

10

**AGENDA ITEM REQUEST FORM**

**Hays County Commissioners Court**

Tuesdays at 9:00 AM

Request forms are due in Microsoft Word Format via email by 2:00 p.m. on Wednesday.

**AGENDA ITEM**

Approve revised specifications for RFP 2013-P04 Food & Catering Services for the Government Center and authorize Purchasing to rebid this project, solicit for proposal and advertise.

ITEM TYPE	MEETING DATE	AMOUNT REQUIRED
CONSENT	March 12, 2013	

**LINE ITEM NUMBER**

**AUDITOR USE ONLY**

**AUDITOR COMMENTS:**

**PURCHASING GUIDELINES FOLLOWED:** N/A                      **AUDITOR REVIEW:** N/A

REQUESTED BY	SPONSOR	CO-SPONSOR
Kennedy/Maiorka	COBB	N/A

**SUMMARY**  
See attached

**HAYS COUNTY  
REQUEST FOR PROPOSAL #2013-P04R  
LOCAL FOOD AND CATERING SERVICES**



**SUBMITTAL DEADLINE & PROPOSAL OPENING: Open until awarded  
HAYS COUNTY PURCHASING OFFICE  
712 SOUTH STAGECOACH TRAIL, SUITE 1071  
San Marcos, Texas 78666  
Phone: 512-393-2271  
Email: [cindym@co.hays.tx.us](mailto:cindym@co.hays.tx.us)**

## TABLE OF CONTENTS

Items below represent components which comprise this bid/proposal package. Respondents are asked to review the package to be sure that all applicable parts are included. If any portion of the package is missing, please notify Cindy Maiorka immediately.

### Part Page

1.0 Notice of Intention .....	3
2.0 Proposal Requirements .....	3
3.0 Instructions to Proposers .....	5
4.0 Scope & Specifications .....	7
5.0 Evaluation & Award of Proposals .....	9
6.0 Financial Offer & Questionnaire .....	11
7.0 General Terms & Conditions .....	14

## PART 1.0 – NOTICE OF INTENTION

Hays County is conducting this procurement to establish a contract. The Initial Term of the prospective contract is a period of one year. The County may elect, with mutual agreement of the awarded vendor, to extend any contract awarded pursuant to this procurement solicitation for up to four (4) additional one-year terms (individually, a “Renewal Term”). The maximum duration of any contract resulting from this procurement is a total of five (5) years, running from the date of execution of the contract by the Commissioners Court. No contract shall be executed until it has been reviewed and approved by the Hays County Commissioners Court. Proposers are requested to submit a proposal offering their total line of available products and services that are commonly purchased by government entities.

Product(s) considered for award shall equal or exceed the technical, environmental and performance standards and specifications as defined within this RFP and further described in the scope and specification section.

The good(s) or service(s) to be purchased under the awarded contract, if any, may be of indefinite delivery and indefinite quantity (IDIQ).

### GENERAL INFORMATION:

Food service will be offered in the new Dining area within the new Hays County Government Center, 712 S. Stagecoach Trail, San Marcos, TX, in accordance with the terms, conditions, and requirements set forth in this Request for Proposal. The new 232, 209 square foot facility opened January 2012 and houses the functions for 15 County departments, plus Justice of the Peace, County Courts at Law, and District Courts with related administrative offices. The intent of this request for proposal is to enable negotiations for food service within the Dining area and have provisions for occasional catering for functions within the building. There are approximately 400 employees in the building and there is public traffic that ranged in count from 772 to 1352 persons/day, with a documented average of 1142 public visits between January 2<sup>nd</sup> to January 20<sup>th</sup> this year.

### DIRECTIONS

To get to the Government Center:

Take the Wonder World Drive exit (Exit 202) from IH-35 and head west. At the bottom of the railroad track overpass, turn right and head north on South Stagecoach Trail.

Take Hunter Road (FM 2439) to Wonder World Drive and turn east toward IH-35. At the bottom of the railroad track overpass, turn left and head north on South Stagecoach Trail. South Stagecoach Trail dead ends at the Government Center.

*\*Note that this address is not yet on some online maps and you may be directed to 712 Stagecoach, which is not South Stagecoach. Please check carefully.*

## PART 2.0 – PROPOSAL REQUIREMENTS

*Please read carefully this entire proposal document and specifications. Complete all forms and submit your bid with all appropriate attachments.*

### **2.1 Request for Proposals (RFP) Documents**

Documents are made available to anyone who wishes to submit a proposal. However, it is the responsibility of the proposer submitting a proposal to make certain that the Hays County Purchasing Office has the appropriate company name, authorized representatives, and contact information on file for the purpose of receiving notices, changes, addenda or other critical information.

**2.2 Tentative Time Table**

Hays County anticipates following the time table listed below for the commissioning of this contract:

Activity		Date & Time
	We are leaving the proposal open until award	

Within Thirty (30) days after negotiation of contract, specification and procurement of equipment will be performed, during which the Dining space is outfitted with equipment, food service shall start.

**2.3 Requirements for Return of Proposal Responses**

Respondents must submit proposals to the Hays County Purchasing Office located at 712 South Stagecoach Trail, Suite 1071, San Marcos, Texas 78666.

**2.4 Rights Reserved by Hays County and Restrictions on RFP Process**

- a) Hays County reserves the right to cancel this solicitation in whole or in part by issuance of a revised or amended Request for Proposals.
- b) Hays County further reserves the right to award one or more contracts, in part or in whole, to a single or to multiple prospective vendors or proposers. The decision to award multiple contracts, award only one contract, or to make no awards rests solely with Hays County. Hays County may make multiple awards, and this fact should be taken into consideration by each proposer.
- c) Hays County assumes no financial responsibility for any costs incurred by prospective vendors in developing and submitting a proposal or any amendments or addenda, participating in bid conferences, participating in any negotiation sessions or discussions, or any other costs incurred by proposers prior to award of a contract pursuant to this RFP.
- d) Hays County reserves the right to reject any and/or all proposals, to award contracts for individual products or services as may appear advantageous, and to negotiate separately in any manner necessary to serve the best interests of Hays County. Hays County further reserves the right to accept, reject, or negotiate modifications in any terms of a proposed vendor’s proposal or any parts thereof. Hays County further reserves the right to waive any formalities or technicalities if deemed in the best interest of the County.

**2.5 Questions and Clarification**

- a) Questions regarding the requirements specified in this solicitation shall be emailed to [cindym@co.hays.tx.us](mailto:cindym@co.hays.tx.us).

**PART 3.0 – INSTRUCTIONS TO PROPOSERS**

This portion of the RFP includes instructions on the format proposers must follow in preparing and submitting their proposals. It further identifies how questions can be raised and will be addressed.

**3.1 Compliance with Specifications**

Proposers are required to respond to all requests identified in this RFP and indicate their acceptance or objection to the terms of the RFP and the terms of the Agreement. Any exceptions to the terms and conditions in the RFP or the Agreement must be clearly indicated in the proposer’s submitted proposal. Each proposer, by making its proposal, represents that the proposer has read and

understands the RFP and the Agreement.

### **3.2 Required Proposal Format**

All proposers are required to respond to this RFP using the. The following forms must be completed, signed, and attached to proposal:

- Execution of Offer
- Conflict of Interest Form
- W-9
- Financial Offer & Questionnaire
- Current Department of Health Food Dealer's Permit and/or Food Service Manager's Certificate
- Proof of Insurance, which includes, Worker's Compensation & Liability Insurance
- Any other information (menu, brochures, etc.) pertinent to proposer's submitted proposal

### **3.3 General Corporate and Contact Information**

Proposers are required to attach all of the following:

- Describe the company's official registered name and its principals.
- Provide a brief history of the company, including the year it was established.
- Provide the company's organizational chart.
- If public, provide the company's income statement, balance sheet, and cash flow for the past three (3) years. If private, provide the company's audited financial statements for the past two years (if available).
- Provide a description of the company's relevant market and the company's position within it.

### **3.4 References**

Provide at least three references of governmental entities *that have purchased services, products, and/or related items from you in the last 3-4 years*. Please use the following format for all references:

- Company Name
- Address
- Contact Name
- Phone Number
- Email

**3.5 Addendum**

Any interpretations, corrections, additions, or changes to this RFP will be communicated to proposers by the issuance of an addendum. All proposers shall comply with the requirements specified in any addendum issued by Hays County.

**3.6 Disqualification**

A proposer may be disqualified before or after the proposals are opened, upon evidence of collusion with the intent to defraud, or evidence of intent to perform other illegal activities for the purpose of obtaining an unfair competitive advantage.

**3.7 Environmental Initiatives**

Hays County is committed to reducing waste and promoting energy conservation. Toward that end, proposers responding to this solicitation are encouraged to provide their company's environmental policy and green initiative.

**3.8 Interpretation**

This solicitation represents the basis for any award and supersedes all prior offers, negotiations, exceptions and understandings (whether orally or in writing). Submitted proposals should be self-explanatory and should not require any clarification or additional information.

**3.9 Non-Collusion Statement**

Proposers are required to certify a Non-Collusive Statement. Proposers are required to state the party submitting a proposal or bid, that such proposal or bid is genuine and not collusive or sham; that proposer has not colluded, conspired, connived or agreed, directly or indirectly, with an entity or person, to put in a sham proposal or bid or to refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference, with any person, to fix the proposal price or of any other proposer, or to fix any overhead, profit or cost element of said proposal price, or of that of any other proposer, or to secure any advantage against Hays County or any person interested in the proposed contract, and that all statements in said proposal or bid are true

**3.10 Open Records Policy**

Hays County is a governmental body subject to the Texas Public Information Act. Proposals submitted to Hays County as a result of this solicitation may be subject to release as public information after contracts are executed or the procurement is terminated. If a proposer believes that its response, or parts of its response, may be exempted from disclosure under Texas law, the proposer must specify page-by-page and line-by-line the parts of the response which it believes are exempt. In addition, the proposer must specify which exception(s) to the Texas Public Information Act are applicable and provide detailed reasons to substantiate the exception(s). Vague or general claims to confidentiality will not be accepted. Hays County assumes no obligation or responsibility relating to the disclosure or nondisclosure of information submitted by proposers.

**3.11 Responsible Vendor**

A responsible vendor is a vendor who has adequate financial resources (or the ability to obtain such resources), can comply with the delivery requirements, and is a qualified and established firm regularly engaged in the type of business that provides the items listed herein.

**3.12 Responsive Proposal**

Proposals shall be deemed responsive if they comply with all material and administrative aspects of this solicitation.

**3.13 Hays County is tax-exempt. Proposal prices should not include taxes.**

**3.14 Sole Source**

Selected purchases may be exempt from competitive procurement if they meet the established criteria

for a sole source purchase:

In order to do business with Hays County as a Sole Source Vendor, Hays County must receive a notarized Sole Source Affidavit along with proof of your company qualifying as a sole source. Hays County reserves the right to decide if your company is a qualified Sole Source Vendor.

**3.15 Conflict of Interest (CIQ Form) – must be filled out and attached to proposal.**

Hays County is required to comply with Texas Local Government Code Chapter 176, Disclosure of Certain Relationships with Local Government Officers. Any company that does business with Hays County must fill out a Conflict of Interest Questionnaire (CIQ) whether or not a conflict of interest exists. A conflict of interest exists in the following situations:

- (1) The person has employment or other business relationship with the local government officer or a family member resulting in the officer or family member receiving taxable income, and/or
- (2) Your company has given one of Hays County's local government officers or family member one or more gifts (excluding food, lodging, transportation, and entertainment) that has an aggregate value of more than \$250 in the twelve-month period preceding the date the officer becomes aware of an executed contract or consideration of the person for a contract to do business with the Department.

If no conflict of interest exists, you must type N/A on Box 1 of the CIQ form, sign and date it.

**PART 4.0 – SCOPE & SPECIFICATIONS**

**4.1 Request for Proposals Defined**

The intention of this Request for Proposals (RFP) is to solicit proposals for Local Food and Catering Services for Hays County.

Hays County is utilizing the Request for Proposals (RFP) method for the procurement of this service. For information regarding the proposal process, contact Cindy Maiorka, Purchasing Manager (512) 393-2273 or email [cindym@co.hays.tx.us](mailto:cindym@co.hays.tx.us).

**4.2 Scope of Services /Specifications**

Hays County is looking to obtain proposals from local food and catering vendors to provide food services for the Hays County Government Center located at 712 South Stagecoach Trail, San Marcos, Texas 78666.

It is the intention of Hays County to establish an annual contract to qualified vendors to provide food purchases and catering services for Hays County staff and special events to support its entities. Hays County intends to make a multiple award to the proposers who qualify and meet the minimum requirements established on this request for proposals.

The facility hours of operation are Monday through Friday 8AM-5PM CST. Entry as early as 7:00 AM can be arranged.

The hours expected for food service are a minimum of 8 AM-2PM CST.

The County employs approximately 400 employees onsite, 40 hours/week. The proposer is expected to understand the market opportunity of for this scale of employee and public choice.

The public either visits to do transactions with administrative offices or visits to participate in County and District Court cases which will last a period of time during a day or a week.

There is occasional catering for County meetings or training, and may be occasional food service for jurors.



The goal is for the proposer to provide primary food and beverage preparation for breakfast through lunch time. Secondary support for food/beverage can be through vending machines. Vended food and beverage machines will not be contracted until this RFP is negotiated. It is the goal of the County for the successful provider of this food service to supply vending machines as an option to this proposal, or if this proposer is not a vending proposer, then the secondary vending machine contract will be negotiated in a way that will complement, not undercut this proposal's business model for success.

The Dining area is outfitted with furnishing and casework at this time, without equipment.

Hays County is proposing to offer the Dining area space and to procure and own for use of the proposer the fixed equipment, not including vending machines, that the proposer specifies in his proposal as necessary in order to perform the menu, services, and cost proposition in the proposal. Equipment which may be supplied and installed by County, as negotiated with proposers may be:

- Microwave(s)
- Conveyor Oven
- Cold Case
- Beverage Case
- Under-counter refrigerator
- Refrigeration in Storage
- Convection/Microwave Oven
- Ice Machine / Dispenser

Vending machines, coffee maker not considered Owner supplied in this RFP.

**It is expected that the proposer will propose a Best Practice Proposal; the above list is not prescriptive, it is negotiable to achieve best value to the County's interests of serving the public and its employees.**

The County may negotiate to offer electronic menu on county supplied flat screen that would also supply information on county events, weather stream and other information.

Proposer should specify the nature and supply of disposables/utensils they will supply. Note that the building is secure, with screening at entry, and the public should have access to potential weapons. It is expected that plastic utensils are offered in the sale, and any metal knives which are used in preparation are in the control of the proposer.

The County maintains cleaning service during the day for restroom sanitization, public spills, some trash removal. It is expected that the proposer will monitor and clean table tops that the users do not clean, as well as the proposer's preparation space.

The County is willing to provide signage instructing users to dispose of trash.

#### **4.3 Special Terms and Conditions**

In addition to Hays County Terms and Conditions, the following special terms and conditions apply to all vendors:

If products are to be delivered, they shall be delivered in sealed containers which should be of a quality that will not leak under normal handling. Foods shall be protected in transit using insulated food transport containers approved by National Sanitation Foundation (NSF). Food must be prepared, stored, and transported at the proper temperature according to Texas Food Establishments Rules (TFER).

All menu products shall be freshly prepared and served. Day-old products are unacceptable. Products shall be uniform in size and shape, uniformly sliced, and free of foreign objects. No alcoholic beverages are to be offered or served as part of this proposal.

**A copy of current Food Establishment Permit and Food Service Certificate from the applicable jurisdiction must be submitted with this response.**

**Respondents are required to submit proof of insurance, which includes, Worker's Compensation and Liability insurance if they are to provide catering services on any Hays County property or events.**

Proposers may submit a single proposal for several food/catering locations (such as in the case of franchises), provided they are authorized to enter into a contract on behalf of the franchise.

#### 4.4 Categories. Group Type of Group

- A. Breakfast
- B. Platters and Trays
- C. Boxed Lunches
- D. Lunch/Dinner Specials
- E. Beverages
- F. Desserts
- G. Bakery Delicacies

### PART 5.0 – EVALUATION AND AWARD OF PROPOSALS

In accordance with applicable laws, rules, and regulations for public purchasing, award(s) will be made to the responsible proposer(s) whose proposal(s) is/are determined, after evaluation by the evaluation committee, to be the best value for Hays County. To qualify for evaluation, a proposal must have been submitted on time and must materially satisfy all mandatory requirements identified in this document.

#### 5.1 Evaluation Criteria

A committee selected by Hays County will review and evaluate all proposals and make a recommendation to the Hays County Commissioners Court. Hays County will base a recommendation for contract award on the following factors:

#### 5.2 Awards

Awards will be made to the successful proposer(s) for the total line of products and services

Evaluation Factors	Weighted Value
1. Price	35 Points
2. Reputation of Vendor and of Vendor's goods and/or services	20 Points
3. Quality of Vendor's goods and/or services	25 Points
4. Extent to which the goods and/or services meet the Hays County needs	10 Points
5. Vendor's past relationship with Hays County (if any)	5 Points
6. Total long-term cost to Hays County to acquire Vendor's goods and/or services	5 Points

Total 100

submitted. Awards will be based on the criteria set forth within this document. Hays County reserves the right to award contracts to multiple vendors if these vendors offer items that are unique and have value to Hays County. Hays County shall comply with the Texas Public Information Act in the event Hays County receives an open records request for information relating to proposals submitted in response to this RFP.

**5.3 Competitive Range**

It may be necessary for Hays County to establish a competitive range of acceptable proposals as part of the evaluation process. Proposals not in the competitive range are unacceptable and do not receive further award consideration.

**5.4 Estimated Quantities**

Hays County makes no guarantee or commitment of any kind concerning quantities that will actually be purchased. Hays County makes no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation.

**5.5 Inspection & Acceptance**

Awarded vendor(s) shall deliver the goods or services procured on this contract to Hays County. If delivery is not or cannot be made within proper time period, the awarded vendor must receive authorization from the Purchasing office for the delayed delivery. If defective or incorrect goods are delivered, Hays County may make the determination, in its sole discretion, to return the goods to the vendor at no cost to the County. The vendor agrees to pay all shipping and handling costs for any such return shipment. The vendor also shall be responsible for arranging the return of the defective or incorrect goods.

**5.6 Minority & Women's Business Enterprise (MWBE), Historically Underutilized Business (HUB), and Small Business Enterprise (SBE) participation**

Hays County encourages the use of HUB, MWBE, and SBE both as prime and subcontractors. However, these entities must meet the same minimum standards and requirements as the prime contractor. It will be the responsibility of the prime contractor to pre-qualify any subcontractors offered as HUB, MWBE and SBE participants. Proposers shall indicate on their submitted proposals whether or not they are a HUB, MWBE, or SBE vendor and with whom they are certified, e.g., State, City, Federal.

**5.7 Formation of Contract (Execution of Offer)**

A response to this solicitation is an offer to contract with Hays County based upon the terms, conditions, scope of work, and specifications contained in this procurement solicitation. A solicitation/proposal does not become a contract unless and until it is accepted by Hays County after approval by the Commissioners Court.

**5.8 Non-Exclusive Contract** Any contract resulting from this solicitation is non-exclusive and shall be awarded with the understanding and agreement that it is for the sole convenience of Hays County. Hays County is free to have multiple contracts for the awarded goods and services and may initiate other procurement solicitations or purchasing activity with other vendors at any time, at Hays County's sole discretion.

**5.9 Pricing** Hays County requires that the pricing submitted in proposals be offered as a quantity one price. Hays County may request the awarded vendor(s) to provide discounts or other adjustments to the quantity one price for larger orders, on a per-purchase order basis. If discounts or quantity prices are offered by an awarded vendor, the vendor must also offer the same reductions in pricing to be available for orders of similar size.

**PART 6.0 – FINANCIAL OFFER & QUESTIONNAIRE**

Proposers must respond to all questions and identify all costs, fees, or charges for which Hays County may be billed. Costs not indicated in this proposal will not be paid. Proposers are to provide written documentation for any exceptions.

**Note: Proposer shall complete this section. Proposer is not required to submit pricing for all the group categories identified in this proposal if that category is not currently being offered. If your company does not offer one or some of the group categories below, please leave that section blank.**

**Please make sure to submit this entire section (Part 6.0) as part of your proposal. Submissions that omit this part will be considered non-responsive.**

**GROUP A: BREAKFAST**

A.1 Have you attached a detailed priced menu listing all products? Yes No  
(If no, what is the method you use in specifying product and prices?)

A.2. Percentage discount \_\_\_\_\_

A.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

A.4 What is your required order lead-time? \_\_\_\_\_ Days

A.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

A.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP B: PLATTERS AND TRAYS**

B.1 Have you attached a detailed priced menu listing all products? Yes No  
If no, what is the method you use in specifying product and prices?

B.2. Percentage discount \_\_\_\_\_

B.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

B.4 What is your required order lead-time? \_\_\_\_\_ Days

B.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

B.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP C: BOXED LUNCHES**

C.1 Have you attached a detailed priced menu listing all products? Yes No

If no, what is the method you use in specifying product and prices?

C.2. Percentage discount \_\_\_\_\_

C.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

C.4 What is your required order lead-time? \_\_\_\_\_ Days

C.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

C.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP D: LUNCH/DINNER SPECIALS**

D.1 Have you attached a detailed priced menu listing all products? Yes No

If no, what is the method you use in specifying product and prices?

D.2. Percentage discount \_\_\_\_\_

D.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

D.4 What is your required order lead-time? \_\_\_\_\_ Days

D.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

D.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP E: BEVERAGES**

E.1 Have you attached a detailed priced menu listing all products? Yes No

If no, what is the method you use in specifying product and prices?

E.2. Percentage discount \_\_\_\_\_

E.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

E.4 What is your required order lead-time? \_\_\_\_\_ Days

E.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

E.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP F: DESSERTS**

F.1 Have you attached a detailed priced menu listing all products? Yes No  
If no, what is the method you use in specifying product and prices?

F.2 Percentage discount \_\_\_\_\_

F.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

F.4 What is your required order lead-time? \_\_\_\_\_ Days

F.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

F.6 What utensils, if any, are provided? \_\_\_\_\_

**GROUP G: BAKERY DELICACIES**

G.1 Have you attached a detailed priced menu listing all products? Yes No  
If no, what is the method you use in specifying product and prices?

G.2 Percentage discount \_\_\_\_\_

G.3 What are your minimum order delivery requirements? \$ \_\_\_\_\_

G.4 What is your required order lead-time? \_\_\_\_\_ Days

G.5 Charges for delivery and setup, if any. Delivery \$ \_\_\_\_\_ Set-up \$ \_\_\_\_\_

G.6 What utensils, if any, are provided? \_\_\_\_\_

**ADDITIONAL INFORMATION:**

1 If needed, do you provide Staff Servers? Y/N \_\_\_\_\_ If yes, at what rate? \_\_\_\_\_

2 Will your business accept Hays County purchase orders? Y/N \_\_\_\_\_

3 Will your business accept Hays County credit cards? Y/N \_\_\_\_\_

4 Is there a minimum order amount for no delivery charge? Y/N \_\_\_\_\_ If yes, what is the minimum amount? \_\_\_\_\_

If required, what is the gratuity percentage, and what is it based on, dollar amount or headcount?

5 Have you included a copy of your current Health Food Dealer's Permit? Yes/No

6 Have you included a copy of your Food Service Manager's Certificate? Yes/No

## **PART 7.0 – GENERAL TERMS AND CONDITIONS**

The words “bids,” “requests for proposals,” “quotes,” “RFPs,” “solicitation,” “procurement,” and their derivatives may be used interchangeably in these terms and conditions. These terms and conditions apply to all bids, requests for proposals, quotes, competitive sealed proposals, and other procurement solicitations to which they are attached. The term “Vendor” means each awarded vendor chosen by Hays County.

These General Terms and Conditions are part of the final contract in each commodity and/or service contract and are part of the terms and conditions of each purchase order or other bid/proposal forms issued in connection with this solicitation.

Proposers are responsible for identifying any exceptions to these terms and conditions.

### **ANY EXCEPTIONS MUST BE NOTED.**

Proposals that are qualified with conditional clauses, items not called for, or other irregularities may be considered non-responsive by Hays County and eliminated from further consideration by Hays County.

This Agreement is entered into between Hays County and Vendor, having submitted a proposal in response to a procurement solicitation issued by Hays County and whose proposal has been accepted and awarded by Hays County. In consideration of the mutual covenants and conditions contained in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Hays County and Vendor, intending to be legally bound, and subject to the terms, conditions, and provisions of this Agreement, agree as follows:

#### **7.1 Agreement Terms; Amendment**

The terms of this Agreement shall govern all procurements conducted hereunder. No pre-published terms on the Vendor’s order acknowledgments, invoices, or other forms shall have any force or effect. Further, no amendment of this Agreement shall be permitted unless first approved in writing by Hays County, and no such amendments shall have any effect unless and until a written amendment to this Agreement is executed by Hays County’s Commissioners Court.

#### **7.2 Assignment of Agreement**

Vendor may not assign this Agreement or any of its rights, duties, or obligations hereunder without the prior written approval of Hays County. Any attempted assignment of this Agreement by Vendor shall be null and void. Any purchase or work order made as a result of this Agreement may not be transferred, assigned, subcontracted, mortgaged, pledged, or otherwise disposed of or encumbered in any way by Vendor without the prior written approval of Hays County. Vendor is required to notify Hays County when any material change in operations occurs, including but not limited to, changes in distribution rights for awarded products, bankruptcy, material changes in financial condition, change of ownership, and the like, within three (3) business days of such change.

#### **7.3 Buy America Act**

Hays County has a preference for domestic end products for supplies acquired for use in the United States when spending federal funds. Purchases that are made with non-federal funds or grants are excluded from the Buy America Act.

#### **7.4 Captions**

The captions herein are for convenience and identification purposes only, are not an integral part hereof, and are not to be considered in the interpretation of any part hereof.

#### **7.5 Catalog Discounts**

In the event of a catalog discount type proposal, Vendor may be allowed to make additions and/or deletions from Vendor’s offerings on an annual basis during the Agreement renewal period, in Hays County’s sole discretion, provided the item(s) substituted are of a like quality and category. These changes will be compliant with the format of Vendor’s original proposal (i.e. manufacturer name, product category, or entire catalog discount). Hays County will send notification to Vendor(s)

seeking any additions and/or deletions, and Vendor will return these proposed changes on company letterhead within the given timeframe. If Hays County, in its sole discretion, accepts Vendor's proposed changes, such changes will remain in effect for the entire year until the next renewal period.

**7.6 Compliance with Laws**

Vendor shall comply with all federal, state, and local laws, statutes, ordinances, rules, and regulations, including, if applicable, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, prompt payment and licensing laws and regulations. For the entire duration of this Agreement, Vendor shall maintain all required licenses, certifications, permits, and any other documentation necessary to perform this Agreement. When required or requested by Hays County, Vendor shall furnish Hays County with satisfactory proof of Vendor's compliance with this provision.

**7.7 Confidentiality**

Vendor and Hays County agree to secure the confidentiality of all information and records in accordance with applicable federal and state laws, rules, and regulations. Vendor also acknowledges that Hays County is subject to the Texas Public Information Act, and Vendor waives any claim against and releases from liability Hays County, its officers, employees, agents, and attorneys with respect to disclosure of information provided under or in this Agreement or otherwise created, assembled, maintained, or held by Vendor and determined by Hays County, the Attorney General of Texas, or a court of law to be subject to disclosure under the Texas Public Information Act.

**7.8 Contract Term**

The initial term of the Agreement is for a period of one (1) year, with Hays County having the option to renew the Agreement for four (4) additional years in one (1) year increments. Consequently, the total term of the Agreement may be for a period of five (5) years. The phrase "Term" in this Agreement shall mean the then-current Term of the Agreement, whether the initial term or a renewal term.

**7.9 Customer Reference List**

Vendor agrees to submit a customer reference list upon request by HCDE.

**7.10 Delivery**

Vendor shall deliver ordered products within the date and time specified by the division setting up the request or previously agreed to, in writing, by Hays County. If delivery cannot occur within that timeframe, Vendor shall notify Hays County of the reasons why the product cannot be delivered at the specified date and time. Hays County may cancel the order if the estimated delivery time is not acceptable to Hays County, in its sole discretion.

**7.11 Entire Agreement**

This Agreement, the procurement solicitation issued by Hays County, and Vendor's proposal submitted in response to Hays County's procurement solicitation, and the attached and incorporated addendum or exhibits, if any, contain the entire agreement of the parties relative to the purpose(s) of the Agreement and supersede any other representations, agreements, arrangements, negotiations, or understanding, oral or written, between the parties to this Agreement. In the event of a conflict between this Agreement and the procurement solicitation issued by Hays County or Vendor's proposal submitted in response to Hays County's procurement solicitation, this Agreement shall control. In the event of a conflict between the procurement solicitation issued by Hays County and Vendor's proposal submitted in response to Hays County's procurement solicitation, Hays County's procurement solicitation shall control. This Agreement supersedes any conflicting terms and conditions on any purchase or work orders, invoices, checks, order acknowledgements, forms, purchase orders, or similar commercial documents relating hereto and which may be issued by Vendor after the Effective Date of this Agreement.



**7.12 Equal Opportunity**

It is the policy of Hays County not to discriminate on the basis of race, color, National origin, gender, limited English proficiency or handicapping conditions in its programs. Vendor agrees not to discriminate against any employee or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions and privileges of employment, or a matter directly or indirectly related to employment, because of age (except where based on a bona fide occupational qualification), sex (except where based on a bona fide occupational qualification) or race, color, religion, national origin, or ancestry. Vendor further agrees that every subcontract entered into for the performance of this Agreement shall contain a provision requiring non-discrimination in employment herein specified, binding upon each subcontractor. Breach of this covenant may be regarded as a material breach of the Agreement.

**7.13 Force Majeure**

Neither Hays County or Vendor shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of God, network failures, acts of civil or military authorities, civil disturbances, wars, energy crises, fires, transportation contingencies, interruptions in third-party telecommunications or Internet equipment or service, other catastrophes, or any other occurrences which are reasonably beyond such party's control.

**7.14 Governing Law and Venue**

The laws of the State of Texas, without regard to its provisions on conflicts of laws, govern this Agreement. Any dispute under this Agreement may be brought in the state and federal courts located in San Marcos, Hays County, Texas, and the parties hereby submit to the exclusive jurisdiction of said courts.

**7.15 Hays County Property**

In the event of loss, damage, or destruction of any property owned by or loaned by Hays County that is caused by Vendor or Vendor's representative, agent, employee, or contractor, Vendor shall indemnify Hays County and pay to the County the full value of or the full cost of repair or replacement of such property, whichever is greater, within thirty (30) days of Vendor's receipt of written notice of Hays County's determination of the amount due. If Vendor fails to make timely payment, Hays County may obtain such money from Vendor by any means permitted by law, including, without limitation, offset or counterclaim against any money otherwise due to Vendor by Hays County.

**7.16 Indemnification**

**VENDOR SHALL INDEMNIFY AND HOLD HAYS COUNTY HARMLESS FROM ALL CLAIMS, LIABILITIES, COSTS, SUITS OF LAW OR IN EQUITY, EXPENSES, ATTORNEYS' FEES, FINES, PENALTIES OR DAMAGES ARISING FROM THE ACTS OR OMISSIONS OF VENDOR, VENDOR'S EMPLOYEES, AGENTS, OR SUBCONTRACTORS, IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE ARISING FROM CLAIMED INFRINGEMENT OF ANY PATENTS, TRADEMARKS, COPYRIGHT OR OTHER CORRESPONDING RIGHT(S) WHICH IS RELATED TO ANY ITEM VENDOR IS REQUIRED TO DELIVER.**

Vendor's obligations under this clause shall survive acceptance and payment by Hays County.

**7.17 Insurance**

Vendor is required to provide Hays County with copies of certificates of insurance, naming Hays County as an additional insured, for Texas Workman’s Compensation and General Liability Insurance. Certificates of Insurance, name and address of Vendor, the limits of liability, the effective dates of each policy, and policy number shall be delivered to Hays County prior to commencement of any work under this Agreement. The insurance company insuring Vendor shall be licensed in the State of Texas and shall be acceptable to Hays County. Vendor shall give Hays County a minimum of ten (10) days’ notice prior to any modifications or cancellation of said policies of insurance. Vendor shall require all subcontractors performing any work under or relating to this Agreement to maintain coverage as specified below.

Minimum Insurance Requirements:

- o Vendor shall, at all times during the Term of this Agreement, maintain insurance coverage with not less than the type and requirements shown below. Such insurance is to be provided at the sole cost of Vendor. These requirements do not establish limits of Vendor’s liability.
- o All policies of insurance shall waive all rights of subrogation against Hays County, its officers, employees, and agents.
- o Upon request, certified copies of original insurance policies shall be furnished to Hays County.
- o Hays County shall be named as an “additional insured” on all insurance policies.
- o Hays County reserves the right to require additional insurance should Hays County deem additional insurance necessary, in Hays County’s sole discretion.
- A. Workers’ Compensation (with Waiver of subrogation to Hays County) Employer’s Liability,
- B. Statutory, and Bodily Injury by Accident: \$100,000 each employee. Bodily Injury by Disease: \$500,000, policy limit \$100,000 each employee. Commercial General Liability Occurrence Form including, but not limited to, Premises and Operations, Products Liability Broad Form Property Damage, Contractual Liability,
  - o \$300,000 each occurrence Limit Bodily Injury and Property Damage combined
  - o \$300,000 Products-Completed Operations Aggregate Limit \$500,000 per Job Aggregate
  - o \$300,000 Personal and Advertising Injury Limit
- C. Automobile Liability Coverage  \$300,000 Com  
Property Damage Combined.

**7.18 Interpretation**

Vendor agrees that the normal rules of construction that require that any ambiguities in this Agreement are to be construed against the drafter shall not be employed in the interpretation of this Agreement.

**7.19 Invoices; Payments**

Invoices shall be directed to Hays County’s Auditor/Accounts Payable Department. All invoices shall be itemized to include the type of good(s) and/or service(s) rendered. Vendor shall submit invoices within a timely manner during Hays County’s fiscal year in which the good(s) and/or services are purchased. Payments are due to Vendor within forty-five (45) days after the later of the following: (1) the date Hays County receives the goods under the Agreement; (2) the date the performance of the service under the Agreement is completed; or (3) the date Hays County receives

an invoice for the goods or service. Vendor agrees to pay any subcontractors, if any, the appropriate share of the payment received from Hays County not later than the tenth (10th) day after the date Vendor receives the payment from Hays County.

**7.20 IRS W-9** In order to receive payment under this Agreement, Vendor shall have a current I.R.S. W-9 Form on file with Hays County.

**7.21 Multiple Contract Awards; Non-Exclusivity**

Hays County reserves the right to award multiple contracts for each commodity category. Commodity categories are established at the sole discretion of Hays County. Nothing in this Agreement may be construed to imply that Vendor has the exclusive right to provide products and/or services to Hays County. During the Term of this Agreement, Hays County reserves the right to use all available resources to procure other products and/or services as needed and doing so will not violate any rights of Vendor.

**7.22 New Products**

New products that meet the specifications detailed in the solicitation may be added to this Agreement, with prior written approval from Hays County. Pricing of any new products shall be equivalent to the percentage discount or proposed prices for other similar products. Vendor may replace or add products to an existing contract if: the replacing products are equal to or superior to the original products offered; are discounted in a similar or to a greater degree; and the products meet the requirements of the original solicitation. No products may be added to avoid competitive procurement procedures. Hays County may reject any proposed additions, without cause, in its sole discretion.

**7.23 No Substitution**

Any order issued pursuant to this Agreement shall conform to the specifications and descriptions identified in this Agreement and in the solicitation. Unless otherwise agreed to in advance by Hays County, Vendor will not deliver substitutes without prior authorization from Hays County.

**7.24 No Agency or Endorsements**

Hays County and Vendor are independent contractors and have no power or authority to assume or create any obligation or responsibility on behalf of the other party. This Agreement shall not be construed or deemed an endorsement of a specific company or product. It is the intention of the parties that Vendor is independent of Hays County and is not an employee, or agent of Hays County, and nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee, agent, or partner, between Hays County and Vendor or Hays County and any of Vendor's agents. Vendor agrees that Hays County has no responsibility for any conduct of any of Vendor's employees, agents, representatives, contractors, or subcontractors.

**7.25 Non-Appropriation Clause**

Renewal of this Agreement, if any, concerning non-appropriation of funds for multi-year contracts, notwithstanding any other provision of this Agreement or obligation imposed on Hays County by this Agreement, Hays County shall have the right to terminate this Agreement without default or liability to Vendor resulting from such termination, effective as of the end of any fiscal year of Hays County if it is determined by Hays County, in the County's sole discretion, that there are insufficient funds to extend this Agreement. The parties agree that this Agreement is a commitment of Hays County's current revenue only.

**7.26 Notice**

Any notice provided under the terms of this Agreement by either party to the other shall be in writing and shall be given by hand-delivery or by certified or registered mail, return receipt requested. Notice shall be sufficient if made or addressed to the address listed in the signature line of this Agreement. Notice shall be deemed effective upon receipt. Each party may change the address at which notice may be sent to that party by giving notice of such change to the other party by certified or registered mail, return receipt requested.

#### **7.27 Penalties**

If Vendor is unable to provide the goods or services at the prices quoted in Vendor's proposal or if Vendor fails to fulfill or abide by the terms and conditions of the Agreement, Hays County may take the following action(s), in Hays County's sole discretion, and Vendor agrees to comply with Hays County's action(s):

- (a) Insist that Vendor honor the quoted price(s) specified in Vendor's proposal;
- (b) Have Vendor pay the difference between Vendor's price and the price of the next acceptable proposal (as determined by Hays County);
- (c) Have Vendor pay the difference between Vendor's price and the actual purchase price of the good or service on the open market; and/or
- (d) Recommend to Hays County that Vendor no longer be given the opportunity to submit a proposal to Hays County and/or that this Agreement be terminated.

#### **7.28 Performance**

Vendor agrees to use best efforts to provide the good(s) and/or service(s) subject to this Agreement.

#### **7.29 Prevailing Wage Rates**

Vendor and all subcontractors of Vendor shall comply with all laws regarding wage rates including, but not limited to, and any related federal requirements applicable to this Agreement and to this solicitation by Hays County.

#### **7.30 Prices**

All prices in Vendor's proposal shall be firm for the Term of the Agreement. All price changes shall be presented to Hays County for acceptance or rejection by Hays County, in its sole discretion, using the same format as was accepted in Vendor's original proposal; all price changes for goods and/or services provided under this Agreement must be approved, in writing, by Hays County prior to taking effect.

#### **7.31 Quantities**

Because all commodities will be provided on an "as needed" basis, Hays County makes no representation either orally or in writing to the amount of commodities, services, or related items Hays County will use during the Term of the Agreement.

#### **7.32 Records Retention**

Vendor shall maintain its records and accounts in a manner that shall assure a full accounting for all goods and/or services provided by Vendor to Hays County under this Agreement. These records and accounts shall be retained by Vendor and made available for audit by Hays County for a period of not less than two (2) years from the date of completion of the services, receipt of the goods, or the date of the receipt by Hays County of Vendor's final invoice or claim for payment in connection with this Agreement, whichever is later. If an audit has been announced, Vendor shall retain its records and accounts until such audit has been completed.

#### **7.33 Right to Audit**

Hays County, upon written notice, shall have the right to audit all of Vendor's records and accounts relating to this Agreement. Records subject to audit shall include, but are not limited to, records which may have a bearing on matters of interest to Hays County in connection with Vendor's work for Hays County and shall be open to inspection and subject to audit and/or reproduction by Hays County or its authorized representative(s) to the extent necessary to adequately permit evaluation and verification of:

- (a) Vendor's compliance with this Agreement and the requirements of the solicitation,
- (b) Compliance with Hays County procurement policies and procedures,
- (c) Compliance with provisions for computing billings to Hays County, and/or
- (d) Any other matters related to this Agreement.

#### **7.34 Safety**

Vendor, its subcontractors, and their respective employees shall comply fully with all applicable federal, state, and local safety and health laws, ordinances, rules, and regulations in the performance of services under this Agreement, including, without limitation, those promulgated by Hays County and by the Occupational Safety and Health Administration ("OSHA"). In case of conflict, the most stringent safety requirements shall govern. Vendor shall comply with all other safety guidelines and standards as required by Hays County. Vendor shall indemnify and hold Hays County harmless from and against all claims, demands, suits, actions, judgments, fines, penalties, and liability of every kind arising from the breach of Vendor's obligations under this provision.

#### **7.35 Severability**

In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

#### **7.36 Subcontractors**

If Vendor uses subcontractors in the performance of any part of this Agreement, Vendor shall be fully responsible to Hays County for all acts and omissions of the subcontractors just as Vendor is responsible for Vendor's own acts and omissions. Nothing in this Agreement shall create for the benefit of any such subcontractor any contractual relationship between Hays County and any such subcontractor, nor shall it create any obligation on the part of Hays County to pay or to see to the payment of any moneys due any such subcontractor except as may otherwise be required by law.

#### **7.37 Taxes**

Hays County is tax-exempt, and Hays County shall not pay taxes for goods and/or services provided under this Agreement. Vendor represents and warrants that it shall pay all taxes or similar amounts resulting from this Agreement, including, without limitation, any federal, state, or local income, sales or excise taxes of Vendor or its employees. Hays County shall not be liable for any taxes resulting from this Agreement.

#### **7.38 Tax Responsibilities of Vendor and Indemnification for Taxes**

Vendor and all subcontractor(s) of Vendor shall pay all federal, state, and local taxes applicable to their operation and any persons employed by Vendor and all subcontractors of Vendor. Vendor shall require all subcontractors to hold Hays County harmless from any responsibility for taxes, damages, and interest. If applicable, contributions required under federal, state, and/or local laws and regulations and any other costs including, but not limited to, transaction privilege taxes, unemployment compensation insurance, Social Security, and Worker's Compensation, shall be the sole responsibility of Vendor.

#### **7.39 Termination of Contract**

This Agreement shall remain in effect until (1) the Agreement expires by its terms or (2) the Agreement is terminated by mutual agreement of Hays County and Vendor. In the event of a breach or default of the Agreement and/or the procurement solicitation by Vendor, Hays County reserves the right to enforce the performance of the Agreement and/or the procurement solicitation in any manner prescribed by law or deemed to be in the best interest of Hays County. Hays County further reserves the right to terminate the Agreement immediately in the event Vendor fails to: (1) meet schedules, deadlines, and/or delivery dates within the time specified in this Agreement, the procurement

solicitation, and/or a purchase or work order; (2) make any payments owed; or (3) otherwise perform in accordance with this Agreement and/or the procurement solicitation. Hays County also reserves the right to terminate the Agreement immediately, with written notice to Vendor, if Hays County believes, in its sole discretion, that it is in the best interest of Hays County to do so. Vendor agrees that Hays County shall not be liable for damages in the event that Hays County declares Vendor to be in default or breach of this Agreement and/or the procurement solicitation. Vendor further agrees that upon termination of the Agreement for any reason, Vendor shall, in good faith and with reasonable cooperation, aid in the transition to any new arrangement and/or vendor.

#### **7.40 Title and Risk of Loss**

Whenever Hays County is purchasing (and not leasing) an item under this Agreement, title and risk of loss shall pass upon the later of Hays County's acceptance of the item or payment of the applicable invoice.

All deliveries under this Agreement shall be delivered: **Freight Prepaid, F.O.B. Destination, Full Freight Allowed, Inside Delivery** and shall be included in all pricing in Vendor's proposal unless otherwise clearly stated in writing in Vendor's proposal.

#### **7.41 Waiver**

No failure on the part of either party at any time to require the performance by the other party of any term hereof shall be taken or held to be a waiver of such term or in any way affect such party's right to enforce such term, and no waiver on the part of either party of any term hereof shall be taken or held to be a waiver of any other term hereof or the breach thereof. No waiver, alteration, or modification of any of the provisions of this Contract shall be binding unless in writing and signed by duly authorized representatives of the parties hereto.

#### **7.42 Warranty**

All goods and/or services provided by Vendor under this Agreement must be warranted to be free from defects in material, workmanship, and free from such defects in design for a period of one (1) year upon the later of Hays County's acceptance of the product and/or service or payment of the applicable invoice. Vendor warrants that all goods and/or services furnished under this Agreement shall conform in all respects to the terms of this Agreement, including any drawings, specifications, and/or standards incorporated herein, including, without limitation, those detailed in the procurement solicitation issued by Hays County. In addition, Vendor warrants that goods and/or services are suitable for and will perform in accordance with the purposes for which they are intended. Vendor shall assume all liabilities incurred within the scope of consequential damages and incidental expenses, as set forth in the vendor or manufacturer's warranty, which result from either delivery or use of product, which does not meet the specifications within this Agreement or the solicitation procurement.

#### **7.43 Workforce**

Vendor shall employ only orderly and competent workers, skilled in the performance of the services, if any, which shall be performed under this Agreement. Vendor, its employees, subcontractors, and subcontractor's employees may not use or possess any firearms, alcoholic or other intoxicating beverages, illegal drugs or controlled substances while on the job or on Hays County's property, nor may such workers be intoxicated or under the influence of alcohol or drugs on HCDE's property.