



**MINISTRY OF DEFENSE  
BRAZILIAN NAVY  
BRAZILIAN NAVAL COMMISSION IN WASHINGTON**

**DRAFT**

**Contract Between the**

**Brazilian Naval Commission in Washington**

**and**

\_\_\_\_\_ **(Name of the Winning Bidder)**

**for**

**Acquisition of Individual Ballistic Protective Equipment (EPBI), its components and accessories for the operative units of the Marine Corps.**

**Contract n° \_\_\_\_\_**

**NUP: 63150.001440/2024-66**

**Contract signed between the Brazilian Naval Commission in Washington and (the Winning Bidder) for the Acquisition of Individual Ballistic Protective Equipment (EPBI), its components and accessories for the operating units of the Marine Corps.**

The Brazilian Federal Government, through the Brazilian Naval Commission in Washington (BNCW), Brazilian Navy, located at 5130 MacArthur Blvd., N.W., Washington, DC, 20016, represented herein by his President, **CAPT ALEXANDRE VIZEU DIAS**, appointed by Directive No. 62, 2022, holder of Brazilian Navy Identification Card No. \_\_\_\_\_, hereinafter referred to as **BUYER**, and the company \_\_\_\_\_ (Winning Bidder), represented by \_\_\_\_\_(name), holder of the Indetity document n° \_\_\_\_\_, with main offices located at \_\_\_\_\_ (Winning bidder address), hereinafter referred to as **SELLER**, in view of what is stated in Process n° **63150.001440/2024-66**, in compliance with the provisions of Regulation GM-MD No. 5.175, of December 15, 2021, adapted to local peculiarities, hereby decide to enter into this Contract Agreement, resulting from the Online Reverse Bid Auction No. 07/2024, through the clauses and conditions set out below.

**1 - OBJECT**

1.1 The object regarding this contract is the acquisition of Individual Ballistic Protective Equipment (EPBI), its components and accessories for the operative units of the Marine Corps, according to the conditions established in this Contract and in the Terms of Reference.

1.2 Objects of the contract:

<b>Individual Ballistic Protective Equipment (EPBI)</b>				
<b>Item</b>	<b>NSN - Description</b>	<b>Size</b>	<b>QTY</b>	<b>BNCW Reference</b>
1	8470-99-671-1467 - Positively Buoyant Ballistic Plate Level III	Front	2300	PE31000-2024-00040
2	1386-99-493-5757 - Positively Buoyant Ballistic Vest Level IIIA	M	16	PE31000-2024-00041
3	1386-99-181-0945 - Positively Buoyant Ballistic Vest Level IIIA	L	96	PE31000-2024-00042
4	1386-99-344-4440 - Positively Buoyant Ballistic Vest Level IIIA	XL	48	PE31000-2024-00043
5	8470-99-269-4702 - Ground Troops Ballistic Helmet Level III-A with no accessories	M	460	PE31000-2024-00044
6	8470-99-602-8050 - Ground Troops Ballistic Helmet Level III-A with no accessories	L	460	PE31000-2024-00045
7	8470-99-155-9945 - Ground Troops Ballistic Helmet Level III-A with no accessories	XL	230	PE31000-2024-00046
8	8470 - BR3336923 Ballistic Vest Level III-A	M	100	PE31000-2024-00047
9	8470 - BR3336924 Ballistic Vest Level III-A	L	600	PE31000-2024-00048
10	8470 - BR3336942 -Ballistic Vest Level III-A	XL	300	PE31000-2024-00049

1.3 Bind this Contract, regardless of the transcript:

1.3.1 The Terms of Reference;

1.3.2 The Bidding Notice;

1.3.3 The **SELLER's** Proposal;

1.3.4 Any attachments to the above documents.

## **2 - TERM AND EXTENSION**

2.1 The Contract's validity period is 12 (twelve) months from the Contract's signature date.

2.2 The term will be automatically extended, regardless of an additional time, when the object is not completed within the established period, with the exception of measures applicable in case of the **SELLER's** fault, as provided for herein.

## **3 - DELIVERY AND CONTRACT MANAGEMENT**

3.1 This acquisition must be driven by environmental sustainability criteria, based on Law No. 12,187/2009, along with the international commitments undertaken by the Brazilian government, so that the **SELLER**, if possible, prioritizes recycled and recyclable products that are compatible with socially and environmentally sustainable consumption standards.

3.2 Regarding ballistic performance, the equipment must meet the specifications NIJ Standard 0101.06 / 0101.07 and 0106.01 / 0108.01 - Levels III-A and III, as stipulated in the Technical Specifications, Appendix of the Terms of Reference.

3.3 The bidder ranked first, after being notified as such, must send a prototype of each item to CMatFN for evaluation within 20 days. The vests, plates, and helmets must be sent in size "L." The prototypes must be shipped to Brazil under INCOTERM 2020 CIP Galeão Airport (GIG-RJ). The shipment of the prototypes must follow the CNBW Shipping Instructions. A shipping authorization from CNBW is required to avoid delays at customs in Brazil.

3.4 In the event of prototype rejection due to discrepancies with the technical specifications, the company will have 20 days to send a new prototype with the necessary corrections. If the new prototype is also rejected, the company will be disqualified, and the next participating company in the bidding process will be called.

3.5 The contract will be signed only after the approval of the prototypes.

3.6 All expenses related to the submission of the prototypes will be the responsibility of the bidders, with no right to reimbursement from the **BUYER** in the event of prototype rejection.

**3.7 The delivery deadline for EPBI items must be up to 150 days after the contract is signed.**

3.8 The winning company(ies) must manufacture, within the same batches, 05 (five) additional units of III-A Body Armor ballistic vests, 20 (twenty) additional units of ballistic plates, 03 (three) additional units of ballistic helmets, and 05 (five) additional unit of Positive Buoyancy vest,

intended for ballistic compliance testing. These additional quantities must be included in the amounts to be delivered in Brazil.

3.9 The samples of EPBI, designated for compliance testing with the standards of the National Institute of Justice (NIJ), will be randomly selected from the quantities received after the arrival of the EPBI in the country. The company will be notified and will have a period of up to 5 (five) business days to collect the selected samples. After collecting the selected samples, the company will have an additional 20 (twenty) days to conduct the ballistic tests.

3.10 The winning company(ies) will conduct ballistic compliance tests according to the National Institute of Justice (NIJ) standards 0101.06 / 0101.07 (for vests and plates) and 0106.01 / 0108.01 (for helmets), as established by the Compliance Testing Program (CTP) Requirements. These tests must be conducted in a laboratory accredited by the NIJ (see item 3.11), and a list can be found at <https://cittec.org/compliance-testing-program/nij-approved-test-laboratories/>. The reports resulting from these tests must be sent to the end user and must include the batch and serial numbers of the samples tested.

3.11 Oregon Ballistic Laboratories (OBL), located in Oregon, USA, is designated as the reference laboratory for conducting compliance tests of the samples with the standards established by the National Institute of Justice (NIJ), as it is certified by the NIJ and accredited by NVLAP (NVLAP Lab Code 200826-0), and is capable of performing all parts of the NIJ 0101.06 / 0101.07 standard, including environmental conditioning cycles for hard and soft armor.

3.12 Representatives of the Brazilian Marine Command (CFN) may accompany the laboratory tests conducted at Oregon Ballistic Laboratories (OBL) in the United States. For this, the winning company must inform, at least 30 (thirty) days in advance, the expected date for conducting the compliance tests at OBL, and provide the contact information of the representative(s) who will accompany them in the USA.

3.13 The EPBI (helmet, vest, and plate) must have at least 93% of the validity period remaining upon delivery in Brazil.

3.14 The **BUYER** must deliver the material according to the requirements established in the Terms of Reference and international shipping instructions.

3.15 The **SELLER** must obtain at its own cost and risk any export license or other official authorization and comply, when applicable, with all necessary customs formalities to export the goods/services to Brazil, according to INCOTERMS 2020, ICC Publication No. 723E. The **BUYER** will not pay any costs related to export license applications.

3.16 If the **SELLER** anticipates or encounters difficulties that impact the delivery schedule, it must notify the **BUYER** in writing immediately, providing relevant details (including the indication of the cause(s) and the **SELLER**'s efforts to maintain the schedule).

3.17 If the **SELLER** does not comply with the schedule established in this contract, the **BUYER** reserves the right to request expedited shipping to compensate for the respective delay, at the expense of the **SELLER**, without bearing any additional costs associated with such shipping.

3.18 The warranty requirements are detailed in the Terms of Reference and its appendices.

3.19 All notices or permissions required by the **PARTIES** must be formal, written in English, and followed by an acknowledgment of receipt. Notices must be addressed to the contacts below:

For the **SELLER**:       **SELLER's** representative name:  
                                  **SELLER's** name:  
                                  **SELLER's** Telephone number:  
                                  **SELLER's** e-mail address:

For the **BUYER**:       Brazilian Naval Commission in Washington  
                                  To: Contracts and Public Bid Division  
                                  Contract Number: \_\_\_\_\_  
                                  Tel: (202) 244-3950 – ext.: 312 e 320  
                                  Email: [elias.ferreira@marinha.mil.br](mailto:elias.ferreira@marinha.mil.br)/[manoela.accioly@marinha.mil.br](mailto:manoela.accioly@marinha.mil.br).

#### 4 – SUBCONTRACTING

4.1 Subcontracting of the contractual object will not be permitted.

#### 5 – PRICE

5.1 The total amount of this Contract is **US\$ [XXX]**.

5.2 The amount above includes all direct and indirect ordinary expenses resulting from the execution of the object, including administration fees, freight charges, insurance, and any other charge necessary for full compliance with the object of the contract.

#### 6 – PAYMENT

6.1 The deadline for payment is 30 days after certification of complete delivery and inspection of the items in Rio de Janeiro, Brazil. The End User, after said inspection, will authorize the payment.

6.2 In case of partial delivery, invoices will be paid individually.

6.3 Payment will be made by wire transfer to the account provided by the **SELLER**.

6.4 The **BUYER** will not be responsible for any fees charged by the **SELLER's** financial institution.

6.5 Invoices issued by the **SELLER** must strictly comply with this Contract and must present the following information:

- a) Addressed to the Brazilian Naval Commission in Washington;
- b) Price in dollars;
- c) Contract number;
- d) Address of destination;

- e) Delivery term: CIP - Rio de Janeiro, Brazil;
- f) Description of the item, PN, and NSN;
- g) Quantities and unit prices, as presented in the price proposal; and
- h) Banking information for payment: SWIFT code, ABA and account number for payment.

6.6 The final invoice (and not the commercial invoice) must be sent to the **BUYER** via email at [cnbw.shipment@marinha.mil.br](mailto:cnbw.shipment@marinha.mil.br).

6.7 Invoices that do not contain all the information required in this Clause will not be accepted, and a revised invoice will be requested. In this case, the payment deadline may be affected, and BNCW will not incur any costs for delays in payment.

6.8 Payment is subject to discounts resulting from administrative penalties due to non-compliance with contractual execution.

6.9 The **BUYER** is exempt from taxes nationwide on purchases over USD 500.00. A copy of the tax exemption card can be provided upon request.

## 7 - READJUSTMENT

7.1 Within the validity of this Contract, the total amount cannot be readjusted.

## 8 - BUYER'S OBLIGATIONS

8.1 The **BUYER's** obligations are:

8.1.1 Require the fulfillment of all obligations assumed by the **SELLER**, following the Contract and its attachments;

8.1.2 Receiving the object in the period and conditions established in this Contract;

8.1.3 Reject, in whole or in part, the contracted object when in disagreement with the specifications contained in the Contract.

8.1.4 Notify the **SELLER**, in writing, about vices, defects, or inaccuracies found in the supplied object so that it may be replaced, repaired, or corrected, in whole or in part, at its expense, according to the conditions established in this Contract;

8.1.5 Monitor and inspect the performance of the Contract and the **SELLER's** compliance with its obligations;

8.1.6 Pay the **SELLER** the amount corresponding to the supply of the object in the period, form, and conditions established in this Contract;

8.1.7 Apply sanctions to the **SELLER** in accordance with the law and this Contract;

8.1.8 Issue a decision on all requests and complaints related to the execution of this Contract, except manifestly impertinent requests, merely delaying or devoid of interest for the proper execution of this agreement;

8.1.9 Notify the **SELLER** in writing of any imperfections, failures, or irregularities identified during the execution of the services, setting a deadline for their correction, and ensuring that the solutions proposed by the **SELLER** are the most appropriate;

8.1.10 Supervise the execution of this contract; and

8.1.11 The Administration will not be responsible for any commitments made by the **SELLER** with third parties, even if related to the execution of the contract, nor for any damage caused to third parties as a result of acts by the **SELLER**, its employees, agents, or subordinates.

## **9 - SELLER's OBLIGATIONS**

9.1 The **SELLER** shall comply with all obligations contained in this Contract and in the Term of Reference, assuming as exclusively its risks and expenses resulting from the good and perfect execution of the object, observing, also, the obligations set forth below:

9.1.1 Comply with the regular determinations issued by the contract supervisor or higher authority, and provide any clarification or information requested by them;

9.1.2 Be responsible for any defects and damages arising from the execution of the contract's object, as well as for any and all damage caused to the Administration or third parties, without reducing this responsibility due to the supervision or oversight of the contract execution by the **BUYER**, who will be authorized to deduct from the payments due or from the guarantee, if required in the notice, the amount corresponding to the damages incurred;.

9.1.3 Be responsible for complying with all labor, social security, tax, commercial and other obligations provided for in specific legislation, whose default does not transfer the responsibility to the **BUYER** and may not encumber the object of the Contract.

9.1.4 Keep during the whole validity of the Contract, in compatibility with the obligations assumed, all the conditions required for qualification in the bidding;

9.1.5 Keep confidential all information obtained as a result of the Contract;

9.1.6 Bear the burden arising from any errors in the sizing of the quantities in its proposal, including variable costs resulting from future and uncertain factors, and must supplement them if the initially proposed amounts are not sufficient to meet the object of the contract, except to restore the initial economic-financial balance of the contract in cases of force majeure, unforeseen events, or acts of the prince, or due to unforeseeable events or foreseeable events with incalculable consequences that make the execution of the contract as agreed impossible;

9.1.7 Notify the **BUYER** of any subsequent impediments that may cause delays or suspension of the delivery of the contracted object, within a maximum period of 72 (seventy-two) hours before the supply date;

9.1.8 Assume responsibility for the tax expenses arising from the awarding of this Bidding Process (Online Reverse Bid Auction);

9.1.9 Assume responsibility for property damage or any losses arising from this Contract when caused by the direct or indirect actions or omissions of its employees or subcontractors acting on its behalf;

9.1.10 Not allow the employment of any workers under the age of sixteen, except in the capacity of apprentices for those over fourteen years old, nor allow the employment of workers under eighteen in night work, hazardous, or unhealthy conditions; and

9.1.11 Repair, correct, remove, rebuild, or replace, at its own expense, in whole or in part, within the timeframe set by the contract supervisor, any goods found to have defects, flaws, or inaccuracies.

## **10 - HIRING GUARANTEE**

10.1 There will be no requirement for a Contract guarantee.

## **11 - ADMINISTRATIVE INFRACTIONS AND SANCTIONS**

11.1 For the total or partial non-execution of the Contract, the **BUYER** can, guaranteeing a previous defense, apply to the **SELLER** 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 **SELLER** to the 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 (%), 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 two (2) 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 **SELLER** reimburses the **BUYER** for the resulting damages and after the period of the sanction used based on the item "c" elapses.



11.2 The penalties provided in item 11.1, paragraphs "a," "d," and "e" may be applied together with one of the paragraphs "a" and "b," being allowed the previous defense of the **SELLER**, in the respective process, within 5 (five) working days.

11.3 The sanction established in paragraph "e" of item 11.1 is of the exclusive competence of the Minister of Defense, the defense of the **SELLER** 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.

## **12 - CONTRACT TERMINATION**

12.1 The contract will be terminated when the obligations of both parties are fulfilled, even if this occurs before the stipulated deadline.

12.2 If the obligations are not met within the stipulated time, the term will be extended until the completion of the object, in which case the Administration shall provide the readjustment of the schedule set for the Contract.

12.3 When the non-conclusion of the Contract referred to in the previous item results from the **SELLER's** fault:

12.3.1 It will be constituted in default, being applicable to the respective administrative sanctions;

12.3.2 The Administration may choose to terminate the Contract and, in this case, will adopt the measures allowed by law for the continuity of Contract enforcement.

12.4 The total or partial non-performance of the Contract gives rise to its termination, with the appropriate contractual, legal, and regulatory consequences.

12.5 The **BUYER** reserves the right to terminate the referred Contract in case of contractual non-performance through written notice addressed to the **SELLER**, which may lead to the establishment of an Administrative Liability Process, ensuring the adversary and the entire defense if:

a) The **SELLER** fails to fulfill any contractual obligations or irregularly fulfills the contractual clauses, specifications, projects, and terms and does not take measures to remedy such defaults after receiving formal notification;

b) If there is slowness in compliance, leading the **BUYER** to prove the impossibility of completing the delivery within the stipulated deadlines;

c) The **SELLER** becomes insolvent, goes into voluntary or compulsory liquidation, except for merger;

d) The unjustifiable delay in the delivery of the object by the **SELLER**;

e) The interruption of supply without just cause and prior communication to the Administration;

- f) Total or partial subcontracting of the object, the association of the **SELLER** with others, the total or partial assignment or transfer, as well as the merger, split, or incorporation, not admitted in the contract;
- g) Failure to comply with the regular determinations of the designated authority to monitor and supervise its execution, as well as those of its superiors;
- h) Declaration of bankruptcy or the institution of civil insolvency;
- i) Dissolution of the company or the death of the **SELLER** (if applicable);
- j) Corporate alteration or change in the finality or structure of the company, which impairs the performance of the Contract;
- k) Suppression of services, resulting in a modification of the initial Contract value beyond the permitted limit of 25% (twenty-five percent) of the initial updated contract value.

12.6 The following also constitute grounds for termination of the Contract:

- a) The delay of more than 90 (ninety) days of the payments due by the **SELLER** arising from services, or parts of them, already received or executed, except in case of public calamity, serious disturbance of the internal order or war, assured to the contractor the right to opt for the suspension of the fulfillment of its obligations until the situation is normalized;
- b) Failure to comply with the regular determinations of the designated authority to monitor and supervise its execution, as well as those of its superiors;
- c) The occurrence of fortuitous case or force majeure, regularly proven, impeding the execution of the Contract ;
- d) In case of a second re-probation of the prototype due to discrepancies regarding the technical specifications;
- e) The **BUYER** fails to comply with any contractual obligation and does not take the necessary measures to remedy such non-compliance within 30 (thirty) days from receiving a written notification from the **SELLER** to do so; and
- f) The **SELLER** exceeds the agreed delivery dates by more than 05 (FIVE) weeks due to reasons attributable to the **SELLER**, and the delay is not justified under Force Majeure;

12.7 The penalties provided in Article 65 of Annex I of GM-MD Ordinance No. 5,175, dated December 15, 2021, are applicable in any case of total or partial non-performance of the contract.

## **13 - BUDGET ALLOCATION**

13.1 Expenses to attend this bidding process are programmed in a specific budget allocation, foreseen in the Union budget for this fiscal year, in the classification below:

Management/Unit:	00001/52131
AO/PO:	731000/770200
PTRES:	236955
INTERNAL ACTION:	C.302.03
Nature of Expense:	449052

#### 14 - OMITTED CASES

14.1 The **BUYER** will decide the omitted cases according to the provisions of the Regulation GM-MD N° 5.175, of December 15, 2021 and other Brazilian norms.

#### 15 - MODIFICATIONS

15.1 Registrations that do not characterize alteration of the Contract may be done by simple notification, dispensing the celebration of an amendment.

15.2 The **SELLER** is required to accept, under the same contractual conditions, the additions or deletions that may be necessary up to the limit of 25% (twenty-five percent) of the updated initial value of the Contract.

#### 16 - PUBLICATION.

16.1 BNCW undertakes to publish all information related to this bidding process in the Official Gazette of the Union, as well as on the Brazilian Navy's Bidding Portal.

#### 17 - FORUM

17.1 If the **PARTIES** cannot resolve any disputes arising from or relating to this Contract amicably, such claims shall be determined by arbitration following the International Arbitration Rules of the American Arbitration Association.

17.2 The place of arbitration will be in Washington, DC, the number of arbitrators will be three, and the arbitrator's decision will be final and binding on the **PARTIES**. Each party shall select one arbitrator within thirty (30) days after the commencement of the, be arbitration, and both arbitrators shall select a third. If either party fails to appoint an arbitrator within this period, the arbitrator chosen by the other party will be the sole arbitrator. Suppose the two arbitrators do not agree on the selection of a third arbitrator within 45 (forty-five) days after the commencement of the arbitration, the American Arbitration Association will select the third arbitrator.

17.3 The arbitration must be conducted in English, and all documentation must also be in English. The arbitration award shall be the sole and exclusive remedy between the parties concerning claims, counterclaims, issues, or bills presented or pleaded to the arbitrators. The award must be paid in US Dollars, net of any tax, deduction, or offset. Any costs, fees and, expenses incurred in enforcing the judgment will be charged against the party resisting such enforcement.

17.4 All notices relating to the arbitration shall be in English and writing.

17.5 The dispute or claim arising out of or relating to the Contract will be determined following the Maritime and Commercial Laws applicable to this type of trade, and the parties will submit to the jurisdiction of the federal courts located in the District of Columbia. They will waive the right to claim a lack of personal jurisdiction in any legal process.

**18 - FORCE MAJEURE**

18.1 The parties will consider cases of force majeure, for the purpose of counting the deadlines established in this Contract, as those events which, being unforeseeable or unavoidable, may prevent one of the parties from meeting the scheduled dates. Neither party will be responsible for delays or failures in the performance of any part of this Contract if such delay or failure is caused by events beyond the reasonable control of that party or its subcontractors (“Force Majeure”).

18.2 The following are considered Force Majeure, including but not limited to: war, insurrection, revolution, civil war, strike, blockade, epidemic, pandemic, outbreak, nuclear radiation, shortage of materials or utilities, fire, earthquake, tsunami, typhoon, storm, flood, volcanic activity, pressure waves, and acts of nature, adverse weather conditions, government actions, and others that, according to Subclause 12.6 letter C, are beyond the control of the affected party and prevent the fulfillment of this Contract.

18.3 In the event of Force Majeure, the affected party must notify the other party in writing within 10 (ten) business days from the onset of the Force Majeure period. The affected party must inform the other party of the consequences of the Force Majeure in relation to delays under the Contract and the time required to overcome these delays. By mutual agreement of the parties, the scheduled dates will be extended by the respective periods of Force Majeure.

18.4 The contracting parties may terminate this contract if the force majeure period persists for 6 (six) months.

**19. COPIES**

19.1 To secure and validate what has been agreed upon, this Contract has been drawn up in two COPIES of equal content, which the contracting PARTIES have signed after having been read and found to be in order.

Washington DC, \_\_\_\_\_, 2024.

\_\_\_\_\_  
ALEXANDRE VIZEU DIAS  
Captain – Brazilian Navy  
President

\_\_\_\_\_  
SELLER

Witness:

\_\_\_\_\_  
BNCW Witness

\_\_\_\_\_  
SELLER Witness