



**SOLICITATION, OFFER  
AND AWARD**

Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

<b>Solicitation No.:</b> RFP 2023-P09 Delinquent Tax Collection Services	<b>Date Issued: May 25, 2023</b>
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**SOLICITATION**

Vendors must submit proposals as listed: One (1) original and one (1) digital copy on a thumb drive at the Hays County Purchasing Office at the address shown above or Electronically through BidNet Direct and one (1) hard copy at the Hays County Purchasing Office at the address shown above until:  
**11:00 a.m. local time June 15, 2023.**  
**Proposals received after the time and date set for submission will be returned unopened.**

For information please email: <a href="mailto:purchasing@co.hays.tx.us">purchasing@co.hays.tx.us</a>	Questions concerning this RFP must be received in writing no later than 5:00 on June 2, 2023.	Phone No.: (512) 393-2283
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**OFFER (Must be fully completed by Respondent)**

In compliance with the above, the undersigned offers and agrees to furnish all items or services awarded at the prices stipulated for each item delivered at the designated point(s) and within the time specified herein. Award shall include all solicitation documents and attachments.  
**MANUALLY SIGN ALL COPIES SUBMITTED. SIGNATURE IS MANDATORY.**

<b>Respondent</b>		<b>Respondent's Authorized Representative</b>	
Entity Name:		Name:	
Mailing Address:		Title:	
		Email Address:	
		Phone No.:	
Signature:		Date:	
Name, Email Address and Phone No. of person authorized to conduct negotiations on behalf of Respondent:			

**NOTICE OF AWARD (To be completed by County)**

Funding Source:	Awarded as to item(s):	Contract Amount:
Vendor:		Term of Contract:
This contract issued pursuant to award made by Commissioners Court on:	Date:	Agenda Item:

<b>Important: Award notice may be made on this form or by other Authorized official written notice.</b>	_____	_____
	Hays County Judge	Date
	_____	_____
	Hays County Clerk	Date

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## I. RFP Submittal Checklist

This checklist is provided for the Vendor's convenience and identifies documents that MUST be submitted for the bid/proposal/SOQ to be considered responsive, as well as the required forms requested by Hays County.

### **A COMPLETE SOLICITATION RESPONSE PACKAGE INCLUDES:**

**The following forms MUST be returned for the bid/proposal/SOQ to be considered responsive:**

- \_\_\_ 1. Solicitation, Offer and Award Form completed and signed
- \_\_\_ 2. Proposal
- \_\_\_ 3. Vendor Reference Form

### **Required Forms by Hays County:**

- \_\_\_ 1. Conflict of Interest Questionnaire completed and signed
- \_\_\_ 2. Code of Ethics signed
- \_\_\_ 3. HUB Practices signed
- \_\_\_ 4. House Bill 89 Verification signed and notarized
- \_\_\_ 5. Senate Bill 252 Certification
- \_\_\_ 6. Debarment & Licensing Certification signed and notarized
- \_\_\_ 7. Vendor/Bidder's Affirmation completed and signed
- \_\_\_ 8. Federal Affirmations and Solicitation Acceptance
- \_\_\_ 9. Related Party Disclosure Form
- \_\_\_ 10. System for Award Management ([www.SAM.gov](http://www.SAM.gov)) Entity Registration Page
- \_\_\_ 11. Any addenda applicable to this solicitation

**Hays County will accept bids/proposals/SOQ, by the stated due date by one of the following methods:**

- \_\_\_ 1. Electronic Submission of Bid Packet through BidNet Direct and one (1) hard copy delivered, within 24 hours of proposal due date, in a sealed envelope with the Solicitation Number and Vendor's name on the outermost envelope addressed to: Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666  
OR
- \_\_\_ 2. One (1) original bid packet and one (1) digital copy on a thumb drive in a sealed envelope with the Solicitation Number and Vendor's Name on the outermost envelope, addressed to:  
Hays County Purchasing, 712 S Stagecoach Trail, Suite 1071, San Marcos, TX 78666

## II. Summary

- 1. Type of Solicitation:** Request for Proposal (RFP)
- 2. Solicitation Number:** RFP 2023-P09  
Delinquent Tax Collection Services
- 3. Issuing Office:** Hays County Auditor  
Purchasing Office  
712 S. Stagecoach Trail, Suite 1071  
San Marcos, TX 78666
- 4. Responses to Solicitation:** Sealed proposals marked with Solicitation Number and Vendor Name on the outermost envelope  
Manual: One (1) Original and one (1) digital copy on a thumb drive, or  
Electronic: Proposals can be submitted through BidNet Direct and one (1) hard copy is required to be received.
- 5. Deadline for Responses:** In issuing office no later than:  
**June 15, 2023; 11:00 a.m. Central Time (CT)**
- 6. Initial Contract Term:** October 1, 2023 – September 30, 2024
- 7. Optional Contract Terms:** Four (4), one (1) year renewal options
- 8. Designated Contact:** Hays County Purchasing  
Email: [purchasing@co.hays.tx.us](mailto:purchasing@co.hays.tx.us)
- 9. Questions & Answers:** Questions regarding this solicitation must be made in writing and submitted to the designated contact above no later than June 2, 2023; 5:00 p.m. CT. Telephone inquiries will not be accepted. Questions may be submitted by email to the address above. Answers to questions will be provided in the form of an addendum posted after the question deadline on the CivicPlus, BidNet Direct, and ESBD websites for the benefit of all potential respondents. The County reserves the right to contact the person submitting a question to clarify the question received, if necessary. Each clarification, supplement, or addenda to this IFB, if any, will be posted on the CivicPlus, BidNet Direct and ESBD websites. All potential or actual respondents are responsible for monitoring the websites for such materials. Respondents are deemed to have notice of, and are required to comply with, any such material posted in accordance with this paragraph. Respondents should not rely upon any other sources of written or oral responses to inquiries.
- 10. Addenda** Any interpretations, corrections or changes to this RFP and

specifications will be made by addenda. Sole issuing authority of addenda shall be vested in the Hays County Purchasing Office. It is the Vendor's responsibility to acknowledge receipt of all addenda with proposal submission.

**11. Contact with County Staff:**

Upon issuance of this solicitation, employees and representatives of Hays County, other than the Purchasing Office staff identified as the Designated Contact above, will not discuss the contents of this solicitation with any Vendor or its representatives. Failure of a Vendor or any of its representatives to observe this restriction may result in disqualification of any related offer. This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.

**Anticipated Schedule of Events**

May 25, 2023	Issuance of RFP
June 2, 2023	Deadline for Submission of Questions (5:00 PM CT)
June 15, 2023	Deadline for Submission of Proposals (11:00 AM CT) <b>Late proposals will not be accepted.</b>
September 2023	Anticipated contract award date

### III. Specifications

#### A. Introduction

Hays County (County) is seeking well-qualified law firm with experience and a verifiable history of delinquent tax collections programs in Texas. The awarded Firm will assist the County in delinquent collections as authorized under Sections 6.30 and 33.07 of the Property Tax Code. Other services may be requested of the firm related to delinquent property tax matters.

#### B. Background

Hays County currently contracts with McCreary, Veselka, Bragg and Allen, P.C. (MVBA) for collection of Delinquent Taxes; the current contract auto renews with a thirty-day termination. Accounts held by the current contractor shall have an additional six (6) months from contract expiration to reduce judgement or sell all tax collection lawsuits filed and collect all bankruptcy claims filed prior to the termination date of the Contract and shall have exclusive right to compensation of fees earned due to these suits and bankruptcy claims during this period.

The Hays County Tax Assessor Collector Office collects on behalf of nearly all taxing units, vast majority of special districts, and assessment districts (public improvement districts). Currently, there are 68 entities which are collected by the Tax Assessor Collector Office, with the anticipation that more will be added annually. The County currently uses Orion for tax collection software.

Statistical data of Hays County's Tax Levy and Collections.

2020 Tax Year (Fiscal Year 2021)	
Original 2020 Tax Levy 10-1-2020	\$567,616,944.65
Amount of 2020 tax due 7-1-2021	\$ 10,602,914.92
Amount of 2020 tax due 6-30-2022	\$ 9,752,343.03
Collection Percentage	98.19%

2021 Tax Year (Fiscal Year 2022)	
Original 2021 Tax Levy 10-1-2021	\$643,646,746.97
Amount of 2021 tax due 7-1-2022	\$ 7,805,385.53
Amount of 2021 tax due 4-28-2023	\$ 19,853,000.09
Collection Percentage	98.62%

#### C. Scope of Work

The tax collection attorneys will be responsible for the following duties and services:

1. Preparing monthly status and performance reports to the County indicating the progress of tax collections. The monthly progress reports prepared by the firm shall contain, at a minimum, the following information:
  - Number and types of communication with delinquent taxpayers
  - Summary of all delinquent accounts collected
  - Detailed list of suits filed
  - Detailed list of judgments rendered
  - Number of warrants issued/served
  - Detailed list of bankruptcies and status of those properties
  - Detailed list of properties submitted to Courts for auction, with date submitted and most recent status
  - Number of properties sold
  - Detailed list of properties sold or reverting to taxing entity because of non-sale
  - Detailed list of payments made by all taxpayers

2. Preparing and sending notices to delinquent taxpayers as may be required by law or as may be advisable for the purpose of expediting collections. Also, advise Hays County of errors, double assessments, or other discrepancies coming under observation during the progress of work.
3. The Firm shall send delinquent mailouts, not to coincide with the County's statement mailouts in October, January, and May.
4. The Firm will represent Hays County in all delinquent property tax suits, bankruptcy hearings, and property tax hearings before County Courts and federal agencies and will represent Hays County when Sheriff Sales are conducted at no additional expense to the County.
5. The Firm shall be responsible for the filing of delinquent property tax claims related to bankruptcy and other judicial proceedings. No suit shall be filed to collect a tax on real property unless a title search has been conducted on the property. Upon request, before filing a delinquent tax suit, the delinquent tax attorney shall provide the collector a copy of the title search.
6. Advising the County on legal issues that arise in the process of delinquent tax collection. This includes, but not limited to, legal support, advice, written opinions, and research upon request. This also includes providing recommendation to the County for or against submission of penalty and interest waivers to the taxing unit governing body pursuant to Texas Law.
7. The Firm will provide and make available annual Truth in Taxation advice, assistance and communication to guide and direct the County Tax Assessor Collector in the procedures and process of performing annual property tax rate calculations.
8. The Firm will provide Legislative updates, interpretation and application of legislation affecting operation of tax assessor/collector offices, taxing entities collected by Tax Office, ancillary responsibilities.
9. Providing such additional services as the Hays County Commissioners Court or the County staff may deem advisable to expedite the collection of delinquent taxes.
10. The Firm shall absorb all costs associated with the administration of the contract including, but not limited to all supplies, postage, court filing fees, technology, travel, and all other costs necessary to collect delinquent property taxes.
11. Intervene on behalf of Hays County in all delinquent tax suits filed by other taxing entities involving property within the boundaries of the county, on which County taxes are outstanding.
12. The Firm will assist the County with collection of the following:
  - Special Inventory Delinquent Penalties (commonly referred to as Vehicle Inventory Tax), upon request.
  - Property Assessed Clean Energy (P.A.C.E.) assessments.
  - Texas Alcoholic Beverage Commission (TABC) County portion fees, upon request.
13. The Firm shall sell all properties seized or ordered sold pursuant to foreclosure of a tax lien in accordance with the State Property Tax Code Sec. 34.01, 34.02, 34.03 and 34.04.
  - All properties struck off under the County's name or any other taxing jurisdiction that the County collects for shall be re-sold in accordance with State Property Tax Code, Sec. 34.05 and Sec. 34.06 at no additional cost to the County. If property is unable to be sold, the Firm shall provide explanation as to the reason why the property is unable to be sold.
  - Manage the County's surplus property resale program by maintaining listings of available properties on website. Prepare all necessary closing documents in relation to sale of surplus properties.
14. The Firm shall establish a Delinquent Tax Collection Law Office in Hays County with a local representative as a liaison accountable to the County Tax Collector's Office within thirty (30) days after the delinquent tax collection contract is signed.
  - Hays County has office space available within the Hays County Government Center Tax Assessor/Collector Office, which the Firm may choose to use for a monthly reimbursement cost of \$2,500, payable to Hays County.

- The Firm will also be responsible for paying for the phone and internet service, payable to Hays County.

#### **D. Hays County Responsibilities**

- Hays County shall employ a firm to enforce by suit or tax warrants for the collection of all delinquent tax, penalty, and interest owing to Hays County and any other taxing jurisdiction the County Tax Assessor-Collector's office collects for now and in the future.
- Hays County shall furnish all necessary delinquent tax information to the Contractor on all property within the boundaries of Hays County.
  - The Contractor shall determine the name identity and location of necessary parties and procure necessary descriptions of property and recover the costs of obtaining such information.
- Hays County agrees to pay the Contractor up to the statutory amount permitted not to exceed 20%, per Texas Property Tax Code Section 6.30 (c) collected and remitted from the taxpayer to the Contractor.
  - The County has previously adopted and does hereby reaffirm the adoption of the additional penalty provided by Sections 33.07, 33.08 and 33.11 of the Texas Property Tax Code. The penalty imposed pursuant to Section 33.07, 33.08 and 33.11 of the Texas Property Tax Code is not subject to the contractual fee.
- The additional collection penalty imposed up to 20% is collected at the time of payment from the taxpayer and remitted to the tax attorney.
- Hays County shall provide a website and post tax sale property listings for the benefit of the public and provide internet accessible property tax sale and resale information over the Internet. This information is identified as the Sheriff's Sale.

#### **E. Qualifications**

The following minimum requirements must be demonstrated in order for the submission to be considered responsive to Hays County.

- Contractor shall have at least five (5) years' experience in collection fees and/or taxes for governmental entities.
- Licensed by the State Bar of Texas as a licensed attorney to perform legal services and possess a satisfactory record of integrity and ethics.
- The responding individual or business must be registered in the State of Texas to provide the products or services required in the solicitation, and the individual or business must have all licensure required by the State to provide any services required under this contract.
- Possess the resources and personnel necessary to provide an efficient and successful solution.
- Provide the most economical solution to completely satisfy the objectives laid out in the Scope of Work.
- Be familiar with the local conditions and requirements under which these services must be provided.

**REFERENCES:** Hays County requires respondent to supply with the statement of qualifications, a list of at least three (3) references where like services have been supplied by their company for municipalities of similar size within the last five (5) years. Include name of company, address, telephone number and name of representative.

**RESPONSIBILITY:** A prospective respondent must affirmatively demonstrate respondent's responsibility. A prospective respondent must meet the following requirements:

- Have adequate financial resources, or the above ability to obtain such resources as required
- Be able to comply with required or proposed delivery schedule



- Have a satisfactory record of performance
- Be otherwise qualified and eligible to receive an award

**TIME OF PERFORMANCE:** It is imperative that the prospective respondent respond to County requests in a timely manner and comply with required or proposed delivery schedules. Please describe how you intend to respond to and track County requests.

**SYSTEM FOR AWARD MANAGEMENT:** Respondent and its Principals may not be debarred or suspended nor otherwise on the Excluded Parties List System (EPLS) in the System for Award Management (SAM). Include verification that the company as well as the company's principals are not listed (are not debarred) through the System for Award Management ([www.SAM.gov](http://www.SAM.gov)). Enclose a printout of the Entity Registration page that shows your firm is in active status and is not expired.

#### **F. Proposal Requirements**

Proposals shall be prepared simply and economically, providing a straightforward, concise description of the respondent's ability to meet the requirements of this RFP. Emphasis shall be on the quality, completeness, clarity of content, responsiveness to the requirements, and the understanding of the County's Needs.

Proposals shall not exceed twenty (30) pages (15 sheets front and back) in length, but not including:

- **Front and Rear Covers**
- **Letter of Transmittal:** RFP Subject Line, name of Vendor, address, telephone number, name of contact person, and signed by the individual authorized to negotiate for and contractually bind the company.
- **Table of Contents**
- **Appendix materials (any required forms, see RFP Submittal Checklist, and addenda from Hays County)**

Items that count towards the 30-page limit

- **Profile/Experience of the Company**
  - Company information shall include: Company legal name of the Bidder, principal place of business, number of years in business, and description of company organization including identification of number of staff dedicated to the project.
  - Experience of the Company and prior work performance on three (3) projects of similar size and scope that have been completed in the last five (5) years.
  - List of any criminal charges, civil lawsuits, or dispute resolutions to which the Company is a part in the past five (5) years and the nature of the issue. Indicating if and how it was resolved.
  - Collection History: Submit the firm's experience by providing the collection data for at least three (3) taxing entities with similar levy size of Hays County under contract.
  - Identify whether or not your firm has had any contracts terminated due to non-performance within the last five (5) years.
  - Identify whether or not your firm has had any adverse actions sanctioned by any regulatory authorities within the last five (5) years.
  - Identify whether or not your firm has had any cybersecurity incidents involving your firm within the last three (3) years.
- **Key Personnel**
  - Provide resumes of all employees who may be assigned to provide services if your company is selected.

- Provide an organizational chart containing the names, telephone numbers and email address of the prime providers and any sub-providers that would be proposed for the team and their contract responsibilities by work category.
- **Capacity to Perform**
  - Describe the capacity to perform the Scope of Work activities.
  - Provide a description of your proposed approach/strategy to provide and perform the objectives, specific elements, and tasks associated with services. At a minimum include the following:
    - Summary of proposed collection activities such as: collection letters, telephone contacts, skip trace techniques, daytime and evening collection staff, payment options, etc.
    - An example of title research documentation and describe efforts.
    - Detailed payment processing services.
    - Proposed methodology for: Addressing customers' questions and issues, and non-English speaking customer.
    - Proposed method of communication between firm and County Staff.
    - How your firm proposes to establish and manage information flow.
    - A statement identifying who is liable for mistakes and lawsuits that may ensure.
  - Implementation Schedule: description of your firm's implementation plan and schedule for integrating the proposed collection program into current procedures.
  - Clearly define the County's participation and responsibilities outside of section III. Specifications, D. Hays County Responsibilities.
  - Describe the proposed software application your firm will use and how it will interface with the existing County software, as described in the Scope of Work.
  - Provide evidence of ability to maintain records of placements, collections, recovery and producing reports, and billing for an unlimited number of clients and debtors and describe backup capabilities.
  - Provide examples of forms, invoices, billing statements, monthly reports and other documentation used or required in the collection process.
  - Provide supplemental information or materials that would be beneficial to the decision process.
  - Provide descriptions and details of any comprehensive services offered beyond delinquent tax collections that may be beneficial for the County to consider.
  - Optional: provide applicable analysis, reports, or interpretation of Hays County's Delinquent Tax Roll.
- **Proposed Commission Rate (Tax Attorney)**
  - Tax Attorney – Proposed percentage compensation not to exceed 20%, as per Texas Property Tax Code Section 6.30(c).
- **Appendix materials (any required forms, see RFP Submittal Checklist, and addenda from Hays County)**

Sheet size is limited to 8½" x 11" sheets only, using 12-point font. The organizational chart is permissible to use an 11" x 17" sheet (one-sided) and a font smaller than 12-point for the organizational chart, provided text is clearly legible. It is permissible to use a font smaller than 12-point for graphics, provided text is clearly legible.

The proposal must be submitted with a continuous binding (e.g. – spiral, GBC, etc.) along the left edge; no other binding will be accepted and should not exceed thirty (30) pages, fifteen (15) pages front and back, not including the appendix materials.

## **G. Evaluation Criteria**

The Evaluating Committee will evaluate each respondent's proposal based on a comprehensive set of criteria. Proposals received shall be evaluated and ranked by the County according to the following criteria: **(Maximum Point Total 100)**

1. **Experience of the Company** **45 points**  
Local tax collection experience, including legal personnel, support personnel, collection experience, and demonstrated results.
2. **Capacity to Perform** **45 points**  
Local capability of the firm in the areas collection process, tax sale experience, the spectrum of services to be offered to prospective clients and data processing capabilities, as well as any comprehensive services beyond delinquent tax collections. Demonstrated ability to handle complex delinquent tax litigation and comprehensive bankruptcy services.
3. **Proposed Commission Rate** **10 points**  
Proposed percentage compensation not to exceed 20%, as per Texas Property Tax Code Section 6.30(c).

**Interview (optional)**

**Ranking**

At the County's discretion, submitting entities may be requested by the Evaluating Committee to conduct interviews as part of the evaluation process, prior to making recommendations to Commissioners Court regarding award.

It is the practice of Hays County to encourage local participation and to promote and encourage contracting and subcontracting opportunities for locally owned businesses and labor in all contracts.

The County of Hays does not discriminate on the basis of race, color, national origin, sex, religion, age and disability in employment or the provision of services. Hays County is an Affirmative Action/Equal Opportunity Employer and strives to attain goals for Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), as amended. Section 3 Residents and Business Concerns, Minority Business Enterprises, Small Business Enterprises and Women Business Enterprises are encouraged to submit proposals.

Hays County reserves the right to award to multiple contractors and to designate contractors in terms of primary service providers and standby service providers.

**H. Submittal Requirements**

The Company must deliver their proposal to the Hays County Purchasing Department by one of the following methods by the specified deadline:

Mailed or Dropped off Proposals:

- One (1) original proposal with required forms manually signed by the respondent with original signatures
- One (1) digital copy of the full proposal with all required forms on a thumb drive

Electronic Proposals:

- Upload proposal with required forms manually signed by the respondent. (through BidNet Direct)
- One (1) original proposal with required forms manually signed by the respondent, delivered to the Hays County Purchasing Office. Either the original or Electronic Proposal (through BidNet Direct) MUST be received by the due date and time to be considered responsive. Physical copy must be received in the Hays County Purchasing Office within 24 hours of proposal due date.

**LATE SUBMITTALS WILL NOT BE ACCEPTED.**

ALTERING PROPOSALS: Any interlineations, alteration, or erasure made before receiving time must be initialed by the signer of the proposal, guaranteeing authenticity.

WITHDRAWING OF PROPOSAL: A proposal may be withdrawn at any time prior to the official opening. After the official opening, proposals may not be amended, altered or withdrawn without the recommendation of the County Purchasing Manager and the approval of Commissioners Court.

FORMS: All proposals must be submitted on the forms provided in this solicitation document. Changes to solicitation forms made by bidders shall disqualify the proposal.

RESPONDENT'S ACCEPTANCE: by submitting a response to this RFP, the respondent certifies that it has fully read and understands the terms, conditions and statements of this Request for Qualifications and has knowledge of the scope of the quality of services to be furnished and intends to adhere to the provisions described herein.

**I. Award of Contract**

BASIS OF AWARD: The County reserves the right to award a contract for named project to an organization on the basis of "best value". Best value will be determined based on cost, experience, qualifications, references, proposed methodology/technical proposal, and overall responsiveness, clarity, and organization of the solicitation response.

COMPANY AGREES, if this proposal is accepted, to furnish any and all services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specifications. The period for acceptance of the proposal will be one hundred twenty (120) calendar days.

The awarded company expressly warrants that all services specified in the RFP will be performed with care and diligence and in accordance with all specifications of the RFP. The awarded company agrees to correct any deficiencies in its performance of services upon notification by the County and without additional expense to the County.

ACCEPT OR REJECT: It is understood that Hays County reserves the right to accept or reject any and all submittals as it shall deem to be in the best interest of Hays County. The prospective entities are fully responsible for all costs incurred in the preparation and/or presentation of the RFP submittals. All received RFP submittals will become the property of the County. The RFP does not commit the County to award a contract, issue a purchase order, or pay any costs incurred in the preparation of a submission in response to this RFP. Proposals may be held for one hundred twenty (120) calendar days after opening without taking action.

COMMISSIONERS COURT APPROVAL REQUIRED: The Hays County Commissioners Court must approve the contractors selected to provide the services requested in this RFP. The County reserves the right to authorize contract negotiations to begin without further discussion with contractors submitting a response. Therefore, each proposal should be submitted as completely and accurately as possible. The County reserves the right to request additional data, oral discussions, or presentations in support of the written proposal. If the proposal is accepted and approved by Commissioners Court, this document shall be made part of the contract.

#### Respondent's Obligation Regarding Evaluation

- a. **SUBMISSION OF INFORMATION.** Submitters are cautioned that it is each contractor and or individual's sole responsibility to submit information related to the evaluation categories, and the County is under no obligation to solicit such information if it is not included with the proposal. Failure of a contractor or individual to submit such information may cause an adverse impact on the evaluation of the specific proposal.
- b. **SUBMITTER REVIEW OF RFP.** Submitters are responsible for examining and being familiar with all specifications, terms, conditions, provisions, and instructions of the RFP and their responses. Failure to do so will be at the contractor and/or individual's risk and will not be a determinative factor when awarding the contract for services.

**ORAL NON-BINDING:** Any non-written representations, explanations, or instructions given by County staff or County agents are not binding and do not form a part of, or alter in any way, the RFP, a written agreement pertinent to the RFP, or the awarding of the contract.

**RESERVATIONS BY COUNTY:** The Commissioners Court has the right to accept, reject, or cancel any and all submissions. In addition, the County expressly reserves the following:

1. waive any defect, irregularity, or informality in any submission or RFP procedure;
2. extend the RFP closing time and date;
3. reissue this RFP in a different form or context;
4. procure any item by other allowable means;
5. revise and modify, at any time before the RFP submittal due date, the factors and/or weights of factors the County will consider in evaluating RFP submittals and to otherwise revise or expand its evaluation methodology as set forth herein;
6. investigate the qualifications of any contractor under consideration and require confirmation of information furnished by a contractor;
7. require additional information from a contractor concerning contents of its RFP submittal and/or require additional evidence of qualifications;
8. waive minor deviations from specifications, conditions, terms, or provisions of the RFP, if it is determined that waiver of the minor deviations improves or enhances the County's business interests under the RFP;
9. extend any contract when most advantageous to the County, as set forth in this RFP.
10. appoint an evaluation committee to review RFP submittals or responses, make recommendations and seek the assistance of outside technical experts in RFP submittal evaluation;
11. hold interviews and conduct discussions and correspondence with one or more of the contractors responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.
12. disclose information contained in an RFP submittal to the public as required under the Texas Public Information Act; AND/OR
13. exercise any other right reserved or afforded to Hays County under this RFP. The County reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the County.

The County shall not, under any circumstances, be bound by or be liable for any obligations with respect to any construction project until such time (if at all) a contract has been awarded and all approvals obtained in form and substance satisfactory to the County have been executed and authorized by the County, and then only to the extent of such agreements.

#### **J. Warranty of Performance**

The successful respondent expressly warrants that all services specified in the RFP will be performed with care and diligence and in accordance with all specifications of the RFP. The successful bidder agrees to correct any deficiencies in performance of services upon notification by the County and without additional expense to the County.

CONTINUING NON-PERFORMANCE of the bidder, in terms of specifications, shall be basis for the termination of the contract by the County. The County shall not pay for merchandise/services that are unsatisfactory. Failure to perform any provision will constitute a default of contract, in which case, corrective action shall take place within ten (10) days from the date of written notice citing the nature of breach. Failure to take corrective action or to provide a satisfactory written reply excusing such failure within the prescribed ten (10) days will authorize the County to terminate this agreement by written notice.

COMPLIANCE WITH LAWS: The successful Respondents shall comply with all applicable federal, state and local laws and regulations pertaining to the practice of the profession and the execution of the duties under the solicitation. Any contract executed as a result of this RFP shall be governed by the laws of the State of Texas.

## IV. General Terms and Conditions for Solicitations

### Applicable To: Request for Proposals (RFP)

#### 1. GENERAL DEFINITIONS:

- a. "Auditor" means the Hays County Auditor or his/her designee.
- b. "Commissioners Court" means Hays County Commissioners Court.
- c. "Contract" means the contract awarded pursuant to the RFP.
- d. "Contractor" means a person or firm receiving an award of contract from Commissioners Court.
- e. "County" means Hays County, Texas, a political subdivision of the State of Texas.
- f. "County Building" means any County owned buildings and does not include buildings leased by County.
- g. "Is doing business" and "has done business" mean:
  - i. Paying or receiving in any calendar year any money or other valuable thing which is worth more than \$250 in the aggregate in exchange for personal services or for purchase of any property or property interest, either real or personal, either legal or equitable; or
  - ii. Loaning or receiving a loan of money; or goods or otherwise creating or having in existence any legal obligation or debt with a value of more than \$250 in the aggregate in a calendar year;
  - iii. But does not include any retail transaction for goods or services sold to a Key Contracting Person at a posted, published, or marked price available to the general public.
- h. "Key Contracting Person" means any person or business listed in Exhibit A to Affidavit.
- i. "Purchasing Manager" means the Hays County Purchasing Manager.
- j. "Sub-contractor" means a person or firm doing business with a Contractor.

2. **FUNDING:** Funds for payment on this Contract have been provided through the County budget approved by Commissioners Court for this fiscal year only. State of Texas statutes prohibit the obligations and expenditure of public funds beyond the fiscal year for which a budget has been approved. However, the cost of items or services covered by this Contract is considered a recurring requirement and is included as a standard and routine expense of Hays County to be included in each proposed budget within the foreseeable future. County Commissioners expect this to be an integral part of future budgets to be approved during the period of this Contract except for unanticipated needs or events which may prevent such payments against this Contract. However, County cannot guarantee the availability of funds, and enters into this Contract only to the extent such funds are made available. The Fiscal Year for County extends from October 1st of each calendar year to September 30th of the next calendar year.

3. **FUNDING OUT:** Despite anything to the contrary in this Contract, if, during budget planning and adoption, Commissioners Court fails to provide funding for this Contract for the following fiscal year of County, County may terminate this Contract after giving Contractor thirty (30) calendar days written notice that this Contract is terminated due to the failure to fund it.

#### 4. INVOICING/PAYMENTS:

- a. Contractor shall provide County with an Internal Revenue Form W-9, Request for Taxpayer Identification Number and Certification, that is completed in compliance with the Internal Revenue Code and its rules and regulations before any Contract funds are payable.
- b. As a minimum, invoices shall include: (i) name, address, and telephone number of Contractor and similar information in the event payment is to be made to a different address; (ii) County Contract or Purchase Order number; (iii) identification of products or services as outlined in this Contract; (iv) quantity or quantities, applicable unit prices, total prices, and total amount; and (v) any additional payment information called for by this Contract. County will not pay invoices that are in excess of the amount authorized by the purchase order.
- c. Payment shall be made by check or warrant by County upon satisfactory delivery and acceptance of products and services and submission of an invoice to the address below:  
County Auditor

712 S Stagecoach Trail, Suite 1071  
San Marcos, Texas 78666

- d. Payment shall be deemed to have been made on the date of mailing of the check or warrant. For purposes of payment discounts, time will begin upon satisfactory delivery of products and services and/or submission of acceptable invoice, whichever is last. Partial payments will not be made unless specifically requested and approved by County prior to Contract award.
  - e. Accrual and payment of interest on overdue payments shall be governed by Tex. Gov't Code Ann., ch. 2251.
5. COUNTY TAXES: If the Contractor subsequently becomes delinquent in the payment of County taxes, it will be grounds for cancellation of the contract. Despite anything to the contrary, if the contractor is delinquent in payment of County property taxes at the time of invoicing, Contractor assigns any payments to be made for performance under this contract to the County Tax Assessor-Collector for the payment of delinquent taxes.
6. PROMPT PAYMENT ACT: TEX. GOV'T CODE ANN., ch 2251 (Vernon Supp. 1995) requires that payments be made within 30 calendar days. If County fails to pay within 30 days, interest on overdue amounts is subject to Chapter 2251, Texas Government Code. The law does not apply if the terms of a federal grant, contract, regulation, or statute prevent local governments from making timely payments with federal funds. Contractors and subcontractors must pay their suppliers interest if the supplier is not paid within 10 calendar days after the contractor or subcontractor receives payment. Contractors must apply for interest payments within 6 months of submitting a proper invoice if they believe such interest was due but not paid. Interest begins accruing 30 days after either of the following, whichever is later; (i) satisfactory delivery or performance has been completed, or, (ii) a correct invoice is received at the designated place.
7. FOB POINT: Delivery of all products under this contract, if any, shall be made Free on Board to final destination, at the address shown in this contract or as indicated on each Purchase Order placed against this contract. The title and risk of loss of the goods shall not pass to County until acceptance takes place at the F.O.B. point.
8. INSPECTION AND ACCEPTANCE: The County office or department receiving items pursuant to this contract shall inspect and accept only those items that are satisfactory to them, and reject those items which are damaged or which do not conform to specifications. Contractor shall be responsible for the proper labeling, packing, and delivery to final destination, including replacement of rejected deliveries.
9. VARIATION IN QUANTITY: No variation in the quantity of any item called for by this contract will be accepted unless such variation has been caused by conditions of loading, shipping, or packing, or allowances in manufacturing processes, and then only to the extent, if any, specified elsewhere in this contract.
10. OFFICIALS NOT TO BENEFIT: If a member of Commissioners Court belongs to a cooperative association, the County may purchase equipment or supplies from the association only if no member of the Commissioners Court will receive a pecuniary benefit from the purchase, other than as reflected in an increase in dividends distributed generally to members of the association.
11. NONDISCRIMINATION; CIVIL RIGHTS/ADA COMPLIANCE:
  - a. Contractor shall not engage in employment practices that have the effect of discriminating against employees or prospective employees because of age, race, color, sex, creed, national origin or handicapped condition.
  - b. Contractor shall provide all services and activities required in a manner that would comply with the Civil Rights Act of 1964, as amended, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504, and with the provisions of the Americans with Disabilities Act of 1990, Public Law 101-336 [S.933] if Contractor were an entity bound to comply with these laws.



## 12. CHANGES:

- a. This Contract may be amended only by written instrument signed by both County and Contractor. It is acknowledged by Contractor that NO OFFICIAL, EMPLOYEE, AGENT OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY, EITHER EXPRESS OR IMPLIED, TO CHANGE THE SCOPE OF THIS CONTRACT OR OTHERWISE AMEND THIS CONTRACT, OR ANY ATTACHMENTS HERETO, UNLESS EXPRESSLY GRANTED THAT AUTHORITY BY THE COMMISSIONERS COURT.
- b. Contractor shall submit all requests for changes to this Contract or any attachment(s) to it to the Purchasing Manager. The Purchasing Manager shall present Contractor's requests to Commissioners Court for consideration.

## 13. REPRESENTATIONS:

- a. Contractor represents that he has thoroughly examined the drawings, specifications, schedule, instructions and all other contract documents. Contractor has made all investigations necessary to be thoroughly informed regarding plant and facilities for delivery of material, equipment and/or services as required by the proposal conditions.
- b. The Contractor's delivery time includes weekends and holidays.
- c. Contractor certifies that he is a qualified, bondable business entity that he is not in receivership or contemplates it, and has not filed for bankruptcy. He further certifies that the Company, Corporation, Partnership, or Sole Proprietorship is not delinquent with respect to payment of County property taxes.
- d. Contractor warrants that all applicable patents and copyrights which may exist on items that will be supplied under the contract have been adhered to and further warrants that County shall not be liable for any infringement of those rights. Warranties granted County shall apply for the duration of this contract or for the life of equipment or supplies purchased, whichever is longer. County must not extend use of the granted exclusive rights to any other than County employees or those with whom County has established a relationship aimed at furthering the public interest, and then only for official public uses. County will not knowingly or intentionally violate any applicable patent, license, or copyright. Contractor must indemnify County, its officers, agents, and employees against all claims, suits, and liability of every kind, including all expenses of litigation, court costs, and attorney's fees arising in connection with any alleged or actual infringement of existing patents, licenses or copyrights applicable to items sold.
- e. The Contractor warrants that upon execution of a contract with the County, he will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of age, religion, race, color, sex, creed, handicap, or national origin and will submit reports as the County may require to assure compliance.
- f. Contractor warrants to County that all items delivered and all services rendered will conform to the specifications, drawings, or other descriptions furnished or incorporated by reference, and will be of merchantable quality, good workmanship, and free from defects. Contractor further agrees to provide copies of applicable warranties or guarantees to the Purchasing Manager. Copies will be provided within 10 days after the Notice of Award is issued. Return of merchandise under warranty shall be at Contractor's expense.

## 14. SUBCONTRACTS:

- a. Contractor shall not enter into any subcontracts for any service or activity relating to the performance of this Contract without the prior written approval or the prior written waiver of this right of approval from County. IT IS ACKNOWLEDGED BY CONTRACTOR THAT NO OFFICER, AGENT, EMPLOYEE OR REPRESENTATIVE OF COUNTY HAS THE AUTHORITY TO GRANT SUCH APPROVAL OR WAIVER UNLESS EXPRESSLY GRANTED THAT SPECIFIC AUTHORITY BY THE COMMISSIONERS COURT.
- b. If a subcontract is approved, Contractor must make a "good faith" effort to take all necessary and reasonable steps to insure HUBs maximum opportunity to be subcontractors under this Contract. Contractor must obtain County approval of all proposed HUB subcontractors through the Purchasing

Manager. Failure by Contractor to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Contract and may result in termination of this Contract.

15. ASSIGNMENT:

- a. The parties to this Contract shall not assign any of the rights or obligation hereunder without the prior written consent of the other party. No official, employee, representative or agent of County has the authority to approve any assignment under this Contract unless that specific authority is expressly granted by Commissioners Court.
- b. The terms, provisions, covenants, obligations and conditions of this Contract are binding upon and inure to the benefit of the successors in interest and the assigns of the parties to this Contract if the assignment or transfer is made in compliance with the provisions of this Contract.
- c. Contractor remains responsible for the performance of this Contract when there is a change of name or change of ownership. If a change of name is required, the Purchasing Manager shall be notified immediately. No change in the obligation of or to Contractor will be recognized until it is approved by Commissioners Court.

16. DISPUTES AND APPEALS: The Purchasing Manager acts as the County representative in the issuance and administration of this contract in relation to disputes. Any document, notice, or correspondence not issued by or to the Purchasing Manager or other authorized County person, in relation to disputes is void unless otherwise stated in this contract. If the Contractor does not agree with any document, notice, or correspondence issued by the Purchasing Manager, or other authorized County person, the Contractor must submit a written notice to the Purchasing Manager within ten (10) calendar days after receipt of the document, notice, or correspondence, outlining the exact point of disagreement in detail. If the matter is not resolved to the Contractor's satisfaction, Contractor may submit a written Notice of Appeal to the Commissioners Court, through the Purchasing Manager, if the Notice is submitted within ten (10) calendar days after receipt of the unsatisfactory reply. Contractor then has the right to be heard by Commissioners Court.

17. MEDIATION: When mediation is acceptable to both parties in resolving a dispute arising under this Agreement, the parties agree to use a mutually agreed upon mediator, or a person appointed by a court of competent jurisdiction, for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in §154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

18. FORCE MAJEURE: If the performance by either party of any of its obligations under this Contract is interrupted or delayed due to an act of God or the common enemy or as the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party to this Contract, then it shall be excused from performance for such period of time as is reasonably necessary to remedy the effects thereof.

19. NON-WAIVER OF DEFAULT:

- a. No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of Contractor which then exists or may subsequently exist. No official, agent, employee or representative of County may waive any breach of any term or condition of this Contract unless expressly granted that specific authority by the Commissioners Court.
- b. All rights of County under this Contract are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Contract shall not preclude the exercise of any other right or remedy under this Contract or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

20. **TERMINATION FOR DEFAULT:** Failure by either County or Contractor to perform any provisions of this Contract shall constitute a breach of contract. Either party may require corrective action within ten (10) calendar days after date of receipt of written notice citing the exact nature of the other's breach. Failure to take corrective action or failure to provide a satisfactory written reply excusing such failure within the ten (10) calendar days shall constitute a default. The defaulting party shall be given a twenty (20) calendar day period within which to show cause why this Contract shall not be terminated for default. All notices for corrective action, breach, default or show cause on behalf of County shall be issued by the Purchasing Manager or County legal representative only, and all replies to the same shall be made in writing to the County Purchasing Manager or County legal representative at the address provided herein. Notices issued by or to anyone other than the Purchasing Manager or County legal representative shall be null and void, and shall be considered as not having been issued or received. County reserves the right to enforce the performance of this Contract in any manner prescribed by law in case of default and may contract with another party with or without competition or further notification to the contractor. At a minimum, Contractor shall be required to pay any difference in the cost of securing the services covered by this Contract, or compensate for any loss or damage to the County derived hereunder if it becomes necessary to contract with another source because of a default, plus reasonable administrative costs and attorney's fees. In the event of termination for default, County, its agents or representatives, shall not be liable for loss of any profits anticipated under this Contract.
21. **TERMINATION FOR CONVENIENCE:** County reserves the right to terminate this Contract upon thirty (30) days written notice for any reason deemed by the Commissioners Court to serve the public interest, or resulting from any governmental law, ordinance, regulation, or court order. Termination for convenience shall not be exercised with the sole intention of awarding the same or similar contract requirements to another source. In the event of such termination, County shall pay Contractor those costs directly attributable to work done in preparation for compliance with this Contract prior to termination; provided, however, that no costs shall be paid which are recoverable in the normal course of the business in which Contractor is engaged, nor shall County pay any costs which can be mitigated through the sale of supplies or inventories. If County pays for the cost of supplies or materials obtained for use under this Contract those supplies or materials shall become the property of County and shall be delivered to the FOB point shown in this Contract, or as designated by the Purchasing Manager. County shall not be liable for loss of any profits anticipated under this Contract.
22. **GRATUITIES:** Contractor shall not provide any gratuity in any form, including entertainment, gifts, or otherwise, to any employee, buyer, agent, or representative of County with a view to securing a contract, or securing favorable treatment with respect to the award or amendment, or the making of any determination with respect to the performance of this Contract. County may terminate this Contract if it is found that gratuities of any kind including entertainment, or gifts were offered or given by the Contractor or any agent or representative of the Contractor, to any County Official or employee with a view toward securing favorable treatment with respect of this contract. If this Contract is terminated by the County pursuant to this provision, County shall be entitled, in addition to any other rights and remedies, to recover from the Contractor at least three times the cost incurred by Contractor in providing the gratuities.
23. **COVENANT AGAINST CONTINGENT FEES:** Contractor represents and warrants that no persons or selling agency has been retained to solicit this Contract upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by the Contractor to secure business. For breach or violation of this warranty, County shall have the right to terminate this Contract without liability, or in its discretion to, as applicable, add to or deduct from the Contract price for consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
24. **COUNTY ACCESS:** Contractor shall maintain and make available for inspection, audit or reproduction by any authorized representative of County all books, documents, and other evidence pertinent to the costs and expenses of this Contract, including but not limited to both direct and indirect costs, cost of labor, material, equipment, supplies, and services, and all other costs and expenses of whatever nature for which

reimbursement is claimed under this Contract. All required records shall be maintained until an audit is completed and all required questions arising therefrom are resolved, or three (3) years after completion of the contract term, whichever occurs first; provided, however, the records will be retained beyond the third year if an audit is in progress or the finding of a completed audit have not been resolved satisfactorily.

**25. FORFEITURE OF CONTRACT:**

- a. The selected Offeror must forfeit all benefits of the contract and County must retain all performance by the selected Offeror Contractor and recover all consideration or the value of all consideration paid to the selected Offeror pursuant to the contract if:
- b. The selected Offeror was doing business at the time of submitting its proposal offer or had done business during the 365- day period immediately prior to the date on which its proposal offer was due with one or more Key Contracting Persons if the selected Offeror failed to disclose the name of any such Key Contracting Person in its offer; or
- c. The selected Offeror does business with a Key Contracting Person after the date on which the offer that resulted in the contract is submitted and prior to full performance of the contract.

**26. CONTRACTOR CLAIMS NOTIFICATION:**

- a. If any claim, or other action, that relates to Contractor's performance under this Contract, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against Contractor, Contractor shall give written notice to County of the following information within ten (10) working days after being notified of it:
  - i. The existence of the claim, or other action;
  - ii. The name and address of the person, firm, corporation or their entity that made a claim or that instituted any type of action or proceeding;
  - iii. The alleged basis of the claim, action or proceeding;
  - iv. The court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and
  - v. The name or names of any person against whom this claim is being made.
- b. Except as otherwise directed, Contractor shall furnish to County copies of all pertinent papers received by Contractor with respect to making these claims or actions and all court pleadings related to the defense of these claims or actions.

**27. CERTIFICATION OF ELIGIBILITY:** This provision applies if the anticipated Contract exceeds \$100,000. By submitting a bid or proposal in response to this solicitation, the bidder/respondent certifies that at the time of submission, he/she is not on the Federal Government's Excluded Parties List System ([www.epls.gov](http://www.epls.gov)), which details a listing of suspended, ineligible, or debarred contractors. In the event of placement on the list between the time of bid/proposal submission and time of award, the bidder/respondent will notify the Hays County Purchasing Manager. Failure to do so may result in terminating this Contract for default.

**28. CONTRACTOR LIABILITY, INDEMNIFICATION AND CLAIMS NOTIFICATION:** Contractor shall indemnify County, its officers, agents, and employees, from and against any and all third party claims, losses, damages, causes of action, suits, and liability of every kind whether meritorious or not and, including all expenses of litigation, court costs, and reasonable attorney's fees, arising in connection with the services provided by Contractor under this Contract. It is the expressed intention of the Parties to this Contract, both Contractor and County, that the indemnity provided for in this paragraph is indemnity by Contractor to indemnify and protect County from the consequences of Contractor's actions.

**29. CONSTRUCTION OF CONTRACT:**

- a. This Contract is governed by the laws of the United States of America and the State of Texas and all obligations under this Contract are performable in Hays County, Texas. Venue for any dispute arising out of this Contract will lie in the appropriate court of Hays County, Texas.

- b. If any portion of this Contract is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of it shall remain valid and binding.
- c. Headings and titles at the beginning of the various provisions of this Contract have been included only to make it easier to locate the subject matter covered by that part, section or subsection and are not to be used in construing this Contract.
- d. When any period of time is stated in this Contract, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Hays County has declared a holiday for its employees, these days shall be omitted from the computation. All hours in this Contract are stated in Central Standard Time from 2:00 o'clock a.m. on the first Sunday of November until 2:00 o'clock a.m. on the second Sunday of March and in Central Daylight Saving Time from 2:00 o'clock a.m. on the second Sunday of March until 2:00 o'clock a.m. on the first Sunday of November or such other dates as may be adopted for the activation of Daylight Savings Time in the United States in future years.
- e. Words of any gender in this Contract shall be construed to include any other gender and words in either number shall be construed to include the other unless the context clearly requires otherwise.
- f. Provisions, Words, Phrases, and Statutes, whether incorporated by actual use or by reference, shall be applied to this Contract in accordance with Texas Government Code, §§ 312.002 and 312.003.

30. ADDITIONAL GENERAL PROVISIONS:

- a. Contractor must comply with all Federal and State laws and regulations, City and County ordinances, orders, and regulations, relating in any way to this Contract.
- b. Contractor must secure all permits and licenses, pay all charges and fees, and give all notices necessary for lawful operations.
- c. Contractor must pay all taxes and license fees imposed by the Federal and the State Governments and their agencies and political subdivisions upon the property and business of Contractor.
- d. Despite anything to the contrary in this Contract, if the Contractor is delinquent in payment of property taxes at the time of providing services, Contractor assigns the amount of any payment to be made for services provided under this Contract equal to the amount Contractor is delinquent in property tax payments to the Hays County Tax Assessor-Collector for the payment of the delinquent taxes.
- e. In this subsection, "County Building" means any County-owned buildings and does not include buildings leased by County. Contractor must not execute any mortgage, or issue any bonds, shares of stock, or other evidence of interest in County Buildings.

31. INTERPRETATION OF CONTRACT:

- a. This document contains the entire agreement between the parties relating to the rights granted and the obligations assumed. Any prior agreements or representations not expressly set forth in this agreement are of no force. Any oral representations or modifications concerning this agreement shall be of no force except a subsequent modification in writing signed by the Purchasing Manager. No official, representative, employee, or agent of the County has any authority to modify or amend this contract except pursuant to specific authority to do so granted by the Commissioners Court.
- b. If inconsistency exists between provisions of this solicitation, the inconsistency shall be resolved by giving precedence in the following ascending order of precedence:
  - i. The Schedule of Items/Services
  - ii. Terms and Conditions of Request for Proposals;
  - iii. General Provisions;
  - iv. Other provisions, whether incorporated by reference or otherwise; and
  - v. The specifications.
- c. If any contract provision shall for any reason be held invalid, illegal, or unenforceable in any respect, invalidity, illegality, or unenforceability shall not affect any other provision, and this contract shall be construed as if invalid, illegal or unenforceable provision had never been contained.
- d. This contract shall be governed by the laws of Texas and all obligations are performable in Hays County, Texas.

- e. If a word is used with reference to a particular trade or subject matter or is used as a word of art, the word shall have the meaning given by experts in that particular field.
- f. Words in the present or past tense include the future tense. The singular includes the plural and the plural includes the singular. The masculine gender includes the feminine and neuter genders.
- g. The headings in this contract have been included only to make it easier to locate the subject covered by each provision and are not to be used in construing this contract.
- h. Provisions, words, phrases, and statutes, whether incorporated by actual use or by reference, shall be applied to this contract in accordance with TEX. GOV'T CODE ANN., SEC 312.002, 312.003 (Vernon 1991).

**32. MODIFICATIONS:**

- a. The County Purchasing Manager may at any time, by written order, and without notice to the sureties, if any, make changes within the general scope of this contract in any one of the following:
  - i. Drawings, designs or specifications when the supplies to be furnished are to be specifically manufactured for the County in accordance with the drawings, designs, or specifications.
  - ii. Method of shipment or packing.
  - iii. Place of deliveries.
  - iv. Correction of errors of a general administrative nature or other mistakes, the correction of which does not affect the scope of the contract, or does not result in expense to the Contractor.
  - v. Description of items to be provided.
  - vi. Time of performance (i.e. hours of day, days of week, etc)
- b. If any such change causes an increase or decrease in the cost of, or time required for, performance of any part of the work under this contract whether, or not changed by the order, the Commissioners Court shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract. The Contractor must submit any "proposal for adjustment" under this clause within thirty (30) calendar days from the date of receipt of the written order. However, if the County Purchasing Manager decides that the facts justify it, the County Purchasing Manager may receive and act upon a proposal submitted before final payment of the contract. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the County shall have the right to prescribe the manner of disposition of the property. Failure to agree to any adjustment shall be a dispute under the Disputes and Appeals clause. However, nothing in this clause shall excuse the Contractor from proceeding with the contract as changed.

**33. PRICE CHANGES:** The prices offered shall remain firm for the period of the contract. The prices offered shall also remain firm for the option years should the County choose to exercise the option to renew, except for changes that are industry wide and beyond the control of the contractor. If such changes do occur, it will be the responsibility of the contractor to provide documentation to Hays County substantiating the changes to the bid prices. Any price changes must be approved by Hays County.

- 34. 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 day advance written notice of cancellation or material change to said insurance.
  - d. Provide the County Purchasing Manager 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 Hays County.
  - e. Submit an original certificate of insurance reflecting coverage as follows:

<u>Business Automobile Liability:</u>	
Bodily Injury (Each person)	\$250,000.00

Bodily Injury (Each accident)	\$500,000.00
Property Damage	\$1,000,000.00

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Commercial General Liability (Including Contractual Liability):

Bodily Injury (Each accident)	\$1,000,000.00
Property Damage	\$ 100,000.00
Medical Expenses	\$ 10,000.00
Personal & Advertising Injury	\$1,000,000.00
General Aggregate	\$2,000,000.00
Products – Completed Operations Aggregate	\$2,000,000.00

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Excess Liability:

Umbrella Form	Not Required
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Labor Liability:

Worker's Compensation	Meeting Statutory Requirements, and the following
Employers Liability – Each Accident	\$1,000,000.00
Employers Liability – Each Employee	\$1,000,000.00
Employers Liability – Policy Limit	\$1,000,000.00

## V. Vendor Reference Form

Please list three (3) references of current customers who can verify the quality of service your company provides. The County prefers customers of similar size and scope of work to this proposal/bid. **This form must be returned with your bid/proposal.**

REFERENCE ONE
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Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE TWO
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Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_

REFERENCE THREE
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Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Person and Title: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Scope & Duration of Contract: \_\_\_\_\_

Email: \_\_\_\_\_



## VI. Certificate of Interested Parties

In 2015, the Texas Legislature adopted House Bill 1295, which added 2252.908 to the Texas Government Code and applies to all contracts entered into on or after January 1, 2016. Section 2252.908 (b)(1)(2) applies only to a contract of a governmental entity or state agency that requires an action or vote by the governing body of the entity or agency before the contract may be signed or that has a value of at least \$1 million. In addition, pursuant to Section 2252.908 (d), a governmental entity or state agency may not enter into a contract described by Subsection (b) with a business entity unless the business entity, in accordance with this section and rules adopted under this section, submits a disclosure of interested parties to the governmental entity or state agency at the time the business entity submits the signed contract to the governmental entity or state agency.

With regard to Hays County purchases, a vendor or other person who is awarded a contract or purchase approved by Hays County Commissioners Court is required to electronically complete a Form 1295 through the Texas Ethics Commission website at [https://ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and submit a signed copy of the form to the Hays County Purchasing office. A contract, including County issued purchase order (if applicable), will not be enforceable or legally binding until the County received and acknowledges receipt of the properly completed Form 1295 from the awarded vendor.

If you do not have access to the link provided above or have any questions, please contact Purchasing at 512-393-2283.

# VII. Conflict of Interest Questionnaire

## CONFLICT OF INTEREST QUESTIONNAIRE For vendor doing business with local governmental entity

## FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

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

### OFFICE USE ONLY

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**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 the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information is being disclosed.

\_\_\_\_\_  
Name of Officer

**4** Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

Yes       No

**5** Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.

**6**  Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

(a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

(2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

- (i) a contract between the local governmental entity and vendor has been executed;
- or
- (ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

- (i) a contract between the local governmental entity and vendor has been executed; or
- (ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

(a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

- (1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);
- (2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or
- (3) has a family relationship with a local government officer of that local governmental entity.

(a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

(1) the date that the vendor:

- (A) begins discussions or negotiations to enter into a contract with the local governmental entity; or
- (B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

(2) the date the vendor becomes aware:

- (A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);
- (B) that the vendor has given one or more gifts described by Subsection (a); or
- (C) of a family relationship with a local government officer.

## VIII. CODE OF ETHICS FOR HAYS COUNTY

Public employment is a public trust. It is the policy of Hays County to promote and balance the objective of protecting government integrity and the objective of facilitating the recruitment and retention of personnel needed by Hays County. Such a policy implemented by prescribing essential standards of ethical conduct without creating unnecessary obstacles to entering public services.

Public servants must discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors. Moreover, they should conduct themselves in such a manner as to foster public confidence in the integrity of the Hays County procurement organization.

To achieve the purpose of this article, it is essential that those doing business with Hays County also observe the ethical standards prescribed here.

It shall be a breach of ethics to attempt to influence any public employee, elected official or department head to breach the standards of ethical conduct set forth in this code.

It shall be a breach of ethics for any employee of Hays County or a vendor doing business with the county to participate directly or indirectly in a procurement when the employee or vendor knows that:

The employee or any member of the employee's immediate family, or household has a substantial financial interest pertaining to the procurement. This means ownership of 10% or more of the company involved and/or ownership of stock or other interest or such valued at \$2500.00 or more.

A business or organization in which the employee, or any member of the employee's immediate family, has a financial interest pertaining to the procurement.

Gratuities: It shall be a breach of ethics to offer, give or agree to give any employee of Hays County or for any employee to solicit, demand, accept or agree to accept from a vendor, a gratuity of consequence or any offer of employment in connection with any decision approval, disapproval, recommendation, preparation or any part of a program requirement or purchase request influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or controversy, any particular matter pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefore pending before this government.

Kickbacks: It shall be a breach of ethics for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor for any contract for Hays County as an inducement for the award of a contract or order.

Contract Clause: The prohibition against gratuities and kickbacks prescribed above shall be conspicuously set forth in every contract and solicitation, therefore.

Any effort to influence any employee, elected official, or department head to violate the standards of the code is grounds to void the contract. Please certify, by your signature below, that you understand the ethics policy of Hays County and in no way will attempt to violate the code.

SIGNATURE: \_\_\_\_\_

PRINT NAME & TITLE: \_\_\_\_\_

COMPANY NAME: \_\_\_\_\_

## IX. Hays County Practices Related to Historically Underutilized Businesses

### 1. STATEMENT OF PRACTICES

Hays County will strive to ensure that all businesses, regardless of size, economic, social or ethnic status have an equal opportunity to participate in the County's procurement processes. The County is committed to promote full and equal business opportunity for all businesses to supply the goods and services needed to support the mission and operations of county government, and seeks to encourage the use of certified historically underutilized businesses (HUB's) through the use of race, ethnic and gender neutral means. It is the practice of Hays County to involve certified HUBs to the greatest extent feasible in the County's procurement of goods, equipment, services and construction projects while maintaining competition and quality of work standards. The County affirms the good faith efforts who recognize and practice similar business standards.

### 2. DEFINITIONS

Historically underutilized businesses (HUBs), also known as a disadvantaged business enterprise (DBE), are generally business enterprises at least 51% of which is owned and the management and daily business operations are controlled by one or more persons who is/are socially and economically disadvantaged because of his/her identification as a member of certain groups, including women, Black Americans, Mexican Americans, and other Americans of Hispanic origin, Asian Americans and American Indians.

Businesses include firms, corporations, sole proprietorships, vendors, suppliers, contractors, subcontractors, professionals and other similar references when referring to a business that provides goods and/or services regardless of the commodity category.

Certified HUB's include business enterprises that meet the definition of a HUB and who meet the certification requirements of certification agencies recognized by Hays County, as expressed below.

Statutory bid limit refers to the Texas Local Government Code provision that requires competitive bidding for many items valued at greater than \$50,000.

### 3. GUIDELINES

- a. Hays County, its contractors, their subcontractors and suppliers, as well as all vendors of goods, equipment and services, shall not discriminate on the basis of race, color, creed, gender, age, religion, national origin, citizenship, mental or physical disability, veteran's status or political affiliation in the award and/or performance of contracts. All entities doing business or anticipating doing business with the County shall support, encourage and implement affirmative steps toward a common goal of establishing equal opportunity for all citizens and businesses of the County.
- b. Vendors and/or contractors desiring to participate in the HUB program must successfully complete the certification process with the State of Texas or Texas Unified Certification Program. The vendor or contractor is also required to hold a current valid certification (title) from either of these entities.
- c. Vendors and/or contractors must be registered with the State Comptroller's web-based HUB directory and with the Comptroller's Centralized Master Bidder's List (CMBL). Hays County will solicit bids from certified HUB's for state purchasing and public works contracts.

4. Hays County will actively seek and encourage HUBs to participate in all facets of the procurement process by:

- a. Continuing to increase and monitor a database of certified HUB vendors, professionals and contractors. The database will be expanded to include products, areas of expertise and capabilities of each HUB firm.
  - b. Continuing to seek new communication links with HUB vendors, professionals and contractors to involve them in the procurement process.
  - c. Continuing to advertise bids on the County’s website and in the newspapers including newspapers that target socially and economically disadvantaged communities.
5. As prescribed by law, the purchase of one or more items costing in excess of the statutory bid limit must comply with the competitive bid process. Where possible, those bids will be structured to include and encourage the participation of HUB firms in the procurement process by:
- a. Division of proposed requisitions into reasonable lots in keeping with industry standards and competitive bid requirements.
  - b. Where feasible, assessment of bond and insurance requirements and the designing of such requirements to reasonably permit more than one business to perform the work.
  - c. Specifications of reasonable, realistic delivery schedules consistent with the County’s actual requirements.
  - d. Specifications, terms and conditions reflecting the County’s actual requirements are clearly stated, and do not impose unreasonable or unnecessary contract requirements.
6. A HUB practice statement shall be included in all specifications. The County will consider the bidder’s responsiveness to the HUB Practices in the evaluation of bids and proposals. Failure to demonstrate a good faith effort to comply with the County’s HUB practices may result in a bid or proposal being considered non-responsive to specifications.
7. Nothing in this practice statement shall be construed to require the County to award a contract other than to the lowest responsive bidder as required by law. This practice is narrowly tailored in accordance with applicable law.

Please sign for acknowledgement of the Hays County HUB Practices:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

X. Hays County House Bill 89 Verification

I, \_\_\_\_\_ (Person name), the undersigned representative of \_\_\_\_\_ (Company or Business name, hereafter referred to as Company) being an adult over the age of eighteen (18) years of age, after being duly sworn by the undersigned notary, do hereby depose and verify under oath that the company named above, under the provisions of Subtitle F, Title 10, Government Code Chapter 2270:

- 1. Does not boycott Israel currently; and
2. Will not boycott Israel during the term of the contract.

Pursuant to Section 2270.001, Texas Government Code:

- 1. "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes; and
2. "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or any limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of those entities or business associations that exist to make a profit.

\_\_\_\_\_  
Signature of Company Representative

\_\_\_\_\_  
Date

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared \_\_\_\_\_, the above-named person, who after by me being duly sworn, did swear and confirm that the above is true and correct.

NOTARY SEAL

\_\_\_\_\_  
Notary Public in and for the State of Texas  
(if other than Texas, Write state in here \_\_\_\_\_)

\_\_\_\_\_  
Date

## XI. Hays County Purchasing Department Senate Bill 252 Certification

Pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that the company named below is not listed on the website of the Comptroller of the State of Texas concerning the listing of companies that are identified under Section 806.051, Section 807.051 or Section 2253.153. I further certify that should the above-named company enter into a contract that is on said listing of companies on the website of the Comptroller of the State of Texas which do business with Iran, Sudan or any Foreign Terrorist Organization, I will immediately notify the Hays County Purchasing Department.

---

Company Name

---

Print Name of Company Representative

---

Signature of Company Representative

---

Date

### CERTIFICATION CHECK PERFORMED BY HAYS COUNTY PURCHASING:

On this day; the Purchasing Representative for Hays County in San Marcos, Texas, pursuant to Texas Government Code, Chapter 2252, Section 2252.152 and Section 2252.153, certify that I did review the website of the Comptroller of the State of Texas concerning the listing of companies that is identified under Section 806.051, Section 807.051 or Section 2253.253 and I have ascertained that the above-named company is not contained on said listing of companies which do business with Iran, Sudan or any Foreign Terrorist Organization.

---

Print Name of Hays County Purchasing Representative

---

Signature of Hays County Purchasing Representative

---

Date

---

IFB/RFP/RFQ Number



## XII. Debarment and Licensing Certification

STATE OF TEXAS       §  
                                  §  
COUNTY OF HAYS     §

I, the undersigned, being duly sworn or under penalty of perjury under the laws of the United States and the State of Texas, certifies that Firm named herein below and its principals:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency;
- b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a federal, state or local governmental entity with commission of any of the offenses enumerated in paragraph (1)(b) of this certification;
- d. Have not within a three-year period preceding this application/proposal had one or more public (federal, state or local) transactions terminated for cause or default;
- e. Are registered and licensed in the State of Texas to perform the professional services which are necessary for the project; and
- f. Have not been disciplined or issued a formal reprimand by any State agency for professional accreditation within the past three years.

\_\_\_\_\_  
Name of Firm

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

Where the Firm is unable to certify to any of the statements in this certification, such Firm shall attach an explanation to this certification.

SUBSCRIBED and sworn to before me the undersigned authority by \_\_\_\_\_ on this the day of \_\_\_\_\_, 20\_\_\_\_, on behalf of said Firm.

\_\_\_\_\_  
Notary Public in and for the State of Texas  
(if other than Texas, Write state in here \_\_\_\_\_)

My commission expires: \_\_\_\_\_

### XIII. Vendor/Bidder's Affirmation

- Vendor/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, and that the contents of this bid as to price, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any other person engages in this type of business prior to the official opening of this bid.
- Vendor/Bidder hereby assigns to Purchaser any and all claims for overcharges associated with this Contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
- Pursuant to 262.0276 (a) of the Texas Local Government Code, Vendor/Bidder, hereby affirms that Vendor/Bidder:

\_\_\_\_\_ Does not own taxable property in Hays County, or;

\_\_\_\_\_ Does not owe any ad valorem taxes to Hays County or is not otherwise indebted to Hays County

\_\_\_\_\_  
Name of Contracting Company

If taxable property is owned in Hays County, list property ID numbers:

\_\_\_\_\_  
Signature of Company Official Authorizing Bid/Offer

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Email Address

\_\_\_\_\_  
Phone

## XIV. FEDERAL AFFIRMATIONS AND SOLICITATION ACCEPTANCE

In the event federal funds are used for payment of part or all of the consideration due under any contract resulting from this Solicitation Response, Respondent must execute this **Federal Affirmation and Solicitation Acceptance**, which shall constitute an agreement, without exception, to the following affirmations:

### 1. **Debarment and Suspension (2 CFR 180.220)**

Respondent certifies, by signing this Attachment, that neither it nor any of its principals or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. This certification is made pursuant to the OMB guidelines at 2 CFR 180 that implement Executive Order 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), Debarment and Suspension, 28 C.F.R. pt. 67, § 67.510, as published as pt. VII of the May 26, 1988, Federal Register (pp. 19160-19211), and any relevant program-specific regulations. This provision shall be required of every subcontractor receiving any payment in whole or in part from federal funds.

### 2. **Americans with Disabilities Act**

Respondent and any potential subcontractors shall comply with all terms, conditions, and requirements of the Americans with Disabilities Act of 1990 (P.L. 101-136), 42 U.S.C. 12101, as amended, and regulations adopted thereunder contained in 28 C.F.R. 26.101-36.999, inclusive, and any relevant program-specific regulations.

### 3. **Discrimination**

Respondent and any potential subcontractors shall comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to:

- a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which prohibits discrimination on the basis of race, color, or national origin;
- b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101- 6107), which prohibits discrimination on the basis of age;
- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse;
- f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
- g. Sections 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;
- h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental, or financing of housing;
- i. Any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and
- j. The requirements of any other nondiscrimination statute(s) that may apply to the application.

### 4. **Equal Employment Opportunity**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246

Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

**5. Wages**

Under the Davis Bacon Act, 40 U.S.C. 276a – 276a-5 (40 U.S.C. 3141-3148), as amended, and the regulations adopted thereunder contained in 29 C.F.R. pt. 1 and 5. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). Respondent and any potential subcontractors have a duty to and shall pay the prevailing wage rate specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

**6. Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**7.** Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

**8.** All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.

**9. Lobbying**

If Respondent, in connection with any resulting contract from this Solicitation, is a recipient of a Federal contract, grant, or cooperative agreement exceeding \$100,000 or a Federal loan or loan guarantee exceeding \$150,000, the Contractor shall comply with the requirements of the new restrictions on lobbying contained in Section 1352, Title 31 of the U.S. Code, which are implemented in 15 CFR Part 28. Respondent shall require that the certification language of Section 1352, Title 31 of the U.S. Code be included in the award documents for all subcontracts and require that all subcontractors submit certification and disclosure forms accordingly. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

**10. Rights to Inventions Made Under a Contract or Agreement**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

#### **11. Minority and Women’s Businesses**

Respondent and any potential subcontractors shall take affirmative steps to assure that minority and women's businesses are utilized when possible as sources of supplies, equipment, construction, and services, as detailed in the federal requirements relating to minority and women’s business enterprises: Executive Order 11625 of October 13, 1971, 36 Fed. Reg. 19967, as amended by Executive Order No. 12007 of August 22, 1977, 42 Fed. Reg. 42839; Executive Order No. 12432 of July 14, 1983, 48 Fed. Reg., 32551; and Executive Order No. 12138 of May 18, 1979, 44 Fed. Reg. 29637.

#### **12. Environmental Standards**

Respondent and any potential subcontractors shall comply with environmental standards that may be prescribed pursuant to the following:

- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
- b. Notification of violating facilities pursuant to EO 11738;
- c. Protection of wetlands pursuant to EO 11990;
- d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
- e. Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.);
- f. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- g. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and
- i. Protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- j. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).
- k. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded
  - \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

#### **13. Historic Properties**

Respondent and any potential subcontractors shall assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

**14. All Other Federal Laws**

Respondent and any potential subcontractors shall comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the Solicitation.

I have read, understand, and agree to comply with the Federal Affirmations specified above. Checking "YES" indicates acceptance, while checking "NO" denotes non-acceptance.

YES \_\_\_\_\_ NO \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name & Title: \_\_\_\_\_

Respondent's Tax ID: \_\_\_\_\_ Telephone: \_\_\_\_\_

If Respondent is a Corporation or other legal entity, please attach a corporate resolution or other appropriate official documentation that states that the person signing this Solicitation Response is an authorized person to sign for and legally bind the corporation or entity.

## XV. Related Party Disclosure Form

Hays County strives to provide financial transparency to its taxpayers. Completion of this form will allow for added transparency into the procurement process by disclosing Vendor relationships with current or former Hays County employees. The existence of a relationship may not present a legal or ethical conflict for a Vendor. However, disclosure will allow for consideration of potential conflicts and/or ways to eliminate conflicts.

A Vendor who Employs any of the following is required to disclose the relationship on this form:

- Current Hays County employee (including elected or appointed official) (Complete Section A)
- Former Hays County employee who has been separated from Hays County for no less than four (4) years (including elected or appointed official) (Complete Section B)
- Person related within the 2<sup>nd</sup> degree of consanguinity or affinity to either of the above<sup>(1)</sup> (Complete Section C)

If no known relationships exist, complete Section D.

**This form is required to be completed in full and submitted with the proposal package.** A submitted proposal package that does not include this completed form will be considered non-responsive and will not be eligible for an award.

<u>Section A: Current Hays County Employee</u>	
<hr/>	
Employee Name	Title

<u>Section B: Former Hays County Employee</u>		
<hr/>		
Employee Name	Title	Date of Separation from County

<u>Section C: Person Related to Current or Former Hays County Employee</u>		
<hr/>		
Hays Employee/Former Hays Employee Name	Title	
<hr/>		
Name of Person Related	Title	Relationship

<u>Section D: No Known Relationships</u>
If no relationships in accordance with the above exist or are known to exist, you may provide a written explanation below:
<hr/>
<hr/>
<hr/>

Attach additional pages if necessary.

I, the undersigned, hereby certify that the information provided is true and complete to the best of my knowledge.

\_\_\_\_\_  
Name of Vendor

\_\_\_\_\_  
Signature of Certifying Official

\_\_\_\_\_  
Title of Certifying Official

\_\_\_\_\_  
Printed Name of Certifying Official

\_\_\_\_\_  
Date

<sup>(1)</sup>A degree of relationship is determined under Texas Government Code Chapter 573. (as outlined below)

Relationship of Consanguinity				
	1st Degree	2nd Degree	3rd Degree*	4th Degree*
<b>Person</b>	child or parent	grandchild, sister, brother or grandparent	great-grandchild, niece, nephew, aunt,* uncle* or great-grandparent	great-great-grandchild, grandniece, grandnephew, first cousin, great aunt,* great uncle* or great-great-grandparent
* An aunt, uncle, great aunt or great uncle is related to a person by consanguinity only if he or she is the sibling of the person's parent or grandparent.				

Relationship of Affinity		
	1st Degree	2nd Degree
<b>Person</b>	spouse, mother-in-law, father-in-law, son-in-law, daughter-in-law, stepson, stepdaughter, stepmother or stepfather	brother-in-law, sister-in-law, spouse's grandparent, spouse's grandchild, grandchild's spouse or spouse of grandparent

“Vendor” shall mean any individuals or entity that seeks to enter into a contract with Hays County.

“Employs” shall mean any relationship wherein Vendor has made arrangements to compensate an individual, directly or by way of a business organization in which the individual has a sharehold or ownership interest, even if that arrangement is contractual and/or on an hourly-charge basis.