



General Instructions to Vendors

The following terms, conditions and instructions apply to all Knoxville's Community Development Corporation's (KCDC) solicitations whether they are quotations, bids, proposals, requests for qualifications or other types of solicitations. The term "bidder" is used collectively for bidder, proposer, vendor, quoter, contractor and all other terms implying or meaning one who is responding to an opportunity with KCDC. The submission of a response means that the vendor understands and agrees with KCDC's "General Instructions to Vendors." Any variance is to be clearly noted on the submittal document. KCDC will be the sole judge as to whether the variance is "material" or "immaterial" to the bid.

1. **ACCEPTANCE**

Bidders shall hold their price firm and subject to acceptance by KCDC for sixty calendar days from the date of the opening unless otherwise directed by KCDC.

2. **ALTERATIONS OR AMENDMENTS**

Alterations, amendments, changes, modifications or additions to a solicitation shall not be binding on KCDC without prior written approval.

3. **APPROPRIATION**

In the event funds are not appropriated by KCDC for the goods or services or insufficient funds exist to purchase the goods or services, the contract shall terminate upon the expenditure of previously appropriated with no further obligations owed to or by either party.

4. **ASSIGNMENT/SUBCONTRACTING**

The bidder shall not assign or subcontract this agreement, its obligations or rights hereunder to any party, company, partnership, incorporation or person without the prior written specific consent of KCDC. KCDC may terminate the subsequent contract if assignment or subcontracting is done without approval.

5. **AWARD/ REJECTION OF RESPONSES**

- a. An award shall be made to the responsible bidder complying with the conditions of the solicitation based on the response that receives the highest rating and is in the best interest of KCDC. However, KCDC reserves the right to reject any and all responses and to waive any informality in the responses received whenever KCDC determines that such rejection or waiver is in KCDC's best interest.

- b. KCDC also reserves the right to reject responses from any bidder who has previously failed to perform properly or to complete work or contracts of a similar nature on time; who is not in a position to perform the work; or who has habitually and without just cause neglected the payment of bills or otherwise disregarded his obligations to other bidders, subcontractors, and/or employees.

6. **AWARD RESULTS**

As soon as practicable after evaluation, KCDC shall post the award decision and the proposal tabulation to its web page. Individual notices are normally not mailed or emailed.

7. **BID WITHDRAWAL**

A bidder is permitted to withdraw or amend a solicitation response before the date and time set for receipt of bids without stating a reason. A bid cannot be amended after the bid opening unless the amendment does not materially affect the price, quality, quantity or delivery of the service. If granted, withdrawal after the due date is non-reversible. To affect a withdrawal or amendment clear proof of a clerical error must be submitted. Withdrawal is ultimately subject to KCDC's discretion.

8. **BOOKS AND RECORDS**

The bidder shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under a contract and make such materials available at its offices at all reasonable times during the contract period and for three years (and as required by federal law and/or regulations) from the date of the final payment under a contract. This shall be for inspection by KCDC or by any other governmental entity or agency participating in the funding of a contract, or any authorized agents thereof. Copies of said records shall be furnished by the bidder if requested. Such records shall include those books, documents and accounting records that represent the bidder's costs of manufacturing, acquiring or delivering the products and services governed by a contract.

9. **COMPLIANCE WITH ALL LAWS**

The bidder is assumed to be familiar with and agrees to observe and comply with all federal, state and local laws, statutes, ordinances, and regulations in any manner affecting the provision of goods and/or services, and all instructions and prohibitive orders issued regarding the work and shall obtain all necessary permits and inspections.

10. **CONFIDENTIALITY OF DATA, PROPERTY RIGHTS IN PRODUCTS AND COPYRIGHT PROHIBITION**

- a. The bidder agrees that all information, data, findings, recommendations, proposals, et cetera by whatever name described and in whatever form secured, developed, written or produced by the bidder in furtherance of a contract shall be the property of KCDC. The bidder shall take such action as is necessary under law to preserve such property rights of KCDC while such property is within the control and/or custody of the bidder. By a contract, the bidder specifically waives and/or releases to KCDC any cognizable property right of the bidder to copyright, license, patent or otherwise use such information, data, findings, recommendations, responses, et cetera.

- b. The bidder understands and agrees that data, materials, and information disclosed to bidder may contain confidential and protected data. Therefore, the bidder promises and assures that data, materials, and information gathered, based upon or disclosed to the bidder for the purpose of a contract, shall not be disclosed to others or discussed with other parties without the prior written consent of KCDC.

11. **CONTACT POLICY**

Contact is not permitted between bidder and anyone other than the KCDC Purchasing Division from the issuance of a solicitation until an award is finalized. Information obtained from an unauthorized officer, agent, or employee of KCDC or any other person shall not affect the risks or obligations assumed by the bidder or relieve him from fulfilling any of the conditions of the contract for the purpose of a project. Such contact can disqualify the bidder from participation in the solicitation process.

12. **DEBRIEFING**

If desired by one or more bidders, KCDC staff shall conduct a debriefing meeting to discuss why a particular award decision was made. If you are interested in such a meeting, please contact the KCDC Purchasing Division.

13. **DELIVERY**

All deliveries shall be to the designated KCDC property and they must be Freight On Board (FOB) Knoxville, Tennessee with all delivery, handling, surcharges and other charges included in the bid price. Failure to do so may cause rejection of bid. KCDC will not pay additional surcharges.

14. **EXPENSES INCURRED**

All expenses incurred in the preparation and submission in response to a solicitation shall be borne by the bidder.

15. **FAILUE TO ENFORCE**

Past failure to enforce a contract provision does not mean that KCDC has waived its rights to enforce said provision or any other provision.

16. **FEDERALLY REQUIRED ORDERS/DIRECTIVES**

Both parties agree that they will comply with the following laws and directives that KCDC has received from HUD and all other branches of the federal government. These same clauses shall be a part of any contract that ensues as a result of an RFP:

- a. Executive Order 11246: "Equal Employment Opportunity."
- b. Copeland "Anti-Kickback" Act.
- c. Clean Air Act.
- d. Energy Policy and Conservation Act.

- e. Executive Order 11061, as amended, which directs the Secretary of HUD to take all action which is necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- f. Public Law 88-352, Title VI of the Civil Rights Act of 1964.
- g. Public Law 90-284, Title VIII of the Civil Rights Act of 1968, popularly known as the Fair Housing Act.
- h. The Age Discrimination Act of 1975, which prohibits discrimination on the basis of age.
- i. Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- j. 24 CFR 85.36(1) and Section 6002 of the Solid Waste Disposal Act.

The mention herein of any statute or executive order is not intended as an indication that such statute or executive order is necessarily applicable nor is the failure to mention any statute or executive order intended as an indication that such statute or executive order is not applicable. In this connection, therefore each provision of law and each clause, which is required by law to be inserted in an agreement, shall be deemed to have been inserted herein, and an agreement shall be read and enforced as though such provision or clause had been physically inserted herein. If, through mistake or otherwise, any such provision is not inserted or is inserted incorrectly, this agreement shall forthwith be physically amended to make such insertion or correction upon the application of either party.

17. **GOVERNING LAW**

Any contract shall be governed by the laws of the State of Tennessee and all applicable federal statutes and standards including HUD regulations and all obligations of the parties are performable in Knox County, Tennessee. The Chancery Court and/or the Circuit Court of Knox County, Tennessee, shall have exclusive and concurrent jurisdiction of any disputes, which arise hereunder.

18. **HUD Forms/Documents**

The following HUD documents are referenced for the bidder's benefit. The bidder should review these documents for important details about a solicitation and contract (if any). By this reference, these documents are incorporated as if they are attached hereto. Bidders shall be bound by these documents when they submit a response to a solicitation.

- HUD Form 5369 HUD's Instructions to Bidders for Contracts
- HUD Form 5369 A Representations & Certifications of Bidders.
- HUD Form 5369 C Certifications & Representations of Offers – Non Construction.
- HUD Form 5370 General Conditions of the Contract for Construction.
- HUD Form 5370 C General Conditions for Non-Construction Contracts-Section I (with or without Maintenance).

HUD Form 5370 C General Conditions for Non-Construction Contracts-Section II (with Maintenance)

HUD Form 5370 EZ General Conditions of the Contract for Small Construction

19. **INDEMNIFICATION/HOLD HARMLESS**

The bidder shall indemnify, defend, save and hold harmless KCDC, its officers, agents and employees from all suits, claims, actions or damages of any nature brought because of, arising out of, or due to breach of the agreement by bidder, its subcontractors, suppliers, agents, or employees or due to any negligent act or occurrence or any omission or commission of bidder, its subcontractors, suppliers, agents and/or employees.

20. **INDEPENDENT BIDDER**

The bidder shall acknowledge that it and its employees serve as independent contractors.

21. **INFORMALITIES**

KCDC reserves the right to waive informalities and irregularities as minor defects in a bid response or variations from the exact requirements of the solicitation provided that the defects or variations do not affect the price, quality, quantity or delivery of the service.

22. **INSPECTION**

The bidder is responsible for thoroughly inspecting the site of the proposed work and for becoming completely familiar with the circumstances under which the work will be performed. KCDC is under no obligation to allow additional payments if the bidder fails to thoroughly inspect the site.

23. **INTEREST OF CURRENT & PAST MEMBERS, OFFICERS OR EMPLOYEES**

No member, officer or employee of KCDC, no member of the governing body of the locality in which the project is situated, no member of the governing body in which KCDC was activated and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the project shall during his tenure or for one year thereafter have any interest, direct or indirect, in a contract, agreement or purchase order or the proceeds thereof.

24. **INTERPRETATIONS**

KCDC shall not be responsible for any oral interpretation made to the meaning of the specifications. Requests for interpretation shall be made in writing. Requests received seven or more days prior to the opening date will be answered. Official interpretations are called addenda and will be posted on KCDC's webpage. It shall be the bidder's responsibility to examine the webpage for addenda. All such addenda shall become a part of the contract and all bidders shall be bound by such addenda whether or not received by the bidder.

25. **INVOICING**

Mail all invoices to:

Knoxville's Community Development Corporation
Accounting Division
P. O. Box 3550
Knoxville, Tennessee 37927-3550

26. **LIMITATION OF LIABILITY**

In no event shall KCDC be liable for any indirect, incidental, consequential, special or exemplary damages or lost profits, even if KCDC has been advised of the possibility of such damages.

27. **MINORITY AND WOMEN-OWNED BUSINESSES**

KCDC desires to conduct as much business as possible with minority and woman owned businesses. These businesses are at least 51% owned and operated by a minority or woman. KCDC also encourages its bidders when they subcontract, to utilize minority and/or woman owned businesses.

In order to assist the vendor in finding Minority and Women Owned Businesses, you are directed to these sites that list small, women-owned (WOB) and minority-owned (MOB) businesses.

City of Knoxville:

<http://www.ci.knoxville.tn.us/eqbusop/mwsmbus.pdf>

Knox County:

<http://knoxcounty.org/supplierdiversity/searchform.php>

State of Tennessee:

<http://www.tennessee.gov/businessopp/regdivcomp.html>

Hispanic Chamber of Commerce:

<http://www.hccet.org/businesses/?PHPSESSID=c8dfc5b1419977db72dd8d67290d679f>

Tennessee Minority Supplier Development Council:

<http://www.tmsdc.net>

Bidders are strongly encouraged to use the information on these web sites and then, as appropriate, obtain quotes from WOB and MOB for work to be accomplished on contracts.

28. **NON-CONFORMING TERMS AND CONDITIONS**

Should a bidder submit non-conforming terms and conditions, KCDC reserves the right to request the bidder withdraw non-conforming terms and conditions that do not materially affect the price, quality and/or delivery of the service.

29. **NON-DISCRIMINATION AND NON-CONFLICT STATEMENT**

The bidder agrees that no person on the grounds of handicap, age, race, color, religion, sex or national origin shall be excluded from participation in, or be denied benefits of, or be otherwise subjected to discrimination in the performance of an agreement, or in the employment practices of the bidder. The bidder shall upon request show proof of such non-discrimination and shall post it in a conspicuous place available to all employees and applicants notices of non-discrimination. The bidder covenants that it complies with the Fair Wage and Hour Laws, the National Labor Relations Act, and other federal and state employment laws as applicable. The bidder covenants that it does not engage in any illegal employment practices.

The bidder covenants that it has no public or private interest and shall not acquire directly or indirectly any interest that would conflict in any manner with the provision of its goods or performance of its services. The bidder warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of KCDC as wages, compensation or gifts in exchange for acting as officer, agent, employee, subcontractor or consultant to bidder in connection with any goods provided or work contemplated or performed relative to an agreement.

Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.) “Nondiscrimination in Federally Assisted Programs” states that “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.”

It is the policy of KCDC that all its services and activities be administered in conformance with the requirements of Title VI. This extends to the vendors that KCDC contracts with as they are expected to be compliant with Title VI.

30. **NON-ESCALATION**

Unless otherwise specified within the solicitation documents, the unit prices reflected on the contract shall remain firm with no provision for price increases during the term of the contract.

31. **ORAL STATEMENTS**

Written modifications issued by the Purchasing Division are the only acceptable method of modifying a solicitation and any resulting contract. Oral statements will not affect this solicitation nor a resulting contract.

32. **PAYMENT**

KCDC normally pays on a net thirty basis (net ten for contracts). Checks are normally issued on or about the 15th and 30th of each month if invoices are submitted in accordance with all requirements outlined herein. To be paid on the 15th, the invoice must arrive at KCDC by the 5st day of the month. To be paid on the 30th, the invoice must arrive by the 20th. This allows time for internal approvals of the invoices. Before a check is issued, a KCDC representative must approve the payment and indicate that the goods or services were satisfactorily received. Accounts Payable and/or the Purchasing Division must have time to verify that the invoice reflects the correct contract pricing. Payments for on-going services (such as construction contracts) are made once per month.

33. **PROOF OF FINANCIAL AND BUSINESS CAPABILITY**

Bidders shall furnish, upon request, satisfactory evidence of their ability to furnish products or services in accordance with the terms and conditions of a specification. KCDC shall make the final determination as to the bidder's ability.

34. **PROPRIETARY INFORMATION**

Bidders are cautioned that KCDC operates under Tennessee's Open Record Laws and all information in KCDC's possession is subject to disclosure upon request. This applies whether or not such information is stamped "confidential," "proprietary" or other similar phrases.

35. **PROTESTS**

Any actual or prospective bidder may protest the solicitation or award of a contract for serious violations of the principles of this policy. Any protest against a solicitation must be received at least seventy-two hours before the due date for receipt of responses. Any protest against the award of a contract must be received within five calendar days after contract award (i.e. when notifications are sent or results are posted to KCDC's webpage), or the protest will not be considered. All proposal protests shall be in writing and submitted to the contract officer or designee who shall issue a written decision on the matter. The Contract Officer may, at his or her discretion, suspend the procurement pending resolution of the protest if warranted by the facts presented. The protestor shall be advised as soon as possible in writing as to the action taken.

a. Protests shall include, as a minimum, the following information:

1. Names, addresses and telephone numbers of the protestors.
2. The solicitation number and project title.
3. A detailed statement of the basis for the protest.
4. Supporting evidence or documents to substantiate any arguments.
5. The form of relief requested (e.g. reconsideration of their offer).

b. Appeals

If a protestor is not satisfied with the decision of the Contract Officer, he or she may appeal to the Executive Director/CEO. Such appeals shall be in writing (see above) and must be submitted within five business days after the Contract Officer's written decision is released. The written documentation is to include language that details how the written decision of the Contract Officer is in error.

36. **REJECTION OF RESPONSES**

KCDC reserves the right to reject responses from any and all bidders if it is in its own best interest.

37. **REQUIREMENTS CONTRACTS**

Unless otherwise specified, any agreement resulting from a KCDC solicitation shall be an “open-end” type of agreement and there is no guarantee that any specified or minimum level of products or services shall be required by KCDC or provided by the bidder. It is understood that KCDC plans to use the successful bidder exclusively, but that KCDC reserves the right to purchase these services elsewhere if it is in KCDC’s best interest.

38. **RESTRICTIVE OR AMBIGUOUS SPECIFICATIONS**

It is the responsibility of the prospective bidder to review the entire solicitation packet and to notify the Purchasing Division if the specifications unnecessarily restrict competition or are conflicting or ambiguous. Any such protest or question regarding the specifications or bidding procedures must be received in the Purchasing Division with enough time remaining before the opening for an addendum to be issued.

39. **RIGHTS IN DATA AND PATENT RIGHTS**

KCDC shall have exclusive ownership of all proprietary interest in, and the right to full and exclusive possession of all information, materials, and documents discovered or produced by the bidder pursuant to terms of the agreement, including but not limited to, reports, memoranda and/or letters concerning the research and reporting tasks of the agreement.

40. **RIGHT TO INSPECT**

KCDC reserves the right to make periodic inspections of the manner and means the service is performed or the goods are supplied.

41. **ROYALTIES AND PATENTS**

The bidder hereby guarantees that he has full legal right of materials, supplies, equipment, machinery, articles, software or things involved in the contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are, in any way, involved in the contract. It shall be the responsibility of the bidder to pay for all such royalties and costs. The bidder shall hold and save KCDC, its officers, agents, servants and employees, harmless from liability of any kind or nature, including reasonable attorneys fees, for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract. During the pendency of any claim against bidder or KCDC with respect to bidder's ownership and/or authority, KCDC may withhold payment of any sums otherwise required to be paid hereunder.

42. **SECTION 3 OF THE HOUSING & URBAN DEVELOPMENT ACT OF 1968 AND VENDORS**

All contracts awarded are subject to Section 3 requirements. Bidder shall seek to fill any and all positions that are needed and unfilled with residents of KCDC communities. For additional information, please go to <http://www.hud.gov/offices/fheo/section3/Section3.pdf>. The successful vendor will supply KCDC with job announcements for any position that must be filled as a result of the award of KCDC work. Additionally the successful vendor will supply the same job announcement to the Knoxville-Knox County Committee Action Committee’s Workforce Connections group. These can be faxed to 544-5269.

A Section 3 resident is one who lives within a public housing authority's site. It is also people who live in an area with a HUD assisted program and whose income is below HUD's low income requirements.

A Section 3 business is one that:

- a. Is at least 51% owned by a Section 3 resident; or
- b. Employs Section 3 residents for at least 30% of its employee base; or
- c. Makes a commitment to sub contract at least 25% of the project's dollars to a Section 3 business.

43. **SMALL BUSINESS GOAL**

KCDC has adopted a goal of affirmatively seeking to contract with qualified small businesses for at least twenty percent of its annual dollar expenditures for production and supply of goods and services. A small business is defined as a business, including its affiliates, that is independently owned and operated for profit, is not dominant in its field of operation and is not an affiliate or subsidiary of a business dominant in its field of operation. To be classified as a small business, the enterprise shall not exceed either of the following criteria (developed by the State of Tennessee).

Industry	The annual gross dollar volume shall not exceed	The number of employees shall not exceed
Agriculture, Forestry & Fishing	\$500,000	9
Architectural / Design / Engineering	\$2,000,000	30
Construction	\$2,000,000	30
Educational	\$1,000,000	9
Finance, Insurance & Real Estate	\$1,000,000	9
Information Systems / Technology	\$2,000,000	30
Manufacturing	\$2,000,000	99
Marketing / Communications / Public Relations	\$2,000,000	30
Medical / Healthcare	\$2,000,000	30
Mining	\$1,000,000	49
Retail Trade	\$750,000	9
Service Industry	\$500,000	9
Transportation, Commerce & Utilities	\$1,000,000	9
Wholesale Trade	\$1,000,000	19

44. **SMALL BUSINESS MEETING**

If specifically requested by one or more firms or if KCDC staff members determine that the need exists, a meeting shall be scheduled and held within seven calendar days after this solicitation is published to review KCDC's procurement policies and procedures and/or to review solicitation requirements. Every firm expressing an interest in the contract shall be invited and encouraged to participate in the conference.

45. **SUBCONTRACTORS**

The provisions of a contract are intended solely for the benefit of KCDC and the contractor. Nothing in a contract shall in any manner create or be construed to create any obligations to or establish any rights against any party to a contract in favor of any other person(s) not a party to a contract. This includes, without limitation, any subcontractor(s).

46. **TERM**

Unless expressly specified and agreed to otherwise, KCDC normally enters into one year contracts with options to renew for up to a total of five years.

47. **TERMINATION**

a. KCDC may terminate an agreement, in part or in whole, for its convenience or the failure of the bidder to fulfill contractual obligations. KCDC shall terminate by delivering to the bidder a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the bidder shall:

1. Immediately discontinue all services affected (unless the notice directs otherwise).
2. Deliver to KCDC all information, papers, reports and other materials accumulated or generated in performing the contract, whether completed or in progress.

b. If the termination is for the convenience of KCDC, KCDC shall only be liable for payment for services rendered before the effective date of the termination.

c. If the termination is due to the failure of the bidder to fulfill its obligations under the contract, KCDC may:

1. Require the bidder to deliver any work described in the Notice of Termination.
2. Take over and prosecute the same to completion by contract of otherwise and the bidder shall be liable for any additional cost incurred by KCDC.
3. Withhold any payments to the bidder for purpose of set-off or partial payment, as the case may be, of amounts owed by KCDC to the bidder.

In the event of termination for cause, KCDC shall be liable to the bidder for reasonable costs incurred by the bidder before the effective date of the termination. Any dispute shall be decided by KCDC's Contract Officer.

48. **USE OF SOLICITATION FORMS**

Bidders are to complete the solicitation forms contained in the solicitation package. Failure to complete these forms may result in the rejection of your response.

Bidders should also consider that notes on bid envelopes (such as deduct/add dollars to the bid) will not be considered.

48. **VENDOR SURVEY**

KCDC, as a part of its continuous improvement program, will survey its departments, divisions and employees about the quality of the goods and/or services provided by the successful vendor. The results will be shared with the vendor. If necessary, KCDC and the vendor will then jointly work on an improvement program.