



COUNTY OF EL PASO
500 E. San Antonio, Suite PU500
El Paso, Texas 79901
(915) 546-2048 (915) 546-8180 Fax

Notice to Interested Parties

Sealed Request for Proposals (RFP) will be received at the County Purchasing Department, 500 E. San Antonio, Suite 500, El Paso, Texas 79901 before 2:00 p.m., **Wednesday, May 21, 2008** to be opened at the County Purchasing Office the same date for **Operation of the Cafeteria located at the Sheriff's Office Headquarters**. A pre-bid conference will be held on Tuesday, May 6, 2008 at 10:00 a.m. in the Purchasing Conference Room located at 500 East San Antonio, Room 500, El Paso, Texas 79901.

Proposals must be in a sealed envelope and marked:

"Proposals to be opened May 21, 2008

Operation of the Cafeteria located at the Sheriff's Office Headquarters.

RFP Number 08-059"

Any questions or additional information required by interested vendors must be submitted in writing to the attention of the County Purchasing Agent before Tuesday, May 13, 2008, at 12:00 p.m. Questions can be faxed to (915)-546-8180.

Award will be made based on a review of qualifications, scope of services and price. **COMMISSIONER'S COURT RESERVES THE RIGHT TO REJECT ANY AND ALL PROPOSALS AND WAIVE TECHNICALITIES.** Only proposals that conform to specifications will be considered. Successful Proposer shall not order items or services until a Purchasing Order is received from the County Purchasing Office. Payment will not be made on items delivered without an Agreement.

If the proposal totals more than \$100,000.00, the bidder shall furnish a certified cashiers check made payable to the County of El Paso or a good and sufficient bid bond in the amount of 5% of the total contract price, executed with a surety company authorized to do business in the State of Texas. The certified cashiers check must be included with the proposal at the time of the opening.

In order to remain active on the El Paso County Vendor list, each Vendor receiving this proposal must respond in some form. Vendors submitting a proposal must meet or exceed all specifications herein. Vendors submitting a no proposal must submit their reason in writing to the El Paso County Purchasing Department.

PITI VASQUEZ
County Purchasing Agent

PROPOSAL SCHEDULE

To: El Paso County, Texas

I or we agree to furnish the following described equipment, supplies, or services for the prices shown in accordance with specifications listed below or attached. By execution of this proposal, I hereby represent and warrant to El Paso County that I have read and understood the Proposal Documents and the Contract Documents and this proposal is made in accordance with the Proposal Documents.

Please quote prices and discounts on the following items:

F. O. B. El Paso County

Description – RFP # 08-059 Operation of the Cafeteria located at the Sheriff's Office Headquarters. Vendor must meet or exceed specifications
Please do not include tax, as the County is tax-exempt. We will sign tax exemption certificates covering these items. Please submit one (1) original copy and two (2) copies of your bid.

Company

Address

Federal Tax Identification No.

City, State, Zip Code

CIQ Confirmation Number

CIQ Sent Date

Representative Name & Title

Telephone & Fax Number

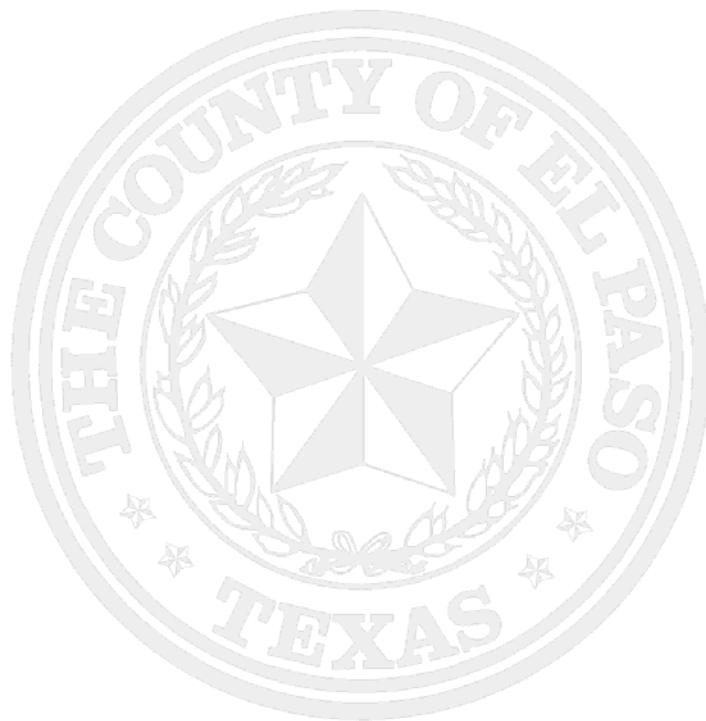
Signature

Date

*****THIS MUST BE THE FIRST PAGE ON ALL BIDS*****

**Operation of the Cafeteria located
at the Sheriff's Office
Headquarters.**

RFP #08-059



**Opening Date
Wednesday, May 21, 2008**

**El Paso County Sheriff's Office Headquarters
3850 Justice Blvd.
El Paso, Texas**

Specifications for Operation of Cafeteria

SCOPE

The El Paso County Sheriff's Office is requesting proposals for the operation of the Cafeteria and concession area located at 3850 Justice Blvd. El Paso, Texas. Services are to include the preparation, service and sale of food, beverages, goods, merchandise and other items at the premises.

TERM

The term of the award shall be for an initial period of three (3) years, to begin once the final contract is approved by El Paso County Commissioner's Court. El Paso County Sheriff's Office shall have the option to extend the initial term for two additional one-year periods by giving the concessionaire sixty days notice. Any such award extensions shall be under the same conditions set forth in the original term unless agreed to in writing by both parties.

HOURS OF OPERATION

Successful concessionaire shall provide the services between the hours of 7:00 a.m. to 2:00 p.m., Monday through Friday, as minimum hours of operation. This shall exclude any observed holidays when the Sheriff's Office is closed to the public. Concessionaire shall open at other hours upon the request of the El Paso County Sheriff's Office and with reasonable advance notice.

MATERIALS AND SUPPLIES

The El Paso County Sheriff's Office shall provide the equipment listed in Exhibit "A" for the concessionaire's use during the term of the award. Concessionaire shall secure maintenance contracts on the equipment as indicated in Exhibit "A", at their own expense. Concessionaire shall maintain all the equipment in good condition and repair and shall surrender the equipment in good condition upon termination of the award, normal wear and tear excluded. Concessionaire shall be responsible for the cleaning of grease traps and vents and vent filters. All property owned by the El Paso County Sheriff's Office shall remain the property of the El Paso County Sheriff's Office.

All other supplies and equipment necessary to perform the contract shall be provided by the Concessionaire at their expense.

Concessionaire shall provide all personnel and other items necessary to perform their obligations under the contract.

The El Paso County Sheriff's Office will provide for electricity and other utilities required excepting telephone service, which shall be provided by the Concessionaire.

COMPLIANCE WITH APPLICABLE STATUTES, ORDINANCE, AND REGULATIONS

In performing the services required, Concessionaire shall comply with the applicable federal, state, county and city statutes, ordinances, and regulations and shall secure all necessary licenses and permits required. Failure to comply shall constitute a material breach of contract.

INSURANCE

Concessionaire shall, at all times during the term of award and any subsequent extension maintain Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of not less than One Million Dollars (\$1,000,000) for each occurrence, including, but not limited to, Personal Injury Liability, covering only the activities of Concessionaire under the Agreement and shall provide County with a certificate evidencing such policies no later than 10 days prior to execution of the contract. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice. County shall be named as an additional insured under Concessionaire's policies of insurance. Failure to carry or provide proof of insurance shall constitute a breach of Contract. Concessionaire shall provide Worker's Compensation Insurance

PERFORMANCE OF CONCESSIONAIRE

Concessionaire and its employees will perform the service in a professional and courteous manner. If in the opinion of the Commissioner's Court, the services are not provided in a professional and courteous manner the County may terminate the award by giving ten days notice.

Concessionaire employees shall be neatly groomed and in a clean uniform to perform the services.

INTEREST IN REAL ESTATE

Award shall convey no interest in real estate.

COMPENSATION

Please state in your proposal the percentage of net/receipts derived from the cafeteria operation to be paid to the El Paso County Sheriff's Office. Indicate the percentage of guest meal sales and the percentage of catering sales separately. **Net receipts are defined as gross receipts excluding sales and use taxes.**

Concessionaire shall use the County cashiering system (RECWARE), and keep detailed records of all receipts and shall provide the El Paso County Sheriff's Office with daily summary reports. Said reports shall be submitted to the County Auditors Office monthly.

Payment will be made without demand within thirty (30) days after close of each account period.

The El Paso County Sheriff's Office and County Auditor's Office shall have the right, without notice, to inspect any and all records kept by Concessionaire pertaining to the cafeteria operation at the El Paso County Sheriff's Headquarters.

Proposal should include a proposed food/beverage menu along with a proposed price listing.

MANAGEMENT AGREEMENT

This Management Agreement (“Agreement”) is made and entered into this ____ day of _____, 2008, by and between El Paso County (“County”), a political subdivision of the State of Texas, and _____, (“Concessionaire”), a Texas Corporation, who agree as follows:

ARTICLE I **PURPOSE OF THE AGREEMENT**

- 1.1 Purpose of Agreement. The Agreement sets forth the terms and conditions upon which County retains Concessionaire to manage and operate Food Service for County’s staff, employees, invited guests and general public.
- 1.2 Independent Contractor. Concessionaire shall be an independent contractor and shall retain control over its employees and agents.
- 1.3 Regulations and Access. County will establish reasonable requirements for use and occupancy of the Premises and shall give Concessionaire written notice thereof. County’s authorized representatives shall have access to the Premises at all times.

ARTICLE II **DEFINITIONS**

- 2.1 Accounting Period. A calendar month, twelve (12) of which constitute an accounting year.
- 2.2 Food Service. The preparation, service and sale of food, beverages, goods, merchandise and other items on or from the Premises.
- 2.3 Gross Sales. All sales of food, beverages, goods, merchandise and services in the Food Service operation, plus sales and use of taxes.
- 2.4 Net Sales. Gross Sales excluding sales and use taxes.
- 2.5 Premises. County’s Food Service facilities located at 3850 Justice Blvd., El Paso, Texas, 79938.
- 2.6 Smallwares. Dishware, glassware, flatware, utensils and similar items.

ARTICLE III
TERM AND EXCLUSIVITY

- 3.1 Term of Agreement. The initial term of the Agreement is three (3) years, commencing on _____, and continuing until _____. County shall have the option to extend the initial term for two (2) additional one-year periods by giving the Concessionaire sixty (60) days notice.
- 3.2 Food Service Exclusive. County grants Concessionaire the exclusive right to operate Food Service on or form the Premises. This provision does not prevent County from installing and operating or engaging others to install and operate vending machines for food, beverage, confections and similar products within the Premises.

ARTICLE IV
RETAIL SALES PROGRAM

- 4.1 Locations. Concessionaire shall provide retail sales at the Premises and at such other locations as County and Concessionaire shall agree.
- 4.2 Retail Segment Prices. Prices charged for retail sales shall be reasonable as determined by Concessionaire and competitive with prices charged in comparable establishments in the geographic area of the Premises for products of like quality.
- 4.3 County-Sponsored Functions. Prices for the catering of County-sponsored functions shall be established by mutual agreement of the parties. Concessionaire shall prepare and submit invoices to individuals or groups served by Concessionaire at County-sponsored functions. Concessionaire shall bill and collect amounts due for functions not County-sponsored from the individuals or groups served, unless County and Concessionaire agree otherwise in writing.
- 4.4 Reports. Concessionaire shall prepare a statement of sales and commissions for each Account Period and shall submit such statement with commission payments due to County for such Account Period. Statement of sales and commissions shall be detailed, and shall be prepared using standard accounting practices, listing each commission category separately, number of customers served in each category and total sales in each category. Concessionaire shall submit an annual statement to County within sixty (60) days of close of the Accounting Year. All reports shall contain a separate original statement, signed by the person responsible for the report attesting to the report's accuracy.
- 4.5 Electronic Reporting. Concessionaire shall submit required reports to County via the County cashiering system and equipment, RECWARE, or as subsequently updated. County shall provide the training and equipment required for its use. Concessionaire shall complete the system training in a satisfactory manner, and shall care for the

equipment in a proper manner and return it in satisfactory condition,. Concessionaire acknowledges that submission of required reports in electronic format is for the convenience of both parties only, and does not relieve the Concessionaire from the responsibility of accurate record keeping. Furthermore, by accepting the required reports in electronic format, County **does not** waive any Right of Inspection and Audit, as set forth below.

- 4.6 Record Keeping. Concessionaire shall retain copies of al financial records pertaining to Concessionaire Food Service at County’s location for a minimum of two (2) years, or longer if requested by County or required by law.
- 4.7 Right of Inspection and Audit. Concessionaire agrees that all financial records pertaining to Concessionaire Food Service shall be available for inspection and audit without notice by County. Such financial records include, but are not limited to a copy of register tapes, daily reports, and catering invoices.

ARTICLE IV
EMPLOYEES

- 5.1 Concessionaire Management Employees. Concessionaire shall provide qualified management employees to operate the Food Service and supervise all Food Service employees.
- 5.2 Concessionaire Non-management Employees. All non-management Food Service employees shall be Concessionaire Employees. Concessionaire employees working at the Premises shall comply with County Sheriff policies and practices.
- 5.3 Personnel Obligations. The parties hereto shall be solely responsible for employees on their respective payrolls, including responsibility for recruitment, employment, promotion, transfer, layoff and termination. Each party shall prepare and process the payroll for its employees and shall withhold and pay all applicable federal and state employment taxes and payroll insurance relating to its employees including any income, social security and unemployment taxes and workers’ compensation costs charges.
- 5.4 Agreement Not to Hire. County shall not, without Concessionaire’s written consent, hire, make any agreement with, or permit the employment of, in any operation providing food service, any person who has been a Concessionaire management employee at the Food Service within the earlier of one (1) year after termination of the Agreement. This provision shall survive termination of the Agreement.
- 5.5 Equal Opportunity and Affirmative Action Employer. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability or status as a Vietnam veteran, as defined and prohibited by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities

concerning Food Service employees. Concessionaire affirms that it is an equal opportunity and affirmative action employer and shall comply with all applicable federal, state and local laws and regulations including, but not limited to: Executive Order 11246 as amended by 11375 and 12086; 12138; 11625; 11758; 12073; the Rehabilitation Act of 1973, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1975; Civil Rights act of 1964; Equal pay Act of 1963; Age Discrimination in Employment Act of 1967; Age of Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; and any additions or amendments thereto.

- 5.6 Background Check. Concessionaire employees, both management and non-management, must each complete Exhibit B and pass a background check conducted by the County Sheriff's Office.**

ARTICLE VI
INVENTORIES, FACILITIES, EQUIPMENT AND MAINTENANCE

- 6.1 Inventory of Equipment. Concessionaire and County have inventoried County's Food Service equipment. Upon termination of the Agreement, Concessionaire shall surrender such inventory of equipment to County.
- 6.2 Inventory of China and Smallwares. County and Concessionaire jointly shall inventory all china, if any, and smallwares owned by County. If at any time Concessionaire is to provide additional service, Concessionaire shall be responsible to increase, at its own expense, the inventories required for the additional service.
- 6.3 Office Facilities. Concessionaire shall have access to office facilities located at the Premises, including furniture and equipment. Concessionaire shall take reasonable and proper care of the office and furnishings and return them to County at termination of the Agreement in satisfactory condition.
- 6.4 Telephone Expenses. County shall be responsible for telephone installation costs. Concessionaire shall pay its local and long distance telephone billings.
- 6.5 Sanitation. Concessionaire shall be responsible for maintaining the Premises in a clean and sanitary condition. County shall be responsible for any costs involved in setting up and cleaning premises for functions not managed by Concessionaire.
- A. Concessionaire shall be responsible for housekeeping and sanitation in food preparation, storage and serving areas. Concessionaire shall provide daily janitorial service for the Food Service area, including cleaning of dining area floors and /or carpets and of all windows, walls, ceilings, drapes, fixtures, tables and chairs. Concessionaire shall provide necessary pest control, and transport refuse to designate refuse collection areas.

- B. County shall provide and maintain adequate fire extinguishing equipment for the Premises.

6.6 Maintenance.

- A. County shall provide the equipment listed in Exhibit “A” in good condition for Concessionaire’s use during the term of the Agreement. Concessionaire shall secure maintenance contracts on the equipment as indicated in Exhibit “A”, at their own expense. Concessionaire shall maintain all the equipment in good condition and repair at its own expense and shall surrender all equipment in good condition upon termination of the Agreement, normal wear and tear excepted. Concessionaire will be responsible for the cleaning of grease traps, vents, and vent filters. All property owned by the County shall remain the property of the County.
- B. Concessionaire agrees to provide written copies of all equipment maintenance agreements to County’s Facilities Management Department within fifteen days of their effective date. Concessionaire shall notify the Facilities Management Department in writing within forty-eight (48) hours if any maintenance contract on specified equipment is cancelled, invalid, transferred, or otherwise taken out of effect. A copy of the new contract covering the equipment must be provided to the Client’s Facilities Management Department within five business days of its effective date.
- C. Concessionaire shall establish and observe mandatory policies and procedures regarding the proper use of the grease trap, garbage disposal, and sink drains, including but not limited to the proper disposal and removal of grease, large food items, small food particles, paper and plastic products, utensils, and any other items typically used in the food preparation kitchen or cafeteria environment. Concessionaire shall post signs in prominent areas directing staff to the proper disposal of grease in the grease trap. Concessionaire shall provide mandatory detailed training and instruction to all new employees, and periodic re-training and instruction to all employees, regarding the above described policies and procedures.
- D. Concessionaire shall bear all expenses incurred that are a result of the improper disposal of grease, food, food particles, paper/plastic products, utensils, and/or any other item that is identified to be the cause of the plumbing problem in each incident. For service at the Premises, Concessionaire shall contract only with professional plumbers licensed by the State of Texas to perform commercial plumbing work. In the event that the problem affects the Sheriff’s Office plumbing or facilities, Concessionaire shall reimburse the County for all costs and expenses within 30 days of receiving notice of said costs and expenses. Failure to do so shall be considered a material breach of contract.

6.7 Laundry, Linen and Uniforms. Concessionaire shall be responsible for costs of all laundry, linen, and uniform services.

6.8 Utilities. County shall be responsible for the cost of utilities consumed in the Food Service operation.

6.9 Condition of Premises and Equipment. The Premises and equipment provided by each party for use in the Food Service operation shall be in good condition and maintained by Concessionaire to ensure compliance with applicable laws concerning building conditions, sanitation, safety, and health. County agrees that any modifications or alterations to the workplace or the Premises (whether structural or non-structural) necessary to comply with the Americans with Disabilities Act or any other similar law shall be the responsibility of County and shall be at the County's expense. Concessionaire shall take reasonable and proper care of the Premises and equipment under its custody and control and shall notify County of any known deficiencies.

**ARTICLE VII
FINANCIAL ARRANGEMENTS**

7.1 Commissions. Concessionaire shall pay County a commission as follows:

Guest Meal Retail Sales	_____ % of Net Sales
Concession Catering Sales	_____ % of Net Sales

7.2. Commission Payments. Commission payments are to be made without demand, within thirty (30) days after close of each Account Period. Commission payments are to be made to the Treasury Division, El Paso County Auditor, fourth floor, El Paso County Courthouse unless notified otherwise in writing.

7.2 Financial Offsets. A penalty of one percent, (1%) per month shall be assessed by the County against Concessionaire for Commission Payments in arrears.

7.3 Changes in Policies and Practices. Financial terms of the Agreement shall be adjusted automatically to reflect any changes in Concessionaire's costs and charges resulting from changes in County's policies, practices, wage rates, employee benefits, service requirements, including increased costs that result from County's procurement specifications or in Federal and State minimum wage rates.

**ARTICLE VIII
GENERAL TERMS AND CONDITIONS**

8.1 Taxes. Concessionaire shall bill and collect sales and use taxes, if applicable, on all meals and services rendered on or from the Premises. If the parties disagree as to taxability of any meals or services, Concessionaire shall promptly obtain a ruling from the appropriate governmental authority. Concessionaire shall indemnify County against any liability or assessment, including related interest and penalties, arising from a tax assessment and shall pay reasonable collection expenses, attorney's fees and costs

incurred in connection with the enforcement of such indemnity. This provision shall survive termination of the Agreement.

- 8.2 Compliance with Law. Concessionaire shall comply with all applicable laws, ordinances, rules and regulations relating to Food Service sanitation, safety and health, and shall maintain all necessary licenses and permits. Failure to do so shall be considered a material breach of contract.
- 8.3 Workers' Compensation Insurance. Each party shall maintain workers' compensation as required by state law covering all of its employees employed in connection with the Food Service operation.
- 8.4 Comprehensive or Commercial Insurance. Concessionaire shall, as Charge to the Food Service operation, maintain during the term of the Agreement, Comprehensive or Commercial General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of not less than One Million Dollars (\$1,000,000) for each occurrence, including, but not limited to, Personal Injury Liability, covering only the activities of Concessionaire under the Agreement and shall provide County with a certificate evidencing such policies. The insurance policies shall contain covenants by the issuing company that the policies shall not be canceled without thirty (30) days prior written notice. County shall be named as an additional insured under Concessionaire's policies of insurance.
- 8.5 Property Insurance. County shall keep County's building, including the Premises and all property contained therein, insured against loss or damage by fire, explosion or other cause normally covered by standard broad form property insurance policies.
- 8.6 Liability for Non-Concessionaire Approved Vendors. County understands that Concessionaire has entered into agreement with many vendors and suppliers of products which give Concessionaire the right to inspect such vendors' and suppliers' plants and/or storage facilities and require such vendors and suppliers to adhere to standards to ensure the quality of the products purchased by Concessionaire for or on behalf of County. County may, however, direct Concessionaire to purchase products from non-Concessionaire approved vendors. In such instances, for the mutual protection of County and Concessionaire, County will require each such vendor to obtain from a reputable insurance company acceptable to County and Concessionaire liability insurance (including products liability coverage) and contractual liability insurance in the amount of not less than One Million Dollars (\$1,000,000) for each occurrence naming County and Concessionaire as additional insureds. Said insurance shall not exclude the negligence of County or Concessionaire from coverage. A certificate evidencing such insurance shall be provided to County and Concessionaire upon the requesting of either party. County shall also require each such vendor to sign an indemnity certificate (acceptable to County and Concessionaire) in which such vendor shall agree to defend, indemnify, and hold harmless County and Concessionaire from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses, and

attorney's fees which may arise as a result of using such vendor's products, except when such liability arises solely as a result of the negligence of Concessionaire and /or County. County shall not require Concessionaire to use products from non-Concessionaire approved vendors until such insurance certificates and indemnity certificates have been provided.

- 8.7 Indemnity. Concessionaire shall defend, indemnify and hold harmless County from and against all claims, liability, loss and expense, including reasonable collection expenses, and attorney's fees, which may arise because of the acts or omissions of the Concessionaire, its agents or employees. This clause shall survive termination of the Agreement.
- 8.8 Trade Secrets and Proprietary Information. During the term of the Agreement, Concessionaire may grant to County a nonexclusive right to access certain proprietary materials of Concessionaire, including recipes, signage, Food Service surveys and studies, management guidelines and procedures, operating manuals, software (both owned by and licensed to Concessionaire), computerized data bases and similar compilations and documents regularly used in Concessionaire's business operations ("Trade Secrets"). SUBJECT TO THE REQUIREMENTS OF TEXAS PUBLIC INFORMATION ACT, County shall not disclose any of Concessionaire's Trade Secrets or other confidential information, directly or indirectly, during or after the term of the Agreement. County shall not photocopy or otherwise duplicate any such material without the prior written consent of Concessionaire. All Trade Secrets and other confidential information shall remain the exclusive property of Concessionaire and shall be returned to Concessionaire immediately upon termination of the Agreement. Without limiting the foregoing, County specifically agrees that all software associated with the operation of the Food Service, including without limitation, menu systems, food production systems, County accounting systems, and other software, are owned by or licensed to Concessionaire and not County. Furthermore, County's access or use of such software shall not create any right, title interest, or copyright in such software, and County shall not retain such software beyond the termination of the Agreement.
- 8.9 Assignment. The Agreement may not be assigned by either party without the written consent of the other, except Concessionaire may, without prior approval and without being released from any of its responsibilities hereunder, assign the Agreement to an affiliate or wholly-owned subsidiary of Concessionaire.
- 8.10 Notice. Any notice of communication required or permitted to be given hereunder shall be in writing and served personally, delivered by courier or sent by United States certified mail, postage prepaid with return receipt requested, addressed to the other party as follows:

To County: El Paso County Sheriff's Office
Attention: Budget Director
3850 Justice Drive
El Paso, Texas 79938

To Concessionaire:

And/or to such other persons or places as either of the parties may hereafter designate in writing. All such notices shall be affective when received.

- 8.11 Catastrophe. Neither Concessionaire nor County shall be liable for the failure to perform its respective obligations hereunder when such failure is caused by fire, explosion, water, act of God, civil disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy-related closings, governmental rules or regulations, or like causes beyond the reasonable control of such party, or for real or personal property destroyed or damaged due to such causes.
- 8.12 Termination for Cause. If either party breaches a material provision hereof (“Cause”), the non-breaching party shall give the other party notice of such cause. If the cause is remedied within ten (10) days in the case of failure to make payment when due thirty (30) days in the case of any other cause, the notice shall be null and void. If such cause is not remedied within the specified period, the party giving notice shall have the right to terminate the Agreement upon expiration of such remedy period. The rights to termination referred to in the Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.
- 8.13 Termination for Lack of Funding. The County may terminate this agreement at the end of any fiscal year during the term of this agreement if sufficient funds intended to satisfy the payment obligations of this agreement are not included in the adopted budget of El Paso County for the upcoming fiscal year.
- 8.14 Termination without Cause. Either party may terminate the Agreement at any time by giving at least sixty (60) days prior written notice.
- 8.15 Construction and Effect. A waiver of any failure to perform under the Agreement shall neither be construed as nor constitute a waiver of any subsequent failure. The article and section headings used herein are used solely for convenience and shall not be deemed to limit the subject of the articles and sections or be considered in their interpretation. Any exhibits referred to herein are made a part of the Agreement by reference. The Agreement may be executed in several counterparts, each of which shall be deemed an original.

- 8.16 Severability. If any term or provision of the Agreement or the application thereof to any person or circumstance shall, to any extent or for any reason be invalid or unenforceable, the remainder of the Agreement and the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each remaining term and provision of the Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 8.17 Amendments to Agreement. All provisions of the Agreement hereto shall remain in effect throughout the term thereof unless the parties agree, in a written document signed by both parties, to amend, add or delete any provision. The Agreement contains all agreements of the parties with respect to matters covered herein, superseding any prior agreements and may not be changed other than by an agreement in writing signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have entered into the Agreement as of the date first signed or the first day of the Term, whichever is sooner.

EL PASO COUNTY

By: _____
 Anthony Cobos
 County Judge

Signature Date: _____

[CONCESSIONAIRE]

By: _____

Signature Date: _____

COUNTY OF EL PASO, TEXAS

CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; DRUG-FREE WORKPLACE REQUIREMENTS; FEDERAL DEBT STATUS, AND NONDISCRIMINATION STATUS AND IMPLEMENTING REGULATIONS*

Instructions for the certifications:

General Requirements

The County of El Paso, Texas is required to obtain from all applicants of federal funds or pass-through certifications regarding federal debt status, debarment and suspension, and a drug free workplace. Institutional applicants are required to certify that they will comply with the nondiscrimination statutes and implementing regulations.

Applicants should refer to the regulations cited below to determine the certifications to which they are required to attest. Signature of the form provides for compliance with certification requirements under 21 CFR part 1405, "New Restrictions on Lobbying," 21 CFR part 1414, Government wide Debarment and Suspension (Non procurement), Certification Regarding Federal Debt Status (OMB Circular A-129), and Certification Regarding the Nondiscrimination Statutes and Implementing Regulations. The certifications shall be treated as a material representation of fact upon which reliance will be placed when the County of El Paso determines to award the covered cooperative agreement

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented in 21 CFR part 1405, for persons entering into a cooperative agreement over \$100,000, as defined at 21 CFR Part 1405, the applicant certifies that;

(a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, and officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement,

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal Grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure of Lobbying Activities," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award document for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

1. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension and implemented at 21 CFR Part 1404, for prospective participants in primary covered transactions

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or and 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 governmental entity (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to the application.

2. DRUG-FREE WORKPLACE

As required by the Drug Free Workplace Act of 1988, and implemented at 21 CFR Part 1404 Subpart F.

A. The applicant certifies that it will or will continue to provide a drug free workplace by:

(a). Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the applicant's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(b) Establishing an on-going drug free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The applicant's policy of maintaining a drug free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violation occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph

(a)

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee must

- (1) Abide by the terms of the statement; and
- (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such convictions. Employers of convicted employees must provide notice including position title, to: The County of El Paso, Texas, 500 East San Antonio Street, Suite 406, El Paso, Texas 79901. Notice shall include the identification number of each affected grant

(f) Taking one of the following actions within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal State, or local health, law enforcement, or other appropriate agency

(g) Making a good faith effort to continue to maintain a drug free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

3. CERTIFICATION REGARDING FEDERAL DEBT STATUS (OMB Circular A-129)

The Applicant certifies to the best of its knowledge and belief, that it is not delinquent in the repayment of any federal debt.

4. CERTIFICATION REGARDING THE NONDISCRIMINATION STATUTES AND IMPLEMENTING REGULATIONS

The applicant certifies that it will comply with the following nondiscrimination statutes and their implementing regulations: (a) title VI of the Civil right Act of 1964 (42 U.S.C. 2000D et seq.) which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination under any program or activity for which the applicant received federal financial assistance; (b) Section 504 of the rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs and activities receiving federal financial assistance; (c) title IX of the Education Amendments of 1972m as amended (20 U.S.C. 1981 et seq.) which prohibits discrimination on the basis of sex in education programs and activities receiving federal financial assistance; and (d) the Age Discrimination Act of 1975, and amended (42 U.S.C. 6101 ec seq.) which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance, except that actions which reasonably take age into account as a factor necessary

for the normal operation or achievement of any statutory objective of the project or activity shall not violate this statute.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

COUNTY OF EL PASO PURCHASING DEPARTMENT

COUNTY COURTHOUSE, 500 EAST SAN ANTONIO,
ROOM PU500, EL PASO, TEXAS 79901
(915) 546-2048, FAX: (915) 546-8180

PITI VASQUEZ, PURCHASING AGENT
JOSE LOPEZ, JR. ASST. PURCHASING AGENT
LUCY BALDERAMA, INVENTORY BID TECHNICIAN

PROPOSAL CONDITIONS

This is the only approved instruction for use on your invitation to bid. Items below apply to and become a part of the terms and conditions of the bid.

1. BY SUBMITTING A PROPOSAL, EACH BIDDER AGREES TO WAIVE ANY AND ALL CLAIMS IT HAS OR MAY HAVE AGAINST THE COUNTY OF EL PASO, AND ITS OFFICERS, AGENTS AND EMPLOYEES, ARISING OUT OF OR IN CONNECTION WITH: THE DOCUMENTS, PROCEDURES, ADMINISTRATION, EVALUATION, OR RECOMMENDATION OF ANY PROPOSAL; THE WAIVER BY EL PASO COUNTY OF ANY REQUIREMENTS UNDER THE PROPOSAL DOCUMENTS OR THE CONTRACT DOCUMENTS; THE ACCEPTANCE OR REJECTION OF ANY PROPOSAL; AND THE AWARD OF THE CONTRACT.
2. Proposal must be in the Purchasing Department **BEFORE** the hour and date specified. Faxed proposals will not be accepted.
3. Late proposals properly identified will be returned to bidder unopened. Late proposals will not be considered under any circumstances.
4. All proposals are for new equipment or merchandise unless otherwise specified (merchandise only).
5. Quotes F.O.B. destination. If otherwise, show exact cost to deliver (merchandise only).
6. Proposal unit price on quantity specified-extend and show total. In case of error in extension, unit prices shall govern. RFP subject to unlimited price increases will not be considered.
7. Proposals must give full firm name and address of offeror. Failure to manually sign the proposal will disqualify it. Person signing should show title or authority to bind his firm in a contract.
8. No substitutions or cancellations permitted without written approval of County Purchasing Agent for merchandise.
9. The County reserves the right to accept or reject all or any part of the proposal, waive minor technicalities and award the proposal to the lowest responsible proposer. The County of El Paso reserves the right to award by item or by total proposal. Prices should be itemized.
10. RFP \$100,000.00 and over, the proposer shall furnish a certified cashiers check made payable to the County of El Paso or a good and sufficient bid bond in the amount of 5% of the total contract prices and execute with a surety company authorized to do business in the State of Texas. The bid bond must be included with the bid at the time of the opening.
11. This is a quotation inquiry only and implies no obligation of the part of the County of El Paso.

12. The County of El Paso reserves the right to reject any proposal due to failure of performance on deliveries. The County Purchasing Agent will justify this.
13. Brand names are for descriptive purposes only, not restrictive (merchandise only).
14. The County of El Paso is an Equal Opportunity Employer.
15. Any proposal sent via express mail or overnight delivery service must have the RFP number and title clearly marked on the outside of the express mail or overnight delivery service envelope or package. Failure to clearly identify your proposal may be cause for disqualification.
16. PURSUANT TO TEXAS GOVERNMENT CODE SECTION 2253.021, A PRIME CONTRACTOR WHO IS AWARDED A PUBLIC WORKS CONSTRUCTION CONTRACT SHALL, PRIOR TO BEGINNING THE WORK, EXECUTE TO THE COUNTY:
 - 1) ? A PERFORMANCE BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$100,000; AND
 - 2) A PAYMENT BOND, IN THE FULL AMOUNT OF THE CONTRACT, IF THE CONTRACT IS IN EXCESS OF \$25,000.
17. PURSUANT TO TEXAS LOCAL GOVERNMENT CODE SECTION 262.032(b), ANY SUCCESSFUL BIDDER WHO IS AWARDED ANY CONTRACT IN EXCESS OF \$50,000 MAY BE REQUIRED TO EXECUTE A PERFORMANCE BOND TO THE COUNTY. SAID BOND SHALL BE IN THE FULL AMOUNT OF THE CONTRACT AND MUST BE FURNISHED WITHIN 30 DAYS AFTER THE DATE A PURCHASE ORDER IS ISSUED OR THE CONTRACT IS SIGNED AND PRIOR TO COMMENCEMENT OF THE ACTUAL WORK. ANY PERFORMANCE BOND REQUIRED PURSUANT TO THIS SECTION SHALL BE NOTED IN THE ATTACHED DETAILED BID SPECIFICATIONS OR SCOPE OF WORK. THIS SECTION DOES NOT APPLY TO A PERFORMANCE BOND REQUIRED BY CHAPTER 2253, TEXAS GOVERNMENT CODE.
18. "Beginning January 1, 2006, in order to implement HB 914 (adding new Local Government Code Chapter 176), ALL VENDORS MUST SUBMIT A CONFLICT OF INTEREST QUESTIONNAIRE (Form CIQ) disclosing its affiliations and business relationships with the County's Officers (County Judge and Commissioners Court) as well as the County employees and contractors who make recommendations for the expenditure of County funds. The names of the County Officers and of the County employees and contractors making recommendations to the County Officers on this contract are listed in the Specifications.

THE CONFLICT OF INTEREST QUESTIONNAIRE MUST BE FILED WITH THE COUNTY CLERK AND A COPY OR PROOF OF FILING MUST BE ATTACHED TO THE BIDDER'S RESPONSE SUBMITTED TO THE PURCHASING DEPARTMENT.

Bidders should be aware that this bidding condition is not intended to cover or to advise you about all situations in which Local Government Code Chapter 176 would require you to file a Form CIQ. You should consult your private attorney with regard to the application of this law and your compliance requirements. Failure to comply is punishable as a Class C misdemeanor.

NOTICE:

ALL COMMUNICATIONS BY A VENDOR TO THE COUNTY, ITS OFFICIALS, AND DEPARTMENT HEADS REGARDING THIS PROCUREMENT SHALL BE DONE THROUGH THE EL PASO COUNTY PURCHASING DEPARTMENT. **THE EL PASO COUNTY CODE OF ETHICS PROHIBITS ALL PRIVATE COMMUNICATION BETWEEN VENDORS AND CERTAIN COUNTY OFFICIALS AND EMPLOYEES AS DESCRIBED BELOW:**

No vendor, its representative, agent, or employee shall engage in private communication with a member of the El Paso County Commissioners Court or county department heads regarding any procurement of goods or services by the County from the date that the bid, RFP, or RFQ is released. No private communication regarding the purchase shall be permitted until the procurement process is complete and a purchase order is granted or a contract is entered into. Members of the commissioners court are required to make a reasonable effort to inform themselves regarding potential procurements and have a duty to inquire of vendors, their representatives or employees, the nature of any private communication being sought prior to engaging in any communication. "Private Communication" means communication with any vendor outside of a posted meeting of the governing body, a regular meeting of a standing or appointed committee, or a negotiation with a vendor which has been specifically authorized by the governing body.

Health Insurance Benefits Provided By Bidder

Consideration of Health Insurance Benefits*

1. Do you or your subcontractor(s) currently offer health insurance benefits to your employees?

If so, please describe those health insurance benefits that you or your subcontractor(s) currently provide/offer to your employees.

2. What percentage, if any, of your of your subcontractor's employees are currently enrolled in the health insurance benefits program?

El Paso County may consider provision of health insurance benefits as part of the overall "best value" determination. Failure to provide health insurance benefits will not disqualify you from participating in this bid selection process.

Business Name

Date

Name of Authorized Representative

Signature of Authorized Representative

* This page must be included in all responses.



COUNTY OF EL PASO
County Purchasing Department
500 East San Antonio, Suite PU500
El Paso, Texas 79901
(915) 546-2048
(915) 546-8180 Fax

RE: RFP #08-059, Operation of the Cafeteria located at the Sheriff's Office Headquarters.

Dear Vendor:

As of January 1, 2006, the Texas Local Government Code Chapter 176 requires all vendors and potential vendors who contract or seek to contract for the sale or purchase of property, goods, or services with any local government entity to complete and submit a Conflicts of Interest Questionnaire. A copy of the requirements regarding vendors is attached. Also attached is a copy of the Questionnaire which needs to be filed and was prepared and approved for statewide use by the Texas Ethics Commission.

In filing out the Questionnaire, the following are the County Officers that will award the bid and the employees which will make a recommendation to the Commissioners Court:

County Officers: County Judge Anthony Cobos
Commissioner Luis C. Sariñana
Commissioner Veronica Escobar
Commissioner Miguel Teran
Commissioner Dan Haggerty

County Employees: Piti Vasquez, Purchasing Agent
Jose Lopez, Jr., Assistant Purchasing Agent
Peter Gutierrez, Buyer II
Linda Gonzalez, Inventory Bid Technician
Lucy Balderama, Inventory Bid Technician
Irma Cerda-Padilla, Budget Director
Lucille Samuel, Budget Services Supervisor
Gomecindo Lopez, Lieutenant
Vince Pokluda, Academy Director
Joe Flores, Food Service Director

Please note that the state law requires that the Questionnaire be filed with the **COUNTY CLERK** no later than **the 7th business day after submitting an application, response to an RFP, RFQ or bid** or any other writing related to a potential agreement with the County. Failure to file the questionnaire within the time provided by the statute is a Class C misdemeanor

CONFLICT OF INTEREST QUESTIONNAIRE

FORM CIQ

For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 1491, 80th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code by a person who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the person 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 person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.

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

OFFICE USE ONLY

Date Received

1 Name of person 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 the originally filed questionnaire becomes incomplete or inaccurate.)

3 Name of local government officer with whom filer has employment or business relationship.

Name of Officer

This section (item 3 including subparts A, B, C & D) must be completed for each officer with whom the filer 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 filer of the questionnaire?

Yes No

B. Is the filer of the questionnaire 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 of 10 percent or more?

Yes No

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

4

Signature of person doing business with the governmental entity

Date

Tex. Local Gov't Code § 176.006 (2005)

§ 176.006. Disclosure Requirements for Vendors and Other Persons; Questionnaire

(a) A person described by Section 176.002(a) shall file a completed conflict of interest questionnaire with the appropriate records administrator not later than the seventh business day after the date that the person:

(1) begins contract discussions or negotiations with the local governmental entity; or

(2) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the local governmental entity.

(b) The commission shall adopt a conflict of interest questionnaire for use under this section that requires disclosure of a person's affiliations or business relationships that might cause a conflict of interest with a local governmental entity.

(c) The questionnaire adopted under Subsection (b) must require, for the local governmental entity with respect to which the questionnaire is filed, that the person filing the questionnaire:

(1) describe each affiliation or business relationship the person has with each local government officer of the local governmental entity;

(2) identify each affiliation or business relationship described by Subdivision (1) with respect to which the local government officer receives, or is likely to receive, taxable income from the person filing the questionnaire;

(3) identify each affiliation or business relationship described by Subdivision (1) with respect to which the person filing the questionnaire receives, or is likely to receive, taxable income that:

(A) is received from, or at the direction of, a local government officer of the local governmental entity; and

(B) is not received from the local governmental entity;

(4) describe each affiliation or business relationship with a corporation or other business entity with respect to which a local government officer of the local governmental entity:

(A) serves as an officer or director; or

(B) holds an ownership interest of 10 percent or more;

(5) describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to the expenditure of money;

(6) describe each affiliation or business relationship with a person who:

(A) is a local government officer; and

(B) appoints or employs a local government officer of the local governmental entity that is the subject of the questionnaire; and

(7) describe any other affiliation or business relationship that might cause a conflict of interest.

(d) A person described by Subsection (a) shall file an updated completed questionnaire with the appropriate records administrator not later than:

(1) September 1 of each year in which an activity described by Subsection (a) is pending; and

(2) the seventh business day after the date of an event that would make a statement in the questionnaire incomplete or inaccurate.

(e) A person is not required to file an updated completed questionnaire under Subsection (d)(1) in a year if the person has filed a questionnaire under Subsection (c) or (d)(2) on or after June 1, but before September 1, of that year.

(f) A person commits an offense if the person violates this section. An offense under this subsection is a Class C misdemeanor.

(g) It is a defense to prosecution under Subsection (f) that the person filed the required questionnaire not later than the seventh business day after the date the person received notice of the violation.

Tex. Local Gov't Code § 176.001 (2005)

§ 176.001. Definitions

In this chapter:

(1) "Commission" means the Texas Ethics Commission.

(2) "Family member" means a person related to another person within the first degree by consanguinity or affinity, as described by Subchapter B, Chapter 573, Government Code.

(3) "Local governmental entity" means a county, municipality, school district, junior college district, or other political subdivision of this state or a local government corporation, board, commission, district, or authority to which a member is appointed by the commissioners court of a county, the mayor of a municipality, or the governing body of a municipality. The term does not include an association, corporation, or organization of governmental entities organized to provide to its members education, assistance, products, or services or to represent its members before the legislative, administrative, or judicial branches of the state or federal government.

(4) "Local government officer" means:

(A) a member of the governing body of a local governmental entity; or

(B) a director, superintendent, administrator, president, or other person designated as the executive officer of the local governmental entity.

(5) "Records administrator" means the director, county clerk, municipal secretary, superintendent, or other person responsible for maintaining the records of the local governmental entity.

COUNTY OF EL PASO, TEXAS

Check List

**Operation of the Cafeteria located at the Sheriff's Office Headquarters.
RFP #08-059**

THIS CHECKLIST IS PROVIDED FOR YOUR CONVENIENCE

_____ Responses should be delivered to the County Purchasing Department by 2:00 p.m., Wednesday, May 21, 2008. Did you visit our website (www.epcounty.com) for any addendums?

_____ Did you sign the Bidding Schedule?

_____ Did you sign the "Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements; Federal Debt Status, and Nondiscrimination Status And Implementing Regulations" document?

_____ Did you sign the "Consideration of Insurance Benefits" form?

_____ Did you file a copy of the completed Conflict of Interest Questionnaire (Form CIQ) with the El Paso County Clerk (in person or by mail to 500 E. San Antonio, Suite 105, El Paso, TX 79901 or by fax to 915-546-2012 attention Joann. Phone number is 546-2000, ext. 3143) and write the confirmation number given as proof of filing on your bidding schedule? Please include the completed and signed form with your response whether a relationship exists or not.

_____ If your bid totals more than \$100,000, did you include a bid bond?

_____ Did you provide one original and two (2) copies of your response?
