



**MINISTRY OF DEFENSE
BRAZILIAN NAVY
MULTIPURPOSE DOCK SHIP BAHIA**

ANNEX A

TERM OF REFERENCE

ONLINE REVERSE BID AUCTION

BID PROCESS N° 10/2023

PROCESS N° (NUP): **63275.008434/2023-42**

TERM OF REFERENCE

Term of Reference – Bid Process N° 10/2023

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BID PROCESS N° 10/2023
ONLINE REVERSE BID AUCTION

1. OBJECT

1.1 Acquisition of **04 (four)** Marine Engine Generator Sets for the Multipurpose Dock Ship “Bahia”, under the terms of the table below, following the conditions and requirements established this Term.

Common good

1.2 The Marine Engine Generating Groups to be acquired are characterized as common goods, considering that performance and quality standards can be objectively defined in this Term, as well as in the Notice, through usual specifications in the market, aligned with the peculiarities locations, as provided for in Ordinance GM-MD n°. 5,175, of December 15, 2021.

1.3 The object of this Contract does not qualify as a luxury good, according to Decree n°. 10,818, of September 27, 2021.

1.4 The Term of this Contract is **60 (sixty) months**, counting from the signing of the Contract, extendable for up to **60 (sixty) months**, following articles 106 and 107 of Law n°. 14,133 of 2021.

2. LEGAL GROUNDS AND DESCRIPTION OF THE NECESSITY

2.1 The technical details of the object of this Contract are detailed in the Acquisition Specification prepared by the Naval Engineering Directorate, according to Appendix I to this Term of Reference.

2.2 The contracting is based on § 4, of Article 4 of Annex I of GM-MD Ordinance n°. 5,175/2021.

3. HIRING REQUIREMENTS

Object classification and supplier selection method

3.1 The object comprises the acquisition of **04 (four)** marine engine generator sets to be delivered to the shipping agent in the United States of America under the provisions of item 4.4 of these terms of reference.

3.2 Considering that there is no national manufacturer that produces this type of equipment and that the price charged abroad is significantly lower than the national price, as demonstrated in NDM Bahia's Substantiated Technical Opinion n° 01/2023, it is necessary to hold a tender at abroad, as provided for in § 4, of Article 4 of Ordinance n° 5,175/2021 of the Ministry of Defense.

Sustainability

3.3 This acquisition must be informed by the criteria of environmental sustainability, based on Law n° 12.187/2009, combined with the international commitments assumed by the Brazilian government, so that the winner of the bid, if possible, prioritizes recycled and recyclable products compatible with standards of socially and environmentally sustainable consumption.

Technical specification of the equipment to be purchased

3.4 The marine engine generator sets to be supplied must strictly comply with the details described in the Acquisition Specification DEN-832-7-G40-311-001, as per Appendix I to this Term of Reference.

3.5 The supply stages must be detailed to allow supervision of all stages of procurement.

3.6 The Brazilian Navy, through the Naval Engineering Directorate, will approve all technical documentation and reports and their suitability and applicability.

3.7 The equipment manufacturer provided by the Contracted Party must have a technical representative and technical assistance approved in Brazil so that future needs for technical assistance, servicing, and corrective maintenance can be contracted in the national territory.

3.8 In addition to the points above, the victorious Contracted Party must declare that they are fully aware of the technical conditions and administrative and financial availability necessary to conclude the Contract and deliver the object.

Packaging Requirements

3.9 The packaging must meet the following requirements:

- a) Protection against damage;
- b) Adequate fixation;
- c) Clean;
- d) Good condition;
- e) Have inspection windows that allow customs clearance in order not to violate its preservation and allow monitoring of the engine's preservation state.

3.10 All packaging must be marked and labeled with legible characters that can be easily verified.

3.11 The packaging marking must contain, as a minimum:

- a) reference number;
- b) date of manufacture;
- c) weight/volume of the product;
- d) components.

Subcontracting

3.12 Partial subcontracting is permitted; however, the Contracted Party will remain responsible for fulfilling the contract.

3.13 Subcontractors must be legally established companies. However, the Contracted Party is solely responsible for the conduct and performance of its subcontractors, including any irregularity committed by them, any breach of contract, illegalities, or negligence.

Hiring guarantee

3.14 There is no requirement for a Contract guarantee.

4. DELIVERY CONDITIONS

4.1 The deadlines and execution stages of the Contract must be met by the physical-financial schedule, as per Annex II of this Terms of Reference.

4.2 The maximum delivery period for the equipment will be **15 (fifteen) months** from signing the Contract.

4.3 If delivery on the designated date is not possible, the company must communicate the respective reasons at least **90 (ninety) days** in advance so that any request for an extension of time can be analyzed, except in situations of unforeseeable circumstances and force Majeure.

4.4 The Contracted Party must deliver the materials to the Contracting Party's freight forwarder:

Karpeles Freight Services, Inc.;

113 Executive Drive Suite 114, Sterling, VA 20166 USA;

Tel: +1 703-579-3838 - E-mail: info@karpelesfreight.com; e

Contract number: _____.

4.5 Delivery must be made following INCOTERMS 2020 – FCA to the address above.

4.6 To enable the shipment of material to Brazil, following Brazilian Customs requirements, the Contracted Party must send the following documentation to the Contracting Party up to 15 (fifteen) days in advance before sending the material:

a) Invoice, including part number, item description, quantity purchased, quantity shipped, unit price, shipping charges, and other charges. Export Control Classification Number (ECCN) and Schedule B Number/Harmonized Tariff Schedule (HTS) for all items to be delivered, following the Code of Federal Trade and Commerce Regulations, paragraph 758.1 (b)(5) and 758.3(c). Billing, shipping, and recipient addresses are indicated below in the "Dialing Instructions" section.

b) Packing List, including part number, item description, quantity purchased, quantity shipped, net weight and gross weight per box/item (including contents of each box), dimensions of each box, and SHELF LIFE (if applicable). Export Control Classification Number (ECCN) and Schedule B Number/Harmonized Tariff Schedule (HTS), for all items to be delivered, by the Code of Federal Trade and Commerce Regulations, paragraph 758.1 (b)(5) and 758.3(c). Shipping and recipient addresses are indicated below in the "Marking Instructions" section.

c) Following international shipping requirements, all dangerous goods must be appropriately marked and labeled following IATA or IMDG standards and must include an MSDS (Material Safety Data Sheet) and DGD (Dangerous Goods Declaration).

d) Following international shipping requirements, all wooden packaging (box, skids, etc.) must meet all requirements of ISPM-15 (International Standards for Phytosanitary Measures No. 15) regarding heat treatment.

e) Marking Instructions:

Billing address:

BRAZILIAN NAVAL COMMISSION IN WASHINGTON

5130 MacArthur Blvd, Washington, DC 20016 USA;

Delivery address:

KARPELES FREIGHT SERVICES INC.

113 Executive Dr., Suite 114, Sterling, VA, 20166 USA;

Consigne Address:

MARINHA DO BRASIL CENTRO DE DISTRIBUIÇÃO E OPERAÇÕES ADUANEIRAS DA MARINHA

Av. Brasil 10500 – Olaria – Rio de Janeiro – RJ – Brasil – 21012-350

CNPJ: 00.394.502/0382-06 / Recinto Alfandegado: 7.93.35.012

OMD: +55 (21)2189-1503 - ramal 1541 / OMS: +55 (21)2189-1503 - ramal 1541

CONTRACT: _____

4.6 The Contracted Party will be responsible for paying any charges related to delays in the clearance of goods by Brazilian Customs if such charges are related to discrepancies in the documentation provided.

4.7 The Contracted Party must deliver the products in perfect condition, following the technical specifications, deadline, and location contained in this Term, in the Notice, and in the Contract.

4.8 The equipment purchased must be new, without any previous use or reconditioning history, and must have been recently manufactured. Products with a manufacturing date greater than 1 (one) year will not be accepted.

4.9 Equipment will not be received if there are signs of deterioration in the product's storage conditions.

4.10 Packaging, preservation, and transportation must meet the sanitary requirements and other standards in force in the country where it is supplied.

Factory Acceptance Tests

4.11 The Contracted Party must inform, **90 (ninety) days** in advance, the date of carrying out the Factory Acceptance Tests of each engine and its accessories, which representatives of the Brazilian Navy will accompany.

4.12 If the Brazilian Navy does not send a representative to carry out the Factory Acceptance Tests, the Contracted Party must issue a test report within **15 (fifteen) days** after completion.

Provisional Receipt

4.13 The object will be provisionally received upon its arrival at the BNCW freight forwarder in Sterling, VA – USA, as described in item 4.4. The Brazilian Navy must approve the Factory Acceptance Tests. A detailed term should be provided for those responsible for receiving it, the conditions and pending issues identified, and the date and time of inspection, among other pertinent observations.

4.14 The object may be rejected, in whole or in part, at each inspection carried out by representatives of the Contracted Party or the Brazilian Navy when in disagreement with the acquisition specifications and approved proposals and must be replaced or redone within **30 (thirty) business days**, counting from the Contracted Party's notification, at its expense, without prejudice to the application of penalties.

Receipt in Brazil

4.15 The object will be received after customs clearance in Brazil, to be carried out by the Navy's Customs Distribution and Operations Center (CDAM). It will be stored at the Rio de Janeiro Navy Arsenal (AMRJ).

4.16 The inspection of the material supplied, regarding the quality of the equipment, will be carried out by the Brazilian Navy (Naval Engineering Directorate) after the equipment arrives in Brazil, which is responsible for:

- a) Refuse items that do not comply with the order and specifications of the object;
- b) Require removal or replacement within **30 (thirty) days** after formal notification of any item that is disputed in supply;
- c) Require the Contracted Party to immediately remove any employee not considered by the institution capable of the desired purpose, regardless of justifications.

4.17 Compliance with the initial stages of delivery of the Marine Engine Generator Sets does not exempt the Contracted Party from liability for hidden defects in the supplied equipment, which can only be verified after installation and commissioning.

4.18 The provisional receipt or the receipt in Brazil does not exclude the Contracted Party's liability for damages resulting from incorrect execution of the Contract.

4.19 The Contracted Party is responsible for the quality of the material to be delivered and for any costs arising from carrying out technical examinations determined by the Contract's Technical Manager.

4.20 As soon as the Marine Engine Generator Sets and its accessories are delivered to Brazil, the Technical Manager of the Contract must sign a receipt with a duplicate copy, one for the Brazilian Navy and the other for the Contracted Party. A copy of this receipt must be presented to the BNCW by one of the members of the contract inspection team, along with the invoice for payment to proceed.

4.21 After receiving the object abroad, the export to Brazil will be carried out by BNCW and, after customs clearance in Brazil, to be carried out by the Navy Customs Distribution and Operations Center (CDAM), it will be stored in the Navy Arsenal of Rio de Janeiro (AMRJ). After these steps, the Brazilian Navy will plan the installation of **4 (four)** Marine Engine Generator Sets in the NDM Bahia Engine Rooms. The "route opening" in the Engine Rooms and the installation of the sets on board will be the responsibility of the Brazilian Navy.

Port Acceptance Tests and Sea Acceptance Tests

4.22 The Contracted Party must arrange for its technical representative or a technical representative of the equipment manufacturer in Brazil to be present after the installation and commissioning of the Marine Engine Generator Sets by the Brazilian Navy at the moment the Ship is first launched at the port and in two days at sea, so that this professional performs the following tasks:

- Check and validate the installation of Marine Engine Generator Sets and its accessories;
- Check the normal operating parameters of the Marine Engine Generator Sets and its accessories;
- Comply with the requirements established in item 6.1.3 of Appendix I to this Term of Reference.

4.23 The tests mentioned in the previous item will be requested by the Brazilian Navy at least **60 (sixty) days** in advance. They will be held from Monday to Friday.

Warranty, maintenance, and technical assistance

4.24 The contractual warranty period for the equipment to be supplied, complementary to the legal warranty, is at least **12 (twelve) months**, or for the period provided by the manufacturer, if longer, counting from the execution of the Port Acceptance Tests and Sea Acceptance Tests established in item 4.22. The Contracted Party must issue a Warranty Term that ensures the proper functioning of the equipment under normal operating conditions, considering the terms of the Contract.

4.25 The warranty will be provided to keep the equipment supplied in perfect condition of use without any burden or additional cost to the Contracting Party.

4.26 The warranty covers corrective maintenance of the goods by the Contracted Party himself or, if applicable, through authorized technical assistance following specific technical standards.

4.27 Corrective maintenance is intended to correct defects presented by the goods, including replacing parts and making adjustments, repairs, and necessary corrections.

4.28 Defective parts found during the warranty period must be replaced with new, first-use, original ones that present quality and performance standards equal to or greater than those of the parts used to manufacture the equipment.

4.29 Once notified, the Contracted Party will repair or replace the goods that are defective or defective within a period of up to **30 (thirty) business days**, counting from the date of formal notification by the Contracting Party or by authorized technical assistance.

4.30 The period indicated in the previous sub-item, during its course, may be extended once, for an equal period, upon written and justified request from the Contracted Party, accepted by the Contracting Party.

4.31 The cost of transporting equipment covered by the warranty will be the Contracted Party's responsibility.

4.32 The Contracted Party must inform the Brazilian Navy for how long the equipment is considered preserved in its original packaging before installation and commissioning and what preservation routines are necessary for preservation after the expiration of the period established by the manufacturer.

4.33 The warranty covers all equipment and components of the object, including the main object and its accessories.

5. CONTRACT MANAGEMENT

5.1 The **PARTIES** must faithfully execute the Contract following the agreed clauses, and each party will be responsible for the consequences of its total or partial non-performance.

5.2 In case of impediment, stoppage order, or suspension of the Contract, the execution schedule will be automatically extended for the corresponding time, such circumstances may be noted by notification.

5.3 Communications between the agency or entity and the winning bidder must be in writing whenever the act requires such formality, admitting the use of electronic messages for this purpose.

5.4 The agency or entity may also summon a representative of the winning bidder to adopt measures that must be complied with immediately.

5.5 The End User will monitor the execution of the Contract so that all the conditions established in it are fulfilled to ensure the best results for the Administration.

Technical Management

5.6 The Contract's Technical Manager will monitor the execution of the Contract regarding technical aspects so that all conditions established in the Contract are met to ensure the best results for the Contracting Party.

5.7 The inspection team will inspect the equipment upon arrival in Brazil, which may reject it in the event of non-compliance with the specifications and requirements established in the Bid Process Notice N° 10/2023, in this Term, and the Contract.

5.8 In case of rejection, the Contracting Party will notify the Contracted Party. They must accept the return of the product that does not comply with the Contract and replace it with a new one that is in strict accordance with the applicable specifications and requirements. The return and replacement of the rejected product will be at the Contracted Part's expense and risk.

6. ALTERATIONS

6.1 The Contracted Party is obliged to accept, under the same contractual conditions, any additions or deletions that are necessary, up to a limit of **25% (twenty-five percent)** of the updated initial value of the Contract.

6.2 The merger, spin-off, or incorporation of the Contracted Party with/into another legal entity is permissible, provided that the new legal entity observes all the qualification requirements required in the original bid; the other clauses and conditions of the Contract are maintained; there is no prejudice to the execution of the agreed object, and there is the express consent of the Administration to the continuity of the Contract.

7. PAYMENT CRITERIA

Settlement

7.1 If there is an error in the presentation of the invoice or equivalent billing document or circumstances that prevent the settlement of the expense, it will be suspended until the Contracted Party provides remedial measures, restarting the period after proving that the situation has been regularized, free of charge to the Contracting Party;

Payment Term

7.2 Payment will be made by BNCW, according to the schedule contained in Annex II, and within **30 (thirty) days** after receipt of the Contracted Party's invoice with delivery at each planned stage.

Form of payment

7.3 Payment will be made by wire transfer to the current account indicated by the Contracted Party.

8. SUPPLIER SELECTION FORM AND CRITERIA

Form of selection and criterion for judging the proposal

8.1 The supplier will be selected through a BIDDING procedure, adopting the criteria for judging the lowest global price.

8.2 Failure to comply with the Acquisition Specification attached to this Term of Reference, the Contracting Requirements, and other rules in the Notice will disqualify the Bidder's proposal.

8.3 Bidders, when requested, must provide all information necessary to prove the legitimacy of the requested documents.

Qualification requirements

8.4 Legal Qualification

a) Identity Card and complete identification of the bidder, with the respective title of its representative, complete address, e-mails, and telephone numbers for contact;

b) Copy of the company's articles of incorporation if available, business license or permit and certificates of registration if available;

c) Government-issued authorization document for the exercise of the bid object (sales tax permit or resale certificate);

d) Certificate of good standing and certificate of liability insurance (proof of insurance);

e) Company tax identification number (TIN) and tax clearance certificate;

8.5 Technical Qualification

a) Proof, provided by the bidder, that it received the documents and that it became aware of all the information for the fulfillment of the obligations object of the bidding;

b) Letters of recommendation, good performance, or guarantees provided by authorities or entities that regulate the related commercial activity.

8.6 Economic-Financial Qualification

a) Balance sheet and income statements for the last fiscal year, or equivalent documents, that prove the good financial situation of the company, their replacement by trial balances or provisional balance sheets being prohibited, and may be updated by official indices when closed for more than **3 (three) months** from the date of proposal submission;

b) A declaration that it is not in bankruptcy, in the case of a legal entity, or of asset execution, in the case of an individual.

c) After judging the proposals, the Contracting Party will check the documentation demonstrating the financial capacity of the provisional winning bidder on an official website of known specialization. The bidder will be considered qualified if he has a risk indicator of 1 (low) or 2 (low to medium).

d) All documents must be up-to-date and valid.

e) Documents that have expired will not be accepted.

f) Suppose it is impossible to present a qualification document due to local legislation. In that case, an equivalent document must be presented, or a formal justification must be made to the BNCW explaining the reasons for the impossibility.

9. ADMINISTRATIVE INFRACTIONS AND SANCTIONS

9.1 For the total or partial non-execution of the Contract, the BNCW can, guaranteeing a previous defense, apply to the bidder the following sanctions:

a) Warning.

b) The unjustified delay in the execution of the contract, starting from the first day of the postponement of the service, will subject the bidder to a fine of **0.1% (0.1 percent)** for a day of delay, limited to **30 days (thirty) days**. Reaching this limit, the fine will be converted into a compensatory fine.

c) Compensatory fine, in a percentage of **10% (ten percent)**, levied on the value of the unfulfilled portion of the Contract;

d) Temporary suspension from participation in bidding and impediment to contract with this Naval Commission for a period not exceeding **2 (two) years**;

e) Declaration of ineligibility to bid or contract with the Brazilian Public Administration while the reasons that determined the punishment last or until rehabilitation is promoted before the authority that applied the penalty, which will be granted whenever the bidder reimburses the BNCW for the resulting damages and after the period of the sanction used based on the item "c" elapses.

9.2 The penalties provided in item 9.1, paragraphs "a," "d," and "e" may be applied together with one of the paragraphs "a" and "b," being allowed the previous defense of the bidder, in the respective process, within 5 (five) working days.

9.3 The sanction established in paragraph "e" of item 9.1 is of the exclusive competence of the Minister of Defense, the defense of the bidder being allowed in the respective process within **10 (ten) days** of the opening of the case, and the rehabilitation can be requested after **2 (two) years** of its application.

10. CONTRACT ESTIMATED AMOUNT

10.1 The estimated Contract amount is **USD 2,543,000.00 (two million five hundred and forty-three thousand US dollars)**, according to the average unit cost in the Price Comparison Map.

11. SUPPLIER REGISTRATION

11.1 Companies participating in the Bidding Process N° 10/2023 must be previously registered in the BNCW's register of approved suppliers.

11.2 Guidelines for registering suppliers will be available on the BNCW's website.

12. BUDGET ALLOCATION

12.1 The expenses to comply with this bidding process are foreseen in the Multi-Year Plan and are programmed in a specific budget allocation, predicted in the Union budget for the years 2023 (or 2024) and 2025, in the classification below:

Management/Unit:	00001/52931
PTRES:	195262
SOURCE OF RESOURCES	1077000000
INTERNAL ACTION:	Y.3E2
Nature of Expense:	449052

The following Appendices form part of this Term of Reference, for all purposes and effects:

Appendix I – Acquisition Specification – DEN-EA-832-7-G40-311-001/2023;

Appendix II – Project Goals and Financial Schedule.

Niterói, RJ, December 04th, 2023.

DIEGO DOS SANTOS ALVES

LT – Brazilian Navy
Manager of division “E”

Approved by:

Niterói, RJ, December 04th, 2023.

CASSIO REIS DE CARVALHO

CAPT – Brazilian Navy
Commander of the Multipurpose Dock Ship “Bahia”