

**METROPOLITAN ENTERTAINMENT & CONVENTION AUTHORITY
REQUEST FOR PROPOSAL 23026
ADVERTISING AND SOFT DRINK POURING RIGHTS
CHI HEALTH CENTER OMAHA
March 3, 2023**

PART I - INTRODUCTION

The Metropolitan Entertainment & Convention Authority (“MECA”) is requesting proposals from qualified soft drink providers interested in performing all services necessary to develop and implement the soft drink category at CHI Health Center Omaha (“CHIHCO”). MECA is responsible for managing the operations of these Facilities.

1. Anticipated RFP Schedule

This Request for Proposal (RFP) and the guidelines set forth for responses hereto are intended to provide MECA with significant substantive information early in the negotiating process so that final agreement can be reached quickly. MECA has therefore established the following schedule (*all time are CST*):

RFP Issued	Friday, March 3, 2023
Final Questions	Friday, March 24, 2022, 1:00 pm
Due/Public Opening	Friday, March 31, 2023, 1:00 pm
Post Bid Interviews	If necessary, interviews will be scheduled for the week of April 3 - April 7, 2023.
Agreement Execution	Wednesday, May 17, 2023

2. Bidder Inquiries

All inquiries regarding this RFP must be made in writing and addressed to kshiers@omahameca.com. Oral explanations or answers shall not be valid. Revisions, clarifications, and/or additional information will be issued to all Bidders in the form of an RFP addendum. All or any RFP addenda issued to the Bidders prior to the bid due date shall become a part of the bidding documents and the cost of such work shall be included in the bids.

3. Delivery of Proposals

Three copies of Bidder’s proposal must be submitted in writing and one proposal must be submitted electronically signed by an officer of the company, and delivered before the time set forth in Section 1 to MECA’s offices:

MECA
RE: Advertising and Soft drink Pouring Rights 23026
455 North 10th Street
Omaha, NE 68102

All proposals received will be publicly opened at MECA’s offices at the time set forth in Section 1. Bidders may attend; however, attendance is not required. MECA reserves the

right to accept or reject late proposals or to extend the time for response for one or more respondents.

4. Criteria for Evaluation of Proposals

4.1 Evaluation of Compliance with RFP Guidelines

Each proposal received will be evaluated to determine whether it generally supplies the information requested in this RFP. MECA may (at its sole discretion) disqualify any proposal, which it deems non-compliant. All proposals shall be valid for acceptance for a period of ninety (90) calendar days.

4.2 Evaluation of Proposals

Proposals will be evaluated based on the following criteria: (a) the company profile, background, experience, and references of the proposing party; (b) pricing; (c) service and support; (d) ability to agree to the requested contractual terms and conditions; and (e) financial considerations. Other criteria may be considered by MECA based on the nature of the proposals received.

4.3 Selection of Respondents

Based on the foregoing criteria, MECA will select one or more entities for further negotiations. It is possible that based on the responses, MECA will elect to negotiate with more than one respondent. In such event, all selected entities will be informed that others have also been selected for negotiation, although MECA reserves the right to not disclose the identity of the other selected respondents.

MECA will notify the successful Bidder of the acceptance of its proposal. Such notice will be sent to the name and email address of the bidder as stated in its proposal.

4.4 Reservations

MECA reserves the unqualified right to reject any or all proposals, extend the time for receipt of proposals, waive defects or technicalities, correct discrepancies, advertise for new proposals, or to take any other action that MECA determines, at its sole discretion, to be in its best interest. Any such determination or action may be made without notice. All costs of preparation and submission of a proposal shall be at the risk and expense of the respondent. MECA shall have no liability in connection with a proposal or any respondent.

4.5 Proposals

All bids and proposals submitted by the various Bidders for this work become the property of MECA. Neither MECA nor the Bidders shall disclose the contents of any proposal to the other parties prior to the announcement of the award.

5. Contractual Terms and Conditions

Review and provide a detailed response whether the following contractual terms and conditions are agreeable. The Bidder's Proposal shall specifically note any requested modifications to this section, which MECA may take into consideration during the review process, at MECA's discretion.

5.1 Purchase Agreement and Payment

The successful Bidder will be required to execute a MECA Service Agreement prior to performing any portion of work required within the specifications of this RFP. A sample MECA Purchase Agreement is available upon request.

Payment terms will be in accordance with the Advertising Agreement.

5.2 Term

The initial term of the agreement shall be for Five Years, beginning July 1, 2023, unless terminated sooner as hereinafter provided.

In addition to the initial term hereof and at the sole discretion of MECA, the Agreement may be renewed for one additional five-year period. MECA agrees to exercise its option by providing written notice to Vendor no less than 90 calendar days prior to the end of the then current term.

5.3 Equal Employment

The successful Bidder and its sub-contractors, if any, must insure that employees and applicants for employment are not discriminated against because of their race, color, religion, sex, origin, age, marital status, or disability.

5.4 Insurance

The successful Bidder must provide evidence of the following types of insurance during the term of the Agreement. For the avoidance of doubt, such coverage and limits are minimum requirements and shall not be deemed as a limitation on vendor's liability under any provision of any agreement. Approval of the insurance by MECA shall not relieve or decrease the liability of the vendor hereunder. Note any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to an additional insured.

Commercial General Liability Insurance (including personal injury, contractual liability and products liability) and Automobile Liability coverage (owned, non-owned and hired coverages) with minimum limits of \$1,000,000 Combined Single Limit (Auto Liability), and \$1,000,000 Per Occurrence, \$2,000,000 General Aggregate. Commercial General Liability aggregate limit will apply on a "per location" basis. The insurance must protect the Bidder and MECA from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with the performance of the Bidder's services hereunder or from or out of any negligent act or omission of the Bidder, its officers, directors, agents or employees.

Workers' Compensation Insurance as required by applicable law. Policy shall be endorsed to include Waiver of Subrogation against MECA, the City of Omaha, their employees, officers and legal representatives.

Employer's Liability Insurance with minimum limits of:

\$500,000 Each Accident—Bodily Injury by Accident

\$1,000,000 Policy Limit—Bodily Injury by Disease

\$500,000 Each Employee—Bodily Injury by Disease

Umbrella or Excess Liability: additional \$5,000,000 Limit. Coverage is to apply excess of Commercial General, Employer's Liability, and Automobile Liability policies.

All such insurance required above shall be with companies and on forms acceptable to MECA and shall provide that the coverage thereunder may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to MECA. All insurance shall be primary and not contributory. All insurance shall be written by companies with a Best's Key Rating Guide (Property-Casualty, United States) rating of A or better and a Best's Financial Size Category of Class VI or better. Within thirty (30) days of the date on which coverage is to be provided hereunder, the successful Bidder shall furnish to MECA certificates of insurance along with copies of endorsements evidencing compliance to the above requirements. Such certificates and insurance policies shall name MECA and the City of Omaha as additional insureds on a primary basis, and contain a waiver of subrogation, in which the insurer waives any claim or right to recover against MECA, the City of Omaha, their officers, agents or employees. The additional insured requirement does not apply to Workers' Compensation.

5.4 Indemnification

Bidder does hereby covenant and agree to indemnify, defend and hold harmless MECA, and the City of Omaha, their officers, directors, employees, agents and representatives, from and against all claims, demands, losses, suits, damages, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of or relating to any claim, demand or judgment for property loss or damage (including loss of use of CHIHCO), and/or personal injury, including death, arising out of the Products and Services furnished hereunder by Bidder and Bidder's Personnel except to the extent same is caused by the negligence or reckless conduct of MECA or its employees or agents.

MECA is not responsible for any equipment, furnishings, supplies or other property or products owned by Bidder and used or stored at CHIHCO, nor is it responsible for damage resulting from power failure, flood, fire, explosion or other similar causes.

The provisions requiring the furnishing of personal injury liability or property damage liability insurance shall not be construed to affect or impair the generality of the forgoing.

The successful Bidder shall represent and warrant in the contract that the components of this RFP to be purchased for the Facilities shall not violate or infringe upon any patent, copyright, trademark, trade secret or other intellectual or proprietary right of any third party. The Bidder shall agree to defend, protect and hold harmless MECA and its related parties from and against any and all liabilities, actions, losses, awards, damages, costs, claims or expenses including reasonable attorneys' fees incurred by them as a result of any claim that the components of this RFP to be purchased for the Facilities are illegal or infringe upon any third party patent, copyright, trademark, trade secret or other intellectual or proprietary right.

5.5 Award of Contract

MECA will notify the successful Bidder of the acceptance of its proposal. Such notice will be sent to the name and address of the bidder as stated in its proposal.

All bids and proposals submitted by the various Bidders for this work become the property of MECA. Neither MECA nor the Bidders shall disclose the contents of any proposal to the other parties prior to the announcement of the award.

This RFP and the Bidder's proposal thereto shall become part of any contract that may be entered into as a result of this RFP.

All proposals shall be valid for acceptance for a period of ninety (90) calendar days. MECA reserves the right to reject any or all bids or to award the contract to other than the low bidder.

5.6 Warranty

The Bidder shall warrant in the contract that the components of this RFP to be purchased for the Facilities shall be new and of good and workmanlike quality and fit for the use intended. The Bidder shall further warrant that during the manufacturer's warranty period that the components will operate in accordance with the manufacturer's specifications. The manufacturer's warranty period shall be specified on the Bidder's proposal and shall begin on the date of MECA's acceptance of the installation. All other specific promises and warranties made by Bidder in the RFP Response or bid process generally shall also be included in the final contract.

5.7 Scope, Quality of Work Guarantee

The successful Bidder shall furnish all equipment, labor, personnel, and facilities necessary to perform and complete the work.

5.8 Conduct of Personnel

No business, other than that specifically outlined in the RFP, may be conducted by personnel of the Bidder while on the premises of CHIHCO.

The Bidder shall be responsible for all actions of its employees, while they are assigned to CHIHCO. The employees shall at all times comply with applicable laws, ordinances, and regulations of local, state, and federal agencies, along with all regulations, policies, and procedures of MECA.

Bidder certifies and agrees that, with respect to its staff and employees who will participate in the performance of this Agreement, the Bidder shall maintain a workplace free of drugs and alcohol during the term of this contract.

If, for whatever reason, MECA determines that personnel assigned to the CHIHCO are unsatisfactory, the Bidder shall replace the individual immediately, or as mutually agreed upon.

5.9 Sales Tax

Other than federal, state or local income taxes imposed on MECA, Vendor shall pay all applicable taxes arising out of the sale of products or use of Services to the appropriate governmental entities. MECA is a sales taxable entity and as such, Vendor warrants that sales tax is included in the bid price.

All federal, state and local taxes, including without limitation sales, use, excise, privilege, transactional, gross receipts, ad valorem or any other transactional tax or customs and duties ("Tax" or "Taxes") paid or payable by Bidder, however designated, levied or based on amounts payable to Bidder under or in connection with the RFP have been included in the pricing set forth in Bidders Proposal as required by the relative taxing authorities.

MECA is a sales taxable entity and as such, Bidder warrants that sales tax is included in the price provided in Bidders Proposal. Notwithstanding anything in the Agreement to the contrary, the successful Bidder shall indemnify and defend MECA for any sales tax audit assessment against MECA relating to the amount of Nebraska sales tax charged under this Agreement.

As a Vendor of CHIHCO, any sales tax collected must be reported to the State of Nebraska monthly. A Convention Center Facilities Financing Assistance Act Sales and Use Tax Information Form must be completed and filed on or before the 20th day of the month following the month of sale. Forms are available by contacting MECA's Finance Department. Vendor must also supply MECA with the Vendor's Nebraska Sales Tax Permit number upon execution of the Agreement.

PART II - SCOPE OF PROJECT

MECA will agree that all Soft Drink Beverages sold; distributed or sampled at all locations in the facility where refreshments are sold, distributed, or sampled will be Bottler's products. MECA agrees that it shall, or shall cause its concessionaires to, purchase its complete requirements of products for CHIHCO from the Bottler. Bottler and MECA agree that, at a minimum, the following products shall be made available, at each refreshment location: Cola and Diet Cola

MECA and Bottler agree that during any NCAA events that a competitor's product may have an opportunity to be sampled and advertised but not sold for this event. MECA and Bottler also agree during this time frame that MECA at its sole discretion may use non-descript beverage cups.

1. Beverage/Marketing Rights

- a) MECA shall use its reasonable efforts to maximize the sale and distribution of Products including hawking Products in stands in Approved Cups or twenty-ounce bottles during all events when any items of any make or description are hawked at CHIHCO.
- b) MECA and Bottler will promote soft drinks in connection with tenants and CHIHCO, including the right to recognition of its sponsorship on signs, as described in Exhibit A.
- c) MECA will refer to Bottler in any of Bottler's marketing materials as a "sponsor" of CHIHCO and refer to any brand of Products in any of the Bottler's marketing materials as the "official" or "exclusive" soft drink of CHIHCO.
- d) Offer Products without charge to attendees and guests at CHIHCO with MECA's approval, which shall not be unreasonably withheld.
- e) Undertake Beverage promotions at or in connection with MECA, CHIHCO, including offering Products in promotional packaging bearing Account Marks on a royalty-free basis.
- f) Sample and survey individuals at CHIHCO with MECA's prior approval as to event location and time.
- g) Market and promote Beverages at CHIHCO in association with concert series on a mutually agree upon term and condition.
- h) Product trademarks shall be prominently displayed on each menu board at CHIHCO.
- i) Trademarked dispensing equipment, including hawking trays, kiosks, and mobile carts to be provided by Bottler at no additional cost, shall be used by MECA.

2. Equipment and Services

- a) Bottler will install and loan to MECA all soft drink dispensing equipment ("Equipment"), which is required to dispense Products at CHIHCO.
- b) Bottler will provide MECA with reasonable, free service to their respective equipment. All equipment service will be provided during normal business hours.

PART III - Information to be Supplied by Bidder

For ease of evaluation and given the fast-track that MECA desires to pursue to reach final agreement, MECA requests that each proposal submitted incorporate the same general structure. Proposals must include the following sections:

1. Proposal Form

The Proposal Form found in Part IV must be completed and signed.

2. Company Profile

The Bidder should provide information about the company, including the following information:

- A. Company name, address, telephone number and contact person.
- B. Brief company history, which can be in the form of a company brochure.
- C. Local service capabilities (hours of operation and parts availability).
- D. Technician factory certifications and/or training standards.
- E. Licensing information, if applicable.
- F. Description of local project management capabilities.

- G. Any additional literature, brochures, policy statements, or other information that will assist in providing a more complete overview of the Firm's strategies and philosophy.

3. Subcontractors

In order that MECA may be assured that only qualified and competent subcontractors will be retained for the service, each Bidder shall submit with his/her name a list of all subcontractors that the Bidder intends to use. No change shall be made in the list of subcontractors after the receipt of proposals, unless agreed to in writing by MECA.

4. References

Bidders shall supply a list of three references that you have provided similar product/service for, including names and telephone numbers of the customer's contact person. Provide a brief description of product/service for each reference listed.

5. Resumes

Bidder shall provide resumes or bios of key staff assigned to the project highlighting qualifications and experience. Information must include all relevant certifications and/or training.

6. Other Benefits

Bidder shall describe in detail any other benefits available.

7. Warranty and Support Information

Bidders must provide warranty information for equipment and services.

8. Deviations from Scope of Project

Bidders must document all deviations from the specifications outlined in the Scope of Project in Part II.

9. Contractual Terms and Conditions

The Bidder shall review and provide a response whether the contractual terms and conditions set forth in Part 1, Section 5 are agreeable. A detailed response is required if a bidder is not agreeable to one or more of the terms and conditions set forth in Part 1, Section 5.

Part IV – PROPOSAL FORM / COST ANALYSIS

For the rights described herein, MECA would look for a minimum of Two Hundred Thousand dollars (\$200,000) a year for the term.

Bottler will have the option to lease a luxury suite from MECA for the prevailing rate at the time a suite becomes available. The terms and conditions of such lease will come under separate agreement.

This Proposal, submitted to MECA, is deemed to be in accordance with all information contained and referred to in this Request for Proposal by the undersigned.

Name and Title (printed)

Company

Signature

Date

EXHIBIT A

1. Advertising Gate/Recognition Panels

- 1.1 Bidder shall have the right to the following advertising recognition panels during the term:
- One (1) pair LED arena bowl signs
 - Two (2) pair backlit scoreboard ad panels
 - One (1) pair backlight concourse signs
 - One (1) 30 second full feature for all events that the ribbon panels are in use.
- 1.2 Product trademarks shall be prominently displayed on each menu board along with counter displays at CHIHCO.
- 1.3 MECA shall maintain all advertising recognition panels in good order and repair. Bidder shall have the right to change the advertising message on such panels at any time at Bidder expense.

2. Media

- 2.1 One (1) :30 second video commercial spots per event*, subject to video scoreboard being used for the event.

*Bidder acknowledges that video messaging will not take place during NCAA sanctioned events or non-ticketed events.

3. Bottler's Additional Consideration

Twenty second tags on :60 second radio spots. Approximately 100 tags per week over five stations for (8) weeks each year (subject to availability)

Ten second tags on :30 second television commercials. Approximately 50 tags per week over three stations for three (3) weeks each year (subject to availability).

EXHIBIT B

1. Equipment Needs (Minimum)

- Concessions Fountain Units: 26
- Club Fountain Guns: 8 (2 server stations, 6 bar)
- Short Single Door Coolers: 30
- Tall Single Door Coolers: 26
- Tall Single Door Coolers on casters: 12 (for ease of relocating for event setups)
- Double Door Coolers: 16
- Double Door Coolers on casters: 10 (for ease of relocating for event setups)
- Rear Loading Double Door Coolers: 4
- Counter Top Coolers: 2