

**BRAZILIAN NAVAL COMMISSION IN WASHINGTON  
5130 MacArthur Blvd., N.W.  
Washington, D.C. 20016-3316**

**INVITATION FOR SEALED BID (IFSB)**

**Nº 005/16**

**FOR THE PROCUREMENT OF:**

**MARINE FUEL FOR BRAZILIAN NAVY VESSELS IN  
FOREIGN PORT**

**BRAZILIAN NAVAL COMMISSION IN WASHINGTON  
5130 MacArthur Blvd., N.W.**

IFSB No 05/16

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**BRAZILIAN NAVAL COMMISSION IN WASHINGTON**  
**5130 MacArthur Blvd., N.W.**  
**Washington, D.C. 20016-3316**

**INVITATION FOR SEALED BID N° 05/16**  
**COVER PAGE**  
**(THIS IS NOT A PURCHASE ORDER)**

As authorized by the President of the Brazilian Naval Commission (BNC), I, CDR Carlos Eduardo L. Palhares, President of the Bidding Commission (BC) of the BNC, with offices at 5130 MacArthur Blvd., N.W., Washington, D.C., 20016-3316, hereby announces to the recipients of this Invitation for Sealed Bid (IFSB), the commencement of the process of inviting, receiving, and evaluating the sealed responses (the "Bid (s)") to this IFSB, as described herein. Please read all documents attached to this IFSB, including the Bid Procedures and Contract Terms and Condition to ensure that you comply with the bidding process.

Companies (Bidders) submitting a Bid must comply with all instructions contained in this IFSB, including section 5 "DEADLINE FOR SUBMITTAL OF BIDS", and the attached "BID PROCEDURES" and "CONTRACT DRAFT" incorporated herein.

**1. IFSB N° 05/16**

**2. DATE OF ISSUANCE OF THIS IFSB:** 30 September, 2016.

**3. BID MUST BE ADDRESSED TO:** BRAZILIAN NAVAL COMMISSION  
Attention: CDR Carlos Eduardo L. Palhares  
President of the Bidding Commission (BC) of the BNC  
IFSB No. 005/16  
Via regular /express mail to:  
5130 MacArthur Blvd., N.W.,  
Washington, D.C. 20016-3316  
or **Via Email:** [bid@cnbw.mar.mil.br](mailto:bid@cnbw.mar.mil.br)

**4. OBJECT:** To Contract a fuel company to supply "Marine Fuel" to Brazilian Navy Vessels in foreign port, according to the Table of Epecifications on next page. The company shall provide the fuel and the fueling services in compliance with environmental standards, laws, rules and regulations of each country and port. The selection of the winner will be according to the tables below.

a) Object information:

Ship	Port	Country	Supply Date	Berthing Period	Estimated Qty (Li)
NE Brasil (Training Ship Brasil)	Cartagena	Colombia	<b>11/28/2016</b>	11/28 – 11/30	210,000

b) Object Discrimination: The fuel must have the characteristics of specification MGO as described below:

MARINE FUEL SPECIFICATIONS	Fuel ISO-F-DMA (MGO)	ANALYSIS METHOD
Viscosity SSU, 50° C max	-	ASTM D 88
Viscosity CST, 40° C	1,5-6,0	ASTM D 445
Flash Point (°C) min	60	ASTM D 93
Sodium Chloride	Absence	QUALITATIVE
Color, max	4,0	ASTM D 1500
Water and sediment (% vol) max	0,05	ASTM D 2709 or 1796
Ashes (% weight) max	0.01	ASTM D 482
Density at 20/4° C	0.8200-0.8600	ASTM D 1298 or 4052
Distillation (°C), max		
10% evaporated	RECORD	ASTM D 86
50% evaporated	-	ASTM D 86
85% evaporated	370	ASTM D 86
90% evaporated	-	ASTM D 86
Final point	-	ASTM D 86

**5. DEADLINE FOR SUBMITTAL OF BIDS:** Sealed bids for the supply of the object of this IFSB must be submitted via the email address [bid@cnbw.mar.mil.br](mailto:bid@cnbw.mar.mil.br) or headquarters address specified in item 3 above, the latest on the dates and times specified in Section 1.0, 2<sup>nd</sup> and 7<sup>th</sup> Step.

**6. FOR ADDITIONAL INFORMATION** regarding this IFSB, please forward your written inquiry to Ms Claudia Piereckdesa, at [claudia@cnbw.mar.mil.br](mailto:claudia@cnbw.mar.mil.br) and [sidney@cnbw.mar.mil.br](mailto:sidney@cnbw.mar.mil.br).

**TO:** BRAZILIAN NAVAL COMMISSION  
Attn.: CDR Carlos Eduardo L. Palhares  
President of the Bidding Commission (BC) of the BNC  
IFSB No. 005/16  
5130 Mac Arthur Blvd., N.W.  
Washington, D.C., 20016-3316  
Tel: (202) 244-3950  
Fax: (202) 364-7173  
Email: [sidney@cnbw.mar.mil.br](mailto:sidney@cnbw.mar.mil.br) ; [claudia@cnbw.mar.mil.br](mailto:claudia@cnbw.mar.mil.br)

**BRAZILIAN NAVAL COMMISSION**  
**5130 MacArthur Blvd., N.W.**  
**Washington, D.C. 20016-3316**

**BID PROCEDURES**

**SECTION 1.0 - SCHEDULE FOR BID RECEIPT AND EVALUATION**

<b>STEP</b>	<b>DATE</b>	<b>TIME</b>	<b>EVENT</b>
1 <sup>st</sup>	30 SEP	3:30pm	Bid requests sent.
2 <sup>nd</sup>	31 OCT	3:30pm	Latest date for submitting Bids, containing “Qualification Documents for IFSB N° 05/16”. (See Section 4.1).
3 <sup>rd</sup>	02 NOV	9:00am	The BNC's Bidding Commission opens the “Qualification Documents for IFSB N° 05/16” and analyzes if documents submitted are in accordance with what was requested.
4 <sup>th</sup>	02 NOV	3:30pm	Announcement of the names of the Companies that have been qualified to continue in the Bid process.
5 <sup>th</sup>	04 NOV	3:30pm	Last date of step 3 <sup>rd</sup> appeals.
6 <sup>th</sup>	TBA	3:30pm	BNC informs the results of any appeal.
7 <sup>th</sup>	15 NOV	9:00am	Latest date for submitting Bids, containing the “Prices Proposal for IFSB N° 05/16”. (See Section 4.1).
8 <sup>th</sup>	15 NOV	10:00am	The Bidding Commission opens the “Price Proposal for IFSB N° 05/16” of the qualified Bidders, and proceeds to evaluating the Price Proposal contained therein. The final ranking among the qualified Bidders is established. The winner shall be the company with the lowest price. Next business day from Step 6.
9 <sup>th</sup>	15 NOV	11:00am	President of the Bidding Commission announces the final ranking among the qualified Bidders.
10 <sup>th</sup>	16 NOV	12:00am	Last date of step 8 <sup>th</sup> appeals.
11 <sup>th</sup>	16 NOV	13:00pm	President of the Bidding Commission informs the results of any appeal and announces the name of the winner of the Bid.
12 <sup>st</sup>	To be advised		Signature of the Contract for IFSB N° 05/16” (date of signature by both parties).

**SECTION 2.0 - GOVERNING LAW**

The present IFSB is issued in accordance with the Administrative Law 8.666/1993 and Regulations of the Federative Republic of Brazil, and the regulations herein.

- (i) The bidding process and any disputes arising thereunder shall be governed by the applicable laws, rules and regulations of the Federative Republic of Brazil, and, if further guidance is necessary, by principles of the laws of Brazil and of the District of Columbia USA;
- (ii) The United States District Court of Washington, D.C, shall be the court in which any action or proceedings that might arise in connection with the bidding process must be filed and adjudicated; and
- (iii) In the event of contract is entered between BNC and a Bidder, the conformation and performance of such contract shall be governed by the provisions of that contract, including its governing law's provisions.

### **SECTION 3.0 - PRICE**

- 3.1 The total price must include profits and all expenses arising from the provision of services, including fees, taxes and expenses, materials, transportation, insurance, and any other properly specified cost.
- 3.2 Prices should be quoted in US dollars;
- 3.3 The Proposal shall be valid for no less than thirty (30) days from the step 1<sup>st</sup> of Bid Procedures.

### **SECTION 4.0 - BIDS**

- 4.1 Any Bid must be presented in accordance with the provisions established in this IFSB, including the Bid Procedures and all attachments hereto. The Bid must contain a complete and accurate response to each instruction, representations, warranties, and covenants included in the IFSB. BNC is entitled to refuse any Bid that fails to contain, in the proper form, all information required that the BNC determines or to be incomplete, inaccurate, distorted or potentially misleading. The submittal of a Bid in a form other than the established in this IFSB, including the Bid procedures and all attachments hereto, or quoting prices in any currency other than U.S. Dollars shall be reason for disqualification, upon the occurrence of which the BNC shall be entitled to reject the Bid. The Bidding Commission reserves the right to disqualify, without explanation, any Bid not complying with one or more of the requirements established in this IFSB, in which event, the Bidding Commission shall send to the disqualified Bidder a Notice of Non-Acceptance.
- 4.2 After a Bidder submits his Bid, the Bidding Commission shall not accept any additional information from that Bidder, unless the Bidding Commission specifically requests such information in the circumstances set forth in Section 6.1.
- 4.3 The Bid must consist of two (2) parts: Qualification Documents and Price Proposal. The Proposals must be sent via email: bid@cnbw.mar.mil.br.
- 4.4 Qualification Documents.  
All documents submitted must be updated and valid. Expired documents will not be accepted. Bidders must submit the following documents:
  - a) Basic Business License or any evidence that the company is authorized by a Government to operate;
  - b) Articles of Incorporation or similar;
  - c) Company's Tax Identification Number;
  - d) Present a valid Certificate of Liability Insurance (proof of insurance)
  - e) Submit a certificate of quality or a certificate issued by a third party attesting the quality of product supplied ;
  - f) Name and job title of legal representative
  - g) Bidder must include any minor changes or suggestions to the draft of contract in "Appendix A" that are of interest.

4.4.1 The email attachment containing the documents (item 4.4) must have the following identification:

QUALIFICATION DOCUMENTS  
BRAZILIAN NAVAL COMMISSION  
IFSB # 03/2016  
SUBMITTED BY: (INSERT Bidder's name).

4.5 Price Proposal.

4.5.1 Bidder must prepare its price proposal using the table in "Appendix B" to record his offer in the proper area of the "Table for Bidder's Price Proposal". The information should be clear with no amendments or erasures. The Table must be dated and signed.

4.5.2 Quotes sent in the email body will not be accepted. The Price Proposal for IFSB N° 05/16 must have the following identification:

PRICE PROPOSAL  
BRAZILIAN NAVAL COMMISSION  
IFSB # 03/2016  
SUBMITTED BY: (INSERT Bidder's name)

4.6 Bid shall only be accepted for evaluation if received at the BNC's office by no later than the time specified on 2<sup>nd</sup> and 7<sup>th</sup> steps of Section 1.0. Bid received after the deadline shall be definitely disqualified by BNC.

**SECTION 5.0 – CONTRACT TERMS AND CONDITIONS:**

In the event of the signing of a contract between BNC and the Bidder awarded, such contract shall be only and exclusively under the terms and conditions provided in "Appendix B" of this IFSB. Therefore, it is required that the Bidder specify its questions or requirements for small changes to the contract when it presents the "Qualification Documents for IFSB N° 05/16".

**SECTION 6.0 - EVALUATION AND RANKING OF QUALIFIED BIDS**

- 6.1 The Proposals will only be opened by the President of the Bidding Commission the dates and times specified in Section 1.0 and in the presence of Members of the Bidding Commission. Only the President of the Bidding Commission knows the password of mailbox bid@cnbw.mar.mil.br.
- 6.2 The President of the Bidding Commission opens the email, print and authenticates all Qualification Documents (authentication must be done by the Bid Committee and representatives of interested parties wishing to participate). During this stage, the Bidding Commission may require additional information from Bidders. Such request must not be made to provide Bidders an opportunity to submit information they should have submitted initially in their bids. Bidders who decline or fail to respond completely and accurately to any such additional request for information must be deemed to have withdrawn their Bid, in which case, a Notice of Non-Acceptance shall be sent to the Bidder.
- 6.3 Only qualified Bidder will have their "Price Proposal" open and printed by the Bidding Commission, according to the 4<sup>th</sup> step of Section 1.0.
- 6.4 The Price Proposals sent by email must be opened by the President of the Bidding Commission. Then the price proposals must be printed and authenticated by the Bidding Commission and representatives of interested parties participating of the Act.
- 6.5 The Bidding Commission shall examine and compare the prices quoted by all qualified Bidders. The company offering the lowest price will be declared the winner.

**SECTION 7.0 - EVENTS PRECEDING EXECUTION OF A CONTRACT**

After inviting the winner of this Bid to enter into contract negotiations for the supply of the object of this IFSB, and prior to the execution of such contract, the BNC has the right to request from that Bidder any

additional information or documents it deems necessary. The BNC reserves the right to disqualify the winner Bidder if he fails to promptly and fully comply with such requests.

Neither the issuance of an invitation to enter into negotiations, or the conduct of negotiations with a Bidder commits the BNC to award a contract to that Bidder, and further, the BNC reserves the right, at any time, to withdraw without explanation from such negotiation. In that event, the BNC may invite, but is not obliged to, the next ranked Bidder to enter into negotiation for the same contract, or to issue a new IFSB for the same item.

The Bidder invited to enter into negotiations for the contract must immediately notify the Bidding Commission, before the execution of the contract, of any material adverse change in the ability of the Bidder to perform the proposed contract, including but not limited to:

- (i) Filings for insolvency of bankruptcy under applicable Federal or State laws; and
- (ii) Loss of key management or key personnel.

Failure by the Bidder to comply with any of the conditions stated herein, or if the BNC finds any reason to doubt that the Bidder did not provide completely accurate information in its Bid, shall be cause for the Bidding Commission to reject that Bid, and to invite the next ranked Bidder to enter into negotiations for the execution of a contract.

A draft of the contract to be signed with the winner of this BID (Appendix B) is being sent with this IFSB.

#### **SECTION 8.0 - LICENSES**

The Seller shall be responsible for obtaining any license needed to perform the contract.

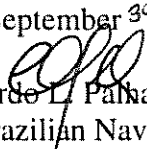
#### **SECTION 9.0 – PAYMENTS**

All and any payment originated from the fulfillment of a contract shall be made following the schedule established in the contract to be signed with the winner of this bidding process.

#### **SECTION 10.0 - MISCELLANEOUS PROVISIONS**

- 10.1 No contract shall be signed until the Brazilian Government has budgeted the amount required for the contract price.
- 10.2 No financial compensation shall be paid for any expenses incurred by Bidders for the preparation and submittal of their bids, and the BNC shall not pay any expenses incurred by Bidders that enter into contract negotiation for the object of this IFSB.
- 10.3 All documents submitted by Bidders will be considered of public domain.

Washington, D.C, September 30, 2016.

  
CDR Carlos Eduardo L. Palkares  
Commander, Brazilian Navy  
President of the Bidding Commission



APPENDIX A



CONTRACT BETWEEN

GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL  
THROUGH THE BRAZILIAN NAVAL COMMISSION IN WASHINGTON

AND

XXXXXXXXXXXXXXXXXXXXXXX

FOR

SUPPLY OF MARINE FUEL FOR BRAZILIAN NAVY  
VESSELS IN FOREIGN PORTS

CONTRACT N° 70200/16-\_\_\_/00

IFSB # 05/16

DRAFT

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Appendix A – Seller’s Proposal.

**BRAZILIAN NAVAL COMMISSION IN WASHINGTON**

**CONTRACT N°: 70200/16-\_\_\_\_\_/00**

**THIS CONTRACT IS ENTERED BETWEEN THE FEDERAL GOVERNMENT, REPRESENTED BY THE BRAZILIAN NAVAL COMMISSION IN WASHINGTON, D.C, AND XXXXXXXX FOR THE SUPPLY OF MARINE FUEL FOR BRAZILIAN NAVY VESSELS IN FOREIGN PORT.**

On the \_\_\_\_<sup>th</sup> day of the month of \_\_\_\_\_ of the year 2016, at the **Brazilian Naval Commission in Washington**, This Contract was entered on this \_\_\_\_\_, at the headquarters of the Brazilian Naval Commission in Washington, between the the Federal Government of the Federative Republic of Brazil, represented by the President of the Brazilian Naval Commission in Washington, Captain Sergio Miranda Brandão, CPF n° \_\_\_\_\_, with headquarters at 5130 MacArthur Boulevard, N.W., Washington D.C. 20016, and XXXXXXXXXXXX, represented by Mr/Ms XXXXXXXXXXXXXXXX, job title, with offices at xxxxxxxxxxxxxxxxxxxx.

**WHEREAS** this Contract was preceded by the Invitation for Sealed Bid (IFSB) No. 05/16, and fulfilled all legal requirements of Brazilian Law n° 8.666/1993.

**WHEREAS** the legal instruments Rules for Administrative Agreements of the Brazilian Navy (SGM-102, Rev 3, item 13.10.1) and Ordinance n° 180/2001, modified by Ordinances 236/MB/2002, 258/MB/2003, 111/MB/2004, and 159/MB/2013 and 626/MB/2014 issued by the Commander of the Navy, granted authority to the President of the Brazilian Naval Commission in Washington to sign this Contract on behalf of the Navy within its area of jurisdiction.

**WHEREAS** in order to meet the payments of the costs and expenses referred to in this Contract, funds were allocated through Management/Unit: 00001; Source: 02500702304/0280700111; Work Program: 093488; PI: P2660100122; and Expenditure Item: 01.

**NOW THEREFORE**, in consideration of the foregoing, the execution of this agreement by each of the parties hereto, and the full and faithful performance of the covenants, representations and warranties contained herein, it is agreed as follows:

**CLAUSE 1 - DEFINITIONS**

As used in this Contract, the following terms shall have the meanings given to them below:

- 1.1 The term “BNC” shall mean “the Brazilian Naval Commission in Washington, for and on behalf of the Federal Government of the Federative Republic of Brazil”.
- 1.2 The term “SELLER” shall mean “XXXXXXXXXXXXXXXXXX”.

- 1.3 The term "BUYER" shall mean "Brazilian Naval Commission in Washington" on behalf of the Federal Government of the Federative Republic of Brazil".
- 1.4 The Term "End User" shall mean "The Receiving Vessel " identified by Buyer to receive the fuel;
- 1.5 The Term "CCIM" shall mean "Navy Inventory Control Center";
- 1.6 The term "SUPERVISOR" shall mean "CCIM"
- 1.7 The term "NEBRASIL" shall mean "Training Ship Brasil";
- 1.8 The term "Marine Term Fuel Contract" means the agreement entered into between Buyer and the Seller pursuant to which the Buyer purchase Marine Fuels from the Seller;
- 1.9 The Term "Product" shall mean "Marine Fuel and Fueling Services";
- 1.10 The Term "Fueling Services" shall mean the supply of Marine Fuel, its transportation until point of delivery and delivery to Receiving Vessel;
- 1.11 The term "Service" shall mean "any service(s) covered by this Contract";
- 1.12 The term "Order for Fueling" shall mean "the official document used by the BNC to request Marine Fuel and Fueling Services";
- 1.13 The Term "Delivery Date" shall mean the date(s) agreed upon as the date(s) for delivery of the Marine Fuel;
- 1.14 The term "Delivery Point" means, "The place agreed upon as the location for delivery of the Marine Fuel".
- 1.15 The term "Parties" means Buyer and Seller collectively.

**CLAUSE 2 - OBJECT OF THE CONTRACT**

2.1 The supply of "Marine Fuel" to NEBRASIL in foreign port. Seller shall provide the fuel and the fueling services (fuel, transportation of fuel to the specific port and filling the Ship's fuel tank in a way that complies with local environmental standards, laws and regulations). The entire chain of services should be strictly in compliance with environmental standards, laws, rules and regulations of country and port.

2.2 Object information:

Ship	Port	Country	Supply Date	Berthing Period	Estimated Qty (Li)
NEBrasil (Training Ship Brasil)	Baltimore	USA	11/02/2016	11/02 – 11/07	-

2.3 Object Discrimination: The fuel must have the characteristics of specification MGO as described below:

MARINE FUEL SPECIFICATIONS	Fuel ISO-F-DMA (MGO)	ANALYSIS METHOD
Viscosity SSU, 50° C max	-	ASTM D 88
Viscosity CST, 40° C	1,5-6,0	ASTM D 445
Flash Point (°C) min	60	ASTM D 93

Sodium Chloride	Absence	QUALITATIVE
Color, max	4,0	ASTM D 1500
Water and sediment (% vol) max	0,05	ASTM D 2709 or 1796
Ashes (% weight) max	0.01	ASTM D 482
Density at 20/4° C	0.8200-0.8600	ASTM D 1298 or 4052
Distillation (°C), max		
10% evaporated	RECORD	ASTM D 86
50% evaporated	-	ASTM D 86
85% evaporated	370	ASTM D 86
90% evaporated	-	ASTM D 86
Final point	-	ASTM D 86

### CLAUSE 3 - PERFORMANCE

- 3.1 The SUPERVISOR must confirm the amount of Marine Fuel and the Delivery Date.
- 3.2 XXXXXXXXXXXXX agrees to sell and deliver the volume of fuel requested by the SUPERVISOR, at a specified date, time and place. SUPERVISOR should notify Seller at least five (5) working days in advance of the requested delivery date, delivery point, volume, method of delivery, name of Vessel, ETA/ETD, IMO number. Seller and SUPERVISOR should jointly decide the delivery time, which preferably should be close to the Vessel ETA. SUPERVISOR should also notify the Seller of any special condition, difficulty, peculiarity, deficiencies in respect to the particular Vessel.
- 3.3 Seller shall confirm the order in writing to the SUPERVISOR within 48 hours of SUPERVISOR's request.
- 3.4 Adverse Conditions: If conditions are adverse, caused by weather, sea, harbor, mooring or any other condition that makes the fueling operation dangerous, this should be cause for rescheduling the delivery, with no onus on the parties.
- 3.5 The Marine Fuel sold under each operation shall be of a commercial Marine Fuel grade and in accordance with ISO 8217. The SUPERVISOR shall be solely responsible for selecting and nominating to Seller the proper grade of Marine Fuel for use in the Receiving Vessel. End User shall be responsible for confirming that Specifications of the Marine Fuel are accurate and suitable for use in the Receiving Vessel.
- 3.6 The volume of Marine fuel actually delivered shall be verified by the readings of the barge's tank gauges or the vehicle meter if delivery is made by truck.
- 3.7 The price per Liter (Li) is \$ \_\_\_\_dollars. This price is in the same amount offered in Seller's Proposal for Public Bid 05/2016, as proposed in the Appendix A.
- 3.8 Seller is responsible for the services of its Subcontractors and will be liable for any environmental damages that may be caused by them such as spills, leaks or others. Seller and its Subcontractors shall be jointly and severally liable for injuries, loss and damage caused directly or indirectly, in whole or part by Seller or Seller's Subcontractors and Representatives.

Seller shall take four (4) representative samples of the Marine Fuel during the delivery process. End User shall have its representative witness the drawing of the samples. The samples shall be securely sealed and labelled by Seller and two (2) samples shall be given to the End User; one (1) of which is for MARPOL compliance purposes. Two (2) samples shall

be retained by the Seller for verification of quality, if required. The Seller shall keep the samples at least third (30) days.

#### **CLAUSE 4 – QUANTITY MEASUREMENTS**

- 4.1 The quantity of Marine Fuel ordered by the SUPERVISOR for delivery shall be those quantities stated in SUPERVISOR's request subject to confirmation of supply by the Seller. After the order confirmation by Seller, no change in quantity is allowed.
- 4.2 The quantity of Marine Fuel delivered shall be the quantity specified in the Seller's confirmation of the order with a tolerance option of +/- 5% of the volume requested.
- 4.3 The volume of Marine Fuel, actually delivered under this contract shall be determined by Seller from the tank gauges of the Barge, the onshore storage tank, pipeline meter or vehicle meter, depending on the delivery method. End User shall witness such measurements. The charges for Marine Fuels are going to be calculated based on these measurements. Adjustment in volume owing to difference in temperature shall be made in accordance with ASTM Petroleum Measurement Tables.
- 4.4 All such measurements made by the Seller and witnessed by End User shall be final and binding save for manifest error or fraud.

#### **CLAUSE 5 – PRICE**

The final price shall be in US dollars, and shall include all expenses, whether direct or indirect, arising from the performance of the Contract, including all taxes and fees, transportation expenses, labor, fiscal, insurance, administration fees, consumption materials, and any and all other fees or expenses necessary for full compliance with the object of the Contract.

#### **CLAUSE 6 - INVOICE**

- 6.1 Invoices issued by XXXXXXXX e sent to BNC must include the volume of the delivery, the delivery date, the delivery point, the delivery day.
- 6.2 Invoices must be accompanied by the receipt of the Receiving Vessel.
- 6.3 Invoice must be issued by Seller in Seller's Company name. Invoice issued by Subcontractor will not be accepted.

#### **CLAUSE 7 - TERMS OF PAYMENT**

- 7.1 Payment to XXXXXXXX shall be made after the invoice and receipt of delivery signed by the End User, is received by the Brazilian Naval Commission. Invoices shall be paid only if they are strictly in accordance with Clause 6.
- 7.2 Administrative proceedings for payment will begin immediately after the receiving of the Invoice and its attachments at BNC's headquarters as long as the invoices are in conformity with the stipulations of Clause 6. If everything is according, payment shall be made within thirty (30) days.
- 7.3 If the invoice does not contain the information required (as per Clause 6), the BNC will contact the Seller to request a compliant one. Payment will begin to be processed only when a fully compliant invoice is received by BNC.

## **CLAUSE 8 – LIABILITY**

- 8.1 Seller shall be liable for damage of property, for injury or death caused to any person, fines or penalties and expenses incurred or sustained arising out of or in connection with the Contract when such claims, losses, costs, damages, liabilities and expenses arise through the sole and proven negligence of the Seller or its Subcontractors. In this case, the Seller and the subcontractors or third party acting in its behalf shall properly indemnify the Buyer.
- 8.2 XXXXXXXXXXXXXXXX is fully responsible for any accidents involving properties or persons, caused by direct or indirect action or omission of its employees and/or its Subcontractors or third parties acting on its behalf.

## **CLAUSE 9 - DELIVERY**

- 9.1 Upon receipt of a request to supply Marine Fuel to a Receiving Vessel, XXXXXX shall contact the SUPERVISOR to confirm the schedule, quantity, point of delivery and Receiving Vessel.
- 9.2 A member of the End User crew shall confirm the quantity and specifications of the fuel prior to commencement of delivery. If there is no objection, delivery may begin.
- 9.3 Once the delivery is completed and quantities checked, one member of the End User should sign a receipt with duplicate copy, one for the ship and one for the Seller. A copy of this receipt shall be submitted with the invoice for payment.
- 9.4 Time is of the essence with respect to delivery of the goods/services purchased under this Contract and any other performance required. If XXXXXXXXXXXXXXXX encounters or anticipates difficulty in meeting the delivery schedule, XXXXXXXXXXXXXXXX must immediately notify, the SUPERVISOR, in writing, with copy to BNC, giving all pertinent details (including stating the cause(s) and describing its efforts to eliminate or diminish the effect of those causes). However, such data must be informational only and must not be construed as a waiver by BNC of any delivery schedule or date or of any rights or remedies provided by law, or in equity, or under the Contract.
- 9.5 Seller must present alternatives to carry out the supply on time. The SUPERVISOR should be consulted and must agree with the alternative offered.

## **CLAUSE 10- SUPERVISION**

Supervision shall be performed by CCIM (Navy Inventory Control Center) that will coordinate all the operations of supply and delivery of Marine fuel:

- a) SUPERVISOR (CCIM) will be in charge of issuing the requests for supply of Marine Fuel, informing date, time, fuel specifications, point of delivery, manifold configuration etc.
- b) Changes in schedule, specifications, point of delivery etc.

## **CLAUSE 11 - ASSIGNMENT AND SUBCONTRACTING**

- 11.1 Subcontracting is allowed. However, Seller shall remain responsible for the performance of the Contract.

- 11.2 Subcontractors shall be legally established companies. However, it is the entire responsibility of XXXXXXXXXXXX for the conduct and performance of its Subcontractors including any irregularity committed by them, any breach of Contract, illegalities and negligence;

## **CLAUSE 12 – CLAIMS**

- 12.1 Any dispute as to the quantity of the Marine Fuels based on the density of the Marine Fuels delivered shall be submitted by the SUPERVISOR to the Seller in writing within twenty one (21) days of the date of delivery, failing which, such claim shall be deemed waived and forever barred.
- 12.2 Any dispute as to short delivery which does not fall under Clause 12.1 above shall be presented by the End User to the Seller at the time of delivery and the End User's representative shall have witnessed such measurement in accordance with Clause 4. Any dispute as to the quantity of the Marine Fuels delivered under this Clause 12.2 shall be recorded at the time of delivery in writing.
- 12.3 Any claim as to the quality of the Marine Fuels delivered must be submitted by the SUPERVISOR to the Seller in writing within thirty (30) days of the date of delivery. The SUPERVISOR shall promptly furnish the Seller with the results of testing of the retained sample provided to the vessel by the Seller together with full supporting evidence of its claim within ninety (90) days of delivery to enable the Seller to properly evaluate the claim.
- 12.4 The liability of the Seller for any loss, damage, claim or other expenditure arising out of or in connection with the failure by the Seller to supply the Marine Fuel according to specifications, shall lead the Seller, if necessary, to remove the improper fuel in a location, accepted by SUPERVISOR. If the unsuitable fuel caused damage of any component Seller also should be responsible for repair costs.

## **CLAUSE 13 - PENALTIES**

- 13.1 In the event that Seller fails to deliver the Marine Fuel to the End User and this is an "ad hoc" failure that does not compromise other supplies and the singular situation that caused this delivery failure could have been prevented by Seller and because of that, can not be excused as "Force Majeure", then Buyer is entitled to collect a financial penalty in the amount of 20% of the estimated price of this delivery. In addition, the Seller has the obligation to help the Buyer find an alternative source of supply of Marine Fuel.
- 13.2 In the event that Clause 13.1 is applied, BNC shall notify XXXXXXXXXXXX, in writing, about the financial penalty that is being applied and, the amount of it. The maturity of the penalty shall be 15 days from the date of notification. After notification, the Seller shall have five (5) business days to appeal.
- 13.3 Nothing in this Clause shall be deemed to restrict BNC's right to terminate the Contract, in whole or in part, in accordance with the terms hereof and to seek any and all rights, remedies and damages available.

## **CLAUSE 14 - EXCUSABLE DELAYS**



- 14.1 Neither BNC nor XXXXXXXXXXXX shall be liable for delays or be deemed to be in default by reason of any failure or delay in performing any of its obligations under the Contract to the extent that such failure or delay is directly due to force majeure or Acts of God that prevent performance of the Contract and that are beyond the affected party's reasonable control and could not have been foreseen or avoided by exercising due care. Force Majeure and Acts of God may include: natural disasters, floods, hurricanes, adverse weather, or sea conditions. Perils of the sea, war (declared or undeclared), embargoes, civil insurrection, riots, strikes, labor disputes, accidents, fires, explosions, mechanical breakdown or any cause beyond reasonable control of the affected Party.
- 14.2 Whenever either Party's performance is prevented or delayed as a result of "Force Majeure" the affected Party shall notify the other, of such failure or delay by a written notice, within twenty-four (24) hours from the date of actual occurrence of "Force Majeure" circumstance set forth herein.
- 14.3 Each Party shall use reasonable diligence to cure or correct any condition of "Force Majeure" affecting performance by such Party.
- 14.4 If applicable, the Seller will make every effort to help SUPERVISOR find alternative sources of supply.

#### **CLAUSE 15 - GOVERNING LAW**

- 15.1 The Contract will be governed by the laws of the District of Columbia.
- 15.2 The Parties shall fully comply with all US Coast Guard and other applicable regulations and federal, State and local laws, rules, regulations which directly or indirectly affect the Marine Fuel supply and delivery.
- 15.3 The Parties should comply fully and strictly with Federal, State and Local Environmental laws, Regulations and Rules.
- 15.4 Seller's Subcontractors must also comply strictly with laws and regulations mentioned in 14.1 and 14.2 and any other law, rule or regulation that applies to the type of operation carried out.
- 15.5 Controversy or claim arising out of or relating to the Contract shall be determined in accordance with the laws of the District of Columbia, and BNC and xxxxxxxx shall be subject to the jurisdiction of the federal courts sitting in the District of Columbia and waive the right to assert lack of personal jurisdiction in any legal proceeding.

#### **CLAUSE 16 – DISPUTES**

- 16.1 If the parties are unable to settle disputes arising out of or relating to this Contract amicably, any controversy or claim arising out of or relating to this Contract shall be determined by arbitration in accordance with the International Arbitration Rules of the American Arbitration Association.
- 16.2 The place of arbitration shall be Washington, D.C., the number of arbitrators shall be three and the award of the arbitrators shall be final and binding on the parties. Each party shall select one arbitrator within thirty (30) days after the commencement of the arbitration and the two arbitrators shall select a third. If either party fails to select an arbitrator within such time period, the arbitrator selected by the other party shall be the sole arbitrator. If the two arbitrators do not agree on the selection of a third arbitrator

- within forty-five (45) days after the commencement of the arbitration, the American Arbitration Association shall select the third arbitrator.
- 16.3 The arbitration shall be conducted in the English language, and all documentation shall be in the English language.
- 16.4 The arbitration award shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrators. The award shall be payable in U.S. Dollars net of any tax, deduction or offset. Any costs, fees, and expenses incurred in connection with enforcing the award shall be charged against the party resisting such enforcement.
- 16.5 The award shall include interest from the date of the breach or other violation of this Contract. The arbitrators shall also fix the appropriate rate of interest from the date of the breach or other violation to the date when the award is paid in full. In no event, however, should such interest rate during such period be lower than the prime commercial lending rate announced by Bank of America for ninety (90) day loans for commercial borrowers for the corresponding period.
- 16.6 Judgment upon the arbitration award may be entered by any court of competent jurisdiction. Notwithstanding the foregoing, nothing in this Clause shall be construed to prevent BNC from seeking injunctive relief or other interim measures during the impending of the arbitration.
- 16.7 All notices to be given in connection with the arbitration shall be in writing. All notices shall be sent by registered airmail, return receipt requested.

#### **CLAUSE 17 – DEFAULT**

- 17.1 In the event of material breach by either party of its obligations under this Contract, or, in the case of Seller, non-delivery of conforming Service in accordance herewith, the aggrieved party may, but is not required to, terminate this Contract for default in whole or in part, and seek the remedies as set forth below.
- 17.2 BNC may terminate this Contract, in whole or in part, for XXXXXXXX default by written notice. If BNC terminates this Contract in part, XXXXXXXXXXXX shall continue performance of this Contract to the extent not terminated.
- 17.3 In the event of termination due to Seller default, BNC shall have all remedies provided in this Contract and all rights and remedies available under applicable law. The rights and remedies of BNC under this Contract are cumulative with, and in addition to, all other rights and remedies available under applicable law.

#### **CLAUSE 18 - TERMINATION**

In addition to the provisions of Default Clause, BNC may terminate this Contract by written notice addressed to Seller, if:

- a) Seller fails to comply with any other contractual obligations and does not take measures to remedy such default within reasonable time from the receipt of the written notice from the BNC, requesting it to do so.
- b) Seller becomes insolvent, undergoes voluntary or compulsory liquidation, except for the purpose of consolidation or merger.

- c) Seller transfers or assigns its rights and obligations under this Contract, without the previous written consent from the BNC.
- d) BNC may terminate the contract upon its sole discretion, without any explanation, when convenient to its interest without penalties.

**CLAUSE 19 - EFFECTIVE DATE**

This Contract will come into force upon signatures by both parties commencing xxx xx, XXXX and expiring upon XXXXXXXXXXXX.

**CLAUSE 20 - SAFETY.**

Seller shall furnish to SUPERVISOR health, safety and local environmental information, laws, regulations and safety aspects of the Marine Fuel purchased by SUPERVISOR, including health, safety and environmental warnings required by applicable law.

**CLAUSE 21 - AMENDMENT**

- 21.1 This Contract shall be changed only by means of written Amendment to this Contract dated and signed by Seller and Buyer.
- 21.2 Under no circumstances, shall oral statements and understandings be valid or binding upon either Buyer or Seller. No express waiver by Buyer shall be construed as a waiver of subsequent breach hereunder or the performance of any of the terms or conditions hereof.

**CLAUSE 22 – ENTIRE AGREEMENT**

The terms and conditions of this Contract constitute the full and complete agreement between the Parties. No other verbal or written agreement shall, in any way, vary or alter any Provision of this Contract unless both Parties consent to vary or alter any provision of this Contract in a signed writing. This Contract is intended to be an integrated writing and any prior oral or written agreements between the Parties are merged into this Contract and extinguished. No custom, industry standard or course of dealing between the Parties shall in any way vary or alter the terms and conditions of this Contract.

**CLAUSE 23 - NOTICES**

All notices required or permitted to be given hereunder shall be in writing and in English, and shall be deemed to be properly given if delivered personally or sent by United States Certified or registered mail addressed, or emailed to XXXXXXXXX, as the case may be, to the address set forth below. The effective time of notice shall be upon receipt.

XXXXXXXXXX:  
Mr XXXXXXXXX  
XXXXXXXXXXXXXXXXXX  
XXXXXX

Tel: XXXXXXXX  
BNC: Brazilian Naval Commission  
Attn. President  
Contracts Division  
Contract Number: \_\_\_\_\_  
5130 MacArthur Blvd., N.W., Washington, D.C. 20016  
Tel: (202) 244-3950 ext 341, Fax: (202) 363-5138

**CLAUSE 24- TITLES AND HEADINGS**

Titles and headings of sections of this Contract are for convenience only and shall not affect the construction of any provision of this Contract.

**CLAUSE 24 - COPIES**

This Contract is made in two original counterparts: one for the BNC and one for e XXXXXXXXXX. One copy was made for CCIM and End User.  
And, it is hereby agreed that both parties have accepted the provisions of this Contract, which was read and agreed with and signed by Captain Sergio Miranda Brandão, President of the Brazilian Naval Commission in Washington, representing the Brazilian Navy, and Mr XXXXXXXXX, (Job Title) and witnessed by LCDR. Sidney de Siqueira Diniz.

Washington, D.C, XXXXXXXXXXXXXXXX.

Sergio Miranda Brandão  
Captain, Brazilian Navy  
President

XXXXXXXXXX  
XXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXXX

Witnesses:

Sidney de Siqueira Diniz  
LCDR, Brazilian Navy  
Head of Contracts Division

## APPENDIX B

### TABLE FOR BIDDER'S PRICE POPOSAL (Public Bid # 05/16)

Company Name: \_\_\_\_\_

Company's Representative (print) \_\_\_\_\_

Date: \_\_\_\_\_

Ship	Port	Country	Supply Estimate Date	Estimated Qty (Li)	Price (US dollars)
NE Brasil (Training Ship Brasil)	Cartagena	Colombia	<b>11/28/2016</b>	210,000	

\_\_\_\_\_  
Signature of Company's Representative

