

## **Request for Proposals**

City of Killeen, Texas Sealed

Proposals will be received for:

# **Food & Beverage Concessionaire Services**

## **RFP No. 21-07**

Sealed Proposals will be received

until 2:00 p.m. on

**December 1, 2020**

Return Proposal to:

City of Killeen  
Attn: Purchasing Division  
802 N 2<sup>nd</sup> Street Building E,  
2<sup>nd</sup> Floor # 215  
Killeen, Texas 76541

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## **NOTICE TO PROPOSERS**

### **Food & Beverage Concessionaire Services**

#### **RFP NO 21-07**

#### **CITY OF KILLEEN, TEXAS**

The City of Killeen will receive proposals for Food & Beverage Concessionaire Services at the Lion's Club Park Sports Complex, Killeen Athletic Complex, Family Aquatics Center and other areas as identified until, **Tuesday, December 1, 2020, at 2pm**. Submittals must be addressed to the City of Killeen, Purchasing Division, 802 N. 2 Street, Second Floor, RM 215, Killeen, Texas 76541 and shall be plainly marked with the name and address of the proposer, and "RFP 21-07 Food & Beverage Concessionaire Services." Submittals received after the closing time will be returned unopened.

The purpose of this request is to select and potentially enter into a contract with an organization to provide food and beverage concessionaire services for the City. Proposers shall provide proposals as outlined in the RFP.

A non-mandatory pre-proposal meeting and tour of the concession stand areas, as outlined in Exhibit A, will be held on November 17, 2020, at 1:00 PM at the Family Recreation Center, located at 1700 E. Stan Schlueter Loop, Killeen TX 76541. Questions will be accepted via email by Lorianne Luciano at [solicitationquestions@killeentexas.gov](mailto:solicitationquestions@killeentexas.gov) until Tuesday, November 24, 2020, at 2pm. Questions will be answered in the form of an addendum and posted to the City's website, Demand Star and ESBD. It is the Proposer's responsibility to obtain and acknowledge all addenda.

Complete information regarding this solicitation may be obtained from the City of Killeen website (<http://www.killeentexas.gov/index.php?section=107>), Demand Star (<http://www.demandstar.com/>), and ESBD (<http://portal.cpa.state.tx.us>). The City of Killeen reserves the right to reject any or all proposals and waive any irregularities.

**CITY OF KILLEEN, TEXAS**

Lorianne Luciano

Director of Procurement and Contract Management

## **SCOPE OF WORK**

The City of Killeen, Texas ("City") is requesting proposals from concessionaire service vendors to provide services. The concessionaire services will possibly include, but will not necessarily be limited to:

Daily Concession Operations at the Lion's Club Sports Complex, Killeen Athletic Complex, Killeen Family Aquatics Center and other areas as identified if the City shall choose.

Recreation Services – Athletics conducts 8 youth and 6 adult leagues with over 3,000 participants and 12 tournaments annually. Recreation Services – Aquatics receive over 42,000 patrons and operates 43 after hour rentals annually.

<b><u>Tentative Timeline</u></b>	<b><u>Dates</u></b>
Issue/announce RFP to internal City Staff	10/1/2020
Advertisement Dates	11/8/20 – 11/15/20
Non-mandatory Pre-Proposal meeting (Family Recreation Center, 1700 E. Stan Schlueter Loop, Killeen, TX 76542 at 1:00pm)	11/17/20
Deadline for questions (no later than 2:00pm)	11/24/20
RFP deadline (no later than 2:00pm)	12/1/20
Determine most qualified vendor	12/15/20
Contract begins	2/24/21

## **PROPOSAL CONTENT REQUIREMENTS**

The RFP submittals must include all items listed below to be considered complete. The RFP submittal shall be placed in a separate sealed envelope or packaged and identified with the RFP deadline and RFP number (as they appear on our cover sheet).

Each vendor shall submit three (3) copies of its RFP submittal on letter (8 x 11) sized paper and spiral bound with all pages sequentially numbered and one (1) electronic copy on a flash drive in a sealed package. Please do not submit your qualifications in a ringed binder. All criteria sections and subsections need to be separated by clearly marked tabs. Each RFP submittal should be clearly marked on the cover and shall be as concise as possible.

The RFP submittal must include the following:

1. Completed RFP letter of interest which shall include (maximum of 6 pages):

- Company name, address, telephone number and e-mail address of the Proposer. Clearly indicate the legal corporate name (or other applicable business ownership name), and the "doing business as" name and/or brand name if different.
- Full name, title, mailing address, telephone number, fax number, and e-mail address of primary point of contact for the company that will be managing or coordinating the business.
- A business plan outlining the method of providing service to include number of personnel, food delivery methods, and menu concepts, to include pricing. (Anticipated menus.)
- Proposed timetable for occupancy of the facilities after a concession agreement is approved.

3. Any requirements for electricity, telephone or other utility connections.

4. Executive summary (maximum of 2 pages)

5. Key personnel qualifications

6. Legal qualifications (Food Handlers' Permit, etc.)

7. Detailed summary of prior concessionaire services with reference information: Vendors shall submit at least three (3) businesses as references.

- This should be a written presentation or resume clearly setting forth the proposer's qualifications in terms of experience, organization, and similar factors, in concessions at

other locations. Proposer shall provide a letter from its references with names, addresses and telephone numbers of management officials or major customers as references that are currently being serviced by the company or have been served by the company within the last twenty-four (24) months.

8. Summary of current or past food- and beverage-related litigation pursued by or brought against the proposer in the previous 5 years
9. Insurance coverage: Provide the types and amount of insurance coverage proposed to be maintained.
  - Coverage will be required from an insurance carrier admitted to do business in the State of Texas that has at least an "A" rating with AM Best Company and is expected to be commensurate with the type, value, and risks of the products and/or services to be sold. Minimum coverage as outlined in our terms and conditions (section 4.0).
10. Completed Certificate of Insurability
11. Completed Non-Collision form
12. A draft contract to include all terms listed within this RFP
13. Any additional information may be submitted in a separate document marked "Appendix."
14. Signed acknowledgement of this RFP.
  - Receipt of all Addenda to this RFP, if any, must be acknowledged by attaching a signed copy of each Addendum to the RFP submittal. All Addenda shall become part of the requirements of this RFP. Failure to acknowledge receipt of an Addendum may result in rejection of the RFP submittal.

## EVALUATION CRITERIA

Proposals will be evaluated by an evaluation committee with a minimum of three (3) to five (5) employees of the City. The recommendation of the evaluation committee is subject to approval by the City Manager and or City Council.

During the evaluation process, the Committee and the City reserve the right, where it may serve the City's best interest, to request additional information or clarifications from submitting entities.

At the City's discretion, submitting entities may be requested to make oral presentations as part of the evaluation process.

Evaluation ratings will be on a **100-point** scale. Vendors submitting proposals will be scored on how well they demonstrate their knowledge and define their methodology and approach to the following areas:

	CRITERIA	MAXIMUM POINTS
1.	<b>Experience</b> – Vendor shall give a brief description of its company’s history, explain its company and the employee structure.	<b>35</b>
2.	<b>References</b> – Provide three (3) references, to include the most recent organization for programs and services that were provided similar in nature and functionality.	<b>30</b>
3.	<b>Menu and Pricing</b> – the vendor will submit various sample menus to include pricing.	<b>20</b>
4.	<b>Staff Qualifications</b> – The vendor shall give a list of certifications or training sessions that any of its staff may have completed related to food and vender services.	<b>15</b>

Once proposals are scored, the evaluation team will select finalists. After interviews are performed, if needed, the evaluation team may request the finalists to submit a Best and Final Offer.

Should negotiations be unsuccessful, the City shall enter into negotiations with the next, highest ranked proposer. The process shall continue until an agreement is reached with a qualified proposer.

The City reserves the right to negotiate the final fee prior to recommending any proposer for a contract. The City reserves the right to use all pertinent information (also learned from sources other than disclosed in the RFP process) that might affect the City’s judgment as to the appropriateness of an award to the best evaluated Proposer. This information may be appended to the proposal evaluation process results.

# **FOOD AND BEVERAGE CONCESSIONAIRE SERVICES**

## **Terms and Conditions**

### **1. Operator Responsibilities**

1.1 The operator shall be responsible for damage to the City's equipment and/or the workplace and its contents, by its work, negligence in work, its personnel and equipment. The operator shall be responsible and liable for the safety, injury and health of its working personnel while its employees are performing service work.

1.2 The operator shall provide all labor and equipment necessary to perform this service. All employees of the operator shall meet the minimum requirements as referenced in federal and state law. All employees of the operator should have a criminal background check within 90 days of the start date of this contract.

1.3 All employees shall be well groomed and appropriately dressed at all times when on duty. All employees shall wear a standardized uniform to include a company t-shirt or polo that will identify the operating entity. Employees shall wear denim jeans/shorts or khaki pants/shorts. All shirts worn by employees will be worn tucked inside the pants/shorts. Employees shall only wear headwear that is in accordance with a standardized uniform that will be worn by all employees.

1.4 The City of Killeen, Texas is committed to maintaining an alcohol and drug-free workplace. Possession use or being under the influence of alcohol or controlled substances by operator's employees while in the performance of this service is prohibited. Violation of this requirement shall constitute grounds for termination of this service.

1.5 Prior to contract execution, the successful proposer shall submit a list of proposed items to be sold, and the prices for each, to the City for approval. In addition, the operator shall provide a menu for review and approval prior to each league commencing. The menu for the FAC, Lion's Club and KAC shall be submitted to the Parks and Recreation Manager and/or Assistant Director of Recreation Services thirty (30) days in advance of the league starting and FAC opening.

### **2. Abandonment or Default**

2.1 An operator who abandons or defaults the work on this contract and causes this service to CEASE FOR ANY PERIOD OF TIME, will not be considered in the re-advertisement of this service and may not be considered in future SERVICE CONTRACTS for the same type of work unless the scope of work is significantly changed. Abandonment or default shall be grounds for termination of this service.



2.2 Any contract awarded will be void if sold or assigned to another service company without written approval from the City. Written notification of changes to company name, address, telephone number, etc., should be given to the City as soon as possible but not later than thirty (30) days from date of change. There will be no sub-contracting of services by the operator. The city has the exclusive right to sub-contracting for additional food services.

### **3. Responsibility for Damage Claims**

The operator agrees to indemnify and save harmless the City of Killeen, Texas, its agents and employees from all suits, action or claims and from all liability annual for any and all injuries or damages sustained by any person or property in consequence of any neglect in the performance of the contract by the operator and from any claims or amounts arising or recovered under the "Workers' Compensation Laws", Chapter 101, VTCA, Civil Practice and Remedies Code, or any other laws. Operator shall further so indemnify and be responsible for all damages or injury to property of any character occurring during the prosecution of the work resulting from any act, omission, neglect or misconduct of the operator, his/her agent and employees, in the manner or method of executing the work; or from failure to properly execute the work; or from defective work or materials. Operator shall not be released from these responsibilities until all claims have been settled and suitable evidence to that effect furnished to the City.

### **4. Competence of Operator**

4.1 To be entitled for consideration, the operator shall have available, under its direct employment and supervision, the necessary organization and facilities to properly fulfill all the services required under this contract. Operator shall obtain any licenses/permits required for the performance of this service. All employees of the concession stand shall have their food handler's license.

4.2 All qualifications received by a company whose services have been documented as unsatisfactory and/or whose services have documented problems pending resolution with the City may not be considered.

### **5. Right to Audit**

The City shall have the right to audit the operator's books and records pertaining to this service during the hours of the normal workday. The operator shall provide the City with monthly reports of gross sales for all concession's operations.

### **6. Applicable Laws**

This contract shall be governed by the laws of the State of Texas and the venue for any disputes shall be in the courts in and serving Bell County.

## **7. Compliance with Laws**

The operator shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations in any matter affecting the performance of this contract including, without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, the operator shall furnish the City with satisfactory proof of its compliance therewith.

## **8. Contract Term and Renewal of Service**

The contract commencement date will be determined by the City and the successful proposer. It is the City's desire for the contract to start **February 24, 2021**. This contract shall remain in effect for One (1) year). The contract may automatically renew for up to four (4) additional one (1) year terms unless either party decides to cancel with written notice sixty (60) days prior to the renewal date. The City has the option of reviewing all fixed rental rates to determine any new rates prior to any term renewal. Such renewal shall be at the rate(s), terms and conditions agreed to in writing by both parties at least sixty (60) days prior to the expiration date.

## **9. Cancellation**

Either party may cancel a contract awarded by the city without penalty by providing sixty (60) days written notice to the other party. Termination under this paragraph shall not relieve the operator of any obligation or liability that has occurred prior to cancellation. Upon receipt of the written notice of cancellation of this proposal, the operator will need to fully vacate all facilities covered under this contract, to include all equipment and product, within 60 days.

## **10. Compliance**

This service shall be done in accordance with the specifications. The City will decide all questions, which may arise as to the quality or acceptability of work performed, the manner of performance, the interpretation of the specifications and the acceptable fulfillment of the service on the part of the operator.

## **11. Duties and Responsibilities of the Operator**

Operator agrees to perform according to duties and responsibilities contained in this specification, including, but not limited to:

11.1 The operator agrees to operate three (3) city owned concession stands at Lions Club Park, one (1) city owned concession stand at the Killeen Athletic Complex and one (1) city owned concession stand at the Family Aquatic Center. Each proposer shall set forth in their proposal a description of the items of food and the beverages they propose to sell, including all the sizes, flavors and any other variations of such items. The following is a recommended menu: A copy of the price list shall be provided to the City of Killeen Recreation Services Department and kept on

file. Any changes to initial price list shall be approved by Assistant Director of Recreation Services or Parks & Recreation Manager: bottled water, sports drinks, carbonated beverages, popcorn, nachos, hot dogs and prepackaged potato chips. The operator agrees not to sell the merchandise in glass containers or in such other containers that may pose a risk or hazard to the safety of the customers, participants or spectators at the facility.

11.2 Operator agrees to provide all equipment, supplies, and qualified personnel necessary for the operation of said concession stand during all regularly scheduled events and activities. Equipment may include grills, vent hoods and suppression systems, ice machines and refrigeration equipment, sinks and other equipment necessary to provide complete operation of said concession stands.

11.3 The city is not responsible for the loss of product due to electrical outages.

11.4 Operator is responsible for the maintenance of said concession. Furthermore, operator agrees to undertake any and all repairs necessary for the safe and continued operation of said concession stands. The operator shall not make any structural alternatives, repairs, or improvements to the premises, without written permission from the Parks and Recreation Manager and/or Assistant Director of Recreation Services.

11.5 Operator agrees to be responsible for any equipment, inventory or other personal property left in the concession area.

11.6 Concession operator shall be responsible for all trash within twenty-five (25) feet of the concession facility and such trash/debris must be removed on a daily basis by the concession operator. Trash is to be placed in trash bags and placed in the site dumpsters on a daily basis. No trash is to be left overnight in the concession facility or in bags sitting outside the facility.

11.7 No delivery trucks/vehicles will be permitted within the complex after 4:00 p.m. Monday-Friday for league game days or not after 6:00 a.m. on weekend game days. For special events held Thursday - Sunday, no delivery truck/vehicles will be permitted in the complex after 6:00 a.m. Secondary storage units must be moved on a daily basis to ensure parking lot cleanliness.

11.8 Operator agrees and understands to operate the concession stands during all scheduled events during the term of the agreement. It is also understood that some events may be postponed or canceled due to weather or other unforeseen circumstances; and some events may last longer than scheduled. The operator agrees to have the concession stand facility open thirty (30) minutes prior to the first scheduled event of the day. The operator agrees to keep the concession stand facility open to the public until the conclusion of the last event of the day.

Below is the estimated annual number of participants by activity to be scheduled at the Family Aquatic Center:

<b>Public Swim</b>	FAC Park Rentals: 43
Adult Admission: 17,414	<b>American Red Cross Courses</b>
Senior Admission: 1,552	Lifeguarding: 27 participants
Youth Admission: 23,432	Water Safety Instructor: 13 participants
GRAND TOTAL: 42,398	Lifeguard Instructor: 5 participants
	Grand Total: 45 participants
<b>Swim Lesson Registrations</b>	<b>Special Events</b>
<i>Session 1: 8:30 AM, 9:45 AM, 7:00 PM</i>	Adult Night: 250
Level 1: 79	Luau: 700
Level 2: 55	Splash Bash: 2,000
Level 3: 41	Barktoberfest: 1,000
Level 4: 23	
Adult: 16	
Parent & Child: 20	
<i>Session 2: 8:30 AM, 9:45 AM, 7:00 PM</i>	
Level 1: 76	
Level 2: 59	
Level 3: 27	
Level 4: 18	
Adult: 10	
Parent & Child: 22	
<i>Session 3: 8:30 AM, 9:45 AM, 7:00 PM</i>	
Level 1: 75	
Level 2: 52	
Level 3: 32	
Level 4: 15	
Adult: 7	
Parent & Child: 18	
<i>Session 4: 8:30 AM, 9:45 AM, 7:00 PM</i>	
Level 1: 62	
Level 2: 60	
Level 3: 24	
Level 4: 17	
Adult: 14	
Parent & Child: 22	
GRAND TOTAL: 1,034	

## 12. Athletics Participation

	Killeen Athletic Complex		Lions Club Sports Complex		Avg. # of Participants	
January						
February			MPF-Soccer		ASB-300	
March					MPF-850	
April	ASB	Softball	LCP N-Baseball	LCP S-Softball	ASB-300	
May					Softball-350	
June					Baseball-500	
June/July	ASB				ASB-300	
August						
September	ASB		MPF-Soccer/Football		ASB-300	
October					ASB-300	
November					Football-250 500	Fall Ball-200
December						

\*MPF: Multi-Purpose Fields \*ASB: Adult Softball \*LCP-N: Lions Club Sports Complex North \*LCP-S: Lions Club Sports Complex South

Tournaments are averaged to one (1) per month at the Killeen Athletic Complex with 26 teams per tournament.

12.1 Lions Club Sports Complex - Youth Soccer (February 1 - March 31) games will be played on 5 multipurpose fields. Games will be scheduled on 2-4 weekdays (6:00pm. - 9:00pm) and Saturdays (8:00 a.m.-2:00p.m). The league is comprised of roughly 850 participants /60 teams.

12.2 Lions Club Sports Complex & Killeen Athletic Complex- Youth baseball/Softball (April, May, June, July) games will be played on 10 fields. Eight fields at Lions Club Sports Complex and 2 fields and Killeen Athletic Complex. Games will be scheduled 4-6 days a week, excluding Sunday. Weekday games will be played during the hours of 6:00pm. - 10:00p.m. Saturday games will be 9:00am a.m. to 3:00 p.m. The league is comprised of roughly 1750 participants / 125 teams.

12.3 Lions Club Sports Complex - Youth Flag Football (October 1-December 1) - games will be played on 5 multi-purpose fields. Games will be scheduled on 3-4 weekdays (5:00 p.m. - 9:00 p.m.) and the league is comprised of roughly 250 participants /25 teams.

12.4 Killeen Athletic Complex- Adult Softball League (mid-February- Mid November) games will be played Monday through Thursday (6:00p.m. - 10:00 p.m.) This play will be broken down into three leagues; either Spring, Summer or Fall. Leagues are comprised of roughly 30 teams per league, an average of 300 participants per league.

12.5 Killeen Athletic Complex I Lions Club Park- Tournaments (June - August) During these months the potential exist that the city will be hosting various state and national tournaments. The service provider can expect 2-4 tournaments to be conducted during this time period. These events will take place Thursday - Monday. However, in most cases, these events will be Friday through Sunday.

### **13. Operations**

13.1 Family Aquatic Center will allow citizens to bring in Coolers while the Water Park is open. This will be a fee paid to the City by the citizens if they want to elect to bring their own food and beverages. At any given time, The Family Aquatic Center will allow water into the facility for health, and safety reasons. Water will be allowed in reusable, and/or sealed bottles and inspected by Recreation Services staff prior to access to the facility.

13.2 The operator understands that inclement weather may force the rescheduling of activities to alternate date and times.

13.4 The operator understands that proposed dates of activities are an estimate and may be altered.

13.4 The operator understands that the aforementioned playing of activity dates and number of participants/attendees is based on previous year's totals and may be significantly higher or lower.

13.5 The City of Killeen will have the exclusive right to contract with various vendors

to set up and provide additional food services in addition to what the designated service provider is providing. This will be reviewed with the concession operator prior to contracts being executed.

13.6 The service provider shall not provide concession services outside of the actual concession stand structure without written consent from the Parks and Recreation Manager and/or Assistant Director of Recreation Services.

13.7 Operator will place a personal lock on the concession stand and provide a minimum of two (2) keys to the Parks and Recreation Manager and the Assistant Director of Recreation Services per facility. Recreation Services Department retains the privilege of access to the structures for routine maintenance, inspection and emergencies.

13.8 A pre-inspection and post-inspection of the facilities shall be performed by the operator and the Parks and Recreation Manager and/or Assistant Director of Recreation Services. All building discrepancies and deficiencies shall be recorded during this inspection. Parks and Recreation Department personnel will conduct a monthly inspection of the concession stand facilities on or about the 15th of each month.

13.9 The Parks and Recreation Manager and/or Assistant Director of Recreation Services may at any time for just cause order the entire concession or any portion of the concession closed down. Just cause shall include, but not be limited to the protection of the public; or conflict with approved Killeen Parks and Recreation sponsored or co-sponsored special events. Written notice of such mandatory closing shall be provided by the Parks and Recreation Manager and/or Assistant Director of Recreation Services to the service provider seventy-two (72) hours prior to the effective mandatory period of cease in services

13.10 Operator agrees to secure any necessary permits or consents required by virtue of its activities, and that all service and preparation areas shall conform with relevant standards established by the Texas Department of Health, the Bell County Health Department and the City of Killeen.

13.11 Operator agrees that alcoholic beverages shall not be sold in or upon the concession stands of public parks and recreation area.

13.12 The City agrees to pay all utilities.

13.13 All concession signage will be professionally prepared and provided by the operator. All signage shall be approved by the City. No handwritten signs or banners will be hung from the concession facility or displayed in the complex.

13.14 Prior to contract execution, the successful proposer shall submit a list of proposed items to be sold, and the prices for each, to the City for approval. In addition, the operator shall provide a menu for review and approval prior to each league commencing. The menu

for the FAC, Lion's Club and KAC shall be submitted to the Parks and Recreation Manager and/or Assistant Director of Recreation Services thirty (30) days in advance of the league starting and FAC opening.

13.15 Price of product after initial price scale is approved by the city shall not increase by more than 10% in the first two years combined. No price increases can be made in the first year after the initial contract is implemented. However, if there is a significant increase in product price, the service provider may appeal to the Parks and Recreation Manager and/or Assistant Director of Recreation Services for a price increase. This should be done in a memo format and should explain the reasons for the increase. Operator should also submit proof of increase along with the memo to the Parks and Recreation Manager and Assistant Director of Recreation Services within ninety (90) days of the implementation of the new price.

13.16 The Parks and Recreation Manager and/or Assistant Director of Recreation Services has the authority to require or prohibit the sale of specific items, and the City reserves the right to require the sale of a specific brand of product to the exclusion of others. **THE CITY SHALL APPROVE THE ITEMS TO BE SOLD AND THE PRICE TO BE CHARGED. NO ITEM SHALL BE SOLD UNTIL SAID APPROVAL IS OBTAINED. THE CITY WILL NOT UNREASONABLY WITHHOLD ANY APPROVALS.**



#### **14. Compensation**

Operator will pay a flat rate to the city for each month of operation as listed in the contract. Monthly payments will be due on the 15th of each month.

Financial records for all purchases, sales, and revenue shall be maintained by the operator and shall be subject to examination and audit by City officials at any time. The City will give operator fourteen (14) business days' notice prior to inspection of said records.

Operator agrees to pay a fixed monthly rate to the City, as follows:

Monthly Rental Rates for Parks and Recreation Concession Facilities:

Month

January	\$0
February	\$1,000
March	\$1,500
April	\$1,500
May	\$2,500
June	\$3,000
July	\$3,000
August	\$3,000
September	\$2,500
October	\$1,000
November	\$1,000
December	\$0

Rates are subject to change upon approval of City Staff and Operator, if City adds or takes away any sporting activities that are not already in place at the time of contract being executed (February 2021).

## **15. Insurance Requirement**

All proposers shall have the appropriate amount of insurance while delivering the items once awarded. This coverage shall be present as to cover all losses.

### **A. Comprehensive General Liability and Property Damage Insurance**

The proposer shall take out and maintain during the life of the awarded contract such Comprehensive General Liability and Property Damage Insurance as shall protect the City from claims for damages or personal injury, including accidental death, as well as from claims for property damages which may arise from delivering the goods or services under the contract, whether such operations be by himself or by an Proposer or by anyone directly or indirectly employed by either of them. All policies shall include the City as an additional insured, and the minimum amounts of such insurance shall be as follows:

#### **Bodily Damage**

(1) Each Occurrence - \$1,000,000 (2) Annual Aggregate - \$2,000,000

#### **Property Damage Insurance**

(1) Each Occurrence - \$1,000,000 (2) Annual Aggregate - \$2,000,000

### **B. Comprehensive Automobile Liability**

#### **Bodily Injury**

(1) Each Person - \$500,000

(2) Each Accident - \$1,000,000

#### **Property Damage**

(1) Each Occurrence - \$1,000,000

## **CITY OF KILLEEN, TEXAS**

### **RESERVATION OF RIGHTS**

In connection with the RFP, the City of Killeen reserves all rights (which rights may be exercised by the City in its sole discretion) available to it under applicable laws, including without limitation, and with or without cause and with or without notice, the right to:

1. Cancel this RFP, in whole or in part at any time before the execution of a contract by the City of Killeen, without incurring any cost, obligations or liabilities.
2. Issue addenda, supplements, and modifications to this RFP.
3. Revise and modify, at any time before the RFP submittal due date, the factors and/or weights of factors the City will consider in evaluating RFP submittals and to otherwise revise or expand its evaluation methodology as set forth herein.
4. Extend the RFP submittal due date.
5. Investigate the qualifications of any firm under consideration and require confirmation of information furnished by a firm.
6. Require additional information from a firm concerning contents of its RFP submittal and/or require additional evidence of qualifications.
7. Waive or permit corrections to data submitted with any response to this RFP until such time as the City declares, in writing, that a particular stage or phase of its review of the responses has been completed or closed.
8. Reject at any time, any or all submittals, responses and RFP submittals received.
9. Terminate, at any time, evaluations of responses received.
10. Appoint an evaluation committee to review RFP submittals or responses, make recommendations and seek the assistance of outside technical experts and consultants in RFP submittal evaluation.
11. Hold interviews and conduct discussions and correspondence with one or more of the firms responding to this RFP to seek an improved understanding and evaluation of the responses to this RFP.
12. Seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to this RFP.
13. Disclose information contained in an RFP submittal to the public as required under the Texas Public Information Act.

14. Authorize firms to substitute key personnel until the City declares, in writing, that a particular stage or phase of its review has been completed and closed.
15. Waive deficiencies in an RFP submittal, accept and review a non-conforming RFP submittal or seek clarifications or supplements to an RFP submittal.
16. Disqualify any firm that changes its RFP submittal without the City's authorization.
17. Exercise any other right reserved or afforded to the City of Killeen under this RFP. The City reserves the right to modify the process, in its sole discretion, to address applicable law and/or the best interest of the City.

## **Exhibit A**

### **Concession Stand Area Address**

#### **Lion's Club Park:**

1700 E. Stan Schlueter Loop  
Killeen, TX 76542

#### **Killeen Family Water Park:**

1800 E. Stan Schlueter Loop  
Killeen, TX 76542

#### **Killeen Athletic Complex:**

2201 E. Veterans Memorial Blvd.  
Killeen, TX 76543

## **Exhibit B**

### **Abbreviations**

**FAC** – Family Aquatic Center

**KAC** – Killeen Athletic Complex

**LCPSC** – Lions Club Park Sports Complex

## **Exhibit C**

### **Point of Contacts Once Contract is in Place**

Assistant Director of Recreation Services – Pete Vento – [pvento@killeentexas.gov](mailto:pvento@killeentexas.gov)

Parks and Recreation Manager – Heather Buller – [hbuller@killeentexas.gov](mailto:hbuller@killeentexas.gov)

Athletic Superintendent – Joe Dyer- [jdyer@killeentexas.gov](mailto:jdyer@killeentexas.gov)

Aquatics Manager – Claryce Free – [jfree@killeentexas.gov](mailto:jfree@killeentexas.gov)

## **FORMS**

Proposer shall complete the following forms. Forms not completed may result in disqualification. If there is any doubt to the meaning of the forms, Proposer may submit an inquiry in accordance with the requirements set forth in this RFP.

- FORM 1 – Conflict of Interest Questionnaire (CIQ)
- FORM 2 – Proposer Certification and Addenda Acknowledgement
- FORM 3 – Certificate of Insurability
- FORM 4 – Non-Collusion

# CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

Chapter 76 of the Texas Local Government Code requires certain persons who wish to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict of interest questionnaire (FORM CIQ). These laws are codified in Chap. 176 of the Texas Local Government Code.

## **What vendors/persons are subject to Chapter 176?**

The word “person” includes a partnership, corporation or other corporate body, including those performing professional services. Such partnerships or corporations act through individuals, but it is the partnership or corporation that would be seeking to do business with the city.

- Any “person” who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- An agent of a person who contracts or seeks to contract for the sale or purchase of property, goods, or services with a local governmental entity
- A vendor shall file a completed conflict of interest questionnaire if the person has a business relationship with a local governmental entity and:
  - (1) has an employment or other business relationship with an officer of that local governmental entity, or a family member of the officer that results in taxable income exceeding \$2,500 during the 12 month period preceding the date a contract is executed or a contract is being considered; Local government officer means a member of the governing body, a person designated the executive officer or an agent (including an employee) who exercises discretion in the planning, recommending or contracting of a vendor. or
  - (2) has given an officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value of more than \$100 in the 12 month period preceding the date a contract is executed or a contract is being considered.

## **What triggers the requirement to file a “conflict of interest questionnaire”?**

When a person begins (1) contract discussions or negotiations with the city or (2) submits an application, response to request for proposals or bids, correspondence, or another writing related to a potential agreement, Form CIQ must be completed. Whether the person initiates the discussion or the city initiates the discussions, Form CIQ must be completed. Even if the vendor has no affiliation or business relationship with an officer or employee of the city, Form CIQ must be completed and submitted.

## **To what type of contracts does the bill apply?**

Any written contract and any implied contract, such as purchase orders, procurement card purchases, utility purchases, or any exchange of money or other consideration for some service or property. The monetary amount or value of the contract/purchase does not matter.

## **When must a vendor file the conflict of interest questionnaire?**

No later than seven days after the date the person: (a) begins contract discussions or negotiations with the city, or (b) submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city, or (c) becomes aware of an employment relationship with a local government officer or family member of the officer, or (d) becomes aware of a qualifying gift.

## **What has to be revealed?**

Section 176.006 requires disclosure of a person’s employment or business relationships. This includes each employment or business relationship with a corporation or other business entity with respect to which a local government officer services as an officer or director or holds an ownership interest of 10% or more.

**How do I go about filling out the Conflict of Interest Questionnaire form?**

Each number below corresponds with the number on FORM CIQ:

1. Fill in the full name of the person who is trying to do business with the City. If the person is a corporation, partnership, etc., then it is the name of that corporation, partnership, etc., that is required on Form CIQ.
2. Check box if the form is an update to a form previously completed. Updates are required by the 7<sup>th</sup> business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate. Updates are also required by September 1 of each year in which the person submits a proposal, bid or response to the City of Killeen or begins contract discussions or negotiations with the City.
3. Complete this Section by listing the name of the local government officer (member of City Council, City Manager or an employee who exercises discretion in the planning, recommending or contracting of a vendor) with whom there is an affiliation to or business relationship and you checked the "Yes" box in Section 3 A, B, or C.

If there is more than one local government officer (City Council, City Manager or an employee who exercises discretion in the planning, recommending or contracting of a vendor) with whom there is an affiliation or business relationship, more than one page two may be needed to provide information on each local government officer.

4. State whether the local government officer named on the form receives or is likely to receive taxable income, other than investment income, from the vendor filing the questionnaire.
5. State whether the filer receives or is likely to receive taxable income, other than investment income, from or at the direction of the local government officer named on the form AND the taxable income is not received from the local governmental entity.
6. State whether the filer is employed by a corporation or other business entity with which the local government officer serves as an officer or director or holds an ownership interest of 10% or more.
7. Describe each employment or business relationship with the local government officer named on the form.
8. Signature box. Person completing form must date and sign the form. If the form is being completed for a corporation, partnership, etc. The person signing should be someone who is authorized to act on behalf of the corporation, partnership, etc.

**A signature is required in box #4 regardless of any other entry on the form.**

**A copy of Chapter 176 of the Texas Local Government Code can be found at:**

**<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/htm/LG.176.htm>**



**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 in this section is being disclosed.

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

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, 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 named in this section AND the taxable income is not received from the local governmental entity?

☐ Yes ☐ No

C. Is the filer of this questionnaire employed by 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?

☐ Yes ☐ No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**

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

\_\_\_\_\_  
Date

Adopted 8/7/2015

**FORM 2**  
**PROPOSER CERTIFICATION AND ADDENDA ACKNOWLEDGEMENT**

By signature affixed, the Proposer certifies that neither the Proposer nor the Proposer, corporation, partnership, or institution represented by the Proposer, or anyone acting for such Proposer, corporation, or institution has violated the anti-trust laws of this State, codified in Section 15.01, et seq., Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in such fine of business.

Proposer has examined the specifications and has fully informed themselves as to all terms and conditions. Any discrepancies or omissions from the specifications or other documents have been clarified with City representatives and noted on the bid submitted. Proposer guarantees product offered will meet or exceed specifications identified in this RFP.

By signing this document, the Proposer hereby verifies that it does not boycott Israel and will not boycott Israel during the term of the contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or 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

Additionally, the City may not enter into a contract for general construction, an improvement, a service, or a public works project or for a purchase of supplies, materials or equipment with a company engaged in business with Iran, Sudan or a foreign terrorist organization.

**Proposer must initial next to each addendum received in order to verify receipt:**

Addendum #1\_\_\_\_\_ Addendum #2\_\_\_\_\_ Addendum #3\_\_\_\_\_

Addendum #4\_\_\_\_\_ Addendum #5\_\_\_\_\_ Addendum #6\_\_\_\_\_

**Proposer Must Fill in and Sign:**

NAME OF PROPOSER/COMPANY: \_\_\_\_\_

REPRESENTATIVE's NAME: \_\_\_\_\_

REPRESENTATIVE's TITLE: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY, STATE, ZIP: \_\_\_\_\_

PHONE & FAX NUMBERS: \_\_\_\_\_

E-MAIL ADDRESS: \_\_\_\_\_

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

DATE: \_\_\_\_\_

**FORM 3**  
**CERTIFICATE OF INSURABILITY**

Proposer hereby certifies that, as a Proposer to the City of Killeen for RFP 21-07, Proposer is fully aware of insurance requirements contained in the RFP. Furthermore, Proposer hereby assures the City of Killeen that Proposer is able to produce the insurance coverage required should Proposer be selected for award.

---

Signature of Proposer

---

Printed Name of Signee

---

Company Name

---

Date

**FORM 4**  
**Non-Collusion**

The undersigned verifies that he/she is duly authorized to execute this Proposal, that this company, corporation, firm, partnership or individual has not prepared this proposal in collusion with any other Proposer, City Official or staff, and that the contents of this proposal as to prices, terms and conditions have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business prior to the official opening of this proposal.

---

Signature of

---

Proposer

---

Printed Name of

---

Signee Title

Company Name

---

Street

---

Address

---

City

---

State Zip

**APPENDIX A**  
**CITY OF KILLEEN**  
**GENERAL TERMS AND CONDITIONS**

**1. General Conditions**

Bidders are required to submit their Bid upon the following express conditions:

- (a) Bidders shall make all investigation necessary to thoroughly inform themselves regarding plant and facilities for delivery of material and equipment as required by the Bid conditions. No plea of ignorance by the bidder of conditions that exist or that may hereafter exist as a result of failure or omission on the part of the bidder to make the necessary examinations and investigations, or failure to fulfill in every detail the requirements of the contract documents, will be accepted as a basis for varying the requirements of the City or the compensation to the bidder.
- (b) Unless specifically stated otherwise in the specifications, only new products or equipment will be acceptable.

**2. Preparation of Bid**

Bid will be prepared in accordance with the following:

- (a) All information required by the Bid shall be furnished. The bidder shall print or type his/her name and manually or electronically sign the Bid and each continuation sheet on which an entry is made.
- (b) Unit prices shall be shown and where there is an error in extension of the price, the unit price shall govern.
- (c) Alternate Bids will not be considered unless authorized by the City within the specifications.
- (d) Proposed delivery time must be shown and shall include weekends and holidays if requested by the City.
- (e) The City qualifies for exemption from State and Local Sales and Use Taxes pursuant to the

provision of Article 20.04(f) of the Texas Limited Sales, Excise and Use Tax Act. Taxes normally levied on the purchase, rental and lease of materials, supplies and equipment used or consumed in performance of the Contract may be exempted by issuing to suppliers an exemption certificate in lieu of tax. Exemption certificates comply with State Comptroller of Public Accounts Ruling No. 95-0.07. Any such exemption certificate issued in lieu of tax shall be subject to State Comptroller of Public Accounts Ruling No. 95-0.09, as amended. Failure by the Bidder or the bidder's Subcontractors to take advantage of the City's exemption and to obtain such exemption certificate shall make him responsible for paying taxes incurred on materials furnished on the Project without additional cost to or reimbursement by the City.

### **3. Description of Supplies**

Any catalog of manufacturer's reference used in describing an item is merely descriptive, and not restrictive, unless otherwise noted, and is used only to indicate type and quality of material. Bidders are required to state exactly what they intend to furnish; otherwise they will be required to furnish the item as specified.

### **4. Submission of Bid**

By submitting your Bid, you acknowledge that the City of Killeen will not accept any Bid, or execute any submitted contract in conjunction with a Bid that requires the City to agree to any of the following:

- Governing law other than the law of the State of Texas
  - Venue other than Bell County
  - Mandatory arbitration
  - Artificial limitation of liability
  - Artificial statute of limitation
  - Waiver of trial by jury
  - Indemnify a vendor
- (a) Bid and changes thereto shall be enclosed in a sealed envelope addressed to the Purchasing Office, City of Killeen. The names and address of Bidder, the date and hour of the Bid opening and the Bid number shall be placed on the outside of the envelope.
- (b) Bids must be submitted on the forms furnished. Telegraphic Bids will not be considered. However, Bids may be modified by written notice provided such notice is received prior to the time and date set for the Bid opening.
- (c) All Bid documents shall be sealed and submitted no later than the specified date and hour of the Bid opening to:

Delivery Address:

City of Killeen

Attn: Purchasing Division

802 N 2<sup>nd</sup> Street, Building E, 2<sup>nd</sup> Floor #215

Killeen, TX 76541

**5. Rejection of Bid**

- (a) The City may reject a Bid if:
  - 1. The Bidder mistakes or conceals any material fact in the Bid, or if
  - 2. The Bid does not strictly conform to law or the requirements of the Bid, or if
  - 3. The Bid is conditional, except that the Bidder may qualify his Bid for acceptance by the City as an "All or None" basis.
- (b) The City may, however, reject all Bids whenever it is deemed in the best interest of the City to do so, and may reject any part of a Bid unless the Bid has been qualified as provided in section 5(a) 3 above.

**6. Withdrawal of Bid**

Bid may not be withdrawn for up to ninety (90) days after the time set for the Bid opening, unless otherwise stated in the Bid.

**7. Late Bid or Modifications**

Bid and modifications received after the time set for the Bid opening will not be considered.

**8. Clarification or Objection to Bid Specifications**

If any person contemplating submitting a Bid for this contract is in doubt as to the true meaning of the specifications, or other Bid documents, or any part thereof, he may submit to Purchasing, a request for clarification by the deadline established in the Bid. All such requests for information shall be made in writing and the person submitting the request will be responsible for its prompt delivery. Any interpretation of the Bid, if made, will be made only by an addendum duly issued. A copy of such addendum will be distributed to all known bidders who have expressed an interest in this bid. The City will not be responsible for any other explanation or interpretation of the proposed Bid made or given prior to the award of the contract. Any objection to the specifications and requirements, as set forth in the Bid documents must be filed in writing with the Purchasing Division by the deadline established in the Bid.

## 9. Discounts

- (a) Prompt payment discounts will be considered in making the award provided the period of the discount offered is sufficient to permit payment within such period in the regular course of business.
- (b) In connection with any discount offered, time will be computed from the date of receipt of supplies or services or from the date a correct invoice is received, whichever is the later date. Payment is deemed to be made on the date of mailing of the check.

## 10. Award of the Contract

- (a) The contract will be awarded to the lowest responsible bidder. "Lowest responsible bidder" means the Bidder submitting the lowest bid meeting all requirements of the specifications, instructions, and terms and conditions of the bid and who has the financial and practical ability to fully and reliably perform all obligations of the Contract, taking into consideration qualifications and past performance of the Bidder. The following are considered examples of performance that is not responsible and may lead to a determination that the Bidder is not responsible:

- \* Falsification of information provided in bid response;
  - \* Non-observance of safety requirements;
  - \* Failure to meet requirements of federal, state, or local law, as applicable, including employment;
  - \* Substantial failure to adhere to contractually agreed-upon schedules; and
- Poor past performance on City projects such as use of defective materials, refusal to correct defective work not in accordance with contract documents, failure to reasonably resolve disputes, termination for cause, or performance leading to litigation.

Or, if applicable, the responsible bidder who provides goods or services at the most advantageous Bid for the municipality based on, but not limited to, the following factors:

- |   |  |
|---|--|
| * Unit price  | * Bidder's past performance                        |
| * Total Bid price   | * Demurrage charges, freight costs and mileage     |
| * Terms and discounts   | * Estimated costs of supplies, maintenance, etc.   |
| * Delivery date   | * Estimated surplus value, life expectancy         |
| * Product warranty  | * Results of testing samples                       |
| * Special needs and requirements of City  | * Conformity to specifications                     |
| * Past experience with product/service  | * Training requirements, location, etc.            |
| * City's evaluation of the bidder's ability, financial, strength, and ethical standards | * Location of maintenance facility/service person; |



- |  |   |
|--|---|
| <ul style="list-style-type: none"> <li>* Quality of the bidder's goods or services</li> <li>* The extent to which the goods or services meet the municipality's needs</li> </ul> | <ul style="list-style-type: none"> <li>ability to provide for minimum down time</li> <li>* The total long-term cost to the municipality to acquire the bidder's goods or services</li> <li>* Reputation of bidder and of bidder goods and services</li> </ul> |
|--|---|
- (b) The City reserves the right to accept any item or group of items of this Bid, unless the Bidder qualifies his Bid by specific limitation. Reference section 5(a) 3 above.
- (c) A written award of acceptance mailed or otherwise furnished to the successful Bidder will then be followed up with a contract/service agreement for review by the City's legal team, if not otherwise specified within.
- (d) Prices must be quoted "F.O.B. Destination (Killeen) with all transportation charges prepaid," unless otherwise specified in the Bid.
- (e) If identical Bids are received from two or more bidders and those Bids are the lowest and best Bid, the tie shall be broken in accordance with provisions in Section 271.901 of the Texas Local Government Code.
- (f) As stated in Section 271.905 of the Texas Local Government Code, "In purchasing under this title any real property or personal property that is not affixed to real property, if a local government receives one or more competitive sealed Bid from a bidder whose principal place of business is in the local government and whose Bid is within three percent of the lowest Bid price received by the local government from a bidder who is not a resident of the municipality, the local government may enter into a contract with: (1) the lowest bidder; or (2) the bidder whose principal place of business is in the local government if the governing body of the local government determines, in writing, that the local bidder offers the local government the best combination of contract price and additional economic development opportunities for the local government created by the contract award, including the employment of residents of the local government and increased tax revenues to the local government."
- (g) As stated in Section 271.9051(b) of the Texas Local Government Code, "In purchasing real property or personal property that is not affixed to real property, or services, if a municipality receives one or more competitive sealed Bid from a bidder whose principal place of business is in the municipality and whose Bid is within five percent of the lowest Bid price received by the municipality from a bidder who is not a resident of the municipality, the municipality may enter into a contract for an expenditure of less than \$100,000 or a contract for other purchases in an amount of less than \$500,000 with: (1) the lowest bidder; or (2) the bidder whose principal place of business is in the municipality if the governing body of the local government determines, in writing, that the local bidder offers the municipality the best combination of contract price and additional economic development opportunities for the municipality created by the contract award, including the employment of residents of the municipality and increased tax revenues to the municipality."

## 11. Bid Protest

Any bidder wishing to file a protest concerning alleged improprieties with this solicitation must submit the

protest in written format to the Purchasing Division within 5 business days after the specified time of the Bid opening. The formal written protest must identify the name of the bidder contesting the solicitation, the project name and number, and the specific grounds for the protest with all supporting documentation. A response to the protest will be prepared by Purchasing within 10 business days of receipt of the protest. All determinations made by the City are final.

## **12. Termination for Governmental Non-Appropriations**

This contract is a commitment of the City's current revenues only. Should the terms of the Bid require payment of funds over more than the current fiscal year ending September 30, the following shall apply:

- (a) For each lease, City represents and warrants: that it has appropriated and budgeted the necessary fund to make all rent payments required pursuant to such lease for the remainder of the fiscal year in which the payment term commences; and that it currently intends to make rent payments for the full lease term as scheduled in the applicable payment schedule if funds are appropriated for the rent payment in each succeeding fiscal year by its governing body. Without contractually committing itself to do so, City reasonably believes that monies in an amount sufficient to make all rent payments can and will lawfully be appropriated; therefore, City agrees to budget requests to include the rent payments payable during each fiscal year in the budget requests presented to City's governing body for each fiscal year; provided, that City's governing body retains authority to approve or reject any such budget request. All rent payments shall be payable out of the general funds of City or out of other funds legally appropriated therefore. Lessor agrees that no lease will be a general obligation of City and no lease shall constitute a pledge of either the full faith and credit of City or the taxing power of City.
- (b) If City's governing body fails to appropriate sufficient funds in any fiscal year for rent property or other payments due under a lease and if other funds are not legally appropriated for such payment, then a non-appropriation event shall be deemed to have occurred. If a non-appropriation event occurs, then: (1) City shall give lessor immediate notice of such non-appropriation event and provide written evidence of such failure by City's governing body; (2) on the return date, City shall return to Lessor all of the equipment covered by the affected lease, at City's sole expense; (3) the affected lease shall terminate on the return date without penalty to City; (4) return date means the last day of the fiscal year for which appropriations were made for the rent payments due under a lease.

## **13. Termination of Contract**

This contract shall remain in effect until the contract expires, delivery/completion and acceptance of products and/or performance of services ordered or until terminated by either party with a thirty (30) day written notice prior to any cancellation. All bidders must state therein the reasons for such cancellation. City reserves the right to award a cancelled contract to next best offeror as it deems to be in the best interest of the City.

## **14. Assurance of Compliance**

For Equal Employment Opportunity and Small and/or Minority Business Enterprise Requirements the bidder agrees that if this Bid is accepted, he/she will not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

**15. Conflict of Interest Disclosure Questionnaire**

The Bidder agrees that if a member of the City Council a Councilmember's close relative or any officer or employee of the City has a financial interest, direct or indirect, or by reason of ownership of stock in any corporation, in any contract with the City, or be financially interested, directly or indirectly, in the sale to the City any land, materials, supplies or services except on behalf of the City, as an officer or employee, the official shall file before a vote or decision on any matter involving the business entity or the real property, an affidavit stating the nature and extent of the interest and shall abstain from further participation in the matter if:

- (a) in the case of a substantial interest in a business entity the action on the matter will have a special economic effect on the business entity that is distinguishable from the effect on the public; or
- (b) in the case of a substantial interest in real property, it is reasonably foreseeable that an action on the matter will have a special economic effect on the value of the property, distinguishable from its effect on the public.

Chapter 176 of the Texas Local Government Code mandates the public disclosure of certain information concerning persons doing business or seeking to do business with the City of Killeen, including affiliations and business and financial relationships such persons may have with the City of Killeen. An explanation of the requirements of Chapter 176 and complete text of the new law are available at:

<https://www.ethics.state.tx.us/data/forms/conflict/CIQ.pdf>

**16. Gratuities**

It shall be a breach of ethics to offer, give, or agree to give any employee of the City or for any employee of the City to solicit or accept from another person, a gratuity or an offer of employment in connection with any decision regarding any part of a program requirement, proposal, or purchase request pending before the City.

**17. 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 the City, or any person associated therewith, as an inducement for the award of a subcontract or order.

**18. Venue for Legal Action**

This agreement shall be governed and construed according to the laws of the State of Texas. Venue for purposes of any and all lawsuits, causes of actions, claims or disputes shall be in Bell County, Texas.

**19. Conflicts in Terms and Conditions for Bids**

If any conflicts exist between the Terms and Conditions for Bids and the standard form of agreement between the owner and Bidder, the standard form of agreement between the owner and bidder shall prevail.

**20. Insurance**

All bidders shall have the appropriate amount of insurance while delivering the items once awarded, this coverage shall be present as to cover all losses up until the City accepts the items in writing.

A. Comprehensive General Liability and Property Damage Insurance.

The bidder shall take out and maintain during the life of this Contract such Comprehensive General Liability and Property Damage Insurance as shall protect the City from claims for damages or personal injury, including accidental death, as well as from claims for property damages which may arise from delivering the item under this contract, whether such operations be by himself or by an subcontractor or by anyone directly or indirectly employed by either of them, and the minimum amounts of such insurance shall be as follows:

Bodily Injury.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000

Property Damage Insurance.

- (1) Each Occurrence - \$1,000,000
- (2) Annual Aggregate - \$2,000,000

B. Comprehensive Automobile Liability.

Bodily Injury

- (1) Each Person - \$500,000
- (2) Each Accident - \$1,000,000

Property Damage

- (1) Each Occurrence - \$1,000,000

**21. Disclosure of Interested Parties**

Texas Government Code Section 2252.908 requires that parties contracting with governmental entities submit a disclosure of interest parties form for contracts entered into after January 1, 2016. Successful bidders shall electronically submit the form at the following website: [https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm) and provide the City with a certified copy prior to Council approval of the Bid award.

**22. Acknowledgement – “Boycott Israel”**

By signing and submitting this bid the vendor hereby verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. Boycotting Israel is defined in Texas Government Code section 808.001 to mean refusing to deal with, terminating business activities with, or 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.

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

PRINT NAME: \_\_\_\_\_