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General Instructions to Suppliers

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 unless excluded within a specific solicitation. The term "supplier" means bidder, vendor, proposer, 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 supplier understands and agrees with KCDC's "General Instructions to Suppliers." Suppliers will clearly note any variance on the submittal document. KCDC will be the sole judge as to whether the variance is "material" or "immaterial" to the bid.

1. Acceptance

Suppliers shall hold their price firm and subject to acceptance by KCDC for ninety calendar days from the opening date unless otherwise indicated by KCDC.

2. Additional Services

Upon award, while the successful supplier may inform KCDC of additional services they can provide, to add those services to the award, requires approval from the Procurement Division.

3. Alterations or Amendments

Alterations, amendments, changes, modifications or additions to the purchase order or award shall not be binding without KCDC's prior written approval.

4. Anti-Lobbying Amendment

Suppliers who submit bids and proposals must sign KCDC's anti-lobbying affidavit (in the solicitation document). Additionally, suppliers shall require each subcontractor and each lower-tier subcontractor exceeding \$100,000 to certify to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the Contractor to be submitted to the Port.

5. Appropriation

In the event KCDC's Board does not appropriate funds for the goods and/or services or insufficient funds exist to purchase the goods and/or services, awards and/or contracts shall terminate upon the expenditure of previously appropriated funds with no further obligations owed to or by either party.

6. Assignment/Subcontracting

Supplier shall not assign the agreement, its obligations or rights hereunder to any party, company, partnership, incorporation or person without KCDC's prior written specific consent. Any such assignment or any interest or any money due or to become due without KCDC's prior written consent shall be void.

7. Award/ Rejection of Responses

- a. KCDC awards to the highest rated, responsible supplier and in KCDC's best interest. KCDC reserves the right to reject 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 reserves the right to reject responses from any supplier who has previously failed to perform properly or to complete work or contracts of a similar nature on time; who is not able to perform the work; or who has habitually and without just cause neglected the payment of bills or otherwise disregarded his obligations to other suppliers, subcontractors and/or employees.
- c. KCDC will check all respondents against State of Tennessee and federal debarment databases. Any listing on these showing an active debarment is sufficient grounds for KCDC to reject the offer from the supplier.

8. Award Results

As soon as practicable after evaluation, KCDC will post the award decision and the proposal tabulation to its web page. KCDC does not typically provide individual notices to suppliers.

9. Background Checks and Drug Screening

Suppliers providing services at KCDC sites must perform background checks, including drug screening, for all employees who may be assigned to perform work at KCDC sites. Additionally, the supplier will maintain an adequate continual education program concerning harassment, drug free workplace and related topics.

10. Bid Withdrawal

A supplier may withdraw or amend a solicitation response before the date and time set for receipt of bids without stating a reason. Suppliers cannot amend a bid after the bid opening unless the amendment does not materially affect the price, quality, quantity or delivery of the good or service. After the bid opening, KCDC must give approval for bid amendment or withdrawal. If granted, withdrawal after the due date is non-reversible. The supplier must submit clear proof of a clerical error for KCDC to approve withdrawals or amendments. Amendments and withdrawals are subject to KCDC's discretion. Bid withdrawal may affect your bid bond (if applicable).

11. Books and Records

- a. The supplier shall maintain all books, documents, accounting records and other evidence pertaining to the goods and services provided under an agreement and/or 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 an agreement or contract.
- b. This shall be for inspection by KCDC or any other governmental entity or agency participating in the funding of an agreement or contract, or any authorized agents thereof. Upon request, the supplier shall furnish copies of said records. Such records shall include those books, documents, payroll and accounting records that represent the supplier's costs of manufacturing, acquiring or delivering the products and services governed by an agreement or contract.

12. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387)**, as amended, apply to contracts of \$150,000 or more. The supplier will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA). All contracts must comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201).

13. Contract Work Hours and Safety Standards Act

- a. Overtime Requirements: No supplier or subcontractor contracting for any part of the work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- b. Violation; Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph (A) of this provision, the supplier and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such supplier and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (A) of this provision, in the sum currently set by federal law, for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in subparagraph (A) of this provision.

- c. Withholding for Unpaid Wages and Liquidated Damages: KCDC shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the supplier or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (B) of this provision.
- d. Compliance with OSHA Regulations: The supplier agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 333, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 CFR 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous or dangerous surroundings or working conditions.
- e. Subcontracts: The supplier or subcontractor shall insert in any subcontracts the paragraphs set forth in this provision, Contract Work Hours and Safety Standards Act, and a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The supplier is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this provision.
 - 1. The term "subcontract" under this section is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this provision if the work in question involves the performance of construction work and is to be performed (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials, which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity.
 - 2. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this section do not apply to contracts or subcontracts for the purchase of supplies or materials normally available on the open market.

14. **Compliance with All Laws**

Supplier agrees to 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.

15. Confidentiality of Data, Property Rights in Products and Copyright Prohibition

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

The supplier understands and agrees that data, materials and information disclosed to the supplier may contain confidential and protected data. Therefore, the supplier promises and assures to not disclose or discuss KCDC's data, material and information gathered, based upon or disclosed to the supplier for this contract, without KCDC's prior written consent.

16. Contact Policy

- a. From the issuance of a solicitation until an award, the supplier shall not contact anyone other than the KCDC Procurement Division about the solicitation unless otherwise directed by Procurement Division staff.
- b. Information obtained from anyone other than the KCDC Procurement Division shall not affect the risks or obligations assumed by the supplier or relieve the supplier from fulfilling any of the conditions of the agreement and/or contract for a project. Such unauthorized contact can disqualify the supplier from participation in the solicitation process.
- c. Suppliers must submit all questions pertaining to the bid and/or bid documents via email to the Procurement Division at procurementinfo@kcdc.org.

17. Contracts

- a. KCDC posts a sample contract and contract rider to its web page for potential suppliers to review. While these are sample documents, actual contracts and riders will be similar in format. By responding to a solicitation, suppliers certify they have reviewed the sample contract and rider and are comfortable signing a similarly formatted contract in the event they receive the award. If there are questions about the contract form and requirements, the suppliers must raise questions during the solicitation process.
- b. If KCDC must sign the supplier's contract document, note:
 - KCDC cannot indemnify the supplier
 - KCDC cannot "hold harmless" the supplier
 - KCDC requires a copy of the proposed contract with easy-to-read formatting of text (i.e., no whole paragraphs in upper case). This may be provided in addition to the standard contract simply for KCDC's ease of reading.

18. **Cooperative Procurement**

- a. KCDC may use properly bid and awarded solicitations from other governmental agencies in lieu of issuing its own solicitations-provided such language was in the solicitation and that it is in KCDC's best interest. Usage of cooperative contracts occurs only after KCDC's Procurement Division has reviewed and approved the proposed cooperative contract.
- b. KCDC often asks suppliers to indicate whether other governments may use the award at the same price (plus any delivery charges added due to distance). In such cases, the supplier may, without harming their award, refuse to extend the terms to other governments. If the supplier extends the terms to other governments, the transactions are solely between the other government and the supplier.

19. **Debriefing**

If requested, KCDC staff will conduct a debriefing meeting to discuss an award decision. If you are interested in such a meeting, please contact the KCDC Procurement Division.

20. **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 the bid. KCDC does not pay surcharges without prior written agreement.

21. **Expenses Incurred**

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

22. **Failure 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.

23. **Federal Obligation**

The federal government is not a party to KCDC's solicitation and is not subject to any obligations or liabilities to a non-federal entity, supplier or any other party pertaining to any matter resulting from its award.

24. **Federally Required Orders/Directives**

Both parties agree that they will comply with the following laws and directives that KCDC has received from HUD and other branches of the federal government. These orders and/or directives shall be a part of any award and/or contract:

- a. Executive Order 11061, as amended, directs the Secretary of HUD to take all action necessary and appropriate to prevent discrimination by agencies that utilize federal funds.
- b. Executive Order 11246: "Equal Employment Opportunity."

- c. The Age Discrimination Act of 1975.
- d. Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq.).
- e. Copeland “Anti-Kickback” Act.
- f. Domestic preferences for procurements (Federal Regulations (200.322)).
As appropriate and to the extent consistent with law, provide a preference for the purchase, acquisition or use of goods, products or materials produced in the United States (including iron, aluminum, steel, cement and other manufactured products). The requirements of this section must be included in all sub-awards including all contracts and purchase orders for work or products. For purposes of this section: (1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) “Manufactured products” means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- g. Energy Policy and Conservation Act.
- h. Equal opportunity clause ((41 CFR §60-1.4(b)) prohibiting workplace discrimination and its application to both prime and subcontractors.
- i. Lead Based Poisoning Prevention Act (42 U.S.C. 4821-4846 as implemented by 24 CFR Part 35).
- j. The Solid Waste Disposal Act (24 CFR 85.36(1) and Section 6002)
- k. Public Law 88-352, Title VI of the Civil Rights Act of 1964.
- l. Public Law 90-284, Title VIII of the Civil Rights Act of 1968, popularly known as the Fair Housing Act.

The mention herein of any law, directive, statute or executive order is not an indication that such law, directive, 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.

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, the agreement and/or contract shall forthwith be physically amended to make such insertion or correction upon the application of either party.

25. **Governing Law**

All the laws of the State of Tennessee and applicable federal laws and regulations governing KCDC purchase orders and other contracts. 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 arising hereunder.

26. **HUD Forms/Documents**

The supplier should review the documents below for vital details about a solicitation and an award and/or contract. This reference incorporates these documents as if they are specified within the solicitation document. These documents bind suppliers when they submit a response to a solicitation and the document has relevance to the solicitation.

Go to http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips to access these documents. If you cannot find the document there or if you need assistance, contact procurementinfo@kcdc.org.

a. HUD Form 2554 - Supplementary Conditions to the Contract for Construction

Applicability: Construction work

b. HUD Form 4010 - Federal Labor Standards Provisions

Applicability: Construction with Community Planning and Development Program funds

c. HUD Form 5369 - HUD's Instructions to Suppliers for Contracts

Applicability: All solicitations

d. HUD Form 5369 A - Representations & Certifications of Suppliers

Applicability: All solicitations

e. HUD Form 5370 - General Conditions of the Contract for Construction

Applicability: All construction or development contracts greater than \$100,000

f. HUD Form 5370 C - General Conditions for Non-Construction Contracts-Section I (with or without Maintenance)

Applicability:

1. Non-construction contracts (without maintenance) greater than \$100,000 - use Section I;
2. Maintenance contracts (including non-routine maintenance as defined at 24 CFR 968.105) greater than \$2,000 but not more than \$100,000 - use Section II;

3. Maintenance contracts (including non-routine maintenance), greater than \$100,000 – use Sections I and II.

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

Applicability: Construction contracts greater than \$2,000 but not more than \$100,000.

27. Indemnification/Hold Harmless

- a. Supplier 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 the supplier, its subcontractors, suppliers, agents or employees or due to any negligent act or occurrence or any omission or commission of supplier, its subcontractors, suppliers, agents or employees.
- b. According to Tennessee state law, KCDC cannot agree to hold suppliers harmless nor to indemnify suppliers.

28. Independence

The supplier shall acknowledge that it and its employees serve as independent suppliers.

29. 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 the defects or variations do not affect the price, quality, quantity or delivery of the service.

30. Inspection

The supplier is responsible for thoroughly inspecting the site of the proposed work and for becoming completely familiar with the work circumstances. The supplier's failure to do so will not obligate KCDC to pay more for goods or service.

31. Insurance

- a. KCDC's solicitation document may include specific insurance requirements. If so, the supplier will provide a Certificate of Insurance matching those requirements to KCDC. Suppliers must review the insurance requirements with their insurance agents and attest that they can provide the required insurance.
- b. Should the certificate expire during the term of the award, the supplier is responsible for providing an updated certificate before the expiration date. KCDC will not permit suppliers to work until an acceptable certificate of insurance is in place.

32. Interest of Current & Past Members, Officers or Employees

KCDC officers, employees, Board of Commissioners and other public officials having responsibilities over the awarded project shall not, during their tenure and for one year thereafter, have any interest, direct or indirect, in a contract, agreement or purchase order or the proceeds thereof.

33. Interpretations

KCDC is not responsible for oral interpretations of specifications. Submit written requests for interpretation as indicated in the solicitation document. KCDC posts addenda (official changes to specifications) to its web page. It is the supplier's responsibility to examine the web page for addenda. All such addenda become part of the contract and bind suppliers to such addenda.

34. Invoicing

The following guidelines apply to all KCDC awards whether they result in purchase orders or contracts. However contractual awards often have slight variations in the payment cycle. These variations are explained in the award meeting with the supplier.

- a. Email invoices only to apamin@kcdc.org with a copy to the department ordering the goods or services. Do not send invoices via USPS.
- b. Until a purchase order is in place, work is not to be performed nor are goods to be delivered. KCDC does not have an obligation to pay for the work performed or goods delivered before the issuance of a purchase order.
- c. While KCDC wants invoices emailed to apadmin@kcdc.org within 10 days following the delivery of goods or services, suppliers **must** submit invoices within 90 days of the delivery of goods or services. KCDC may deny invoices submitted after 90 days.
- d. KCDC's umbrella has 12 entities that **must** receive separate invoices: Bell Street I, 2, 3, (also known as First Creek), Eastport Development, LP; Five Points I, LP; Five Points 2, LP; Five Points 3, LP; Five Points 4, LP; Lonsdale LP; Montgomery Village LP; North Ridge Crossing, LP and The Vista at Summit Hill, LP.
- e. The purchase of goods and services for use by KCDC owned properties are exempt from Tennessee sales and use tax pursuant to Tennessee Code Annotated 67-6-329(a) (4). KCDC is generally exempt from the federal excise tax.

Upon the placement of a purchase order or the award of a contract, KCDC will provide a State of Tennessee Sales Tax Exemption form to the supplier. KCDC will not pay taxes on invoices for its tax-exempt properties. Note that the State of Tennessee does not issue sales tax exemption numbers to local governments such as KCDC. However certain properties are not exempt from taxation and their invoices should include applicable taxes. These are: Bell Street I, LP; Bell Street 2, LP; Bell Street 3, LP (Bell Street is also known as First Creek); Eastport Development, LP, Five Points 1, LP; Five Points 2, LP; Five Points 3, LP; Five Points 4, LP; Lonsdale Homes, LP; Northridge Crossing, LP and The Vista at Summit Hill, LP.

f. Invoices must:

1. Be numbered
2. List a date on them that is after the work is completed or goods delivered
3. List the purchase order number
4. Breakdown pricing according to the award structure
5. Show the Supplier's Name
6. Show the Supplier's Address

35. **Knoxville/Knox County Obligations**

The City of Knoxville and Knox County are not parties to KCDC's purchases and solicitation and are not subject to any obligations or liabilities to a contractor or any other party pertaining to any matter resulting from its award.

36. **Limitation of Liability**

KCDC is not 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.

37. **Minority and Women-Owned Businesses**

KCDC desires to conduct as much business as possible with minority and women-owned businesses. These businesses are at least 51% owned and operated by a minority or woman. KCDC also encourages its suppliers when they subcontract to utilize minority and/or women-owned businesses. To assist the supplier in finding Minority and Women -Owned Businesses, KCDC provides these sites that list small, women-owned (WOB) and minority-owned (MOB) businesses.

- a. **Centro Hispano de East Tennessee:** <https://www.centrohispanotn.org/>
- b. **City of Knoxville:**
[https://www.knoxvilletn.gov/government/city_departments_offices/purchasing/small business and diversity outreach](https://www.knoxvilletn.gov/government/city_departments_offices/purchasing/small_business_and_diversity_outreach)
- c. **Knoxville Black Business Directory:** <https://www.knoxvilleblackbusiness.com/>
- d. **Latino Chamber of Commerce:** <http://latinchambertn.com/businessdirectory/>
- e. **State of Tennessee:** <https://tn.diversitysoftware.com/>
- f. **Tennessee Minority Supplier Development Council:** <http://www.tmsdc.net>

Suppliers are strongly encouraged to use the information on these web pages and then, as appropriate, obtain quotes from WOB and MOB.

38. **News Releases**

As a matter of policy, KCDC does not endorse the services of suppliers. Suppliers will not make news releases concerning any resultant contract from a solicitation without KCDC's prior written approval.

39. Non-Conforming Terms and Conditions

Should a supplier submit non-conforming terms and conditions, KCDC reserves the right to request the supplier to withdraw non-conforming terms and conditions that do not materially affect the price, quality and/or delivery of the goods and/or services. KCDC also reserves the right to reject bids or proposals with non-conforming terms and conditions.

40. Non-Discrimination and Non-Conflict Statement

- a. The supplier agrees not to exclude persons on the grounds of handicap, age, race, color, religion, sex or national origin from participation in, or deny benefits to, or otherwise subject to discrimination in the performance of an agreement, or in the employment practices of the supplier.
- b. The supplier shall post notice of such non-discrimination and shall post it in a conspicuous place available to all employees and applicants. The supplier 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 supplier covenants that it does not engage in any illegal employment practices.
- c. The supplier 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.
- d. The supplier 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 an officer, agent, employee, subcontractor or consultant to the supplier in connection with any goods provided or work contemplated or performed relative to an agreement and/or contract.
- e. **Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)** “Nondiscrimination in Federally Assisted Programs” states “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.”
- f. **Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.)** prohibits employers from discriminating against employees based on sex, race, color, national origin and religion. It generally applies to employers with 15 or more employees, including federal, state and local governments. Title VII also applies to private and public colleges and universities, employment agencies and labor organizations.
- g. KCDC’s policy requires that all its services and activities be administered in conformance with the requirements of Titles VI & VII. This extends to the suppliers that KCDC awards/contracts with. Suppliers must be compliant with Title VI and VII.

41. Non-Escalation

Unless otherwise specified within the solicitation, the prices reflected in the agreement and/or contract shall remain firm with no provision for price increases during the term of the contract.

42. Open and Fair Opportunities

During the term of an award, the supplier shall not create barriers to open and fair opportunities to participate in KCDC contracts or to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. During the performance of an award, neither the supplier nor any party subcontracting under the authority of the award shall discriminate nor tolerate harassment based on race, color, sex, religion, nationality, creed, marital status, sexual orientation, age or the presence of any sensory, mental or physical disability in the employment or application for employment or in the administration or delivery of services or any other benefits under the award.

43. Order of Precedence

Any inconsistency in solicitations or contracts shall be resolved by the following precedence order:

- The signed contract or purchase order
- The solicitation document and any addenda thereto
- Signed copy of the bid or proposal
- General conditions/instructions/information
- General Instructions to Suppliers
- Supplemental conditions (if any)
- Special conditions (if any)
- Technical specifications (if any)
- Drawings (if any)

44. Payment

- a. KCDC pays suppliers electronically via direct deposit (ACH) through the Vendor Café function in KCDC's Yardi software. Additional information is on KCDC's webpage.
- b. KCDC is not able to routinely offer payment history assistance. If the supplier is unable or unwilling to use KCDC's Supplier Portal to track payments, the supplier must consider whether to work with KCDC.
- c. Payments occur weekly on Thursdays - provided the supplier provides invoices in accordance with all requirements outlined herein, however, this does not generically mean that KCDC pays any one invoice the same week that it is received. KCDC maintains its right to pay net 30 days. Before KCDC issues a payment, the KCDC staff member responsible for the purchase must approve payment (indicating that the goods or services were satisfactory) and thus authorize Accounts Payable to issue payment. Accounts Payable and the ordering department must have time to verify that the invoice reflects the correct contract pricing. Payments for ongoing services (such as construction contracts) occur once per month.

- d. KCDC asks for a prompt payment discount percentage in its solicitations. Suppliers may indicate no discount or any discount they may offer.

45. **Pre-Bid and Pre-Proposal Meetings**

- a. Some solicitations call for pre-bid meetings. While KCDC believes there is value in attending KCDC's pre-bid meetings, these meetings are very seldom mandatory. KCDC will post the sign-in sheets from these meetings to its webpage shortly after the meeting concludes.
- b. Generally, pre-bid meetings are conducted through electronic means (such as the Zoom platform). At times, they are held at the site. On occasion, pre-bid meetings start at KCDC's Main Office Complex and conclude at the site. Consult the information on the solicitation's cover page for details.

46. **Procurement Methods**

KCDC uses a variety of procurement methods to achieve its procurement needs. Each method has its own requirements and details are below. For additional information, contact the Procurement Division.

- a. **Request for Written Quotes**
For goods and services valued at \$20,000 but no more than \$50,000, KCDC must obtain quotes from three or more suppliers. However, as part of KCDC's outreach to small businesses, these opportunities are typically posted to KCDC's web page for all interested parties to consider. Although the request for quotes is in written format, these are still quotes and not formal bids. They tend to be shorter documents and have shorter bid timeframes. Formal bidding rules do not apply, though federal Davis Bacon rules and state licensing laws may still apply. Requests for Written Quotes can also take the form of proposals (see below).
- b. **Invitation for Bids**
For goods and services valued at \$50,001 or more, sealed bids (or proposals) are required. These documents typically are longer and a minimum of 15 days for supplier response is given. All the formal bidding rules apply. Typically, KCDC evaluates these solicitations solely on cost, but the solicitation document details the evaluation criteria.
- c. **Request for Proposals**
If there are factors other than cost that will determine the successful supplier, this method is used. These documents typically are longer and ask for non-pricing information from the supplier. If it exceeds \$50,001, all the formal bidding rules apply.
- d. **Request for Qualifications**
This method is used only to hire architects and engineers. State and federal laws require that costs not be initially considered in the selection process. Instead, qualifications alone are used to arrive at the "best" supplier. Then cost negotiations begin with the highest-scoring supplier.

General note to thresholds: KCDC looks at purchases cumulatively (by supplier, by commodity and by year) to determine the appropriate procurement method to use.

e. **Request for Information.**

When KCDC issues a Request for Information (RFI), the process is only an information gathering technique. An RFI is not an indication that KCDC will purchase or issue an actual solicitation for the goods or services. An RFI is not binding nor is it any form of commitment.

f. **Reverse Auctions**

An online auction in which sellers bid against one another to win a buyer's business. Typically used to purchase commodities from multiple pre-qualified providers. Also referred to as "eAuction."

47. Program Fraud/False Statements or Related Acts

31 U.S.C. Chapter 38 (Administrative Remedies for False Claims and Statements) applies to the supplier's actions pertaining to this solicitation and award.

48. Proof of Financial and Business Capability

Suppliers shall provide, 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 supplier's ability.

49. Proprietary Information

KCDC operates under Tennessee's Open Records Act and all information in KCDC's possession is subject to disclosure upon request. This applies whether the supplier has stamped such information as "confidential," "proprietary" or other similar phrases.

50. Protests

- a. This section applies only to "formal sealed solicitations" and not to "requests for written quotes." Requests for written quotes are not bids and protest procedures do not apply. Suppliers may protest the process or award of a solicitation for serious violations of KCDC's procurement policy. KCDC must receive process protests at least 72 hours before its due date.
- b. Award protests must be received within 5 calendar days after award (i.e., when results are posted to KCDC's webpage), or the protest will not be considered. Protests must be in writing and submitted to the Procurement Director. The Procurement Director will forward the protest to the CEO who shall issue a written decision on the matter.
- c. The CEO may suspend the procurement pending resolution of the protest if warranted by the facts presented. KCDC will advise the protestor as soon as possible in writing as to the action taken.
- d. Protests shall include, as a minimum, the following information:

1. Names, addresses and telephone number(s) of the protestor(s).
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).

e. Appeals

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

51. Purchase Orders or Contracts are Required

KCDC requires (though there are exceptions - check with the Procurement Division for details) the issuance of a purchase order or a signed contract before work commences or goods delivered. Alternatively, in emergency or quick turn-around situations, KCDC may use credit cards for payments. If a supplier is instructed to deliver goods or services without a purchase order or contract, the supplier is to contact the Procurement Division for a decision as to whether to proceed or not.

52. Recycled/Recovered Products

- a. To the extent practicable and economically feasible, suppliers shall provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.
- b. Examples of such products may include, but are not limited to, products described in U.S. Environmental Protection Agency (U.S. EPA) guidelines at 40 C.F.R. Parts 247-253, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962. Suppliers shall include this provision in all its subcontracts, with the requirement that it shall flow down to all subcontracts regardless of tier.
- c. These efforts must be consistent with maintaining a satisfactory level of competition unless the supplier determines that such items: (1) are not reasonably available in a reasonable period of time; (2) fail to meet reasonable performance standards, which shall be determined on the basis of the guidelines of the National Institute of Standards and Technology, if applicable to the item; or (3) are only available at an unreasonable price.

53. Rejection of Responses

KCDC may reject responses from any or all suppliers if it is in its own best interest.

54. Requirements Contracts

Unless otherwise specified, any requirements and/or contracts/agreements shall be an “open-end” type of agreement and there is no guarantee that KCDC will require any specified or minimum level of products or services. KCDC plans to use the successful supplier exclusively, but KCDC reserves the right to purchase these goods/services elsewhere if it is in KCDC’s best interest.

55. Restrictive or Ambiguous Specifications

It is the supplier’s responsibility to review the entire solicitation packet and to notify the Procurement Division if the specifications unnecessarily restrict competition or are conflicting or ambiguous. The Procurement Division must receive any such question, in writing, regarding the specifications or bidding procedures with enough time remaining before the opening for an addendum to be issued. Typically, such information must be supplied to Procurement at least five business days prior to the solicitation’s due date.

56. 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 supplier pursuant to the terms of the agreement and/or contract, including but not limited to, reports, memoranda and/or letters concerning the research and reporting tasks of the agreement and/or contract.

57. Right to Inspect

KCDC reserves the right to make inspections of service provision and/or the supply of goods.

58. Royalties and Patents

- a. The supplier guarantees that he or she has full legal rights to inventions, materials, supplies, equipment, machinery, articles, software and other items involved in the contract. The award and/or contract price shall include compensation for all royalties and costs arising from patents, trademarks and copyrights that are, in any way, involved in the award and/or contract. It is the supplier’s responsibility to pay for all such royalties and costs.
- b. During the pendency of any claim against a supplier or KCDC with respect to supplier's ownership and/or authority, KCDC may withhold payment of any sums otherwise owed hereunder. The supplier will hold harmless and indemnify KCDC, its employees, agents and officers for trademark, intellectual property infringement and copyright infringements that the supplier causes during performance of the work.

59. Section 3 of the Housing & Urban Development Act of 1968

- a. Certain contracts awarded are subject to Section 3 requirements. If Section 3 requirements apply, the information will be in the solicitation document Supplier shall seek to fill any and all positions that are needed and unfilled with residents of KCDC communities. For additional information, go to <http://www.hud.gov/offices/fheo/section3/Section3.pdf>. Upon award, the successful supplier will complete a Section 3 project plan for KCDC. The successful supplier will supply KCDC with job announcements for any positions that must be filled as a result of the award of KCDC work.

- b. Additionally the successful supplier will supply the same job announcement to the Knoxville-Knox County Committee Action Committee's Workforce Connections group. These can be faxed to 865-544-5269.

60. Small Business Goal

KCDC has a goal of contracting with qualified small businesses for at least 20% of its annual dollar expenditures for goods and services. A small business is defined as a business that is a continuing, independent, for-profit business that performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than \$10,000,000 averaged over a three-year period OR employs no more than 99 persons on a full-time basis.

61. Small Business Meeting

If one or more firms specifically request or if KCDC staff members determine that the need exists, a meeting shall be scheduled and held within seven calendar days after the publication of a formal solicitation to review KCDC's procurement policies and procedures and/or to review solicitation requirements.

62. Solicitation Delivery

Specific instructions for solicitation delivery are on the cover page of each solicitation. It is the supplier's responsibility to follow those instructions. KCDC will not accept late responses (*delivered* after the indicated due date and time).

63. Solicitation Evaluation

To verify that suppliers have adequately incorporated all elements of the work and the requirements of the solicitation documents in the bid price, the supplier shall, upon KCDC's request, promptly make available for KCDC's review, a complete itemization and breakdown of the total bid amount, a description of the supplier's understanding of the work and a proposed schedule. Prior to the award, the supplier and any or all subcontractors may be required to attend a bid evaluation meeting with KCDC and the supplier shall bring any requested documentation to the meeting. In the event the supplier refuses to supply the documentation discussed in this section or refuses to attend the meeting, KCDC may reject the bid or proposal as non-responsive.

64. Subcontractors

- a. The supplier may sublet portions of the work, however KCDC must approve subcontractors prior to them commencing work. Additionally, KCDC must approve changes in subcontractors used.
- b. Subcontractors shall conform, in all respects, to the applicable provisions specified herein for the supplier and shall be subject to KCDC's approval. The supplier shall not employ any subcontractor, either initially or as a substitute, against whom KCDC has a reasonable objection.
- c. Subcontractors shall be under the sole direction, authority and responsibility of the supplier and the supplier shall take all steps necessary to ensure that subcontractors comply with the requirements. The work to be done by the subcontractors shall be outlined in detail by the

supplier. Supplier is responsible for all acts and omissions of their suppliers, subcontractors and others performing or furnishing any of the work directly or indirectly on behalf of the supplier.

d. Subcontractors must also:

- Not be on state or federal debarment lists.
- Carry the insurance coverages as outlined in the solicitation document.
- Comply with all Davis Bacon requirements that may apply to a project.

65. **Supplier 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 supplier. KCDC shares the results with the supplier. If necessary, KCDC and the supplier will then jointly work on an improvement program. In extreme cases, KCDC may end contracts due to survey results.

66. **Telecommunications Restrictions**

- a. Suppliers must comply with the Federal Register guidance in 200.2154 and its prohibition on certain Telecommunication and Video Surveillance Services or Equipment.
- b. As described in section 889 of the NDAA 2019, covered telecommunications equipment or services includes: Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). For public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities). Telecommunications or video surveillance services provided by such entities or using such equipment. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

67. **Term**

Unless KCDC expressly specifies and agrees to otherwise, KCDC normally enters one-year contracts with four one-year options to renew for up to a total of five years.

68. **Termination**

- a. KCDC may terminate an agreement and/or contract, in part or in whole, for its convenience or the failure of the supplier to fulfill contractual obligations. KCDC shall terminate by delivering to the supplier a written Notice of Termination specifying the nature, extent and effective date of the termination. Upon receipt of the notice, the supplier 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 agreement and/or contract, whether completed or in progress.
- b. If the termination is for KCDC's convenience, 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 supplier to fulfill its obligations under the agreement and/or contract, KCDC may:
 1. Require the supplier to deliver any work described in the Notice of Termination.
 2. Take over and finish the work specified by the award and/or contract. The supplier shall be liable for any additional cost incurred by KCDC.
 3. Withhold any payments to the supplier for set-off or partial payment of amounts owed by KCDC to the supplier.
- d. In the event of termination for cause, KCDC shall be liable to the supplier for reasonable costs incurred by the supplier before the effective date of the termination.

69. Unit Prices

If the bid document includes a schedule of unit prices for labor and materials or other items to establish a cost basis for unforeseen contract changes, KCDC reserves the right to reject, without impairing the balance of the bid, any or all such predetermined unit prices, and negotiate such unit prices during the term of the award.

70. Use of Solicitation Forms

Suppliers are to complete the forms contained in the solicitation package. Failure to complete these forms may result in the rejection of your response. Suppliers are not to change the pricing method that is on the solicitation document unless the Procurement Division approves the change.

71. Utilities

- a. When work is at or in its apartments, KCDC does not supply utilities for suppliers since the residents pay their own utility bills. In such cases, the supplier will arrange for any necessary utilities.
- b. When work is at its office areas, vacant apartments and other non-resident locations, KCDC will provide utilities for suppliers if they are currently available in the area.
- c. The supplier must ascertain the availability of utilities prior to submitting a bid or quote.

72. Workplace Violence Prevention Policy

KCDC is committed to providing a safe, healthy and secure work environment. The presence of weapons, violence, threats of violence and other disruptive behavior in the workplace is prohibited.

This policy applies to anyone on KCDC property, including but not limited to all employees, suppliers, volunteers, interns, residents, temporary employees, board members and visitors. Threats, threatening behavior or acts of violence against employees, visitors, guests or other individuals on KCDC property will not be tolerated. Any person who makes threats, exhibits threatening behavior or engages in violent acts on KCDC property shall be removed from the premises as quickly as safety permits and shall remain off KCDC premises pending the outcome of an investigation. Violation of this policy by non-employees may result in suspension and/or termination of any business relationship, appropriate legal action or other disciplinary response deemed appropriate. KCDC may grant exceptions from this policy, at its discretion, in unusual circumstances.

Weapons include:

- Explosive devices, its component parts or an explosive weapon principally designed, made or adapted for delivering or shooting an explosive weapon.
- Firearms including machine guns, short barrel rifles, shotguns or handguns.
- Switchblade knives or any other type of knife not necessary for a work assignment.
- Brass knuckles.
- Or any other instrument for infliction of bodily injury, serious bodily injury or death which has no common lawful purpose.

The worksite includes all property owned or occupied by KCDC (including KCDC job sites) or in a KCDC vehicle.

