



Request for Proposal, 15MCO506 Construction Manager at Risk - Horseshoe Storage Building

Date Required: August 7, 2015

Time Required: 3:00PM Local Time

INTRODUCTION:

Midland County, hereafter called County, invites sealed proposals from interested qualified Vendors, hereinafter called Vendors, to provide. The following pages provide general information about the requirements and specifications for the package.

This request for proposal ("RFP") is part of a competitive procurement process which provides qualified vendors with a fair opportunity for their commodities and services to be considered, and to provide information concerning their expertise and experience in providing similar services to other customers. The RFP process provides a competitive negotiation platform, wherein price or cost is not the sole determinative factor. This process, designed to best serve the interests of the County, allows the County the flexibility to negotiate with interested, qualified Vendors (following designation by the Commissioners Court, one at a time) to arrive at a mutually agreeable relationship.

MANDATORY SITE SURVEY:

A **Mandatory Site Survey** will be held at the Midland County Horseshoe. We will meet at the Pavilion Flag Poles at **2:00pm on Thursday July 30, 2015** and will promptly begin the survey of the site, which is just north of the Pavilion.

**Midland County Horseshoe Arena and Pavilion
2514 Arena Trail
Midland, TX 79701**

QUESTIONS:

If further information is required, please contact the Midland County Purchasing Department. All requests for information must be submitted in writing. Responses to all questions received will be sent to each Contractor/Vendor known to have copies of the Request for Proposal. Requests for information may be faxed to 432-688-4914 or e-mailed to pur103@co.midland.tx.us.

All questions should be submitted on or before **5:00PM on Friday July 31, 2015**. Questions received after said date and time will not receive a response. Answers and clarifications which are considered to materially change the solicitation will be issued as written addenda to the original RFP and will be posted to the Midland County website at www.co.midland.tx.us. Solution providers are responsible for ensuring all answers to questions are reviewed prior to

bid submittal and that all issued added are properly acknowledged with their submitted proposal response. Midland County will not be responsible for any verbal exchange between the vendor and an employee of Midland County.

COPIES AND RECEIPT:

Please submit one (1) original, three (3) copies, and an electronic copy on USB drive of the proposal. **An executed copy of the Proposal Affidavit SIGNED AND NOTARIZED (Page 7) must be included in each submission.** Please note that if no Proposal Affidavit is included, the response will be rejected. Midland County is exempt from all state and federal taxes. Tax exempt certificates are available upon request.

All responses should be submitted in a sealed envelope, marked on the outside,

Construction Manager at Risk - Horseshoe Storage Building for Midland County 15MCO506

Company Name

Responses must be received by **3:00PM Local Time Friday August 7, 2015**. Late proposals will be rejected and returned without being opened. The clock in the Purchasing Agent's office is the official time piece for this submission. If interested, Contractors may use mail or express systems to deliver their proposal to the Purchasing Department; they should insure that they are tendered to the carrier in plenty of time to reach the Purchasing Department by the time and date required. Facsimile transmitted proposals shall not be accepted.

SUBMISSION LOCATION: All bids which are mailed, shipped, delivered, etc. should be addressed as follows:

Midland County Purchasing Department
Midland County Courthouse
Attention: Kristy Engeldahl, Purchasing Agent
500 N. Loraine Street, Suite 1101
Midland, Texas 79701

DOCUMENTATION SUBMISSION:

The respondent must submit all required documentation. Failure to provide requested information may result in rejection of the proposal.

ALTERATION OF PROPOSAL:

A proposal may be altered, modified or amended by a Vendor at any time, prior to the time and date set forth above as the submission deadline. Alterations, modifications or amendments to a proposal must be made in the offices of the Purchasing Department. Any interlineations, alteration or erasure made on a proposal before the submission deadline must be initialed by the signer of the proposal, guaranteeing authenticity. A proposal may not be altered, modified or amended after the submission deadline.

WITHDRAWAL:

A proposal may not be withdrawn or canceled by the respondent for a period of sixty (60) days following the date designated for the receipt of proposals, and respondent so agrees upon submittal of their proposal.

CONFLICT OF INTEREST:

No public official shall have interest in this contract, in accordance with Vernon's Texas Codes annotated Local Government Code Title 5, Subtitle C, Chapter 171. Vendor is required to sign affidavit form included in Proposal documents.

SILENCE OF SPECIFICATIONS:

The apparent silence of these specifications as to any detail of the apparent omission from it of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practices are to prevail. All interpretations of these specifications shall be made on the basis of this statement.

CONFIDENTIALITY:

Contents of the proposals will remain confidential until the contract is awarded. At that time the contents will be made public under the Texas Public Information Act; except for any portion of a proposal which has been clearly marked as a trade secret or proprietary data (the entire proposal may not be so marked). Proposals will be opened, and the name of the firm submitting the proposal read aloud, acknowledged, at **3:30PM, Friday August 7, 2015**, in the Purchasing Department Conference Room located in the Midland County Courthouse, Suite 1101. All respondents or other interested parties are invited to attend the opening.

Vendor are hereby notified that the Owner strictly adheres to all statutes, court decisions, and opinions of the Texas Attorney General with respect to disclosure of public information.

ADDITIONAL INFORMATION AND DEMONSTRATION, NEGOTIATIONS:

Prior to award, selected Vendors may be asked to provide further information concerning their proposal, up to and including presentations/demonstrations. The Midland County Commissioners Court reserves the right to reject any and all proposals or waive formalities as deemed in the best interests of Midland County. The County may also enter into discussions and revisions of proposals after submission and before award for the purpose of obtaining the best and final offer, and to accept the proposal deemed most advantageous to Midland County.

This request for proposal (RFP) is part of a competitive procurement process which is designed to best serve the interests of the County in obtaining complicated commodities and/or services. It also provides interested Contractors with a fair opportunity for their goods and services to be considered. The RFP process is designed to be a competitive negotiation platform, where price is not required to be the sole determinative factor. Also, the County has the flexibility to negotiate with interested vendors (one at a time) to arrive at a mutually agreeable relationship. Negotiations will be arranged with vendors in a hierarchal order, starting with the vendor selected as the primary. If a contract cannot be negotiated, negotiations will, formally and in writing, end with that Vendor and proceed to move to the second vendor, and so forth until a contract is negotiated.

RIGHTS OF THE CONTRACTING AUTHORITY:

Midland County reserves the right to withdraw this RFP at any time and for any reason. Midland County also has the right to terminate its selection process at any time and to reject all responses, or all proposals. Receipt of the proposal materials by Midland County or submission of a proposal to Midland County confers no rights upon the vendor nor obligates Midland County in any manner.

Vendor must agree to Midland County's Standard Terms and Conditions which are set forth in attached documentation.

All costs associated with the preparation or submittal of proposals shall be borne by the vendor, and no cost shall be sustained by Midland County.

ORAL COMMITMENT:

Vendors should clearly understand that any verbal representations made or assumed to be made during any discussions held between representatives of a vendor and any Midland County personnel or official are not binding on Midland County.

WAIVER OF CLAIMS:

Submission of a proposal indicates Vendor's acceptance of the evaluation technique and Vendor's recognition that some subjective judgments must be made by the County during the determination of qualification.

SELECTION CRITERIA:

Price is a primary consideration, however, it is not the only consideration to be used in the selection. The product and/or service to be provided is also of major importance. Midland County will require that the successful vendor provide a representative for all County related business, service, billing, installation, activation and termination of said service. The evaluation criteria and factors are identified on pages 9 and 10.

ORDINANCES AND PERMITS:

The Contractor/Vendor agrees, during the performance of the work, to comply with all applicable Federal, State, or local code and ordinances.

INVOICES:

Invoices are to be mailed to P.O. Box 421, Midland, Texas 79702 and should cite the applicable Purchase Order Number. Any and all notices or other communications required or permitted by any contract awarded as a result of this RFP shall be served on or given to Midland County, in writing, by personal delivery to the Purchasing Agent of Midland County, Texas, or by deposit with the United States Mail, postage prepaid, registered or certified mail, return receipt requested, addressed to the Midland County Purchasing Agent 500 N. Loraine Suite 1101 Midland, TX 79701, or at such other address as may have been specified by written notice to Vendor.

INSURANCE:

The awarded Vendor will maintain such insurance as will protect the Vendor and the County from claims under the Workers' Compensation Acts, and any amendments thereof, and from any other claims for damages from personal injury, including death, which may arise from operations under this agreement, whether such operations be by themselves or by any sub-Contractor, or anyone directly or indirectly employed by either of them. Current Certificate of such insurance shall be furnished to Midland County and shall show all applicable coverage(s).

Other insurance requirements are:

- General Liability with a \$1,000,000 per occurrence limit and \$2,000,000 general aggregate.
- Commercial Automobile Liability with a limit of no less than \$1,000,000. The coverage will also extend liability to hired and non-owned autos.
- Workers' Compensation with limit of \$1,000,000 for Employers Liability.
- We also require a minimum umbrella (or follow form excess policy covering over general liability, auto liability and workers compensation) of no less than \$2,000,000.
- Builders Risk coverage with a full replacement value. The policy will have both the Contractor and Midland County as named insureds. This will include coverage for Contractors and Subcontractors of All Tiers.
- Construction Manager Professional Liability Insurance (also known as Construction Managers Errors & Omissions Insurance, or Construction Management Firm E&O) in an amount of no less than \$1,000,000. If coverage is written on a claims made form, the coverage shall be kept in force for no less than two years after the completion of the project. A standard general liability policy will be accepted only if specifically endorsed to include Construction Manager at Risk.

Midland County will require the selected Vendor to name Midland County as an additional for both the general liability and auto liability. A waiver of subrogation in favor of the County is required for the workers compensation. If the additional insured status or waiver of subrogation is not blanket, please send a copy of the actual endorsements prior to commencement of any work.

Midland County will require the selected Vendor to name Midland County as an additional named insured and provide a waiver of subrogation prior to making a contract.

INDEMNIFICATION:

The Vendor shall defend, indemnify and save whole and harmless the County and all its officers, agents and employees from and against any and all demands, claims, suits, or causes of action of any character, name, kind or description brought for, or on account of, arising out of or in connection with the Vendor's performance or non-performance of any obligation of Vendor or any negligent act, misconduct or omission of the Vendor in the performance of its contractual obligations. The Vendor shall defend, indemnify, save, and hold harmless the County and its officers, agents, representatives and employees from and against any and all demands, claims, suits, or causes of action of any character, name, kind or description brought for, on account of, arising out of or in connection with Vendor's product or service.

STATUS OF INDEPENDENT CONTRACTOR:

Vendor shall be considered an independent contractor, for all purposes. Vendor will not at any time, directly or indirectly, act as an agent, servant, representative or employee of the County. Vendor will not take any action which is intended to create any commitments, duties, liabilities or obligations on behalf of the County, without prior written consent of the County.

PARTIAL INVALIDITY:

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

CONTRACT TERMINATION:

Non-performance of the Vendor/Contractor in terms of specifications or noncompliance with terms of this contract shall be basis for termination of the contract by the County. Termination in whole or in part, by the County may be made at its option and without prejudice to any other remedy to which it may be entitled at law or in equity, or elsewhere under this contract, by giving (60) sixty days written notice to the Contractor/Vendor with the understanding that all work being performed under this contract shall cease upon the date specified in such notice. The County shall not pay for work, equipment, services or supplies which are unsatisfactory. Contractor/Vendor may be given reasonable opportunity prior to termination to correct any deficiency. This, however, shall in no way be construed as negating the basis for termination for non-performance. The right to terminate the notice thereof is controlled by these proposal specifications and is not subject to being altered by contract.

LAW GOVERNING:

The parties under contract shall be subject to all Federal laws and regulations, and all rules and regulations of the State of Texas. The laws of the State of Texas shall govern the interpretation and application of the contract; regardless of where any disagreement over its terms should arise or any case of action arise.

REMEDIES:

The successful vendor and Midland County agree that both parties have all rights, duties, and remedies available as stated in the Uniform Commercial Code.

VENUE:

It is hereby agreed that the contract will be made in Midland, Midland County, Texas, and any dispute arising as a result of it shall be governed by the laws of the State of Texas for the purpose of any law suit, and the parties agree that such lawsuit shall be brought in Midland County, Texas.

FUNDING CONTINGENCY:

Any contract awarded pursuant to this RFP shall be contingent on sufficient funding and authority being made available in each fiscal period by the appropriate officials of Midland

County. If sufficient funding or authority is not made available, the contract shall become null and void.

ASSIGNMENT:

The Contractor shall not sell, assign transfer or convey this contract in whole or in part, without the prior written consent of the County.

**REQUIRED FORM
COMPANY AFFIDAVIT**

The affiant, _____ states with respect to this submission to County:

I (we) hereby certify that if the contract is awarded to our firm that no member or members of the governing body, elected official or officials, employee or employees of said County, or any person representing or purporting to represent the County, or any family member including spouse, parents, or children of said group, has received or has been promised, directly or indirectly, any financial benefit, by way of fee, commission, finder's fee or any other financial benefit on account of the act of awarding and/or executing a contract.

I hereby certify that I have full authority to bind the company and that I have personally reviewed the information contained in the RFP and this submission, and all attachments and appendices, and do hereby attest to the accuracy of all information contained in this submission, including all attachments and exhibits.

I acknowledge that any misrepresentation will result in immediate disqualification from any consideration in the submission process.

I further recognize that County reserves the right to make its award for any reason considered advantageous to the County. The company selected may be without respect to price or other factors.

Signature _____ Date _____

Name _____ Phone _____

Title _____

Firm Name _____

Type of business organization (corporation, LLC, partnership, proprietorship)

Address _____

County, State, Zip _____

Notary Seal Below

SPECIFICATION

PURPOSE:

It is Midland County's intent to hire a construction manager at risk to build a storage building. The construction manager at risk must gather all necessary permits and equipment for the construction of the building. The design may be preplanned, but must be approved by Midland County. The purpose of said building is to provide the necessary storage space for the Midland County Horseshoe.

SUBCONTRACTOR AND/OR SUPPLIER IDENTIFICATION:

Should the Bidder subcontract any work, the Bidder shall indicate below the name of each subcontractor and/or supplier the bidder will use in the performance of the contract. The Bidder shall specify the work to be performed by the subcontractor or the materials to be provided by the supplier. Any changes in subcontractor and/or supplier listed below shall require prior approval by the Purchasing Office.

Vendors shall also verify that the Vendor can and will deliver the performance and payment bonds referred to below. In the event that a Vendor cannot make this verification, this may be grounds to reject the Vendor.

The Construction Manager-At-Risk shall deliver performance and payment bonds – in amounts whose penal sums shall be equal to the Project Budget – executed with a surety company authorized to do business in the State of Texas not later than the 10th calendar day after the date the Construction Manager-At-Risk executes the contract or provides the guaranteed maximum price.

CONSTRUCTION LOCATION:

The storage warehouse is to be built north of the Midland County Horseshoe Pavilion.

BUILDING SPECIFICATIONS:

10,000 square feet clear span

Standard pitched roof

Metal building (color to match the existing buildings)

20ft minimum side walls

Concrete slab reinforced to withstand forklift and light truck

Plumbing stub up in concrete for a future restroom

Gutter and downspouts

3 roll up doors (14'x14')

3 walk through doors

Lights overhead and on exterior

Electrical outlets throughout

Insulated

EVALUATION PROCESS:

The County will award to the bidder that submits a bid which represents the “best value” to the County. The best value shall not be based solely upon price but the bid which receives the highest cumulative score for each of the evaluation factors delineated herein.

CRITERIA:

Introduction (Executive Summary): 1 page maximum

Tab 1 Previous Related Experience: (25 points, maximum)

- Indicate experience with publicly funded facilities of same approximate size and type as the anticipated project.
- Indicate experience with renovation projects of same approximate size and type as the anticipated project.
- Indicate safety record on previous projects.
- Indicate whether Vendor has had construction contracts terminated prior to completion or whether a bonding company surety has had to pay funds under a bond of the Vendor.

Tab 2 Identity and Location of Vendor: (5 points, maximum)

- Indicate the exact legal name of Vendor, its type of legal organization, its State of organization, its mailing address, the office/business location of the Vendor from which the Project will be managed; and, address Vendor’s availability to the Project and the County and the response time.

Tab 3 Personnel: (15 points, maximum)

Indicate the following:

- Office Staff – qualifications, registrations, experience.
- On-site Staff – qualifications, registrations, experience.
- Consultants (if any) – discipline, staff size, experience in related projects, location.

Tab 4 Project Management: (5 points, maximum)

- Indicate the total project approach proposed by your firm to provide necessary Construction Manager-At-Risk services – from contract execution through warranty period – including consultation with the County during and after the design of the Project.
- Indicate that all major elements of the work on the Project shall, at the expense of the Vendor, be publicly advertised by Vendor; the Vendor shall receive bids or proposals for such work from trade contractors or subcontractors (which may include Vendor) and said bids and proposals shall be received and accepted in accordance with Texas Government Code Section 2269.255.

Tab 5 Project Schedule: (10 points, maximum)

- Indicate the time required to perform necessary Construction Manager-At-Risk services, including construction timeline, for this project.

Tab 6 References: (Include name, address, and phone number of contact):

(10 points, maximum)

- Indicate (3 minimum) general references who can attest to the Vendor's ability, performance, and safety record.
- Indicate (3 minimum) Public Officials who can attest to the Vendor's ability to meet the County's needs; ability to maintain budgets; and cooperation with officials.
- Indicate (3 minimum) contractor references who can attest to the Vendor's abilities in handling construction management.
- Indicate (3 minimum) architect references who can attest to the Vendor's abilities in value engineering, cost control, and constructability issues.

Tab 7 Cost: (15 points, maximum)

- Indicate the Vendor's proposed fee for Construction Manager-at-Risk services and its price for fulfilling the general conditions of the construction contract.
- Indicate any contingency cost you would include in your budget/guaranteed maximum price;
- Guaranteed Maximum Price for construction shall be established at the earliest possible time.
- Indicate the pro-rata share of subsequently identified savings to be returned to Midland County.

MIDLAND COUNTY
PURCHASING
STANDARD TERMS AND CONDITIONS

1. **PACKING:** Seller will package goods in accordance with good commercial practice and mark them clearly. Seller shall bear the cost of packaging. Packaging will facilitate lowest transportation cost and will conform to common carrier requirements. Buyer's count or weight will be final where there are no packing lists.
2. **SHIPMENT UNDER RESERVATION PROHIBITED:** Shipment under reservation is prohibited and tender of a bill of lading will not operate as tender of the goods.
3. **TITLE AND RISK OF LOSS:** Title shall remain with the Seller until Buyer takes possession at delivery point. Vendor hereby assigns to purchaser any and all claims for overcharges associated with contract which arise under the antitrust laws of the United States, 15 USCA Section 1 et seq., and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, et seq.
4. **DELIVERY AND TRANSPORTATION:** Transportation shall be FOB destination, freight prepaid unless provided otherwise. Buyer shall have the right to designate method of transportation.
5. **NO PLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery must comply with these terms. A tender which does not conform constitutes a breach. Substitute conforming tender may not cure the breach unless made within the contract time.
6. **DELIVERY POINT:** Place of delivery shall be as set forth on the purchase order. Any change shall require a modification under Clause 20.
7. **INVOICES AND PAYMENTS:** Seller shall submit separate invoices on each purchase order after each delivery. Invoices shall indicate the purchase order number, shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading, and the freight waybill when applicable, shall be attached to the invoice. Mail invoices to:

Midland County Auditor's Department
P.O. Box 421
Midland, Texas 79702

Payment shall not be due until the above instruments are submitted after delivery. Suppliers should keep the County Auditor's Office advised of any change in remittance address.

Buyer's obligation is payable only and solely from funds available for the purpose of the purchase. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to seller by Buyer.

Do not include Federal Excise, State, County or City Sales Tax. County shall furnish tax exemption certificate, if required.

Midland County vendor payments are made twice each month after cutoff for auditing transactions on the First and Third Mondays. Payment for the goods or services represented hereby will be made as agreed with Seller BUT NOT EARLIER THAN immediately after the Second or Fourth Monday following the First or Third Monday when compliance with these terms and conditions is certified. Midland County will pay neither interest nor penalty on payments considered late by the Seller.

8. GRATUITIES: The Buyer may, by written notice to the Seller, cancel this without liability to the Buyer if it is determined by Buyer that gratuities, in any form, were offered, breaching Midland County's Purchasing Code of Ethics.

9. SPECIAL TOOLS AND TEST EQUIPMENT: If the price stated on the face hereof includes the cost

of any special tooling or special test equipment fabricated or required by Seller for the purpose of filling

this order, such special tooling equipment and any process sheets related thereto shall become the property of the Buyer, and to the extent feasible, shall be identified by the Seller as such.

10. WARRANTY PRICE: The price to be paid by Buyer shall be that shown on the face of the purchase order or, in the case of competitive bidding, the price contained in Seller's bid, which Seller warrants to be no higher than his current prices on similar orders.

Seller warrants that no person or selling agency has employed or retained to solicit or secure this contract upon an agreement of understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Seller for the purpose of securing business. For breach, Buyer shall have the right, in addition to any other rights, to cancel this contract without liability to Buyer.

11. WARRANTY PRODUCTS: If Seller shall attempt to limit or exclude any implied warranties, this contract is voidable. Seller warrants that the goods furnished conform to the specifications, drawings, and descriptions listed in the bid invitation or on the purchase order face. In the event of conflict between documents, the specifications shall govern.

12. SAFETY WARRANTY: Seller warrants that the products conform to standards promulgated pursuant to the Occupational Safety and Health Act of 1970.

13. NO WARRANTY BY BUYER AGAINST INFRINGEMENTS: Seller agrees to ascertain whether goods produced in accordance with the specifications will give rise to the claim of any third person for infringement or the like and will hold Buyer harmless in case of such infringement. Buyer makes no warranty that the specifications will not give rise to such a claim.

14. RIGHT OF INSPECTION: Buyer shall have the right to inspect the goods at delivery before accepting them.

15. CANCELLATION: In addition to other available remedies, Buyer shall have the right to cancel this contract if Seller breaches any of these terms and conditions, becomes insolvent, or commits acts of bankruptcy.

16. TERMINATION: The performance of work under this contract may be terminated by the Buyer by delivering to Seller a "Notice of Termination" specifying the extent the order is terminated and the date it is to become effective. Such right is in addition to and not in lieu of rights of Buyer set forth in Clause 15 herein.

17. FORCE MAJEURE: If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations, such party shall give notice of Force Majeure to the other party in writing within a reasonable time. The obligation of the party giving notice shall be suspended during the continuance of the inability then claimed. Such party shall attempt to overcome such inability with all reasonable dispatch.

The term Force Majeure shall mean Acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, or other cause not reasonable within the control of the party claiming such inability.

18. ASSIGNMENT DELEGATION: No right or interest in this contract shall be assigned or delegation of any obligation made by Seller without the written consent of Buyer.

19. WAIVER: No claim or right arising out of a breach of this contract shall be discharged by waiver or renunciation without consideration, and such waiver or renunciation must be in writing.

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

21. INTERPRETATION PAROLE EVIDENCE: This writing is intended by the parties as a complete, exclusive and final expression of their agreement.

22. APPLICABLE LAW: This agreement shall be governed by the Texas State Purchasing Act (Texas Local Government Code Section 262) and Uniform Commercial Code. Wherever the term "Uniform Commercial Code" is used, it shall be construed as meaning the Uniform Code as adopted in the State of Texas as effective and in force on the date of this agreement.

23. ADVERTISING: Seller shall not advertise, without Buyer's consent, that Buyer has entered into this contract.

24. **RIGHT TO ASSURANCE:** Whenever one party has reason to question the other party's intent, he may demand that the other party give written assurance of his intent to perform. If no assurance is given within five days, the demanding party may treat the failure as an anticipatory repudiation of this contract.

25. **VENUE:** The venue for any litigation arising from this contract shall lie in Midland County, Texas.

26. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** Any elected or appointed official who has any substantial interest, either direct or indirect, in any business entity seeking to contract with Midland County shall, before any vote or decision on any matter involving the business entity, file an affidavit stating the nature and extent of interest and shall abstain from any participation in the matter. This is not required if the vote or decision will not have any special effect on the entity other than its effect on the public. However, if a majority of the governing body are also required to file, and do file similar affidavits, then the member is not required to abstain from further participation.

27. **INSURANCE:** Where required by Buyer on the face of the Purchase Order or in separate specifications for the product or service, Seller shall provide proof of insurance satisfactory to Buyer in the coverage's and amounts stipulated.

28. Vendor agrees not to charge Midland County a price higher than that charged to any other customer for a similar purchase.

29. **A Purchase Order is required on all materials purchased on behalf of Midland County.**