



The BACW's Bidding Commission hereby present questions made by companies with their respective answers.

REMARK: The questions presented in this "Questions and Answers" shall be numbered as they are received by the Bidding Commission and may not match the numbering provided by the companies.

Therefore, the Bidding Commission has answered previous questions on July 6, 2017 and they are published on BACW's website.

2. **Question** - Item 6.1.1.8 of IFB: Please inform the meaning of "ratification".

Answer - For the purposes of the item 6.1.1.8 of the IFB, the term "ratification" means the approval for RNAV/RNP 0.3 operation, as specified by DECEA, item 3.3.9 of the Basic Project, and approved by RVSM, as per item 3.3.10 of the Basic Project.

3. **Question** - Item 6.2.2 of IFB: In The Netherlands there is no document similar to the "Basic Commercial License". In this case, please confirm that the bidder is not obligated to comply with such item.

Answer – In accordance with item 6.2.2 of the IFB, if the company does not have a document as "Basic Commercial License" due to the peculiarities from which it is established, the company shall provide within another evidence of authorization to operate in the jurisdiction issued by the competent government agency.

4. **Question** - Item 6.3.1 of IFB: Please confirm that copies of Purchase Agreements and/or Bills of Sale will serve as evidence of possession or ownership of aircraft.

Answer – In accordance with item 6.3.1 of the IFB, the bidders must present proof of possession or ownership of Aircraft to be leased, by presenting the relevant document, as per the country's Aeronautical Authority. Therefore, if the suggested documentation can attest the possession or ownership of the Aircraft, it can be used for the purposes of fulfilling the requirements of item 6.3.1 of the IFB. Furthermore, in accordance with item 6.3.1.1 of the IFB, "submission of pre-contractual aircraft leasing may be accepted at the bid; however, the winning bidder must present signed contract before execution of this instrument."

5. **Question** - Item 7.12 of IFB: Please clarify if the bidder may present different flight hour cost for each Annual/Monthly effort levels as per item 7.12.3.

Answer – The company's assumption is correct, in accordance with item 7.12.3 of the IFB. Furthermore, it is important to reinforce what is foreseen on item 7.16.2 of the IFB "In this manner, during CONTRACT PERFORMANCE, the CONTRACTING PARTY shall pay on a monthly basis the fixed amount for MODULES 1 and 2 (UPMD1 and UPMD2), the cost per training performed for MODULE 3 (UPMD3), and the COST PER



FH that regards to the actual amount of hours flown, multiplied by the actual amount of hours flown in the month immediately before”.

6. **Question** - *Item 7.17 of IFB: Will the Mobilization Cost be considered when comparing the bidders' proposals in order to achieve the most advantageous proposal? Please explain in what circumstances the Mobilization Cost will be paid to the Contracted Party.*

Answer – *In accordance with item 7.16 of the IFB, “In order to achieve the UNIT PRICE, the BIDDER must add the Unit Prices for Module 1, Module 2, Module 3 and the Weighted Average for Module 4.” Therefore, the mobilization cost will not be taken into consideration for the bidder's comparison.*

Moreover, the mobilization costs shall apply in accordance with clause 24.4 of the Contract Draft, Annex III of the IFB.

7. **Question** - *Items 15.5.1 and 15.5.3 of IFB. Please consider the first aircraft to be delivered within 60 (sixty) days of the contract signature and the following aircraft intervals be equal or shorter than 30 (thirty) days. Such extension is important due to the timeframe necessary for painting the aircraft.*

Answer - *The desired time-frame presented in the IFB and related documents is based on the necessities of the Brazilian Air Force Command (COMAER) and therefore cannot be changed.*

8. **Question** - *Item 22 of IFB: Please explain why the terms are different from the ones stated in items 15.3 and 15.4.*

Answer – *The item 22 of the IFB regards to the receiving of the Object of the Contract. On item 22.2.2 of the IFB states that it is the COMREC responsibility to “Receive the services or reject them in accordance with the specifications set forth in the BASIC PROJECT PLAN, in up to 10 (ten) calendar days” which relates to the time frame presented on item 15.3.1 of the IFB.*

After COMREC issues the Term of Receipt within 10 (ten) days as per item 15.3.1 of the IFB, the Term of Receipt and the Invoice shall be forwarded to the Contracts Division of BACW as per item 22.2.3 of the IFB.

Finally, in accordance with item 15.4.1 and 20.1 of the IFB, the payment shall be made within 30 consecutive days, from the issuance of the Term of Receipt. There is no relation between the item 15.3 or 15.4 with the item 22.2.3 of the IFB.

9. **Question** - *Item 28.8.3.3 of IFB: Items 28.8.1.2, 28.8.2.1 and 28.8.2.3 are not applicable. Please confirm.*

Answer – *In accordance with item 28.8.3.3 of the IFB, “In case of relapse in the practice of an illicit act, which may be sanctioned as per points “28.8.1” and “28.8.2” of this item during a timeframe shorter than 24 (twenty-four) months;” the sub-items of 28.8.1 and 28.8.2 are applicable.*



10. **Question** - Item 28.8.4.3 of IFB: Items 28.8.3.1 and 28.8.3.2 are not applicable. Please confirm.

Answer – In accordance with item 28.8.4.3 of the IFB, “In case of relapse in non-fulfillment subject to sanctions as per point “28.8.3”, during a timeframe shorter than 36 (thirty-six) months;” the sub-items of 28.8.3 are applicable.

11. **Question** - Item 28.8.5.8 of IFB: Item 28.8.4.1 is not applicable. Please confirm.

Answer – In accordance with item 28.8.5.8 of the IFB, “28.8.5.8. In case of relapse in non-fulfillment subject to sanction in accordance with point “28.8.4”, over a timeframe shorter than 48 (forty-eight) months.” the sub-items of 28.8.4 are applicable.

12. **Question** - Item 4.2.3. of the Basic Project. Please confirm that training for mechanics shall not be considered in the bidder proposal and shall not be an obligation of the Contracted Party.

Answer – The item 4.2.3 of the Basic Project does not regard to mechanics. Please specify the item in which generate the doubt.

13. **Question** - Item 4.2.4.3.6 of the Basic Project: Will the Contracted Party decide which data will be incorporated onto SILOMS system?

Answer – In accordance with item 4.2.4.3.6, “It is at the CONTRACTING PARTY’s discretion whether to incorporate aircraft data in SILOMS.”

14. **Question** - Item 4.2.4.6.4 of the Basic Project seems to be disconnected from Item 4.2.4.6.1 mentioned in this paragraph. Please clarify.

Answer – Please reformulate the statement explicating the company’s question.

15. **Question** - Item 7.2 of the Basic Project: Why is the execution term different from the contract term (2 months less)?

Answer – The CONTRACTING PARTY allows 2 (two) months, after the execution of the services, for any payments to be performed, discrepancies to be solved, and any other matter related to the complete execution of the contract to be handled and managed within a valid Contract.

16. **Question** - Item 7.4.1 of the Basic Project: Please clarify how the “the receiving of the service (i.e. leasing, insurance, ...) will be definitive”.



Answer – The definitive receipt described on item 7.4.1 of the Basic Project, regards to the receipt and acceptance of the invoices as they are issued. In other words, the services described in the issued invoices are considered received as definitive at the issuance of the Term of Receipt by COMREC.

17. **Question** - Item 7.5 of the Basic Project: When will an invoice be submitted for approval and how will the parties come to an agreement about the values to be charged? Will there be a confirmation of the flight hours on which both parties will agree with before issuing the invoice?

Answer – In accordance with item 20 of the Invitation for Bid, payment shall be performed as follows:

“20.2. For MODULE 1 and 2, the CONTRACTING PARTY shall pay the monthly fixed amount for UPMD1 and UPMD2

20.3. For MODULE 3, the CONTRACTING PARTY shall pay per training performance, based on the unit cost per student UPMD3.

20.4. For MODULE 4, the CONTRACTING PARTY shall pay the COST PER FH that regards to the actual amount of hours flown, multiplied by the actual amount of hours flown in the month immediately before.”

18. **Question** - Item 11.2.4 of the Basic Project: If the term for another notification is repeated, which are the associated penalties?

Answer – The penalties are exposed on the Contract Draft, annex III, of the IFB, on its clause 22.

19. **Question** - Anexo A of the Basic Project: since the main object of the bid is the leasing of aircraft, may we conclude that the invoice shall present only “leasing of aircraft” as the description of the amounts charged? Alternatively, the Contracted Party will be required to break the amounts related among leasing, insurance, maintenance and training.

Answer – In accordance with item 20 of the Invitation for Bid, payment shall be performed as follows:

“20.2. For MODULE 1 and 2, the CONTRACTING PARTY shall pay the monthly fixed amount for UPMD1 and UPMD2

20.3. For MODULE 3, the CONTRACTING PARTY shall pay per training performance, based on the unit cost per student UPMD3.

20.4. For MODULE 4, the CONTRACTING PARTY shall pay the COST PER FH that regards to the actual amount of hours flown, multiplied by the actual amount of hours flown in the month immediately before.”



20. **Question** - Sections 6.1.6 and 6.1.10 of the Contract Draft: Please confirm that the Contracted Party liability shall be subject to the Contracted Party negligence or willful misconduct.

Answer – In accordance with the items 6.1.6 and 6.1.10 of the Contract Draft, Annex III of the IFB, The CONTRACTED PARTY is bounded to: “6.1.6. Take responsibility, additionally, for any damages caused directly to the CONTRACTING PARTY, further to the performance of services by the CONTRACTED PARTY’s employees, or appointed agents;” and “6.1.10. Accept civil responsibility associated with any and all materials or damages caused by any action or omission by the CONTRACTED PARTY’S employees or contractors, workers, agents or representatives, whether intentionally or not, before the Aeronautical Command or third parties;” Based on that, this Bidding Commission understands that the items as self-explanatory in regards to the question presented. Therefore, the company may, at its own discretion, rewrite its concern in order to fully demonstrate the question.

21. **Question** - Section 6.1.15 of the Contract Draft: Please insert a provision making clear that subcontracting is permitted as set forth in the Invitation for Bid/Basic Project.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered. Notwithstanding, subcontracting is permitted as provided on Clause 11 of the Contract Draft, annex III of the IFB.

22. **Question** - Sections 6.1.23 of the Contract Draft: Please confirm that the Contracted Party liability to third parties shall be subject to the Contracted Party negligence or willful misconduct.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered.

23. **Question** - Section 24.1.6 of the Contract Draft: Please insert a provision making clear that subcontracting is permitted as set forth in the Invitation for Bid/Basic Project.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered. Notwithstanding, the item 24.1.6 of the Contract Draft, Annex III of the IFB provides that 24.1.6. “Partial or total sub-contracting of Contract OBJECT, CONTRACTED PARTY’S partnership with others, partial or total cession or transference, as well as any form of merge, divestiture or incorporation which is not admitted by the INVITATION FOR BID or this CONTRACT” Therefore, this Bidding Commission understands that there is no reason for the request as subcontracting is foreseen in the IFB and Contract.

24. **Question** - Section 24.1.13 of the Contract Draft. Please confirm that the Contracting Party shall pay the indemnification.

Answer – This Bidding Commission understands that the terms presented on the Section 24.1.13 of the Contract Draft, Annex III of the IFB are self-explanatory and do not require confirmation.



25. **Question** - Section 24.1.14 of the Contract Draft. Please confirm that the Contracting Party owes the payments.

Answer – This Bidding Commission understands that the terms presented on the Section 24.1.14 of the Contract Draft, Annex III of the IFB are self-explanatory and do not require confirmation.

26. **Question** - Contract Draft: Please insert a provision to the contract stating that the Contracting Party shall indemnify the Contracted Party for all liabilities, costs, expenses and/or damages related to the aircraft, except for those caused by the Contracted Party or for which the Contracted Party has received insurance proceeds.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered.

27. **Question** - Contract Draft: Please insert a provision to the contract stating that the Contracting Party shall indemnify, defend and hold Contracted Party, its affiliates and their respective officers, directors, shareholders harmless from all liabilities, damages, penalties, claims, actions, suits, costs, and expenses of every kind and nature incurred by or asserted against any indemnified person in any way relating or arising out of the use, possession and operation of the aircraft.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered.

28. **Question** - Contract Draft: Please insert a provision to the contract stating that (i) the aircraft shall be returned to the Contracted party in the same condition they have been delivered, such condition being reflected in a technical report executed by both parties and (ii) no part or equipment shall be removed from the aircraft.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered. Notwithstanding, the requested provisions are foreseen in the solicitation package.

29. **Question** - Contract Draft: Please insert a provision to the contract stating that, in the event of a partial loss of any aircraft during the term of the contract, the Contracting Party shall continue paying the monthly amounts for Module 1 and 2 even if such aircraft is unavailable for flights due to maintenance services and/or until the insurance proceeds are received by the Contracted Party.

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered.

Therefore, the situation exposed in the question will be interpreted in accordance with the clauses of the Contract and the legislation that applies.



30. **Question** - *Contract Draft: Please insert a provision to the contract stating that, in the event of a total loss of any aircraft during the term of the contract, the parties will terminate the agreement in respect to such aircraft without any sanction or penalty.*

Answer – The requested provision cannot be inserted as the Contract Draft cannot be altered. Therefore, the situation exposed in the question will be interpreted in accordance with the clauses of the Contract and the legislation that applies.

31. **Question** - *In relation to item 7.12, it is kindly requested clarification about the correlation between item 7.12.1 and 7.12.3. Item 7.12.1 states "if the total number of hours flown per year should change by as much as 250 total hours for the fleet, above or below the contracted amount, there can be no change to the flight hour cost.". However, item 7.12.3 states "levels of annual/monthly air effort must be taken into consideration to calculate the cost of a flight hour, based on the annual/monthly effort demonstrated bellow". a) Should the bidder consider a fixed contracted amount as per item 7.12.1 or an actual amount as per the table presented on 7.12.3?*

Answer – Presuming that the question regards to the Invitation For Bid document, In accordance with clause 7.12.1 of IFB, the price within the range is fixed. In other words, the COST PER FH in FH5, as per item 7.12.3, is fixed within the annual effort level from 1751 hours to 2250 hours. Furthermore, if the amount of hours is higher than 2250 (FH5), the correspondent FH shall apply. The same rationale applies if the amount of hours is lower than 1751 (FH5), and subsequently for each COST PER FH. Therefore, the bidder should consider a fixed amount for each of the COST PER FH as specified on item 7.12.3 of the IFB.

32. **Question** - *Related to Attachment III, item 12.1.1 and 12.2.1, could BACW please clarify how the "Validity Period (36 months)" and "Performance Timeframe (34 months)" should be effectively considered by bidders as both of them are taking as reference the same date of starting (signature of contract. What is the reason for such differentiation?*

Answer – The CONTRACTING PARTY allows 2 (two) months, after the execution of the services, for any payments to be performed, discrepancies to be solved, and any other matter related to the complete execution of the contract to be handled and managed within a valid Contract.

33. **Question** - *Could BACW please advise if more than one bidder representative could be considered on power of attorney?*



Answer – In accordance with the Brazilian Procurement Law nº 8.666 from 1993, and the Invitation for Bid and its related documents, there is no restriction for such request. However, the Bidding Commission asks for consideration of all bidders to carefully manage any communication sent by the accredited representatives. Therefore, even though this Bidding Commission is not preventing any bidder to register more than one representative in accordance with Clause 4 of the IFB, it is advisable that only one representative presents communication on behalf of the bidder at any action performed, if necessary.

34. **Question** - *Could BACW please advise if a pre-contract of acquisition - or similar documents that prove a pre- agreement of buying or transfer the possession of the aircraft - is acceptable to comply with the item 6.3.1?*

Answer – In accordance with item 6.3.1 of the IFB, the bidders must present proof of possession or ownership of Aircraft to be leased, by presenting the relevant document, as per the country's Aeronautical Authority. Therefore, if the suggested documentation can attest the possession or ownership of the Aircraft, it can be used for the purposes of fulfilling the requirements of item 6.3.1 of the IFB. Furthermore, in accordance with item 6.3.1.1 of the IFB, "submission of pre-contractual aircraft leasing may be accepted at the bid; however, the winning bidder must present signed contract before execution of this instrument."

35. **Question** - *Regarding item 20.2.3 of the contract, please confirm that upon receiving the invoices and the terms of receipt, the payments will be made by BACW in the USA and not by FAB in Brazil.*

Answer – The assumption is correct, in accordance with item 20.2.3.

36. **Question** - *Item 22.1 of the Contract draft states application of administrative sanctions must take into account the "gravity of flaw, the relapse, and damage caused to public interest, loss to Administration", while item 22.2.3.1.1 states "a fine may be applied due to partial inexecution of adjustment in the amount of 0.2% (point two percent) of CONTRACT amount, should the CONTRACTED PARTY not fulfill any condition established in the CONTRACT".*

Taking as reference items "22.1" and "22.2.3.1.1" above, could BACW clarify how the "gravity of flaw, the relapse, and damage caused to public interest, loss to Administration" would be taken into account to calculate the value of fine due to partial inexecution of any condition established in the Contract? In addition, could you please clarify if the penalty would be 0.2% of the total amount of the Contract or if it would be calculated over the amount of the specific milestone/task/obligation not executed or fulfilled? In the way it is written the Contract draft, we understood that any delay would have the same penalty.

Answer – The Administrative Sanctions set forth in the Annex III, of the IFB shall only be enforced after a Formal Internal Administrative Process (PAAI) as per item 1.1.44 of the Contract Draft, Annex III of the IFB, is performed. Therefore, the CONTRACTED PARTY shall have the right to fair defense in which all



claims will be evaluated, so that the gravity of flaw, the relapse, and damage caused to public interest, and the loss to Administration can be evaluated.

Furthermore, the Brazilian Aeronautical Commission appreciates the question, and stands available to clarify and explain any doubts or concerns in order to increase the BID quality. Any questions or concerns must be submitted to con@cabw.org

Note: This information has been made available at BACW website in the publishing for the related Bidding Process.
<http://www.cabwnews.com/index.php/solicitations.html>