

**CAMERON COUNTY
PURCHASING DEPARTMENT
INVITATION TO BID**

BID NUMBER: # 080201

**BID TITLE: CONCESSION FOOD SERVICE/ SNACK BAR-ANDY BOWIE COUNTY PARK
LOCATION # 9**

DATE DUE: February 19, 2008

DUE NO LATER THAN 5:00 P.M.

For opening and evaluation at the next Commissioner’s Court meeting (Bidders are invited to attend), 2nd floor County Courthouse (Dancy Building) schedule for Tuesday each week at 5:30 pm (unless re-scheduled). Bids received later than the date and time above will not be considered.

Carefully read all instructions, requirements and specifications. Fill out all forms properly and completely. Submit your bid with all appropriate supplements and/or samples. Prior to returning your sealed bid response / submittal, all Addendums - if issued - should be reviewed and downloaded by entering the County Purchasing web site at

www.co.cameron.tx.us/purchasing/specs.htm

– Addendums Column (updated Addendums). These Addendums must be signed and returned with your bid in order to avoid disqualification.

Please return bid in sealed envelope. Be sure that return envelope shows the Bid Number, Description and is marked “SEALED BID”.

RETURN BID TO:

by U.S. mail at P. O. Box 3846, Brownsville, Texas 78523

or delivered to the office of the Director of Purchasing, **County Courthouse (Dancy Bldg.)**

1100 E. Monroe St, 3rd Floor, Room 345, Brownsville, Texas 78520

PRE-BID MEETING is scheduled to be held at 10:30 a.m. on WEDNESDAY, FEBRUARY 13, 2008 at the Andy Bowie Park Office, 7355 Park Road 100 South Padre Island, TX 78597.

For additional information or to request addendum contact: Mike Forbes or Beverly Findley at (956) 544-0871, E-mail: mforbes@co.cameron.tx.us or purchasing@co.cameroncounty.tx.us Project specific questions should be directed to Javier Mendez – County Parks Dept. South Padre Island at (956) 761-3700.

You must sign below in INK; failure to sign WILL disqualify the offer. All prices must be typewritten or written in ink.

Company Name: _____

Company Address: _____

City, State, Zip Code: _____

Taxpayer Identification Number (T.I.N.): _____

Cameron County Acct #'s : Real Estate _____ Personal Property _____

Historically Underutilized Business (State of Texas) Certification VID Number: _____

Telephone No. _____ Fax No. _____ e-mail _____

Print Name: _____ Signature: _____

Is Bidder’s principal place of Business within Cameron County? Yes - No

Your signature attests to your offer to provide the goods and/or services in this bid according to the published provision of this bid. When an award letter is issued, it becomes a part of this contract. Contract is not valid until contract is approved by Commissioner’s Court.

INSTRUCTIONS FOR SUBMITTING BIDS

These General Instructions apply to all offers made to Cameron County, Texas (herein after referred to as "County") by all prospective Bidders (herein after referred to as "Bidders") on behalf of Solicitations including, but not limited to, Invitations to Bid and Requests for Quotes.

Cameron County is an Equal Employment Opportunity Employer.

Review this document in its entirety. Be sure your bid is complete, and double check your bid for accuracy.

GOVERNING FORMS: In the event of any conflict between the terms and provisions of these requirements and the specifications, the specifications shall govern. In the event of any conflict of interpretation of any part of this overall document, Cameron County's interpretation shall govern. Where substitutions are used, they must be of equivalent value or service, and specified by the bidder as such, in the columns to the right on the "Minimum Specifications' Forms". The County's specifications may be exceeded and should be noted by the Bidder as such. Any bid NOT MEETING the Minimum Requirements specified will be rejected.

GOVERNING LAW: This invitation to bid is governed by the competitive bidding requirements of the County Purchasing Act, Texas Local Government Code, §262.021 et seq., as amended. Bidders shall comply with all applicable federal, state and local laws and regulations. Bidder is further advised that these requirements shall be fully governed by the laws of the State of Texas and that Cameron County may request and rely on advice, decisions and opinions of the Attorney General of Texas and the County Attorney concerning any portion of these requirements.

Questions requiring only clarification of instructions or specifications will be handled verbally. If any questions results in a change or addition to this Bid, the Change(s) and addition(s) will be forwarded to all Bidders involved (as quickly as possible) in the form of a written addendum only.

Sign the Bidder's Affidavit Notice, complete answers to Attachments A, B, C, D, and E and return all with your bid.

BIDDER SHALL SUBMIT BID ON THE FORM PROVIDED, SIGN THE BIDDER AFFIDAVIT, AND RETURN ENTIRE BID PACKET. In the event of inclement weather and County Offices are officially closed on a bid deadline day, bids will be received until 2:00 p.m. of the next business day, for opening at up coming Commissioner's Court meeting.

BIDS SUBMITTED AFTER THE SUBMISSION DEADLINE SHALL BE RETURNED UNOPENED AND WILL BE CONSIDERED VOID AND UNACCEPTABLE.

SUCCESSFUL BIDDER WILL BE NOTIFIED BY MAIL. All responding Bidders will receive written notification regarding the outcome of the award.

OPEN RECORDS ACCESS TO ALL INFORMATION SUBMITTED. All information included will be open to the public, other bidders, media as per the Open Records Act and not be confidential in nature. If you deem any information as confidential, it should not be made part of your bid package.

PLEASE NOTE CAREFULLY

THIS IS THE ONLY APPROVED INSTRUCTION FOR USE ON YOUR BID. ITEMS BELOW APPLY TO AND BECOME A PART OF TERMS AND CONDITIONS OF BID. ANY EXCEPTIONS THERETO MUST BE IN WRITING.

1. Each bid shall be placed in a separate envelope completely and properly identified with the name and number of the bid. Bids must be in the Purchasing Department BEFORE the hour and date specified.
2. Bids **MUST** give full firm name and address of the bidder. Failure to manually sign bid will disqualify it. Person signing bid should show **TITLE** or **AUTHORITY TO BIND THE FIRM IN A CONTRACT**.
3. Bids **CANNOT** be altered or amended after deadline time. Any alterations made before deadline time must be initiated by bidder or his authorized agent. No bid can be withdrawn after opening time without approval by the Commissioners Court based on a written acceptable reason.
4. Written and verbal inquires pertaining to bids must give Bid Number and Company.
5. **NO** changes or cancellations permitted without written approval of Asst. Auditor / Purchasing. The County reserves the right to accept or reject all or any part of any bid and waive minor technicalities.

6. This is a bid inquiry only and implies no obligation on the part of Cameron County.
7. Partial bids will not be accepted unless awarded by complete category or line item. **To be awarded by total bid.**
8. It is expected that the bidder will meet all state and federal safety standards and laws in effect on the date of the bid for the item(s) being specified, and the particular use for which they are meant.
9. It is the responsibility of the bidder to ask any and all questions the bidder feels to be pertinent to the bid. Cameron County shall not be required to attempt to anticipate such questions for bidders. Cameron County will endeavor or respond promptly to all questions asked.

**CAMERON COUNTY PARK CONCESSION FOOD SERVICE/SNACK BAR
AT ANDY BOWIE PARK
OPERATIONS BID # 080106**

PART I – GENERAL REQUIREMENTS

- 1.0 **PURPOSE:** Cameron County Commissioners' Court will accept bids for the operation of an existing concession business located in Andy Bowie County Park, 7355 Park Road 100 on South Padre Island, Texas. The County will entertain a possible Concession Agreement for the lease of a 500 square foot, concrete block building, partially equipped for food service, which would be utilized by the concessionaire. The concession business may be used only for the sale of items such as daily breakfast and lunch specials, hamburgers, hot dogs, chips, sodas, bottle water, ice cream treats, snow cones, soups, daily lunch specials, candy, T-Shirts, hats, kites, disposable cameras, picnic and beach items and other items approved by the Parks Director, and that no glass containers of any kind will be allowed to be sold to the public. The objective is to obtain concession services. The sale of alcohol and tobacco products shall be allowed only with County written approval. The County has the right to discontinue the sell of such products with reasonable cause at any time during the term of the concession.
- 2.0 **INCURRED EXPENSES:** There is no expressed or implied obligation for Cameron County to reimburse for any expense incurred in preparing bids in response to this request, and Cameron County will not reimburse anyone for these expenses. Cameron County will consider all bids from all responsible bidders.
- 3.0 **CASHIER'S CHECK AND FORFEITURE:** Each bid shall be accompanied by a Cashier's Check made payable to Cameron County in the amount of Five Hundred (\$500.00) Dollars as a guarantee that if the Bidder receives an award, the Bidder will enter into a contract for services and submit proof of any required insurance. Checks of unsuccessful bidders will be returned. If the successful Bidder fails to satisfy all pre-work requirements or commence work after award, that Bidder shall forfeit this security deposit. Cameron County shall retain it as liquidated damages.
- 4.0 **GENERAL CONDITIONS:** Bidders shall thoroughly examine the specific requirements, schedules, instructions and all other contract documents. Bid must set forth accurate and complete information as required by this Bid (including attachments). No plea of ignorance by the Bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the Bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of Cameron County.
- 5.0 **SITE INSPECTION:** Before submitting a Bid, Bidders are encouraged to visit the facility and make all investigations and examinations necessary to ascertain site and/or local physical conditions and requirements affecting the full performance of the Concession Agreement and to verify any representations made by the Cameron County, Texas, upon which the Bidder will rely. If the Bidder receives an award because of its Bid submission, failure to have made such investigations and examinations will in no way relieve the Bidder from its obligations to comply in every detail with all

provisions and requirements of the Concession Agreement, nor will a plea of ignorance of such conditions and requirements be accepted as a basis for any claim by the Bidder for additional compensation or relief. Failure to do so, will not relieve the successful bidder from performing the contract in accordance with all terms and conditions as set forth.

Each bidder attests, by signing this Bid that he/she has acquainted themselves with the park sites and fully understands there will be no recourse for negligence or oversight for not doing so.

PRE BID SITE VISIT

The bidders should attend a site visit to verify exact locations and size.

Pre Bid Meeting Schedule: walk through site at 10:30 a.m. on WEDNESDAY, FEBRUARY 13, 2008. Bidders will meet at the Andy Bowie Park Office, 7355 Park Road 100 South Padre Island, TX 78597.

- 6.0 **PARK RULES AND REGULATIONS:** Before submitting a bid, the bidder is expected to thoroughly review the County Park Rules and Regulations. Bidder can obtain a copy of the rules at the Andy Bowie Park Office.
- 7.0 **ASSIGNMENT:** The awarded Bidder shall not assign, transfer, convey, sublet, or otherwise dispose of any award or of any of its rights, title, or interests therein, without the prior written consent of the County Commissioners Court.
- 8.0 **CONTRACT PERIOD:** The Agreement resulting from this Solicitation shall be a Term of the time period specified herein. During the specified time period, the Bidder shall provide food concession services to the County in accordance with the terms and conditions established herein. It is understood that the County does not guarantee any specific amount of food concession business under this agreement. The period of the Contract shall extend for **sixty (60) months** from the date of Award, beginning **March 1, 2008 thru February 28, 2013.**
- a. Either party may cancel this Contract, in whole or in part for its convenience, by giving thirty (30) days prior notice in writing. However, the Bidder shall not be authorized to exercise this cancellation option during the first one hundred eighty (180) days of the Contract.
- b. Contact Javier Mendez, Director Parks and Recreation Department; phone 956-761-3700 for questions and to make arrangements to inspect park sites.
- 9.0 **BID PRICE:** Rent to be paid to the Cameron County Parks & Recreation Department will be on an annual flat rate to be paid as specified in the Concession Agreement on a Monthly basis at 1/12th of the Annual Rate or 10% of gross sales which ever is greater. **Security Deposit shall be equal to one (1) month's rent based on the Flat Rate.**
- a. The Rental amount bid shall remain firm during the period of the Contract.
- b. BIDDER hereby certifies that this bid is made without prior understanding, agreement or connection with any corporation, firm or person submitting a bid for the same materials, supplies, services or equipment and is in all respects fair and without collusion or fraud. Further, the BIDDER hereby agrees to abide by all terms and conditions of this bid and certifies that the person executing the bid form is authorized to sign this bid for the BIDDER.
- 10.0 **PRE-AWARD SURVEY:** After bid opening and prior to award, County reserves the right to make a pre-award survey of bidder's facilities and its operation to be used in the services and performance of this work. Bidder agrees to allow all reasonable requests for inspection of such facilities or operations with two (2) working days advance notice. Failure to allow an inspection is cause for rejection of a bid as non-responsive. County reserves the right to reject facilities or equipment as unacceptable for performance as a result of the pre-award survey.
- 11.0 **BID EVALUATION AND AWARD:**

- a. The award of the contract shall be made to the responsible Bidder whose bid is determined to be the best offer. The Cameron County Commissioner's Court reserves the right to waive any formality; reject any and all bids; or to award the contract to the responsible concessionaire whose bid is determined to be the best offer, taking into consideration the relative importance of annual flat rates offered. No bid will be entertained that does not meet, at a minimum, the concessionaire's willingness to accept all terms, conditions, restrictions, and other obligations imposed upon the concessionaire in the attached Concession Agreement. However, the County reserves the right to reject any and all bids in accordance with the Cameron County Procurement Policies.
- b. If two or more fully responsive, responsible bids are received for the same total Base Annual Rent, the County reserves the right to award the contract to the BIDDER whose place of business is located within the boundaries of Cameron County, Texas. Should tie bids, as described above, be received from either two or more Cameron County Bidders or from non-local Bidders when no Cameron County Bidder has submitted a tie bid, then the Board of County Commissioners shall award the contract to one Bidder by drawing lots in a public meeting.
- c. The current concessionaire if not awarded the bid shall have 30 days from the date of the award of the bid to vacate the premises.

12.0 REJECTION OF BID:

- a. County expressly reserves the right to:
 - 1) waive any defect, irregularity or informality in any bid;
 - 2) reject or cancel any bid or parts of any bid;
 - 3) accept bids from one or more bidders; or
 - 4) procure the services in whole or in part by other means.

NOTE: PARTS II, III, AND IV, ALONG WITH THE BID, AND ANY DEVIATION TO WHICH CAMERON COUNTY HAS AGREED, IN WRITING, WILL BE INCLUDED WITH THE CONTRACT.

PART II - SPECIFIC REQUIREMENTS

ANDY BOWIE PARK

1.0 RESPONSIBILITIES OF THE COUNTY:

- a. At Andy Bowie Park, the County will provide the Bidder a facility capable of furnishing the required food products to the general public. The facility will not include equipment.
- b. County facilities are provided in an "as is" condition.
- c. The County shall provide and pay for all water and sewer usage necessary to provide the services required by this contract. The Bidder shall pay for electricity, gas, and telephone usage necessary to provide the services required by this Contract. The County will not be responsible for electricity, gas, or any long distance telephone calls placed by the Bidder and/or his employees, or from the facilities.
- d. The County will be responsible for all repairs to the facility which is not the result of actions caused by the negligence or misuse of or by the Bidder and/or his employees. The Bidder shall be responsible for upkeep, repairs, and preventative maintenance in any manner related to the operation of said concession. The County should be notified in writing to any improvements needed to be done to the facility. The County is not responsible for any and all damages to any equipment used by the Bidder.
- e. The County agrees to establish reasonable procedures that will allow the Bidder to have access to and operate the park concession(s) in accordance with the requirements established herein.
- f. The Parks Director or Parks Manager will maintain a continuing evaluation and inspection of the concession service to determine that the Concessionaire is complying with all provisions of the contract. The evaluation will include, but not be limited to, the quality of the service rendered and the prices charged the public, the nature and quality of the articles offered for sale to the public, neatness of the premises and employees, and non-discrimination policies of the concession with relation to both employment and service to the public.
- g. The Concessionaire and employees of the Concessionaire will cooperate with Cameron County in matters of mutual benefits pertaining to the preservation and conservation of natural resources in the park and providing of emergency services.

2.0 RESPONSIBILITIES OF THE CONCESSION BIDDER:

- a. At Andy Bowie Park - Concessionaire will be responsible for providing the necessary staff, equipment, merchandise, buildings and/or site improvements, utilities, insurance and all other items normally required of a business outlet.

NOTE: Andy Bowie Parks peak operating season is between the months of March through August, and Bidders should take into consideration when submitting their bid that revenues during the non-peak months may be low.

- b. The concessionaire shall furnish equipment and fixtures necessary for an attractive display and storage of merchandise. All of the buildings, signage, equipment and fixtures used in any concession operation shall be subject to prior and on-going approval by the Parks Director, or his designee, as to appearance, appropriateness and safety.

- c. The Bidder (concessionaire) must provide sufficient personnel to supervise and operate the park concession facilities pursuant to the hours established by the Parks Department... Concessionaire shall open for patronage during regular park hours, 8:30 a.m. to 7:00 p.m. during peak season (March through August). Concessionaire shall have the right to adjust the hours during which all or any part of the said concession be open for special functions or at other times, by first securing the consent and approval of the County Park Director in writing. The Concessionaire will provide all authorized services during hours the public can reasonably expect services to be available. Concessionaire will provide an operation plan which will include specific days of operation and hours. Failure to perform services according to schedule without Cameron County approval shall be considered non-performance.
- d. Concessionaire shall perform in an efficient and orderly manner as is customary in similar operations, and will endeavor to employ only persons who are suitable for the operation in appearance, manner, and character. The County may require the Concessionaire to dismiss from the premises any employees of the Concessionaire whose conduct is improper, inappropriate or offensive.
- e. Concessionaire and their Employees shall observe all applicable County rules and regulations and exercise courtesy and consideration in their relations with the public. The Concessionaire shall require employees who come in contact with the public to wear a uniform or badge, with a name tag, to show they are employees of the Concessionaire. The employees will be allowed access to the concession park location for business purposes only.
- f. The Bidder shall be responsible for keeping the facilities under his control (concession facilities and surrounding areas) clear of trash and debris and must be kept clean. Daily inspections will be accomplished by Parks and/or Facility Maintenance staff. Daily cleaning of the park concession facilities and surrounding areas by the Bidder shall include the following:
 - 1) Cleaning and sanitizing of the food preparation and serving area including all equipment, utensils, trays, counters, etc...
 - 2) Cleaning of the complex floors to include sweeping and mopping of all Concession areas.
 - 3) Emptying and disposing of all trash and debris in appropriate receptacles.
 - 4) The County shall provide cleaning of restroom facilities.
- g. The Concessionaire is not authorized to make alterations, modifications, or functional changes to any space assigned except by prior written approval of the Parks Director.
- h. Improvements must meet architectural standards established or set within the park. The Bidder shall provide a cash register and shall have sufficient totals to record major categories, including sales tax, total purchase, must automatically issue an itemized customer receipt showing total amount purchased, date and name of concession, and record all transactions covered under the requirements of this contract. The Bidder must provide a register customer receipt to all customers for all sales. The Bidder will need to permanently affix a sign that informs the public of the following, "If this Concessionaire fails to issue a register receipt after the purchase is complete your service shall be free."
- i. The concessionaire shall strictly control all food, litter and waste generated by its operation in the immediate area of the concession.

- j. Electricity, Telephone Service, Liquid Petroleum Gas, will be provided at Concessionaire's expense. The Concessionaire will be required to make independent arrangements for these services with companies or dealers serving the area. Installation of any utility hookup will require pre-approval by the Parks Director. However, if electricity is available at the park site, Concessionaire may, at his/her cost, provide hook-up to their service area.
- k. The Concessionaire shall comply with the requirements of all applicable Federal and State laws and regulations, as appropriate, relating to health, minimum wage, social security, unemployment insurance, worker's compensation, and equal employment guidelines. The Concessionaire shall not employ any person declared by the Parks Director, to be unfit for such employment or be determined otherwise as objectionable. Concessionaire is responsible for or required to provide a current and updated list of employees to the Parks Manager and notifying him of any changes in staffing.
- l. The Concessionaire shall obtain all necessary licenses and permits as required by law.
 - 1) The County reserves the right to require proof that the Bidder is an established business and is abiding by the ordinances, regulation, and laws of their community and the state of Texas, such as but not limited to: occupational licenses, business licenses, Texas sales tax registration, Federal Employers Identification Number, AND;
 - 2) Each firm shall submit with their Bid a copy of, and maintain the appropriate licenses and certificates during the term of the contract and any extensions. Failure to maintain these requirements shall be cause for immediate termination of the contract.
- m. The Bidder shall abide by all health and safety requirements.
- n. The Concessionaire and employees of the Concessionaire will cooperate with Cameron County in matters of mutual benefit pertaining to the preservation and conservation of natural resources in the park and providing of emergency services.
- o. The Bidder shall maintain financial records in accordance with Part III.
- p. The Bidder shall be allowed to sell or serve the following food items:
 - 1) Breakfast foods both hot and cold, i.e., cereals, eggs, toast, bagels, muffins, biscuits, biscuits and gravy, fruit and other approved items.
 - 2) Lunch and dinner foods, both hot and cold, i.e., hot dogs, hamburgers, pizza, soups, chili, chicken, sandwiches (hot or cold), baked potatoes, french fries and other approved foods.
 - 3) Snack foods to include, chips, crackers, popcorn, packaged or canned goods, ice cream products, candy, gum, and other approved items.
 - 4) Bottled (plastic) and/or canned drinks.
- q. Additional Concession services may include but are not limited to: (1) food, drink and/or ice sales; (2) souvenirs; (3) towel sales. All sales will be subject to ongoing approval by the Parks Director of Cameron County.
- r. The sale of alcohol and tobacco products shall be allowed only with written County approval. The County has the right to discontinue the sell of such products with reasonable cause at any time during the term of the concession.

- s. Concessionaire shall not authorize or permit the installation of any entertainment device without the written consent of the County.
- t. In exchange for the right to operate the concession, the Bidder(s) shall pay to the County no later than the 10th day of each month, an amount equal to 1/12 of the Annual Guaranteed Amount. Payments received after the 10th of each month will be subject to a late fee of 10% of the Monthly base fee charged and due on a daily basis for each late day. If 10% of the gross receipts received, less sales tax is higher than the Annual Guaranteed Amount paid, the difference will be due at the end of each Anniversary year.
- u. In establishing rates charged to the Public primary consideration should be given to the prices charged for similar classes of services and merchandise furnished or sold in local markets. The principal objective of any price review procedure is to assure the public of satisfactory service and quality merchandise at reasonable rates.
- v. With one week after filing a Federal Income Tax Return, Contractor must furnish a copy of that portion which reflects the concession operation proceeds from this contract.

PART III – ACCOUNTING PROCEDURES & REVENUES

- 1.0. ACCOUNTING PROCEDURES: The Bidder shall maintain complete accounting records and implement appropriate accounting controls consistent with good business practices.
- a. All transactions generated as a result of the operation of the concession(s) shall be accounted for as follows:
 - 1) All sales shall be rung through the concession cash register.
 - 2) Concession receipts shall be reconciled by the Bidder at the end of each month on a "Payment Certification Form" approved by the County. This certification form is to be signed by the Bidder and submitted to the Parks Department, for approval prior to payment of the monthly concession fee by the Bidder to the County. Gross receipts used for computation of the 10% amounts (which would apply at the end of year if it exceeds the Guaranteed Annual amount) for the County shall not include sales taxes. Sales taxes shall be collected by the Bidder and remitted to the State of Texas as required by law. Certification form shall record sales taxes so collected and remitted, for Bidder's records. The Concessionaire shall furnish a monthly financial statement to the Parks Director on or before the 10th day of the succeeding month. The financial statement shall reflect the amount of total gross receipts collected by Concessionaire during the preceding month. Along with the submission of the financial statement, Concessionaire shall include the authenticated total of the total gross sales for Park Concession Operations sold at Parks. Said fee shall be calculated by multiplying the gross receipts of the preceding month by the 10% percent. If no park sales are conducted during the month, a negative sales report shall be provided. Concessionaire shall keep a ledger stating the dates and hours that the concession is in operation in the parks. The ledger shall be signed by park staff each day to acknowledge that the concessionaire is providing the service as stated in the contract agreement. This ledger is to be turned in each month along with the monthly financial statement.
 - 3) The Bidder will submit approved "Monthly Financial and Payment Certification" forms to the County along with the appropriate cash register receipts and concession payment by the tenth (10th) day of the following month.
 - b. Concessionaire shall prepare and maintain accurate and complete records reflecting the receipts and expenses under this contract. The Concessionaire shall maintain a separate bank account solely for receipts and disbursements relating to this contract. Concessionaire shall not pay from this account expenses for anything not associated with costs of this contract. Cameron County may audit these records and accounts within a reasonable time. The Bidder's accounting records must be made available for audit/inspection by the County at all reasonable times.
 - c. The Bidder shall maintain accounting records for a minimum of three (3) years.
 - d. Within one week after filing a Federal Income Tax Return, Contractor must furnish a copy of that portion which reflects the concession operation proceeds from this contract.

PART IV - REQUIRED DOCUMENTATION

Please note this Section may not address all documentation required by the BID. The bidder is cautioned to read the entire BID to determine all requirements. CAMERON COUNTY RESERVES THE RIGHT TO REJECT ANY BID WHICH DOES NOT CONTAIN ALL INFORMATION REQUIRED BY THIS BID.

Bids shall include all of the information solicited in this BID, and any additional data that the Bidder deems pertinent to the understanding and evaluation of the Bid. The Bidder should not withhold any information from the written response in anticipation of presenting the information orally or in a demonstration, since oral presentations or demonstrations may not be solicited.

Submittal of a Bid shall constitute the Bidder's agreement and intent to follow and adhere to all statements, offerings and monetary incentives contained within this Bid.

In conjunction with other material and information requested in the BID, all Bidders responding to this solicitation shall provide one (1) original and six (6) copies and all attachments of the following in 8 ½ " by 11" format, clearly legible, tabbed and in a binder. To achieve a uniform review process and to obtain a maximum degree of comparability, Cameron County requires that bid information be submitted in the following order:

Table of Contents

List title of each tabbed section and title of any additional information included in this Bid.

Tab 1 - Transmittal Letter

- a. Submit a signed letter briefly addressing the services to be provided by Bidder.

Tab 2 - Proposed Concessionaire Information

- a. Name of owner/operator
- b. Address of concession owner/operator
- c. Telephone & Fax number
- o Identification by name and address of principal financial investors/supporters committed to the project, specifying estimated proportionate levels of involvement for each in the total project.
- d. Include the name and telephone numbers of the designated individual(s), who will answer technical and contractual questions with respect to the bid.
- e. Beverage operations (whether leased or owned) in operation over the last five (5) years with contact information for landlords where applicable. For county locations, this information should include the following:
 1. Name and location of all county operations indicating the two locations Bidder believes to be its best operations
 2. Name and telephone number of county contact person
 3. Term of lease or concession agreement
 4. Gross receipts and number of customers at each location for the past three calendar years
 5. Number of employees
 6. Basic financial arrangements with each county operator including, but not limited to minimum annual guarantees, percentage of gross receipts payments and investment requirements.

Tab 3 - Authorization to Do Business in Texas and Management / Organization Evidence of authorization and certificate of good standing issued by the Secretary of State of Texas indicating Bidder is authorized to conduct business within the State of Texas.

Tab 4 - Bid Bond

A Bid Bond in the amount of five hundred dollars (\$500) shall accompany each Bid submitted as a guarantee that all provisions of the Bid specifications shall be met. Bid bonds will be returned to all unsuccessful Bidders following award by the Cameron County Council and to the successful Bidder following receipt of the Performance Bond.

Tab 5 - Minimum Annual Guarantee and Percentage Rental

Bidder must submit a list of all concession services to be provided and the percentage of gross receipts sales the County will receive for those services.

For the period of time during the term of Concession Agreement for twelve month period, monthly rental shall equal 1/12 of the minimum annual guarantee proposed herein, on a monthly basis.

Annual Guaranteed Flat Rate (to be completed by Bidder)

Year 1 _____

Year 2 _____

Year 3 _____

Year 4 _____

Year 5 _____

For the period of time during the term of the Concession Agreement that for the preceding twelve (12) month period, the successful Bidder shall pay the minimum annual guarantee indicated above on a monthly basis or 10 % of the gross receipts whichever is greater. The monthly minimum guarantee shall be due and payable in advance, without demand, by the first of the month. Percentage of gross receipts payments shall be due and payable on or before the 10th day of each month, commencing with the second month in which payments accrue under the Concession Agreement. Percentage of gross receipts payments shall be paid in such a fashion that the County, on a calendar year-to-date basis, will receive the higher of the cumulative minimum annual guarantee or the cumulative percentage of gross receipts payment.

The term "Gross Receipts" as used herein shall include all monies paid or payable to the Concessionaire for sales made and/or for services rendered at or from the premises and any other revenue of the type arising out of or in connection with the Concessionaire's operations at the premises, including but not limited to, any sales made or services rendered at or from the premises by concessionaire's agents, subtenants, or subcontractors, provided that Gross Receipts shall not include:

- a. Any taxes imposed by law which are separately stated to and paid by the customer and directly payable to a taxing authority by the concessionaire. Refunds and credits to customers for services or for merchandise returned or exchanged.
- b. Amounts and credits received in settlement of claims for loss of, or damage to merchandise.
- c. Amounts and credits received for merchandise returned to shippers, wholesalers, or manufacturers.

- d. Amounts received from the sale of waste or scrap material or from the sale or trade-in of fixtures, equipment, or furniture owned by concessionaire.
- e. The value of merchandise exchanged with or transferred to other operations of concessionaire.
- f. Tips and gratuities received by employees of the concessionaire, which were not included in the bill presented to the customer.
- g. Any value gained from trade-out of existing fixtures, furnishings and equipment acquired.

Tab 6 – Changes / Deviations

Requested changes to Concession Agreement

List any requested changes to the draft Concession Agreement. Each requested change shall reference the lease article and page number. All terms and conditions in the Draft Lease Agreement are final unless any requested changes are approved and agreed upon. The County has the right to negotiate the terms and conditions with the selected Bidder.

Deviations to terms, conditions and specifications

Any deviations from the terms, conditions and specifications listed herein must be clearly indicated; otherwise, it will be considered that the bid offered is in strict compliance with these specifications and the successful Bidder will be held responsible.

Tab 7 - References - Mandatory

Complete & include **Attachment A** three (3) references page. References to include (3) three business references and one (1) creditor or bank.

Tab 9 - All other information required by this BID

(Please note if applicable: All design documents must be reviewed and approved by Cameron County prior to any construction. It is the responsibility of the selected Bidder to obtain and comply with all permits, licenses and authorizations as may be applicable from all governing agencies having jurisdiction over the area to be developed and operated as the Food and Beverage Concession in County Park).

Bidder must submit the following documents after contract award:

Insurance documentation within ten (10) days from execution of the contract.

All other information required in this BID

Concession Agreement

- A. The contents of this BID and all provisions of the successful Bid deemed pertinent by the County may be incorporated into a Concession Agreement and become legally binding. A separate Concession Agreement will be issued. See attached Concession Agreement or preliminary draft.
- B. The Commissioners Court is the sole Contracting Officer for the County of Cameron, Texas, and only the Court is authorized to make changes to any contract.

Award Term **5 years**

Award will be approved by the Cameron County Commissioners Court.

Deviations

All Bids must clearly and with specific detail, note all deviations to the exact requirements imposed upon the Bidder by the specifications. Such deviations must be stated upon the Bid Form; otherwise

Cameron County will consider the subject Bids as being made in strict compliance with said specifications to Bidders, the Bidder being held therefore accountable and responsible. Bidders are hereby advised that Cameron County will only consider Bids that meet the exact requirements imposed by the specifications; except, however, said Bids may not be subject to such rejection where, at the sole discretion of Cameron County, the stated deviation is considered to be equal or better than the imposed requirement and where said deviation does not destroy the competitive character of the BID process by affecting the amount of the Bid such that an advantage or benefit is gained to the detriment of the other Bidders.

Records & Right to Audit The Bidder shall maintain such financial records and other records as may be prescribed by the County or by applicable federal and state laws, rules, and regulations. The Bidder shall retain these records for a period of three (3) years after final payment, or until they are audited by the County, whichever event occurs first. These records shall be made available during the term of the Concession Agreement and the subsequent three-year period for examination, transcription, and audit by the County, its designees, or other authorized entities.

Modifications Due to Public Welfare or Change in Law

The County shall have the power to make changes in the Concession Agreement as the result of changes in law and/or Ordinances of Cameron County to impose new rules and regulations on the Bidder under the Concession Agreement relative to the scope and methods of providing services as shall from time-to-time be necessary and desirable for the public welfare. The County shall give the Bidder notice of any proposed change and an opportunity to be heard concerning those matters. The scope and method of providing services as referenced herein shall also be liberally construed to include, but is not limited to, the manner, procedures, operations and obligations, financial or otherwise, of the Bidder. In the event any future change in Federal, State or County law or the Ordinances of Cameron County materially alters the obligations of the Bidder, or the benefits to the County, then the Concession Agreement shall be amended consistent therewith. Should these amendments materially alter the obligations of the Bidder, then the Bidder or the County shall be entitled to an adjustment in the rates and charges established under the Concession Agreement. Nothing contained in the Concession Agreement shall require any party to perform any act or function contrary to law. The County and Bidder agree to enter into good faith negotiations regarding modifications to the lease which may be required in order to implement changes in the interest of the public welfare or due to change in law. When such modifications are made to the Concession Agreement, the County and the Bidder shall negotiate in good faith, a reasonable and appropriate adjustment for any changes in services or other obligations required of the Bidder directly and demonstrably due to any modification in the lease under this clause.

Right to Require Performance

- A. The failure of the County at any time to require performance by the Bidder of any provision hereof shall in no way affect the right of the County thereafter to enforce same. Nor shall waiver by the County of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of any provision itself.
- B. In the event of failure of the Bidder to deliver services in accordance with the lease terms and conditions, the County, after due written notice, may procure the services from other sources and hold the Bidder responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that the County may have.

NON-PERFORMANCE

- a. Time is of the essence in this contract and failure to deliver the services specified shall be considered a default.

- b. In case of default, the County may procure the services from other sources and hold the Bidder responsible for all costs occasioned there by and may immediately cancel the contract.

SPECIAL PROVISIONS

- a. PUBLIC ENTITY CRIMES - Any person submitting a bid or Bid in response to this invitation certifies that they are aware of, and in compliance with, all requirements under Section 287.133, Texas Statutes, on Public Entity Crimes. Prior to bid award, the recommended Bidder may be required to submit a sworn statement attesting to compliance with said statute.
- b. PERMITS AND LICENSES - The Bidder agrees to secure all necessary licenses and permits prior to award and agrees to comply with all Federal and State laws, and

Minor Irregularities

The County reserves the right to waive minor irregularities in Bids, providing such action is in the best interest of the County. Minor irregularities are defined as those that have no adverse effect on the County's best interests, and will not affect the outcome of the selection process by giving the Bidder an advantage or benefit not enjoyed by other Bidders.

Governing Laws

Except to the extent Federal law is applicable, the laws and regulations of the State of Texas, and the County of Cameron, Texas, shall govern the interpretation, effect, and validity of any contract(s) resulting from this BID. Venue of any court action shall be in Cameron County. In the event that a suit is brought for the enforcement of any term of the contract, or any right arising there from, the parties expressly waive their respective rights to have such action tried by jury trial and hereby consent to the use of non-jury trial for the adjudication of such suit.

INSURANCE AND LIABILITY

During the period of this Contract, contractor shall maintain at his expense, insurance with limits not less than those prescribed below. With respect to required insurance, Contractor shall:

- a. Name County as additional insured, as its interests may appear.
- b. Provide County a waiver of subrogation.
- c. Provide County with a thirty (30) calendar days advance written notice of cancellation or material change to said insurance.
- d. Provide the County Purchasing Agent at the address shown on Page 1 of this contract, a Certificate of Insurance evidencing required coverage within ten (10) calendar days after receipt of Notice of Award. Also, please assure your certificate contains the contract number as indicated on the Contract Award form when issued by Cameron County. All insurance policies shall be issued by insurers licensed to do business in the State of Texas and any insuring company is required to have a minimum rating of B, Class VIII in the "Best Key Rating Guide" published by A.M. Best & Company, Inc.
- e. Loss Deductible Clause: The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible in any insurance policy. The payment of such deductible shall be the sole responsibility of the Bidder and/or subcontractor providing such insurance.

f. Submit an original certificate of insurance reflecting coverage as follows:

Automobile Liability:

Bodily Injury (Each person)	\$250,000.00
Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$100,000.00

General Liability (Including Contractual Liability):

Bodily Injury (Per occurrence)	\$500,000.00
Bodily injury Aggregate.....	\$1,000,000.00
Property Damage (Per occurrence).....	\$500,000.00
Property Damage Aggregate.....	\$1,000,000.00
Fire Damage.....	\$100,000.00
Medical Expense (Anyone (1) person)	\$5,000.00

Excess Liability:

Umbrella Form Not Required

Worker's Compensation: Statutory

g. INDEMNITY

The Bidder covenants and agrees that it will indemnify and hold harmless the COUNTY and all of the County's officers, agents, and employees from any claim, loss, damage, cost, charge, attorney's fees and costs, or any other expense arising out of any act, action, neglect, or omission by Bidder during the performance of the contract, whether direct or indirect, and whether to any person or property to which the COUNTY or said parties may be subject, except that neither the Bidder nor any of its subcontractors, or assignees, will be liable under this section for damages arising out of injury or damage to persons or property directly caused or resulting from the sole negligence of the COUNTY or any of its officers, agents, or employees.

h. PROTECTION OF PERSONS AND PROPERTY

- 1) The Bidder will take all reasonable precautions for, and will be responsible for initiating, maintaining and supervising all programs relating to the safety of all persons and property affected by, or involved in, the performance of his operations under this contract.
- 2) The Bidder will take all reasonable precautions to prevent damage, injury or loss to: (a) all persons who may be affected by the performance of his operations, including employees; (b) all materials and equipment; and (c) all property at or surrounding the work site. In an emergency affecting the safety of persons or property, the Bidder will act, with reasonable care and discretion, to prevent any threatened damage, injury or loss.

i. Companies issuing the insurance policy, or policies, shall have no recourse against the County for payment of premiums or assessments for any deductibles which all are the sole

j. BIDDERS may, at the COUNTY'S request, be required to provide proof that their firm meets the preceding insurance requirements, by submission of Certificates of Insurance Coverage(s), prior to award of the Contract.

Concession Name: _____

Contract No. _____

THE STATE OF TEXAS §

COUNTY OF CAMERON§

CONCESSION AGREEMENT

This Concession Agreement, made this _____ day of _____, 2008, in the City of Brownsville, State of Texas, pursuant to Section 320.044 of the Texas Local Government Code, by and between CAMERON COUNTY (hereinafter referred to as “County”) a political subdivision of the State of Texas, having its principal Administrative offices at 1100 East Monroe Street, Brownsville, Cameron County, Texas 78520, acting through the Cameron County Commissioners’ Court, and _____(hereinafter referred to as “CONCESSIONAIRE”).

WHEREAS, COUNTY operates, through its Park System, Andy Bowie County Park, a beach park located on South Padre Island, for park purposes and related public use and enjoyment;

WHEREAS, said CONCESSIONAIRE has expressed an interest in operating a concession at the said park;

WHEREAS, the Cameron County Commissioner’s Court has concluded that such concession agreement with _____ d/b/a _____as CONCESSIONAIRE would be desirable and in the best interest of the COUNTY;

WHEREAS, the Cameron County Commissioner’s Court is, therefore, willing to enter into such an agreement with said CONCESSIONAIRE;

NOW, THEREFORE, for and in consideration of the premises and the mutual promises of the parties and the mutual benefits they will gain by their performance thereof, all in accordance with the provisions hereinafter set forth, CAMERON COUNTY and CONCESSIONAIRE, agree as follows:

I.

TERM OF AGREEMENT

This Concession Agreement shall be for a term of five (5) years, beginning on the day of _____, 20_, and terminating on the _____ day of _____, 2013.

II.

PROPERTY TO BE CONCESSIONED

The property being concessioned by the COUNTY to the CONCESSIONAIRE consists of a masonry retail building located at Andy Bowie Park, Concession Building "A", measuring approximately five hundred (500 sq. ft.) in Andy Bowie Park.

III.

USE OF PREMISES

The property being concessioned by the COUNTY may be used for the sale _____

_____, and other items approved by the Parks Director, and that no glass containers of any kind will be sold to the public.

CONCESSIONAIRE shall open for patronage during regular park hours, 8:30 a.m. to 5:00 p.m. during off peak season (September thru February) and 8:30 a.m. to 7:00 p.m. during peak season (March through August). CONCESSIONAIRE shall have the right to adjust the hours during which all or any part of the said concession be open for patronage, by first securing the consent and approval of the County Park Director in writing. Such adjustments are based on reason, considering public demand, public safety, and the need to maintain a profitable business. The County Park System Director, or his successors/assignees, reserves the right to determine whether or not an item being sold or served by CONCESSIONAIRE constitutes a violation of this paragraph, in which event, CONCESSIONAIRE agrees to immediately cease and forever refrain from selling or serving such item, service, or activity. In no event will the concession premises or any part thereof be used or occupied as a residence or overnight facility.

IV.

CONCESSION FACILITIES AND OPERATION

CONCESSIONAIRE shall maintain and operate the said concession area, facilities, and/or services in a lawful and proper manner, in accordance with the following rules:

- A. CONCESSIONAIRE shall at all times maintain such area, facilities, and/or services in a safe, sound and clean condition, and shall provide the personnel, equipment, services, and commodities necessary to affect same.
- B. CONCESSIONAIRE shall be responsible for upkeep, repairs, and preventative maintenance in any manner related to the operation of said concession, and improvements on the premises, and any and all damages to any facility or equipment used by the CONCESSIONAIRE under this Concession Agreement.
- C. A site and facility inspection will be done prior to the actual concession period to determine the condition of the facility.
- D. Public bathrooms shall be furnished by the COUNTY.
- E. No alterations, additions or improvements shall be made in or to said premises, equipment or facilities without the consent of the County Park Director and County Engineer or their

successor/assignees, in writing and all additions and improvement made by CONCESSIONAIRE without such consent, shall be removed within 10 working days, at CONCESSIONAIRE'S expense, unless the COUNTY elects otherwise and improvements to said premises shall become affixed property of the COUNTY.

- F. Plans and specifications for any buildings, whether temporary or permanent, or any other improvements, equipment or facilities, which may be utilized under this Concession Agreement or constructed on any property herein concession, shall be approved by the County Parks Director and County Engineer or their successors/assignees, prior to the use or construction of any such structures, facilities or equipment; CONCESSIONAIRE agrees to submit photographs, drawings, plans, or any other type of document required by the County Park Director, or his successor/assignees, to assist said Director and Engineer in considering and approving said plans and specifications.
- G. Any Mechanic's or Materialmen's Lien or other encumbrance file against the demised premises or any improvements thereon shall be promptly discharged by CONCESSIONAIRE.
- H. All concession signage shall comply with the Cameron County Park System sign policy, a copy of which is available through the park system administrative staff.
- I. The COUNTY hereby reserves the right, through its duly appointed representatives, to enter upon the premises, facilities, or equipment of CONCESSIONAIRE, without notice, for the purpose of confirming compliance with the terms of this paragraph as well as the terms of the entire agreement.
- J. CONCESSIONAIRE agrees not to do or suffer any waste or nuisance upon said premises, or deface the same, or any part thereof, or suffer or permit the same, during or at the termination of this Concession Agreement.
- K. CONCESSIONAIRE agrees that upon termination of this Concession Agreement that CONCESSIONAIRE shall leave the concession premises in the condition said premises were in at the time of entry by CONCESSIONAIRE, reasonable wear and tear expected.
- L. The COUNTY shall not be responsible for providing any utilities for the demised premises, provided the CONCESSIONAIRE may utilize County water and sewer services at a set or metered fee, as agreed to by CONCESSIONAIRE and COUNTY.
- M. The CONCESSIONAIRE agrees to permanently affix a sign that informs the public of the following, "If this CONCESSIONAIRE fails to issue a register receipt after the purchase is complete your service shall be free."

V.

CONCESSION FEES AND ACCOUNTING REPORTS

In consideration for the use of the property being concessioned, CONCESSIONAIRE agrees to pay the COUNTY an annual total sum of _____ and shall be paid in twelve (12) equal monthly installments of _____. Such sums are to be paid on or before the first day of each month without deduction and without demand for the term of this Concession Agreement. Also, CONCESSIONAIRE agrees to pay ten (10%) of the monthly base fee as penalties for each

day of payment delinquency. This ten percent (10%) penalty will apply after the ten (10) day grace period has expired. Such penalties shall not be credited to annual fixed base amounts paid to COUNTY.

ANNUAL PERCENTAGE PAYMENT: The CONCESSIONAIRE agrees to prepare and present to the COUNTY and annual report of gross receipts at end of the anniversary year (i.e. _____). If ten percent (10%) of gross receipts is greater than the total amount of the annual fixed rental payment, excluding penalties, for the anniversary year, then the excess shall be payable on or before _____. If applicable, any additional percentage rent shall be payable upon submission of annual report of gross receipts. CONCESSIONAIRE agrees to pay \$25.00 per day for each day the report and/or percentage fee is delinquent.

For the purpose of this Concession Agreement, the term "gross receipts" shall mean the total amount received or realized by, or accruing to, the CONCESSIONAIRE from all operations of the concession on or upon the concession premises or originating from the concession premises or in any way from CONCESSIONAIRE'S use of this COUNTY property, but does not include credits to customers, refund, or sales tax paid which are collected from customers. For the purpose, of ascertaining "gross receipts", the CONCESSIONAIRE agrees to prepare and maintain adequate financial records that will reflect the business, which include income and expenses, conducted on the concession premises, in a format and detail specified by COUNTY. CONCESSIONAIRE agrees to prepare and present an annual report of gross receipts, and COUNTY upon the PARK DIRECTOR'S request may require financial records to be audited by the County Auditor, or his designee at CONCESSIONAIRE'S expense. COUNTY shall have the right, through authorized representatives, to examine such records at the concession premises during regular business hours; moreover, the CONCESSIONAIRE shall tender such records for inspection at the end of each anniversary year, as defined above.

VI.

SECURITY DEPOSIT

CONCESSIONAIRE agrees to submit to Cameron County as security deposit the sum of _____ (_____.00) DOLLARS AND NO/100THS with Cameron County as security for the full and faithful performance by said CONCESSIONAIRE of the terms and conditions of this Concession Agreement. This deposit is not to be construed or treated as an account to cover or offset fixed base fee payments for any payments for any part of the term of this Concession Agreement, and such deposit does not relieve the CONCESSIONAIRE from any obligations under this Concession Agreement. In this connection, the County may apply all or any part of the deposit required herein to cure any default of the CONCESSIONAIRE under the terms and conditions of this Concession Agreement; in the event that part of deposit is so applied, the CONCESSIONAIRE must deposit with the COUNTY the amount applied to cure any default immediately upon notice from the COUNTY of the nature and amount of such application. Finally, the COUNTY agrees to comply with all relevant and applicable laws regarding security deposits in handling and returning such security deposit.

VII.

INGRESS AND EGRESS

During the term of this Concession Agreement, the COUNTY shall allow reasonable ingress and egress to the property being concession.

VIII.

INSURANCE

During the term of this Concession Agreement, CONCESSIONAIRE shall procure and keep in force the following insurance:

(A) Workers' Compensation Insurance protecting all of its employees;

(B) General Liability and Property Damage Insurance:

- Bodily Injury (Per occurrence)\$500,000.00
 - Bodily Injury Aggregate.....\$1,000,000.00
 - Property Damage (Per occurrence).....\$500,000.00
 - Property Damage Aggregate.....\$1,000,000.00
 - Fire Damage.....\$100,000.00
 - Medical Expense (Any one (1) person... ..\$5,000.00
- (C) Automobile Liability:
- Bodily Injury (Each person).....\$250,000.00
 - Bodily Injury (Each accident).....\$500,000.00
 - Property Damage.....\$100,000.00

CONCESSIONAIRE agrees to name the COUNTY, its officials, officers, agents, and employees as additional insured in said policy, and CONCESSIONAIRE or insurance provider shall give the COUNTY at least 30 days notice of any material change in or cancellation or non-renewal of such policies; furthermore, CONCESSIONAIRE shall provide the COUNTY fifteen (15) days prior to commencement of the term of this agreement., through the Park System Director, with either copies of these policies, or alternatively, Certificates of Insurance, to confirm such coverage. CONCESSIONAIRE shall, upon thirty (30) days written notice, increase said insurance coverage if deemed necessary by the COUNTY. CONCESSIONAIRE shall provide COUNTY a waiver of subrogation. All insurance policies shall be issued by insurers licensed to do business in the State of Texas and any insuring company is required to have a minimum rating of B, Class VIII in the "Best Key Rating Guide" published by A.M. Best & Company, Inc. The CONCESSIONAIRE shall be solely responsible and liable for any sums of money or payment which may represent a deductible in any insurance claim.

IX.

INDEMNITY

CONCESSIONAIRE shall indemnify, defend and hold harmless the COUNTY, its officials, officers, agents, and employees, from any and all liabilities, claims, demands, actions, losses, damages and costs, including all costs of defense thereof, of any nature whatsoever, for injury to or death of persons or loss or damage to property, or for any other reason, occurring on

the concessioned premises or in any manner arising out of or connected with CONCESSIONAIRE'S use and occupation of the said premises during the term of this Concession Agreement or any time of occupancy of the said premises by CONCESSIONAIRE, including any claims, liabilities, and actions based upon the acts or omissions of CONCESSIONAIRE, or CONCESSIONAIRE'S officers, agents and employees against any and all liabilities, claims demands, actions, losses, damages, and costs. Moreover, CONCESSIONAIRE shall give the COUNTY ten (10) working days notice of any claim within CONCESSIONAIRE'S knowledge that in any way, directly or indirectly, affects either CONCESSIONAIRE or the COUNTY. Both parties shall have the right to participate in the defense of such claim to the extent of their interest.

X.

TERMINATION

It is specifically understood and agreed by the parties that notwithstanding any other provision of this agreement including the specification of a term of five years, this right of termination by either party upon thirty (30) days written notice takes precedent and is superior in authority to any other provision of this agreement. Notice shall be sent to the address out in this Concession Agreement and shall be by Registered or Certified mail.

XI.

ASSIGNMENT

This Concession Agreement shall not be assigned or sub-concessioned at all or in part by CONCESSIONAIRE without the consent and approval of the COUNTY, set forth in writing and signed by both parties. Any assignee or sub-concessionaire will be bound by the terms of this Concession Agreement and amendments, if any.

XII.

COMPLIANCE WITH ALL LAWS

Both parties will act, at all times, in compliance with all pertinent City and County Ordinances, Cameron County Orders, Regulations and Cameron County Park Policies, as well as all applicable State and Federal Laws.

XIII

NON-DISCRIMINATION

The parties mutually agree in the operation, use and occupancy of the property being concessioned, neither party will discriminate or will allow discrimination of any kind against any individual or group of individuals, in any manner, on the grounds of race, color, sex, religion, creed, ancestry or national origin.

XIV.

NON-WAIVER

Any waiver by any party of any default or breach of this Concession Agreement shall not be construed to be a continuing waiver of such default or breach, nor as a waiver of or permission for any other or subsequent default or breach.

XV.

PARTIES BOUND

This Concession Agreement shall be binding upon and inure to the benefit of the parties to this Concession Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns, as appropriate.

XVI.

“ACT OF GOD” EXCUSES PERFORMANCE

In the event that either party shall be prevented from completing the performance of their respective obligations hereunder by an act of God, then he/she shall be excused from any further performance of their obligations and undertakings hereunder.

XVII.

ENTIRE AGREEMENT: AMMENDMENT

This instrument contains the entire Concession Agreement between the parties relating to the rights herein granted and obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force nor effect, excepting a subsequent modification in writing, signed by the party to be charged. This Concession Agreement may be amended, provided that no amendment, modification, or alteration of the terms of this Concession Agreement shall be binding unless the same is in writing and duly executed by the parties hereto.

XVIII.

BREACH OF OBLIGATION

This Concession Agreement is entire as to all of the performances to be rendered under it. Breach of any obligation to be performed by either party shall constitute a breach of the entire Concession Agreement and shall give the other party the right to terminate this Concession Agreement, in accordance with the paragraph regarding termination above.

XIX.

LAW GOVERNING

This Concession Agreement shall be governed by and construed in accordance with the laws of The State of Texas.

XX.

VENUE

The obligations and undertaking of each of the parties to this Concession Agreement shall be performable in Cameron County, Texas.

XXI.

NOTICE

All notices to the COUNTY shall be sent by certified or registered mail, addressed to: Cameron County Judge, Cameron County Courthouse, 1100 East Monroe Street, Brownsville, Texas 78520, and Cameron County Park System Director, 33174 State Park Rd. 100, South Padre Island, Texas 78597, or at such other address as the COUNTY may otherwise designate. All notices to CONCESSIONAIRE shall be sent certified or registered mail, addressed to: _____ . At such other address as said CONCESSIONAIRE may otherwise designate in writing.

XXII.

AUTHORITY

The COUNTY certifies that it is authorized to enter into this Concession Agreement, and that it's County Commissioners' Court has authorized the execution of such Concession Agreement by its presiding officer, its County Judge.

Executed in triplicate on this ____ day of _____ , _____ at Brownsville, Cameron County, Texas.

By: _____
Carlos H. Cascos, County Judge

ATTESTED By:

Joe E. Rivera, County Clerk

By: _____

REFERENCES

Please list (3) three references - (1) should be a concessionaire customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this Bid.

THIS FORM MUST BE RETURNED WITH YOUR BID.

REFERENCE ONE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work _____

REFERENCE TWO

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work _____

REFERENCE THREE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work _____

BANK OR CREDITOR REFERENCES

REFERENCE

Government/Company Name: _____

Address: _____

Contact Person and Title: _____

Phone: _____ Fax: _____

Contract Period: _____ Scope of Work _____

STATE OF TEXAS
COUNTY OF CAMERON

AFFIDAVIT

The undersigned certifies that the Bid prices contained in this Bid have been carefully checked and are submitted as correct and final and if Bid is accepted (within 60 days), agrees to furnish any and/or all items upon which prices are offered, at the price(s) and upon the conditions contained in the Specifications.

BEFORE ME, the undersigned authority, A Notary Public in and for the State of _____, on this day personally appeared _____ who, after having first been duly sworn, upon oath did depose and say;

That the foregoing Bid submitted by _____ hereinafter called "Bidder" is the duly authorized agent of said company and that the person signing said Bid has been duly authorized to execute the same. Bidder affirms that they are duly authorized to execute this contract, that this company, corporation, firm, partnership or individual has not prepared this Bid in collusion with any other Bidder. The Bidder is not a member of any trust, pool, or combination to control the price of products or services Bid on, or to influence any person to Bid or not to Bid thereon. I further affirm that the Bidder has not given, offered to give, nor intends to give, at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discounts, trip, favor, or service to a public servant in connection with the submitted Bid. The contents of this Bid as to prices, terms or conditions of said Bid have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this Bid.

Name and Address of Bidder:

Telephone number _____ Fax number _____

Signature

Name: _____ Title: _____

SWORN TO AND SUBSCRIBE BEFORE ME THIS _____ day of _____ 20_____.

Notary Public in and for County _____ State _____

THIS FORM MUST BE RETURNED WITH YOUR BID.

RESIDENCE CERTIFICATION

Pursuant to Texas Government Code §2252.001 *et seq.*, as amended, Cameron County requests Residence Certification. §2252.001 *et seq.* of the Government Code provides some restrictions on the awarding of governmental contracts; pertinent provisions of §2252.001 are stated below:

“Nonresident Bidder” refers to a person who is not a resident.

“Resident Bidder” refers to a person whose principal place of business is in this State, including a contractor whose ultimate parent company or majority owner has its principal place of business in this state.

I certify that _____ is a Resident Bidder of Texas as defined in Government Code §2252.001.
(Company Name)

I certify that _____ is a Nonresident Bidder as defined in Government Code §2252.001 and our principal place of business is _____.
(City and State)

Print Name: _____ Signature: _____

THIS FORM MUST BE RETURNED WITH YOUR BID.

CAMERON COUNTY EXPRESSLY REQUESTS THAT BIDDERS / BIDDERS NOT DISCUSS THIS ENGAGEMENT OR THIS BIDDER'S / BIDDER'S PLANS, EXPERIENCE OR CREDENTIALS WITH OTHER BIDDERS / BIDDERS OR ANY MEMBER OF COMMISSIONERS' COURT, ANY COUNTY OFFICIAL, OR ANY EVALUATION COMMITTEE MEMBER APPOINTED BY COMMISSIONERS COURT. EXCLUDED ARE PRE-BID OR PRE-BID CONFERENCES, EVALUATION COMMITTEE SCHEDULED BIDDER PRESENTATIONS OR BIDDER INTERVIEWS, OR EVALUATION COMMITTEE SCHEDULED EQUIPMENT OR SERVICES DEMONSTRATIONS. YOU MAY CONTACT THE ASST. AUDITOR / PURCHASING DEPARTMENT AT ANY TIME.

- 01. Has any individual with the firm submitting this Bid/Bid/Response made any contact with any member of Commissioners Court, any County Official, or an Evaluation Committee member concerning this Invitation to Bid, other than questions to the Assistant County Auditor/Purchasing Officer?

- 02. Has any individual with the firm submitting this Bid/Bid/Response made any contact with any other Bidder or Bidder concerning this Invitation to Bid?

Signature of person doing business with the governmental entity

Date

THIS FORM MUST BE RETURNED WITH YOUR BID.

CONFLICT OF INTEREST QUESTIONNAIRE

For Bidder or other person doing business with local governmental entity

This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.

By law this questionnaire must be filed with the records administrator (County Clerk's Office) of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. *See* Section 176.006, Local Government Code.

A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.

1. Name of person doing business with local governmental entity.

OFFICE USE ONLY Date Received:

2. Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)

3. Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.

4. Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.

CONFLICT OF INTEREST QUESTIONNAIRE

For Bidder or other person doing business with local governmental entity

5. **Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)**

This section, item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?

Yes No

C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?

Yes No

D. Describe each affiliation or business relationship.

6. **Describe any other affiliation or business relationship that might cause a conflict of interest.**

7. Does any individual with the firm submitting BID have any business relationship with any County Official or County employee within the third degree of Consanguinity kinship or the second degree of Affinity kinship? (see attached Nepotism Chart)

Signature of person doing business with the governmental entity

Date

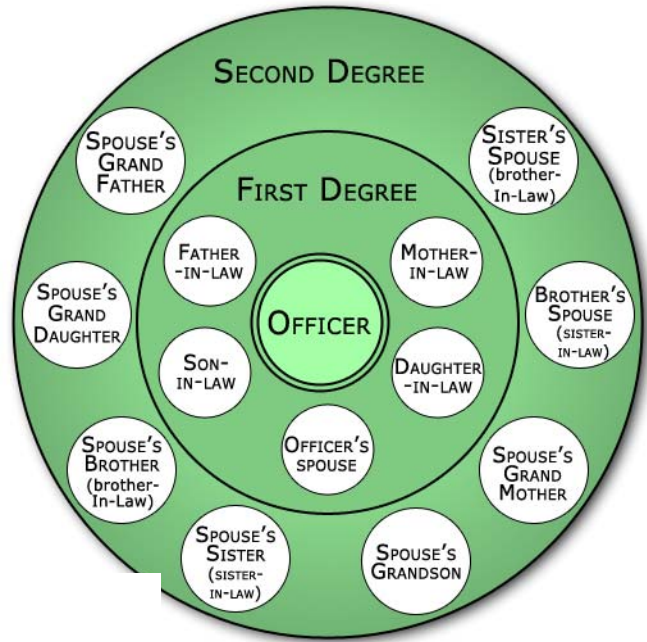
NEPOTISM CHART

The chart below shows

- **Affinity Kinship** (relationship by marriage)
- **Consanguinity Kinship** (relationship by blood) for purposes of interpreting nepotism as defined in VTCA Government Code, Chapter 573, §§573.021 - .025

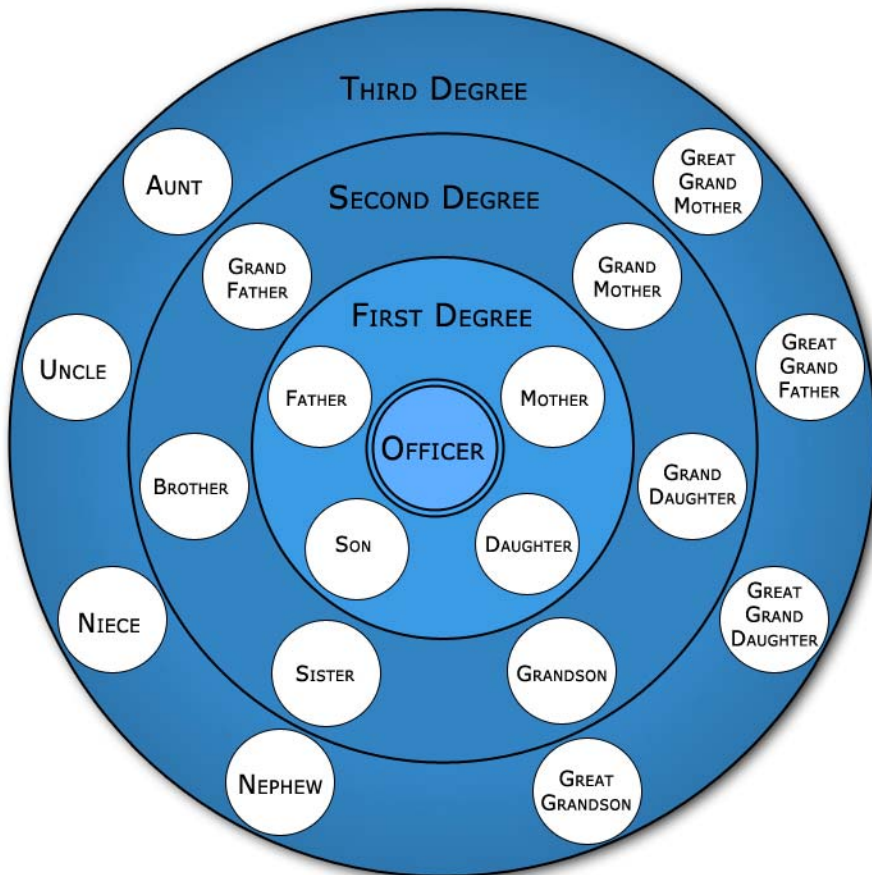
AFFINITY KINSHIP

Relationship by Marriage



CONSANGUINITY KINSHIP

Relationship by Blood



DISCLOSURE OF INTERESTS

Cameron County, Texas requires all persons or firms seeking to do business with the County to provide the following information. Every question must be answered. If the question is not applicable, answer with "N/A." By law this questionnaire must be filed with the records administrator (County Clerk's Office) of the local government.

Date _____

FIRM NAME: _____

ADDRESS: _____

FIRM is: 1. Corporation () 2. Partnership () 3. Sole Owner ()
4. Association () 5. Other () _____

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee, elected official, or member of Commissioners Court" of Cameron County having Substantial Interest in Business Entity **Local Govt. Code 171.002**

DISCLOSURE OF INTERESTS (CONTINUED)

- a) For purpose of this chapter, a person has a substantial interest in a business entity if :
- (1) the person owns 10 percent or more of the voting stock or shares of the business entity or owns either 10 percent or more or \$15,000 or more of the fair market value of the business entity; or
 - (2) funds received by the person from the business entity exceeds 10 percent of the person's gross income for the previous year.
- b) A person has a substantial interest in real property if the interest is an equitable or legal ownership with a fair market value of \$2,500 or more.
- c) A local public official is considered to have a substantial interest under this section if a person related to the official in the first degree by consanguinity or affinity, as determined under Chapter 573, Government Code, has a substantial interest under this section.

Name	Title	Department

CERTIFICATE

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the Cameron County as changes occur.

Certifying Person: _____ Title: _____
 (Type or Print)

Signature of Certifying Person: _____ Date: _____

TERMS AND CONDITIONS

ADDENDA: When specifications are revised, the Cameron County Purchasing Department will issue an addendum addressing the nature of the change. Bidders must **sign and include it in the returned bid package.**

ADVERTISING: Seller shall not advertise or publish, without Buyer's Prior consent, the fact that Buyer has entered into this contract, except to the extent necessary to comply with proper request for information from an authorized representative of the federal, state or local government.

AWARD: Cameron County may hold all bids for a period of forty five (45) days. Cameron County reserves the right to delete any item it considers too expensive. Bid prices are to be F.O.B. Cameron County. All discounts will be considered in determining the lowest, responsible bidder. Cameron County reserves the right to award this contract on the basis of **LOWEST AND BEST BID** in accordance with the laws of the State of Texas, to waive any formality or irregularity, to make awards to more than one Bidder, to reject any or all bids. In the event the lowest dollar Bidder meeting specifications is not awarded a contract, the Bidder may appear before the Commissioners Court and present evidence concerning bidders responsibility after officially notifying the office of the Purchasing Agent of his intent to appear

BONDS: If this bid requires submission of bid guarantee and performance bond, there will be a separate page explaining those requirements. Bids submitted without the required bid bond or cashier's check are not acceptable.

CANCELLATION AND TERMINATION: Buyer shall have the right to cancel for default all or any part of the undelivered portion of this order if Seller breaches any of the terms hereof, including warranties of Seller or if the Seller becomes insolvent or commits acts of bankruptcy. Such right of cancellation is in addition to, and not in lieu of, any other remedies which Buyer may have in law or equity.

TERMINATION: The performance of work under this order may be terminated in whole, or in part, by the Buyer in accordance with this provision. Termination of work hereunder shall be effected by the delivery to the Seller of a "Notice of Termination" specifying the extent to which performance of work under the order is terminated and the date upon which such termination becomes effective. Such right of termination is in addition to, and not in lieu of, rights of Buyer set forth. Cameron County reserves the right to terminate the contract for default if Bidder breaches any of the terms therein, including warranties of Bidder or if the Bidder becomes insolvent or commits acts of bankruptcy. Such right of termination is in addition to and not in lieu of any other remedies which Cameron County may have in law or equity. Default may be construed as, but not limited to, failure to deliver the proper goods and/or services within the proper amount of time, and/or to properly perform any and all services required to Cameron County's satisfaction and/or to meet all other obligations and requirements. Cameron County may terminate the contract without cause upon thirty (30) days written notice.

COLOR SELECTION: Determination of colors of materials is a right reserved by using department unless otherwise specified in bid. Unspecified colors shall be quoted as standard colors, NOT colors which require up-charges or special handling. Unspecified fabrics or vinyls should be construed as medium grade. If Bidder fails to get color/material approvals prior to delivery of merchandise, the using department may refuse to accept items and demand correct shipment without penalty, subject to other legal remedies.

CONTRACT RENEWALS: Renewals may be made ONLY by written agreement between Cameron County and the Bidder. Any price escalations are limited to those stated by the Bidder in the original bid. Annual bid renewal – Price Increases: All Annual Bids with a one (1) year renewal option requires that the awarded bidder must notify Cameron County of any anticipated price increases to the current Annual Bid (in writing) at least two months prior to the annual renewal award date unless otherwise specified within the specific provisions of the Bid. This allows the County sufficient time to plan for re-bidding due to a Bidder required price increase. If Bidder fails to notify the County it shall be assumed that there will be no price increase for the following year's award period if renewed. This procedure does not apply to any Annual Bids which allow for Open Market Price increases or Cost allowance increases during the bid award period (as so specified in the Bid documents).

DISCRIMINATION: In order to comply with the provisions of fair employment practices, the contractor agrees as follows: 1.) the contractor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; 2) in all solicitations or advertisements for employees, the contractor will state that all qualified applicants will receive consideration without regard to race, color, sex, age, religion, handicap or national origin; 3) the contractor will furnish such relevant information and reports as requested by the County for the purpose of determining compliance with these regulations; and 4) failure of the contractor to comply with these laws will be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part.

DISQUALIFICATION OF BIDDER: Upon signing this bid document, an Bidder offering to sell supplies, materials, services, or equipment to Cameron County certifies that the Bidder has not violated the antitrust laws of this state codified in Texas Business and Commerce Code §15.01, et seq., as amended, or the federal antitrust laws, and has not communicated directly or indirectly the bid made to any competitor or any other person engaged in such line of business. Any or all bids may be rejected if the County believes that collusion exists among the Bidders. Bids in which the prices are obviously unbalanced may be rejected. If multiple bids are submitted by a Bidder and after the bids are opened, one of the bids is withdrawn, the result will be that all of the bids submitted by that Bidder will be withdrawn; however, nothing herein prohibits a Bidder from submitting multiple bids for different products or services.

EVALUATION: Evaluation shall be used as a determinant as to which bid items or services are the most efficient and/or most economical for the County. It shall be based on all factors which have a bearing on price and performance of the items in the user environment. All bids are subject to tabulation by the Cameron County Purchasing Department and recommendation to Cameron County Commissioners Court. Compliance with all bid requirements, delivery and needs of the using department are considerations in evaluating bids. **Pricing is NOT the only criteria for making a recommendation.**

The Cameron County Purchasing Department reserves the right to contact any Bidder, at any time, to clarify, verify or request information with regard to any bid.

PROTEST PROCEDURES: Procedure - This protest procedure is available to Bidders responding to this Bid requesting a debriefing conference.

Debriefing Conference – A debriefing conference must be requested in writing to the Purchasing Department within five (5) business days from the date of the Bid award by the Cameron County Commissioners' Court.

Protests are made - 1. To the Purchasing Department after the debriefing conference. Bidder protests shall be received, in writing, by the Purchasing Department within five (5) business days after the Bidder debriefing conference. 2. To County Auditor only after protesting first to the Purchasing Department and its resolution is not satisfactory to the protesting party. Protests to County Auditor shall be received, in writing, within five (5) business days after the Bidder has received notification of a decision on the protest from the Purchasing Department. 3. To the Commissioners Court, only after the protest to the County Auditor and Purchasing Department was not resolved satisfactory to the protestor. Protests to the Commissioners Court shall be made within five (5) business days after the Bidder has received notification of the County Auditor's decision.

Grounds for protest – 1. Errors were made in computing the score. 2. The County failed to follow procedures established in the Bid, the Purchasing policy: Acquisition or applicable state or federal laws or regulations. 3. Bias, discrimination or conflict of interest on the part of an evaluator. Protests not based on these criteria shall not be considered.

Format and Content - Protesting Bidders shall include, in their written protest to the Cameron County Purchasing Department, all facts and arguments upon which they rely. Bidders shall, at a minimum, provide: 1. Information about the protesting Bidder; name of firm, mailing address, phone number and name of individual responsible for submission of the protest. 2. Information about the acquisition and the acquisition method. 3. Specific and complete statement of the County's action(s) protested. 4. Specific reference to the grounds for the protest. 5. Description of the relief or corrective action requested. 6. For protests to County Auditor or the Commissioners Court, a copy of the Purchasing Department's written decision on the protest.

Review Process – 1. Upon receipt of a Bidder protest, the Purchasing Department shall postpone further steps in the acquisition process until the Bidder protest has been resolved. 2. The Department's internal protest review procedures consist of the following: a) The Purchasing Department shall perform an objective review of the protest by individuals not involved in the acquisition protested. The review shall be based on the written protest material submitted by the Bidder. b) A written decision will be delivered to the Bidder within five business days after receipt of the protest, unless more time is needed. The protesting Bidder shall be notified if additional time is necessary.

County Auditor Review Process - 1. The Bidder may protest to County Auditor in writing within five business days after the Bidder has received notification of the agency decision. 2. County Auditor shall consider all the available facts and issue a decision in writing within five business days after receipt of the protest, unless more time is needed. The protesting Bidder shall be notified if additional time is necessary. The County Auditor's decision constitutes the final step of the protest process, except protests which may be reviewed by the Commissioner's Court. County Auditor may choose to convene a Protest Review Board (Board). The Board shall be advisory to the County Auditor and its scope of review shall be limited to procedural issues raised by the protesting Bidder.

Final Determination - The final determination shall 1. Find the protest lacking in merit and uphold the agency's action; or 2. Find only technical or harmless errors in the agency's acquisition process conduct, determine the agency to be in substantial compliance, and reject the protest; or 3. Find merit in the protest and provide the agency options which may include a) Correct its errors and reevaluate all bids, and/or b) Reissue the Bidder solicitation document; or c) Make other findings and determine other courses of action as appropriate.

Commissioners Court Review Process - Protests to the Commissioners Court may be made only for Commissioners Court approved acquisitions, and only after review by County Auditor. Protests of the decisions of County Auditor shall be made by letter to the County Judge, Commissioners Court, who may establish procedures to resolve the protest. Protests shall be received by the County Judge, Commissioners Court, within five business days after the decision of County Auditor in order to be considered. The resulting decision is final, with no further administrative appeal available.

FISCAL FUNDING: A multi-year lease or lease/purchase arrangement (if requested by the Special Requirements/Instructions), or any contract continuing as a result of an extension option, must include fiscal funding out. If, for any reason, funds are not appropriated to continue the lease or contract, said lease or contract shall become null and void on the last day of the current appropriation of funds. After expiration of the lease, leased equipment shall be removed by the Bidder from the using department without penalty of any kind or form to Cameron County. All charges and physical activity related to delivery, installation, removal and redelivery shall be the responsibility of the Bidder.

GRATUITIES AND PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS: Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with the County, shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body is also required to file, and do file similar affidavits, than the member is not required to abstain from further participation. Attached and included is a disclosure of all of this Company's business or pecuniary financial relationships with officers or employees of Cameron County or County entities (if any such relationships exists) must be attached and included with Bid submitted. The Buyer may, by written notice to the Seller, cancel this contract without liability to Seller if it is determined by Buyer that gratuities, in the form of entertainment, gifts, or otherwise, were offered or given by the Seller, or any agent, or representative of the Seller, to any officer or employee of Cameron County with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending or the making or any determinations with respect to the performing of such a contract. In the event this contract is cancelled by Buyer pursuant to this provision, Buyer shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by Seller in providing such gratuities. Consistent and continued tie bidding could cause rejection of bids by the County and/or investigation for Anti-Trust violations. Bidder guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the contractor for the purpose of securing business.

HISTORICALLY UNDERUTILIZED BUSINESS (HUB) CERTIFICATION: If Bidder is a Certified Historically Underutilized Business (HUB), please include a copy of your HUB Certificate with your Bid. This information will assist Cameron County in the percentage tracking of HUB utilization.

LOCAL BIDDER'S PRINCIPAL PLACE OF BUSINESS - 3% PREFERENCE: (consideration of location) The County Commissioner's Court may award to the lowest bidder or the bidder whose principal place of business is within Cameron County if the Commissioner's Court determines, in writing, that the local bidder offers the County the best combination of contract price and additional economic development opportunities for Cameron County created by the contract award, including the employment of residents of Cameron County and increased tax revenues to Cameron County. This option exists only within 3% pricing of the lowest bid price. In order to provide the County Commissioner's Court adequate information for assisting in considering this option, the bidder should submit with each bid the following information for Commissioner's Court review with all information requested to be detailed and \$\$\$ current quantifiable numeric data. 1. Where is your principal place of business (i.e.: Corporate Headquarters) City, County, State, Signature of Bidder, Title, Date? Along with this information, submit information with responses to the following questions. 2. Why and how bidder believes that the local bidder offers the County additional economic development opportunities for Cameron County created by the contract award? 3. How will award to local bidder benefit the employment of residents of Cameron County? 4. How many employees does bidder employ within Cameron County and how many employees are affected financially by award/purchase? 5. How will award to local bidder increased tax revenues to Cameron County? This information should be provided and updated with each bid submitted to the County. If bidder is local and within 3% of the lowest bid, this information will be submitted to Commissioner's Court along with tabulation sheet. **There has been no mandatory requirement or Policy established by Commissioners Court which requires submitting answers to these questions or attending Commissioners Court meetings for the awarding of bids relative to 3% local preference, however individual Commissioners may or may not have preferences (relative to these issues) when making their decision. This paragraph will be revised upon policy change made by Commissioners Court.**

MAINTENANCE: Maintenance required for equipment bid should be available in Cameron County by a manufacturer authorized maintenance facility. Costs for this service shall be shown on the Pricing/Delivery Information form. If Cameron County opts to include maintenance, it shall be so stated in the purchase order and said cost will be included. Service will commence only upon expiration of applicable warranties and should be priced accordingly.

MATERIAL SAFETY DATA SHEETS: Under the "Hazardous Communication Act", commonly known as the "Texas Right to Know Act", a Bidder must provide to the County with each delivery, material safety data sheets which are applicable to hazardous substances defined in the Act. Failure of the Bidder to furnish this documentation will be cause to reject any bid applying thereto.

NAME BRANDS: Specifications may reference name brands and model numbers. It is not the intent of Cameron County to restrict these bids in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Bidders may offer items of equal stature and the burden of proof of such stature rests with Bidders. Cameron County shall act as sole judge in determining equality and acceptability of products offered.

PRICING: Prices for all goods and/or services shall be firm for the duration of this contract and shall be stated on the Pricing/Delivery Information form. **Prices shall be all inclusive: No price changes, additions, or subsequent qualifications will be honored during the course of the contract.** All prices must be written in ink or typewritten. Pricing on all transportation, freight, drayage and other charges are to be prepaid by the contractor and included in the bid prices. If there are any additional charges of any kind, other than those mentioned above, specified or unspecified, Bidder MUST indicate the items required and attendant costs or forfeit the right to payment for such items. Where unit pricing and extended pricing differ, unit pricing prevails.

RECYCLED MATERIALS: Cameron County encourages the use of products made of recycled materials and shall give preference in purchasing to products made of recycled materials if the products meet applicable specifications as to quantity and quality. County will be the sole judge in determining product preference application.

SCANNED RE-TYPED RESPONSE – FLOPPY DISK: If in its bid response, Bidder either electronically scans, re-types, or in some way reproduces the County's published bid package, then in event of any conflict between the terms and provisions of the County's published bid specifications, or any portion thereof, and the terms and provisions of the bid response made by Bidder, the County's bid specifications **as published** shall control. Furthermore, if an alteration of any kind to the County's published bid specifications is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

FLOPPY DISK: If Bidder obtained the bid specifications on a floppy disk in order to prepare a response, **the bid must be submitted in hard copy** according to the instructions contained in this bid package. If, in its bid response, Bidder makes any changes whatsoever to the County's published bid specifications, the County's bid specifications **as published** shall control. Furthermore, if an alteration of any kind to the County's published bid specifications is only discovered after the contract is executed and is or is not being performed; the contract is subject to immediate cancellation.

SILENCE OF SPECIFICATIONS: The apparent silence of specifications as to any detail, or the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and that only material and workmanship of the finest quality are to be used. All interpretations of specifications shall be made on the basis of this statement. The items furnished under this contract shall be new, unused of the latest product in production to commercial trade and shall be of the highest quality as to materials used and workmanship. Manufacturer furnishing these items shall be experienced in design and construction of such items and shall be an established supplier of the item bid. **Substitute items will not be accepted unless approved (in advance).**

SUPPLEMENTAL MATERIALS: Bidders are responsible for including all pertinent product data in the returned bid package. Literature, brochures, data sheets, specification information, completed forms requested as part of the bid package and any other facts which may affect the evaluation and subsequent contract award should be included. Materials such as legal documents and contractual agreements, which the Bidder wishes to include as a condition of the bid, must also be in the returned bid package. Failure to include all necessary and proper supplemental materials may be cause to reject the entire bid.

TITLE TRANSFER: Title and Risk of Loss of goods shall not pass to Cameron County until Cameron County actually receives and takes possession of the goods at the point or points of delivery. Receiving times may vary with the using department. Generally, deliveries may be made between 8:30 a.m. and 4:00 p.m., Monday through Friday. Bidders are advised to consult the using department for instructions. The place of delivery shall be shown under the "Special Requirements/Instructions" section of this bid package and/or on the Purchase Order as a "Deliver To:" address.

USAGE REPORTS: Cameron County reserves the right to request, and receive at no additional cost, up to two (2) times during the contract period, a usage report detailing the products and/or services furnished to date under a contract resulting from this ITB. The reports must be furnished no later than five (5) working days after written request and itemize all purchases to date by Cameron County department, description of each item purchased, including manufacturer, quantity of each item purchased, per unit and extended price of each item purchased, and total amount and price of all items purchased.

WARRANTY PRICE: (a) The price to be paid by the Buyer shall be that contained in Seller's bid which Seller warrants to be no higher than Seller's current prices on orders by others for products of the kind and specification covered by this agreement for similar quantities under similar or like conditions and methods of purchase. In the event Seller breaches this warranty, the prices of the items shall be reduced to the Seller's current prices on orders by others, or in the alternative, Buyer may cancel this contract without liability to Seller for breach or Seller's actual expense. (b) The Seller warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach or violation of this warranty, the Buyer shall have the right in addition to any other right or rights to cancel this contract without liability and to deduct from the contract price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee. Bidders shall furnish all data pertinent to warranties or guarantees which may apply to items in the bid. Bidders may not limit or exclude any implied warranties. Bidder warrants that product sold and services provided to the County shall conform to the standards and laws established by the U.S. Department of Labor, U.S. Department of Homeland Security, Occupational Safety and Health Administration and O.S.H.A. Act of 1970. In the event product does not conform to OSHA Standards, where applicable, Cameron County may return the product for correction or replacement at the Bidder's expense. If Bidder fails to make the appropriate correction within a reasonable time, Cameron County may correct at the Bidder's expense.

WARRANTY PRODUCTS: Seller shall not limit or exclude any implied warranties and any attempt to do so shall render this contract voidable at the option of the Buyer. Seller warrants that the goods furnished will conform to the specifications, drawings and descriptions listed in the bid invitation and to the sample(s) furnished by Seller, if any. In the event of a conflict between the specifications, drawings and descriptions, the specifications shall govern.

SAFETY WARRANTY: Seller warrants that the product sold to Buyer shall conform to the standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act of 1970. In the event the product does not conform to OSHA standards, Buyer may return the product for correction or replacement at the Seller's expense. In the event Seller fails to make the appropriate correction within a reasonable time, correction made by Buyer will be at Seller's expense. Have you attached the required warranty information to the bid (if applicable)? Yes, No.

YEAR 2000 COMPLIANCE: All Products and/or services furnished as part of this contract must be year 2000 compliant. This applies to all computers including hardware and software as well as all other commodities with date sensitive embedded chips.

APPLICABLE LAW

This agreement shall be governed by the Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning "the Uniform Commercial Code" as adopted in the State of Texas as effective and in force on the date of this agreement.

ASSIGNMENT DELEGATION: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written permission of the Buyer. Any attempted assignment or delegation by Seller shall be wholly void and totally ineffective for all purposes unless made in conformity with this paragraph. Any contract entered into pursuant to this request is not assignable, nor the duties thereunder, by either party, without the written consent of the other party in the contract County Judge and County Auditor.

CONTRACT OBLIGATION: Cameron County Commissioners Court must award the contract and the County Judge or other person authorized by the Cameron County must sign the contract before it becomes binding on Cameron County or the Bidders. Department heads are NOT authorized to sign agreements for Cameron County. Binding agreements shall remain in effect until all products and/or services covered by this purchase have been satisfactorily delivered and accepted.

ERRORS AND OMISSIONS: Errors and Omissions in the Bid of any provision herein described will not be construed as to relieve the Bidder of any responsibility or obligation, requisite to the complete and satisfactory implementation, operation, and support of any and all equipment, systems or services.

FORCE MAJEURE: If, by reason of Force Majeure, either party hereto shall be rendered unable wholly, or in part, to carry out its obligations under this agreement, then such party shall give notice and full particulars of Force Majeure in writing to

the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch. The term "Force Majeure" as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightening, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely with the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty.

HOLD HARMLESS AGREEMENT: Contractor, the successful Bidder, shall indemnify and hold Cameron County harmless from all claims for personal injury, death and/or property damage resulting directly or indirectly from contractor's performance. Contractor shall procure and maintain, with respect to the subject matter of this bid, appropriate insurance coverage including, as a minimum, public liability and property damage with adequate limits to cover contractor's liability as may arise directly or indirectly from work performed under terms of this bid. Certification of such coverage must be provided to the County upon request.

INFRINGEMENTS: There will be no warranty by buyer against infringements. As part of this contract for sales, Seller agrees to ascertain whether goods manufactured in accordance with the specifications attached to this agreement will give rise to the rightful claim of any third person by way of infringement or the like. Buyer makes no warranty that the production of goods according to the specification will not give rise to such a claim, and in no event shall Buyer be liable to Seller for indemnification in the event that Seller is sued on the grounds of infringement or the like. If Seller is of the opinion that an infringement or the like will result, he will notify Buyer to this effect in writing within two (2) weeks after the signing of this agreement. If Buyer does not receive notice and is subsequently held liable for the infringement or the like, Seller will hold Buyer harmless. If Seller in good faith ascertains that production of the goods in accordance with the specifications will result in infringement or the like, this contract shall be null and void, except that Buyer will pay Seller the reasonable cost of his/her search as to infringement. The contractor agrees to protect the County from claims involving infringement of patents or copyrights.

INTERPRETATION PAROLE EVIDENCE: This writing is intended by the parties as a final expression of their agreement and is intended also as a complete and exclusive statement of the terms of their agreement. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in the agreement. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement, even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. Whenever a term defined by the Uniform Commercial Code is used in this agreement, the definition contained in the Code is to Control.

MODIFICATIONS: This contract can be modified or rescinded only by a writing signed by both of the parties or their duly authorized agents.

O.S.H.A: Bidder must meet all Federal and State OSHA requirements.

RIGHT TO ASSURANCE: Whenever one (1) party to this contract in good faith has reason to question the other party's intent to perform, he/she may demand that the other party give written assurance of their intent to perform. In the event that a demand is made, and no assurance is given within five (5) days the demanding party may treat this failure as an anticipatory repudiation of the contract.

SEVERABILITY: If any section, subsection, paragraph, sentence, clause, phrase or word of these requirements or the specifications shall be held invalid, such holding shall not affect the remaining portions of these requirements and the specifications and it is hereby declared that such remaining portions would have been included in these requirements and the specifications as though the invalid portion had been omitted.

VENUE: Both parties agree that venue for any litigation arising from this contract shall lie in Cameron County, Texas.

WAIVER OF SUBROGATION: Bidder and Bidder's insurance carrier waive any and all rights whatsoever with regard to subrogation against Cameron County as an indirect party to any suit arising out of personal or property damages resulting from Bidder's performance under this agreement. No claim or right arising out of a breach of this contract can be discharged in whole, or in part, by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing, signed by the aggrieved.