **1.1. Technical Publications**

**1.1.1.** For the purpose of these Terms and Conditions, “Technical Publications” are the services directly used in aircraft equipment in the Brazilian Air Force, to support air navigation.

**1.1.2.** Therefore, the acquisition of Manuals and Bulletins (Technical Orders), used in aircraft support/maintenance activities, is excluded from the scope, since these types of Technical Publications are considered information technology solutions.

### **1.2. Characterization of the Air Navigation Support Service**

**1.2.1.** The service object of these Terms and Conditions comprises the provision of information for updating on-board equipment in FAB aircraft.

**1.2.2.** The data is specific for each aircraft type, since it covers particular procedures, such as takeoff and landing activities and fuel calculation, and considers all the airfields, worldwide, where FAB aircraft may eventually land, as well as the airways used.

**1.2.3.** For planning purposes, air navigation support service may be of the following types:

- a) **FLIGHT PLANNING:** Is the process of producing a flight plan to describe a proposed aircraft flight. It involves two safety-critical aspects: fuel calculation, to ensure that the aircraft can safely reach the destination, and compliance with air traffic control requirements, to minimize the risk of midair collision.
- b) **TERRAIN DATABASE:** Is a digital representation of the elevation of the terrain at a number of discrete points. Major features of a terrain database include geometric distribution/position of discrete points, horizontal/vertical datum and specific units of measurement.
- c) **ELETRONIC CHARTS:** Is a specialized digital navigation, and an alternative to paper charts. It stores a set of Electronic Navigation Charts (ENCs) and/or Raster Charts, which can display all the necessary geographic information a crew needs to complete a voyage.

### **1.3. Object Definition**

**1.3.1.** The object of the bid will be described in the Request for Quote (RFQ), in accordance with the Requisitions available in the SISCAB system. The conditions and general information are described and defined in these “Terms and Conditions” and its annexes, including the RFQ.

**1.3.2.** At BACW's discretion, basic projects, technical specifications or other documents deemed necessary to guide the bidders may be included in the RFQ/Requests.

## **2. PARTICIPATION**

**2.1.**The bids may be participated in by the business entities legally constituted, in the area of activity of the object of the bid, that meet the pre-established requirements and conditions for the registration with BACW and SISCAB, and meet the requirements of legal qualification, technical qualification and economic and financial qualification defined in each RFQ.

**2.2.**The registration of suppliers with BACW is open to all interested parties who meet the established requirements, throughout the year, and can be performed at [www.fab.mil.br/cabw](http://www.fab.mil.br/cabw).

**2.3.**Cannot participate in the bids:

- a) corporate entity, individually or as part of a consortium or joint venture, that is also participating in the same bidding process as a member, shareholder, consultant, controller or agent of another bidder;
- b) corporate entity, individually or as part of a consortium or joint venture, that has in its staff natural or legal persons serving as employees, agents or consultants of another bidder;
- c) individuals or legal entities that have been impeded, suspended or declared ineligible to contract with the Brazilian Public Administration or with the Government of the United States of America;
- d) the authors, either natural or legal entities, of preliminary projects, basic projects or executive projects of works, services or the supply of goods when the bidding has an object related to them;
- e) those who maintain ties of a technical, commercial, economic, financial, labor or civil nature with the Head of BACW or with public agents who perform functions in the bidding or act in the supervision or management of the contract, or who are their spouse, partner or relative in a direct, collateral or by affinity, up to the third degree.

## **3. PRICE PROPOSALS**

**3.1.**The bidder must submit the proposal in response to an RFQ, through the SISCAB system, by the date and time established in the RFQ.

**3.2.**The bidders registered in the SISCAB system must include their proposals directly in it, through the use of an access password.

**3.3.**Eventually, upon motivated decision of the BACW Contracting Agent, proposals sent by e-mail or by physical delivery to the BACW's protocol may be accepted, provided they are sent by the date and time established for the receipt of proposals.

**3.3.1.** If not defined otherwise by the Head of CABW, the Contracting Agent for acquisitions conducted electronically, through the SISCAB system, will be the Head of the Logistics Division.

- 3.4.**The proposals must indicate the complete description of the material, the quantity offered, the unit price, the total price, the supply unit, the condition of the material offered, and the delivery time. In the “Description” field, the bidder can add information deemed relevant or specifics of the submitted proposal.
- 3.5.**The proposal must comply with the specifications required in the respective RFQ. Changes in description, quantity, condition, unit of supply and/or part number (PN) must be fully explained in the “Additional Information/Description” field of the proposal. Variations in specifications or quantities may result in disqualification of the proposal by BACW, as its sole and absolute discretion.
- 3.6.**Proposals with information or conditions that typify disclaimer, such as susceptibility to prior sale, minimum order requirements, lower than required item condition, delivery dates later than specified in the RFQ or establishment of minimum invoicing, may lead to disqualification, at BACW’s sole and absolute discretion.
- 3.7.**Proposals must be presented in an objective manner. Situations or information other than those contained in these “Terms and Conditions” and in the RFQ may lead to disqualification. Conditions for starting the delivery period and the indication of values to be added after submission of the proposal (such as, but not limited to, handling, packing, shipping, storage and/or import/export fees) may lead to the disqualification of proposals, at BACW’s sole and absolute discretion.
- 3.8.**All fields of the proposals will be considered final (prices, deadlines, conditions, etc.), and the bidder must be concerned to foresee eventualities, according to an adequate risk management, in order to avoid losses for both parties.
- 3.9.**All proposals must have a minimum validity of 60 (sixty) days, from the date of its entry in SISCAB. If the bidder presents a proposal with a validity of less than 60 days, it must insert such information in the “Additional Information” field, being aware that this situation may lead to the disqualification of its proposal, at BACW’s sole and absolute discretion.
- 3.10.** Proposals must be submitted in US dollars, unless otherwise specified in the RFQ.
- 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, fiscal and commercial values that are overdue, administrative fees, cost for issuing or evaluating expenses, cost of transportation (including costs of shipping material to the contracting party, customs clearance, material consumption costs, insurance, and all other fees necessary for the full compliance of the contracted object).
- 3.12.** The proposals submitted cannot be altered after the closing date and time for their presentation.
- 3.13.** BACW may perform diligences and request clarifications on the proposals submitted, as well as request the physical or electronic submission of supporting documentation or the prices offered.

#### **4. PRICE PROPOSALS JUDGEMENT**

**4.1.**The judgment of the proposals will be made by the BACW Contracting Agent, in conjunction with the Requesting MO (military organization)/End User, verifying the adequacy of the proposals to the criteria, conditions, specifications and prices established in these “Terms and Conditions” and in the respective RFQs.

**4.2.**BACW will disqualify proposals:

- a) with irreparable defects and that do not comply with the requirements set forth in these “Terms and Conditions” (including the RFQ and its attachments);
- b) that do not comply with the technical specifications provided in the RFQ;
- c) with values higher than the Administration’s reference price;
- d) with prices manifestly unfeasible, derisory, symbolic or of zero value, incompatible with market prices or that do not have their feasibility demonstrated, when required by the BACW;
- e) with advantages not provided for in these “Terms and Conditions”; and
- f) that are subsidized by financing or that present advantages based on proposals from other bidders.

**4.3.**The reasons for eventual declassification of proposals will be registered in a specific field of the SISCAB.

**4.4.**In analyzing the feasibility of submitted proposals, BACW and the Requesting MO will not limit themselves to examining the percentage of the proposal values in relation to the reference price. The declaration of unfeasibility will be preceded by an analysis of the bid, by giving the bidder the opportunity to demonstrate the viability and safety of the prices offered. For this purpose, the bidders may be requested to submit the cost and price formation spreadsheet, the detailing of brands or products to be delivered, the presentation of conditions or reasons that led to the peculiar formation of prices or other measures deemed necessary. After the analysis of such information, the justification for acceptance or rejection of the proposal submitted will be presented, with the formal record of the reasons for the decision.

**4.5.**The proposals will be classified in ascending order by the proposed prices, being declared winner the one that presents the lowest value and meets the criteria and specifications of these “Terms and Conditions” and the respective RFQ.

**4.6.**If there are two or more bids with the same value, BACW will select the winning bidder by drawing lots, to be conducted by the Contracting Agent.

**4.7.**If there are not at least three valid proposals, the bidding will be repeated for at least one time. When, due to market limitations or manifest disinterest of the registered bidders, it is impossible to obtain the minimum number of proposals, these circumstances must be duly registered in the SISCAB.

**4.8.**After the winning bidder is declared, the bidding process will be homologated by the Head of BACW, with the object being awarded to the winner.

## **5. APPEALS AND IMPUGNATIONS**

**5.1.**Any person is entitled to impugn these “Terms and Conditions” due to irregularity in the application of the legal rules or to request clarification on its terms.

**5.2.**Such request must be filed until 3 working days before the opening date of each bid. Therefore, the right to impugn the terms of the invitation to bid shall decline to the bidder that does not do so until the third working day preceding the opening of the public session.

**5.3.**The answer to the challenge or request for clarification will be posted on the BACW website within 3 working days, limited to the last working day before the date of the opening of the bid.

**5.4.**Appeals may be filed, within 3 working days of the notification of the act, in the cases of:

- a) acceptance or rejection of the request for pre-qualification of the interested party or for inscription in the cadastral register, or its alteration or cancellation;
- b) judgment of the proposals;
- c) qualification or non-qualification of a bidder;
- d) annulment or revocation of the bidding process; and
- e) contract termination, when determined by a unilateral and written act of the Administration.

**5.5.**Once the appeal is filed, it will be informed to the other bidders so that they can submit their counterarguments within 3 days.

**5.6.**Appeals should be addressed to the Head of BACW, through the Contracting Agent, and sent physically, to the address cited in these “Terms and Conditions”, or electronically, by e-mail.

## **6. CONTRACT**

**6.1.**The contracts originated from bidding processes governed by these “Terms and Conditions” will be replaced by a “Purchase Order” (PO).

**6.2.**The POs will be sent to the contracted party (bidder) through SISCAB system, and the execution deadlines will start with the registration of the “acknowledgment” by the contracted party in that system.

**6.3.**The POs issued will state the object, prices, and delivery time and place.

**6.4.**In case of partial or total breach of the Purchase Order or of the provisions of these “Terms and Conditions”, BACW may unilaterally terminate the contract, promoting the annulment of the PO.

**6.5.**In cases of cancellation of the POs, when typified a contract termination motivated by the contracted party (bidder), an Administrative Proceeding for Investigation of Irregularities will be instituted, which, after ensuring the right to contradictory and ample defense, may culminate in the application of administrative sanctions to the contracted party (bidder).

## **7. RECEIVING**

**7.1.**The service that is the object of these Terms and Conditions will be provided electronically, so that the receipt will occur after confirmation, by the end user, of the availability of the data necessary to update the equipment.

## **8. PAYMENTS**

**8.1.**Payments will be made by BACW to the contracted party (bidder) within 30 days from receipt, physical or electronic, as per clause 7 above

**8.2.**The payment will be made by wire transfer to a bank account in the name of the contracted party (bidder), being forbidden the payment in third party accounts, except in cases where there is a link between the companies, proven by documents and accepted by BACW.

**8.3.**Occasionally, BACW may send payments by check, if the contracted party formally requests this method of payment.

**8.4.**Payments will be made in US dollars unless otherwise provided in the RFQ and PO.

**8.5.**BACW will not cover any fees charged by the bidder's banks for the receipt of wire transfers.

## **9. SUPERVISION**

**9.1.**The execution of the contracted objects will be supervised by the Head of the Material Section of the BACW or by other military personnel or local assistants designated by the Head of the BACW.

## **10. PRICE READJUSTMENT**

**10.1.** The prices proposed are firm, fixed (FFP) and non-adjustable.

## **11. ADDITIONS AND SUPRESSIONS**

**11.1.** The contracted party (bidder) is obligated to accept additions or supressions in the quantity of the contracted items, up to a limit of 25%.

## **12. PENALTIES**

**12.1.1.** The contracted party (bidder) may be held administratively responsible for the following infractions:

- a) cause the partial non-execution of the contract;
- b) cause 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) cause the total non-execution of the contract;
- d) failing to deliver the documentation required for the tender;
- e) does not maintain the proposal, except as a result of a supervening fact duly justified and accepted by BACW;
- f) refuses to receive the purchase order or does not deliver the documentation required for the contracting, when summoned within the validity term of its proposal;
- g) cause the delay in the execution or delivery of the bid object without a justified reason;
- h) present false declaration or documentation required for the bidding or provide false declaration during the bidding or the execution of the purchase order;
- i) defraud the bidding or practice fraudulent act in the execution of the purchase order;
- j) behave dishonestly or commit fraud of any nature;
- k) practice illicit acts aiming at frustrating the bidding objectives; or
- l) change the place of delivery, the quantities, the condition, the price or the description specified in the PO.

**12.2.** Unjustified delay in the execution of the contract will subject the contracted party (bidder) to a late payment fine, as provided for in these “Terms and Conditions”.

**12.3.** In case of total or partial non-compliance with any item of these “Terms and Conditions”, BACW may apply the penalties listed below:

- a) warning;
- b) fine, as established in these “Terms and Conditions”;
- c) impediment to bidding and contracting, for a period of up to 3 years; and
- d) declaration of ineligibility to bid or contract, for the minimum period of 3 years and maximum of 6 years.

**12.4.** The following fines may be applied:

- a) fine of 0.2% (two tenths percent) of the value of the item in the PO, per calendar day of delay, up to the limit of 30 (thirty) days of the expected date for delivery;

- b) fine of 0.4% (four tenths percent) of the value of the item in the PO, per calendar day of delay, between the 31<sup>st</sup> (thirty-first) day to the 60<sup>th</sup> (sixtieth) day of the expected delivery date;
  - c) fine of 5% of the value of the item, in case of delivery of materials in disagreement with specifications and the conditions provided for in the PO and in this “Terms and Conditions”; and
  - d) fine of 10% of the value of the item in the PO, when the contracted party (bidder) causes its cancellation.
- 12.5.** The fines provided for in letters “c” and “d” of sub-item 12.4 may be applied in conjunction with the fines for late delivery.
- 12.6.** The sanctions provided in letters “a”, “c” and “d” of sub-item 12.3 may be applied in conjunction with the fines provided in these “Terms and Conditions”.
- 12.7.** The amount of the fines imposed must be collected by the sanctioned company in the bank account indicated by the BACW within 5 working days from the receipt of the communication of the imposition of the fine. If the payment is not made within this period, the amounts will be withheld by the Finance Section from future payments due to the contracted party (bidder), even if they refer to other POs or contracts.
- 12.8.** The administrative sanction of warning will be applied when the contracted party (bidder) infringes, for the first time, obligations related to the delay in delivery, substitution of goods or of incorrect invoices, by not complying with supervision guidelines, within 48 hours, and, at the discretion of the Head of BACW, for other infractions considered minor.
- 12.9.** The application of penalties will comply with the provisions of Ordinance GM-MD No. 5,175/2021, and, where applicable, the Aeronautics Command Instruction (ICA) 12-23.
- 12.10.** The application of the sanction of declaration of ineligibility for bidding or contracting is of the exclusive competence of the Minister of Defense of the Federative Republic of Brazil.
- 12.11.** The infractions will be verified by means of an Administrative Process of Investigation of Irregularity, being guaranteed to the contracted party (bidder) the contradictory and full defense.
- 12.12.** The penalties of warning, impediment to bidding and contracting, and declaration of ineligibility to bid or contract will be registered in the SISCAB.
- 12.13.** The application of administrative penalties does not exempt the contracted party (bidder) from the repair of eventual damages, losses and injuries caused to BACW and the Requesting MO/End User.
- 12.14.** Appeals are possible within 15 (fifteen) working days, counted from the date of notification, in cases of application of the penalties provided for in these “Terms and Conditions”.

### **13. GENERAL PROVISIONS**

- 13.1.** BACW may revoke or cancel the bidding processes governed by these “Terms and Conditions”, in which case an appeal is guaranteed within 3 (three) working days from the date of notification of the act or from the signature of the minutes.
- 13.2.** The annulment of the bidding procedure due to illegality does not generate obligation to indemnify.
- 13.3.** The participation in the bidding process implies the acceptance of the conditions specified in this “Terms and Conditions” and in the RFQ, with complete submission to the rules contained therein.
- 13.4.** The venue for resolving issues related to these “Terms and Conditions” will be the United States District Court in Washington, DC, to the exclusion of any other. The acts related to the contracting shall be interpreted in accordance with the principles of Brazilian Law No. 8,666/1993 and Ordinance GM-MD No. 5,175/2021, and shall also be governed in accordance with the laws of the District of Columbia.
- 13.5.** Physical documents relating to these “Terms and Conditions” must be sent to the Brazilian Aeronautical Commission in Washington, 1701 22<sup>nd</sup> Street N.W., Washington, DC, 20008.

### **14. REFERENTIAL ADVISORY**

- 14.1.** The Draft of these “Terms and Conditions” was submitted to the legal analysis of the Adjunct Legal Counsel of the Aeronautics Command, an organization of the General Counsel of the Union, and its approval was obtained through the REFERENTIAL ADVISORY N. 00005/2022/GOJAER/CGU/AGU, of December 7, 2022.

Washington, DC, United States of America, December 7, 2022.

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LEANDRO LUIZ DA SILVA VELOSO Lt Col  
Head of Logistics Division / Contracting Agent

**Revised by:**

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VALDINEI FAGUNDES DE SOUZA Lt Col  
Head of Fiscal Division

**Approved by:**

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WILSON PAULO CORRÊA MARQUES Col  
Head of BACW