



**BRAZILIAN NAVY
BRAZILIAN NAVAL COMMISSION IN WASHINGTON**

DRAFT

Contract Between the

Brazilian Naval Commission in Washington

and

_____ (Name of the Winning Bidder)

for

Hiring a company to provide health insurance services

Contract n° _____

Contrato N° _____

Contract signed between the Brazilian Naval Commission in Washington and _____ (Winning bidder) for provide health insurance services

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, 2023, holder of Brazilian Navy Identification Card No. _____, hereinafter referred to as **BUYER**, and the company _____ (Winning Bidder), represented by _____ (name), holder of the Indentity document n° _____, with main offices located at _____ (Winning bidder address), hereinafter referred to as **SELLER**, in view of what is stated in Process n° **63150.000493/2024-60**, 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. 05/2024, through the clauses and conditions set out below.

1. OBJECT:

1.1 Hiring a company to provide health insurance services with a Preferred Provider Organization (PPO), including medical, dental, and ophthalmological coverage for the Local Hired Employers of the Brazilian Naval Commission in Washington (BNCW) and the Brazilian Naval Attaché in the United States of America, as well as Federal employees on assignment at BNCW, according to the conditions established in the Notice and its Annexes.

1.2 Bind this Contract, regardless of the transcript:

1.2.1 The Terms of Reference;

1.2.2 The Notice;

1.2.3 The **SELLER**'s Proposal; and

1.2.4 Any attachments to the above documents.

2. TERM AND EXTENSION

2.1 The contract term is 12 months from the contract signing date, in accordance with Article 55 of GM-MD Ordinance No. 5,175, dated December 15, 2021, extendable up to a maximum of 5 years, if there is interest from the Administration.

2.2 The extension referred to in this item is subject to approval by the competent authority, confirming that the conditions and prices remain advantageous for the Administration, allowing negotiation with the **SELLER**, while ensuring compliance with the following requirements:

- a) It is formally demonstrated in the process that the service provision has a continuous nature;
- b) A report detailing the contract execution is attached, indicating that the services have been provided regularly;
- c) A written justification and reason attached, stating that the Administration maintains interest in the service;
- d) There is an express statement from the **SELLER** indicating interest in the extension; and
- e) It is proven that the contractor maintains the initial qualification conditions.

2.3 The contract cannot be extended when the **SELLER** has been penalized with sanctions such as declaration of unsuitability or prohibition from bidding and contracting with the public sector, observing the scope of application.

3. DELIVERY AND CONTRACT MANAGEMENT

3.1 The contractual execution regime, the management and execution models, as well as the deadlines and conditions for completion, delivery, observation and receipt of the object are set out in the Terms of Reference, attached to this Contract.

3.2 All notices or permissions required by BNC and the Seller to each other must be formal, written in English, and must be followed by an acknowledgment of receipt. Notices must be addressed to the contacts below:

For the **SELLER**: Name of the Contact from the **SELLER**
 SELLER's name
 SELLER's telephone number
 SELLER's E-mail address

For the **BUYER**: Brazilian Naval Commission in Washington
 ATTN: Bidding and Administrative Contracts Division
 Contract Number: _____
 Telephone: (202) 244-3950 - ext.: 320/321
 Email: elias.ferreira@marinha.mil.br/manoela.accioly@marinha.mil.br.

4. SUBCONTRACTING

4.1 Partial subcontracting is permitted; however, the **SELLER** will remain responsible for compliance with the Contract. The subcontracting depends on prior authorization from the **BUYER**, who is responsible for assessing whether the subcontractor meets the necessary technical qualification

requirements for the execution of the object.

4.1.1 Subcontractors must be legally established companies. However, the **SELLER** is entirely responsible for the conduct and performance of its Subcontractors, including any irregularity committed by them, any breach of the Contract, illegalities, and negligence.

4.1.2 In any subcontracting scenario, the contractor retains full responsibility for the proper execution of the contract, including the supervision and coordination of subcontractor activities, as well as accountability to the BUYER for the strict compliance with the contractual obligations related to the subcontracted object.

5. PRICE

5.1 The total value of the contract is USD xxxxx (XXXXXXXX US Dollars).

5.2 The above amount includes all ordinary direct and indirect expenses arising from the execution of the object, including taxes and/or duties, social, labor, social security, fiscal, and commercial charges, administrative fee, freight, insurance, and other expenses necessary for the full compliance with the contract object.

5.3 The above amount is merely an estimate, so payments due to the contractor will depend on the actual quantities provided.

6. PAYMENT

6.1 The deadline for payment to the contractor and other conditions relating to it are defined in the Terms of Reference, attached to this Contract.

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

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

7. READJUSTMENT

7.1 The initially contracted prices are fixed and non-adjustable for a period of one year from the date of contract signing.

7.2. After the lapse of one year, prices may be adjusted, at the request of the interested party, exclusively for obligations initiated and concluded after the annual occurrence, based on the Consumer Price Index for Health Insurances – CPI” in the United States or equivalent index with market practice.

7.3 The request for adjustment must be made during the term of the contract and before any extension or termination of the contract, under penalty of preclusion.

7.4 Adjustments shall be formalized through an amendment, subject to the conditions provided in clause two.

7.5 In subsequent adjustments after the first, the minimum interval of one year shall be counted from the financial effects of the last adjustment.

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 Receive the object within the deadline and conditions established in the Terms of Reference;

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

8.1.4 Notify the **SELLER**, in writing, about vices, defects, or inaccuracies found in the supplied object so that it may be replaced, in whole or in part, at its expense, in accordance with the conditions established in this contract;

8.1.5 Monitor and supervise the performance of the Contract and the fulfillment of obligations by the **SELLER**;

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 Explicitly issue decisions on all requests and complaints related to the execution of this Contract, except for requests that are manifestly irrelevant, purely dilatory, or of no interest to the proper execution of the agreement.

8.1.9 The Administration shall have a period of 1 month, from the date of the request protocol, to decide, with the possibility of a motivated extension for an equal period.

8.1.10 Respond to any requests for the restoration of economic-financial balance made by the **SELLER** within a maximum period of 20 days.

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

8.1.12 The Administration shall not be liable for any commitments assumed by the **SELLER** with third parties, even if related to the execution of the contract, as well as for any damage caused to third parties as a result of an act 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 regular determinations issued by the contract inspector or higher authority, and provide any clarification or information requested by them;

9.1.2 Be responsible for defects and damages resulting from the execution of the object, as well as for any damage caused to the Administration or third parties, not reducing responsibility due to the supervision or monitoring of the contractual execution by the BUYER, who will be authorized to deduct from the payments due or the guarantee, if required in the notice, the amount corresponding to the damages suffered;

9.1.3 Be responsible for complying with all labor, social security, tax, commercial and other obligations provided for in specific legislation, non-compliance does not transfer responsibility to the BUYER and cannot encumber the object of the contract;

9.1.4 Maintain throughout the term of the contract, in compatibility with the obligations assumed, all the conditions required for qualification in the bidding;

9.1.5 Notify the Contract Supervisor, within 24 (twenty-four) hours, of any abnormal occurrence or accident that occurs at the service location;

9.1.6 Hold accountable for any mistake in the sizing of the quantities of the proposal, including variable costs arising from future and uncertain factors, and must complement them, if what was initially foreseen in the proposal is not satisfactory for meeting the object of the contract, except to reestablish the initial economic-financial balance of the contract in case of force majeure, act of God or *factum principis* or as a result of unpredictable or foreseeable facts with incalculable consequences, which make the execution of the contract as agreed unfeasible;

9.1.7 Submit in advance, in writing, to the BUYER, for analysis and approval, any changes in the executive methods that deviate from the specifications of the descriptive memorandum or similar instrument;

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

9.1.9 Take responsibility for the actions of its employees as well as for any work accidents involving its employees or subcontractors that may occur during the provision of services;

9.1.10 Assume responsibility for property damage, or any losses arising from this Contract when it is caused by its own employees' direct, indirect actions, or omissions, or its subcontractors acting on its behalf.

9.1.11 Cease, at the **BUYER's** request, any activity that is not being executed according to good technique or that poses a risk to the safety of persons or property of third parties;

9.1.12 Execute the contractual object through suitable individuals, assuming full responsibility for any damages or failures that may compromise the performance of their functions, with the End User being able to demand the removal of individuals whose conduct is considered incompatible with military ethics, with the **SELLER** also being obligated to indemnify for all damages they may cause;

9.1.13 Not allow the use of any labor from individuals under sixteen years of age, except as apprentices for those over fourteen years of age, nor allow the use of labor from individuals under eighteen years of age for night, dangerous, or unhealthy work;

9.1.14 Allocate the necessary employees for the perfect fulfillment of the clauses of this contract;

9.1.15 Not hire, during the term of the contract, a spouse, partner, or relative in a direct line, collateral, or by affinity, up to the third degree, of a contracting party's director or public servant who has performed a function in the bidding or who acts in the supervision or management of the contract; and

9.1.16 Maintain confidentiality of third-party data obtained as a result of the contract;

10. HIRING GUARANTEE

10.1 There will be no requirement for contracting guarantee since, concerning the contract execution, there are no risks for the **BUYER**, given that payment to the **SELLER** will occur after the effective delivery of the goods/rendering of the service.

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 participating in bidding processes and prohibition from entering into contracts with the BNCW, for a period not exceeding 2 (two) years; and

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 The contract may be terminated before the fixed term, without cost to the **BUYER**, when there are no budgetary credits for its continuation or when it understands that the contract no longer offers advantages.

12.2 The contract may be terminated before the obligations stipulated therein are fulfilled, or before the fixed term therein is fixed amicably, ensuring due process and full defense.

12.3 When the non-completion of the contract referred to in the previous item is due to the **SELLER's** fault:

12.3.1 The **SELLER** shall be deemed to be in default, subject to the respective administrative sanctions applicable to him; and

12.3.2 The Administration may choose to terminate the contract, and in that case, will adopt the measures allowed by law for the continuity of contractual execution.

12.4 The total or partial non-performance of the contract warrants its termination, with the appropriate contractual, legal, and regulatory consequences, and shall be formally justified, ensuring the right to be heard and the right to a full defense.

12.5 The **BUYER** reserves the right to terminate the said Contract in the event of contractual non-performance, through written notification addressed to the **SELLER**, which may lead to the initiation of an Administrative Responsibility Process, ensuring the right to be heard and the right to a full defense, in the following cases:

a) the **SELLER** fails to fulfill any contractual obligations or irregularly fulfills contractual clauses, specifications, projects, and deadlines and fails to take measures to remedy such breaches after receiving formal notification;

b) the slowness of its performance, leading the **BUYER** to prove the impossibility of the **SELLER** from completing the delivery within the stipulated deadlines;

- c) the SELLER becomes insolvent, enters into voluntary or compulsory liquidation, except for merger purposes;
- d) the unjustified delay in the delivery of the object by the **SELLER**;
- e) the interruption of the supply without just cause and prior communication to the Administration;
- f) the total or partial subcontracting of the object, the association of the contractor with others, the assignment or transfer, total or partial, as well as merger, division, or incorporation, not allowed in the contract;
- g) failure to comply with the regular determinations of the designated authority to monitor and oversee its execution, as well as those of its superiors;
- h) the declaration of bankruptcy or the initiation of civil insolvency;
- i) the dissolution of the company or the death of the SELLER;
- j) the social change or modification of the purpose or structure of the company, which impairs the execution of the contract; and
- k) the reduction of services, resulting in a modification of the initial contract value beyond the permitted limit of 25% (twenty-five percent) of the updated initial contract value.

12.6 Also constitute grounds for contract termination:

- a) the delay of more than 90 (ninety) days in payments due by the BUYER for services, or portions thereof, already received or executed, except in cases of public calamity, severe disturbance of internal order, or war, ensuring the contractor's right to choose to suspend the performance of its obligations until the situation is normalized;
- b) the failure of the Administration to release the area, location, or object for delivery within the contractual deadlines; and
- c) the occurrence of a fortuitous event or force majeure, duly proven, preventing the execution of the contract.

12.7 The sanctions provided for in Article 65 of Annex I of GM-MD Ordinance No. 5,175, of December 15, 2021, are applicable in any case of total and 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 the 2024 fiscal year, in the classification below:

Management/Unit:	70200
PTRES:	174672
Internal Action:	S43204001B4
Nature of Expense:	339039

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 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.

15.1.1 Contractual changes must be made through the signing of an amendment, subject to prior approval by the legal consultancy of the contracting party, except in cases of justified need for the anticipation of its effects, in which case the amendment must be formalized within a maximum period of 1 (one) month.

15.1.2 Records that do not constitute a change to the contract can be made by a simple annotation, without the need for the signing of an amendment.

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. COPIES

18.1 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

Witnesses:

BNCW Representative

SELLER Witness

