

INVITATION TO BID NUMBER 0092007

RETURN THIS BID TO:

**Attention ITB #0082007/ FOOD AND
BEVERAGE CONCESSION SERVICES AT
HURD PARK
PO Box 360
259 US Route One
Scarborough, ME 04070-0360**



THIS IS NOT AN ORDER

DATE ITB ISSUED: 02/16/07

ITB TITLE: FOOD AND BEVERAGE CONCESSION SERVICES AT HURD PARK

SEALED BIDS MUST BE SUBMITTED TO THE PURCHASING AGENT, TOWN CLERK'S OFFICE, OR DELIVERED TO THE OPENING LOCATION AND MUST BE TIME AND DATE STAMPED BY THE PURCHASING AGENT or HIS DESIGNEE PRIOR TO THE BID OPENING ON MARCH 15th, 2007 AT 11:30AM AT WHICH TIME THEY WILL BE PUBLICLY OPENED.

OPENING LOCATION: Town of Scarborough, Town Hall, located at 259 US Route One Scarborough, ME 04070-0360 in the Town Manager's Conference Room, Main Level.

F.O.B. POINT: FINAL DESTINATION

ALL QUESTIONS REGARDING THIS ITB SHOULD BE DIRECTED TO KEITH MATHERNE, PURCHASING AGENT, at (207) 730 4089 or kmathern@ci.scarborough.me.us. THE PREFERRED METHOD IS VIA EMAIL.

IMPORTANT NOTICE: If you received this solicitation from the Town's web site, you must register with the Purchasing Agent to receive subsequent amendments.

CONTRACT INTENT: This Invitation to Bid (ITB) is intended to result in the leasing of a Town of Scarborough owned building at Hurd Park in Scarborough, Maine for operation as a concession stand offering food items and sundries to users of Hurd Park under license from the Town.

NOTICE OF INTENT TO AWARD: After the responses to this ITB have been opened and evaluated, a tabulation of the bids will be prepared. It lists the name of each company or person that offered a bid and the price they bid. A copy of the Bid Tabulation will be mailed to each company or person who responded to the ITB. Bidders identified as the apparent low responsive bidders are instructed not to proceed until a Purchase Order, Contract Award, Lease, or some other form of written notice is given by the Purchasing Agent. A company or person who proceeds prior to receiving a Purchase Order, Contract Award, Lease, or some other form of written notice from the Purchasing Agent does so without a contract and at their own risk.

PAYMENT FOR TOWN PURCHASES: Payment for agreements for the undisputed purchase of goods or services provided to the Town of Scarborough, will be made within 30 days of the receipt of a proper billing or the delivery of the goods or services to the location(s) specified in the agreement, whichever is later.

FEDERAL EXCISE TAX: The Town of Scarborough is exempt from all Federal Excise Tax.

CONTRACT ADMINISTRATION: The administration of this contract is the responsibility of Keith Matherne, Purchasing Agent and/or Bruce Gullifer, Department of Community Services.

INDEMNIFICATION: The contractor shall indemnify, hold harmless, and defend the Town from and against any claim of, or liability for error, omission or negligent act of the contractor under this agreement. The contractor shall not be required to indemnify the Town for a claim of, or liability for, the independent negligence of the Town. If there is a claim of, or liability for, the joint negligent error or omission of the contractor and the independent negligence of the Town, the indemnification and hold harmless obligation shall be apportioned on a comparative fault basis. "Contractor" and "Town", as used within this and the following article, include the employees, agents and other contractors who are directly responsible, respectively, to each. The term "independent negligence" is negligence other than in the Town's selection, administration, monitoring, or controlling of the contractor and in approving or accepting the contractor's work.

INSURANCE: Without limiting contractor's indemnification, it is agreed that contractor shall purchase at its own expense and maintain in force at all times during the performance of services under this agreement the following policies of insurance. Where specific limits are shown, it is understood that they shall be the minimum acceptable limits. If the contractor's policy contains higher limits, the Town shall be entitled to coverage to the extent of such higher limits. Certificates of Insurance must be furnished to the Purchasing Agent prior to beginning work and must provide for a 30-day prior notice of cancellation, non-renewal or material change of conditions. Failure to furnish satisfactory evidence of insurance or lapse of the policy is a material breach of this contract and shall be grounds for termination of the contractor's services.

Proof of insurance is required for the following:

The contractor shall furnish proof of adequate insurance coverage of the types, and to the limits, specified below. Certificates of such insurance shall be filed with the Purchasing Agent within five (5) days following notification of the Bid Award.

WORKERS COMPENSATION:

The Contractor shall purchase and maintain during the life of this Contract Workers Compensation Insurance for all employees employed in the course of performing services under this Contract as awarded pursuant to these Specifications; and in case any work is sublet, the Contractor shall require the Sub-Contractor to similarly provide Worker's Compensation Insurance for all of the latter's employees, unless such employees are covered by the protection afforded the Contractor. In case any class of employees engage in hazardous work under the Workman's Compensation Statute, the Contractor shall provide adequate coverage for the protection of employees not otherwise protected. All coverage to be in accordance with State of Maine laws in effect and the requirements of the Industrial Accident Commission.

LIABILITY INSURANCE:

The Contractor shall carry and maintain, until final written acceptance of the work by the Town, insurance as specified below and in such form as shall protect the Town of Scarborough and its employees and officials from all claims and liability for damages and bodily injury including accidental death and for property damage which may arise from operations under this Contract. The Town of Scarborough must be named as an additional insured in the policy. The Contractor covenants and agrees to hold the Town of Scarborough and its employees, agents, and officials harmless from loss and damage due to claims from personal injury and/or property damage arising from or in connection with operations under this Contract. Except as otherwise stated, the amounts of such insurance shall be for each policy not less than:

1. For liability, for bodily injury, including accidental death \$400,000 on account of one occurrence and \$400,000 aggregate limit.
2. For liability for property damage \$400,000 on account of any one occurrence and \$400,000 aggregate limit.
3. An umbrella policy in the amount of \$400,000 covering the underlying policies. All policies shall be so written that the Purchasing Agent's office of the Town of Scarborough will be notified of cancellation or restrictive amendment at least thirty (30) days prior to the effective date of such cancellation or amendment. A certificate from the Contractor's insurance carrier showing at least the coverage and limits of liability specified above and expiration date shall be filed with the Town before operations may begin. Certificates shall make no claims against the Town of

Scarborough or its officers for any injury to any of his officers or employees for damage to his trucks or equipment arising out of work contemplated by this Contract. The Contractor agrees to hold the Town harmless from any claims so made and to indemnify the Town, its officers, employees, agents, and servants from all claims legal or equitable, including court costs and reasonable attorneys fees arising out of the operation of the contract.

AUTOMOTIVE LIABILITY INSURANCE:

Automotive Liability Insurance with a minimum limit of liability for bodily injury in the amount of \$400,000 for each occurrence and minimum limit of liability for property damage in the amount of \$50,000 / \$100,000 aggregate.

Failure to supply satisfactory proof of insurance within the time required will cause the Town to declare the bidder non-responsible and to reject the bid.

SUPPORTING INFORMATION: The Town strongly desires that bidders submit all required technical, specification, and other supporting information with their bid, so that a detailed analysis and determination can be made, by the Purchasing Agent that the product offered meets the ITB specifications and that other requirements of the ITB have been met. However, provided a bid meets the requirements for a definite, firm, unqualified, and unconditional offer, the Town reserves the right to request supplemental information from the bidder, after the bids have been opened, to ensure that the products offered completely meet the ITB requirements. The requirement for such supplemental information will be at the reasonable discretion of the Town and may include the requirement that a bidder will provide a sample product(s) so that the Town can make a first-hand examination and determination.

A bidder's failure to provide this supplemental information or the product sample(s), within the time set by the Town, will cause the Town to consider the offer non-responsive and reject the bid.

FIRM, UNQUALIFIED AND UNCONDITIONAL OFFER: Bidders must provide enough information with their bid to constitute a definite, firm, unqualified and unconditional offer. To be responsive a bid must constitute a definite, firm, unqualified and unconditional offer to meet all of the material terms of the ITB. Material terms are those that could affect the price, quantity, quality, or delivery. Also included as material terms are those which are clearly identified in the ITB and which, for reasons of policy, must be complied with at risk of bid rejection for non-responsiveness.

CONTRACT PERIOD: From May 12th, 2007 through September 15th, 2007.

CONTRACT PRICES: Contract prices are to remain firm through the duration the contract(s) and the extension or renewal of the contract(s).

ALTERATIONS: The contractor must obtain the written approval from the Purchasing agent prior to making any alterations to the specifications contained in this ITB. The Town will not pay for alterations that are not approved in advance and in writing by the contracting officer.

INVOICES: Invoices must be sent directly to the Town address shown on the individual Purchase Order, Contract Award or Delivery Order. The Town will only make payment after it receives the merchandise or service and the invoice. Question concerning payment must be addressed to the Town.

CONTINUING OBLIGATION OF CONTRACTOR: Regardless of the terms and conditions of any third-party financing agreement, the contractor agrees that none of its responsibilities under this contract are transferable and that the contractor alone will continue to be solely responsible until the expiration date of the contract.

CONTRACT CANCELLATION: The Town reserves the right to cancel the contract at its convenience via written notice to the contractor. The Town is liable only for payment in accordance with the payment provisions of this contract for services or supplies provided before the effective date of termination.

METHOD OF AWARD: Award will be made to the lowest responsive and responsible bidder. To be considered responsive, the bidder must meet the specifications, terms, and conditions of this ITB and the bid must be determined to be responsible. This determination may be determined by (but not limited to) past experience with the bidder (if applicable), references, and jobs of similar size and scope.

SPECIFICATIONS

1. The tenant will operate a seasonal takeout concession stand serving the general public between May 12th, 2007 and September 15th, 2007. The Town is also requesting a bid for an additional season in 2008.
2. During the operating seasons identified in section 1, the Tenant will operate the concession stand daily, Monday through Sunday, opening for business no later than 11:00am and closing no earlier than 6:00pm daily.
3. In return for the use of the Town’s facility and equipment, the Tenant shall make payments to the Town following this schedule:

2007: May 1st
 June 1st
 July 1st
 August 1st

Either party may, no later than March 30th, 2007, request an adjustment of the foregoing scheduled payments for the year 2007.

4. The Tenant shall be entitled to retain all proceeds and profits obtained from operating the concession stand, provided the Tenant has made the payments to the Town required by number 3 above, which payments the Tenant is obligated to make whether or not the operation of the concession stand as an independent contractor and shall not be an employee or agent of the Town of Scarborough for any purposes.
5. Within 30 days after the end of each operating season, the Tenant shall provide a detailed record of revenues and expenses for the season to the Town’s Department of Community Services.
6. No later than March 30th, 2007, the Tenant chosen shall provide a \$1,000 security deposit, in order to secure satisfactory operation of the concession stand and to secure the Town against any damages to Town’s premises or equipment. Upon expiration or termination of the written agreement, the Town shall return the \$1,000 security deposit to the Tenant only if the Town, after inspection, determines that the premises and equipment are in the same condition as at the commencement of the agreement, with reasonable wear and tear considered. Otherwise, the Town shall retain the \$1,000. The Tenant shall not be entitled to any interest on the security deposit.
7. Prior to the operating season, the Tenant shall conduct an inventory of the numbers, types, and condition of equipment located on the premises and shall obtain agreement from the Town’s Department of Community Services as to the accuracy of such inventory before the Tenant commences operation of the concession stand.
8. Prior to commencing operation of the concession stand, the Tenant shall undergo such training regarding the safe and proper use of the concession stand equipment as is deemed appropriate by the Town’s Department of Community Services.
9. Prior to commencing operation of the concession stand each operating season, the Tenant

- shall obtain all required permits from local, state and federal authorities, and the Tenant shall at all times operate the concession stand in compliance with all local, state, and federal laws and regulations.
10. At the conclusion of each season, the Tenant shall thoroughly clean all equipment and remove all supplies which are not the property of the Town of Scarborough from the premises and refill all propane gas containers used in the operation of the concession stand.
 11. The Tenant shall not use or permit the use of the premises for any purpose other than the concession stand as provided in this Invitation to Bid (ITB), without prior written consent of the Town of Scarborough.
 12. The Tenant shall at all times keep the premises, fixtures, equipment and apparatus in good working order, condition and repair, damage by casualty expected. If the Tenant refuses or neglects to maintain or repair the premises, fixtures, equipment or apparatus to the reasonable satisfaction of the Town as soon as reasonably possible after written request from the Town, the Town may make such repairs and the Tenant shall reimburse the Town for the costs of making such repairs upon presentation of bills therefor.
 13. At expiration of the agreement, the Tenant shall surrender the premises in the same condition as the premises were in upon commencement of the agreement, reasonable wear and tear expected, and damage by casualty expected. The Tenant's obligation to observe and perform this covenant shall survive the expiration or termination of the agreement and is not limited by the Town's retention of the security deposit as provided in paragraph 6 of this specification.
 14. The Tenant shall keep in full force and effect a policy of insurance as outlined on pages 2, 3, and 4.
 15. The Tenant shall maintain fire and extended coverage insurance insuring the Town and the Tenant in amounts sufficient to cover any and all losses that might be incurred through the damage or destruction of the premises and any personal property kept on the premises.
 16. The Tenant agrees to Indemnify and save the Town harmless as outlined on page 3 under the heading "**INDEMNIFICATION.**"
 17. Nothing in the agreement shall constitute or be deemed a waiver of any immunities available to the Town pursuant to the Maine Tort Claims Act or other applicable law.
 18. As of the date of the agreement, the Tenant will be asked to list the names and addresses of the persons who will be employed in the operation of the concession stand. The tenant shall agree that they will update the list throughout the term of the agreement, providing such updates to the Town's Community Services Department within 48 hours of any change.
 19. The Town's Department of Community Services will provide proper training to the Tenant and, as needed, to all employees, concerning the safe use of concession stand equipment.
 20. The Town's Department of Community Services will issue a key to the lead concession stand operator identified by the Tenant for use during the entirety of each operating season.
 21. The Town's Department of Community Services will make timely repairs to or replacements of any faulty or damaged equipment in the concession stand if the fault or damage is not the result of negligent acts or omissions by the Tenant or the Tenant's

agents or employees.

BID SCHEDULE

THIS PAGE MUST BE INCLUDED

The UNDERSIGNED hereby declare that he, she or they are the only person(s), firm or corporation interested in this ITB as principal; that it is made without connection with any other person(s), firm or corporation submitting a bid for the same.

The UNDERSIGNED hereby declare that they have read and understand all conditions as outlined herein, and that proposal is made in accordance with the same.

The UNDERSIGNED hereby declare that any person(s) employed by the Town of Scarborough, Maine who has direct or indirect personal or financial interest in this proposal, or in any profits that maybe derived there from, has been identified and the interest disclosed by separate attachment. (Please include in your disclosure any interest which you know of. An example of a direct interest would be a Town employee who is related to any officers, employees, principals or shareholders of your firm or you. If in doubt of status or interest, please disclose to the extent known).

The UNDERSIGNED acknowledges the receipt of Addenda numbered _____

COMPANY NAME: _____

AUTHORIZED SIGNATURE: _____ DATE: _____

(PRINT) NAME AND TITLE _____

ADDRESS: _____

DAYTIME PHONE #: _____

TYPE OF ORGANIZATION-INDIVIDUAL, PARTNERSHIP, OTHER, CORPORATION

STATE OF INCORPORATION, IF APPLICABLE: _____

FEDERAL TAX ID/SOCIAL SECURITY NUMBER: _____

NOTE: Bids must bear the handwritten signature of a duly authorized member or employee of the organization submitting a proposal.

ITEM 1. In return for the use of the Town’s premises and equipment, the Tenant proposes to make payments to the Town as follows:

2007:	
May 1st:	_____
June 1st:	_____
July 1st:	_____
August 1st:	_____
TOTAL:	_____

ITEM 2. In return for the use of the Town’s premises and equipment, the Tenant proposes to make payments to the Town as follows:

2008:	
May 1st:	_____
June 1st:	_____
July 1st:	_____
August 1st:	_____
TOTAL:	_____

ITB#0092007 Mailing List

1. Charles A Randall
3 Scabbard Road
Scarborough, ME 04074

2. Shipwreck Foods, Inc.
Attn: Tari-Lea O'Neill
187 Temple Avenue
Old Orchard Beach, ME 04064

3. Family Secrets
Attn: Dan Rubinoff
53 Codman St.
Portland, ME 04103-4527