

CITY OF KNOXVILLE

REQUEST FOR QUALIFICATIONS

Design and Installation of Play Structure and Outdoor Fitness
Equipment

**Qualifications to be Received by 11:00:00 a.m., Eastern Time
September 18, 2017**

Submit Qualifications to:
City of Knoxville
Office of Purchasing Agent
City/County Building
Room 667-674
400 Main Street
Knoxville, Tennessee 37902

CITY OF KNOXVILLE
Request for Qualifications

Design and Installation of Play Structure and Outdoor Fitness Equipment

Table of Contents

Item	Page Number
Statement of Intent	3
RFQ Timeline	3
Background	3
General Conditions	4
Scope of Service	5
Minimum Qualifications	6
Contract Requirements.....	6
Instructions to Submitting Entities	14
Evaluation Criteria	17
Submission Forms.....	18

**City of Knoxville
Request for Qualifications**

Design and Installation of Play Structure and Outdoor Fitness Equipment

I. Statement of Intent

The City of Knoxville seeks to prequalify no more than four (4) play structure contractors to receive bid documents when the City requires the design, provision, and installation of new play structure equipment/outdoor fitness equipment. Depending upon the scope of the project, the winning bidder will be required to provide a complete, turn-key project, to include as specified but not necessarily limited to: professional design services (as well as engineering services, when required), site preparation, surfacing, parts, installation, labor, materials, supplies, equipment, and incidentals necessary; project scope may also include repair of existing parts or surfaces.

Only suppliers who offer diverse apparatus from one primary equipment manufacturer and who can provide a turnkey design/supply/installed project will be considered for prequalification as a play structure contractor.

The term of the agreement with prequalified vendor/contractors will be for one year with two optional one-year renewals.

II. RFQ Time Line

Availability of RFQ August 28, 2017

Deadline for questions to be submitted in writing to the
Assistant Purchasing Agent September 11, 2017

Qualifications Due Date.....September 18, 2017

This timetable is for the information of submitting entities. These dates are subject to change. **However, in no event shall the deadline for submission of qualifications be changed except by written modification from the City of Knoxville Purchasing Division.**

III. Background

The City of Knoxville has approximately 70 play structures, many of which are aging. The City anticipates installing or replacing two or more play structures per year. The typical footprint of a City play structure is approximately 35' x 40', but several smaller and larger structures are currently installed. Play structures purchased are typically for ages 5 to 12. As structures are replaced, there may be a need for revision of the surrounding play surface, with concomitant site preparation.

The City has fewer than five (5) outdoor fitness areas and anticipates adding one new outdoor fitness

area or upgrading an existing area every two to five years.

IV. General Conditions

4.1 The following data is intended to form the basis for submission of qualifications to provide professional services for the City of Knoxville play structures and outdoor fitness equipment.

4.2 This material contains general conditions for the procurement process, the scope of service requested; contract requirements; instructions for submissions of qualifications; and submission forms that must be included in the Statement of Qualifications. The RFQ should be read in its entirety before preparing the submission.

4.3 All materials submitted pursuant to this RFQ shall become the property of the City of Knoxville.

4.4 To the extent permitted by law, all documents pertaining to this Request for Qualifications shall be kept confidential until the qualification evaluation is complete and a recommendation submitted to City Council for review. No information about any submission of qualifications shall be released until the process is complete, except to the members of the Evaluation Committee and other appropriate City staff. All information provided shall be considered by the Evaluation Committee in making a recommendation to enter into an agreement with the selected consultant.

4.5 Any inquiries, suggestions or requests concerning interpretation, clarification or additional information pertaining to the RFQ shall be made **in writing and be in the hands of the Assistant Purchasing Agent by the close of the business day on September 11, 2017**. Questions can be submitted by letter, fax (865-215-2277), or email to jmcclelland@knoxvilletn.gov. The City of Knoxville is not responsible for oral interpretations given by any City employee, representative, or others. The issuance of written addenda is the only official method whereby interpretation, clarification, or additional information can be given. If any addenda are issued to this Request for Qualifications, the Purchasing Division will post them to the City's website at www.knoxvilletn.gov/purchasing. Submitting organizations are strongly encouraged to view this website often to see if addenda are posted. Failure of any qualifier to receive such addendum or interpretation shall not relieve such Proposer from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

4.6 The City of Knoxville reserves the right to (a) accept or reject any and/or all submissions of qualifications; (b) to waive irregularities and technicalities; and (c) accept any alternative submission of qualifications presented which in its opinion, would best serve the interests of the City. The City shall be the sole judge of the qualifications, and the resulting negotiated agreement that is in its best interest, and its decision shall be final. The City also reserves the right to make such investigation as it deems necessary to determine the ability of any submitting entity to perform the work or service requested. Information the City deems necessary to make this determination shall be provided by the submitting entity. Such information may include, but is not limited to, current financial statements by an independent CPA, verification of availability of equipment and personnel, and past performance records.

4.7 Included in the Contract Documents is an affidavit that the undersigned has not entered into any collusion with any person in respect to this qualification. The qualifier is required to submit this

affidavit with the submission. Also included is the Diversity Business Program contracting packet. Submissions must indicate on the enclosed form whether or not the proposer/qualifier intends to use subcontractors and/or suppliers from one of the defined groups. Proposers/Qualifiers are advised that the City tracks use of such use, but it does not influence or affect evaluation or award.

4.8 Subsequent to the Evaluation Committee's review and the Mayor's recommendation of a firm(s), Knoxville City Council approval may be required before the final contract may be executed.

4.9 All expenses for making submission of qualifications shall be borne by submitting entity.

4.10 Any submission of qualifications may be withdrawn up until the date and time for opening of the submissions. **Any submission not so withdrawn shall, upon opening, constitute an irrevocable offer for a period of 90 days to the City of Knoxville for the services set forth in the Request for Qualifications until one or more of the submissions have been duly accepted by the City.**

4.11 Prior to submitting their qualifications, submitters are to be registered with the Purchasing Division by setting up a Vendor Self-Service Account. Instructions for registering on-line are available at www.knoxvilletn.gov/purchasing. **Submissions from un-registered submitters may be rejected.**

4.12 **NO CONTACT POLICY:** After the posting of this solicitation to the Purchasing Division's website, any contact initiated by any proposer with any City of Knoxville representative concerning this procurement action is strictly prohibited, unless such contact is made with the Purchasing Division representative listed herein or with said representative's authorization. Any unauthorized contact may cause the disqualification of the proposer from this procurement transaction.

4.13 **INCLEMENT WEATHER:** During periods of inclement weather, the Purchasing Division will enact the following procedures with regard to solicitations and weather delays:

- If City offices are closed due to inclement weather on the date that bids/proposals/qualifications/letters of interest are due into the Purchasing Office, all solicitations due that same day will be moved to the next operational business day.
- The City of Knoxville shall not be liable for any commercial carrier's decision regarding deliveries during inclement weather.

V. Scope of Service

Only pre-qualified vendor/contractors will be provided solicitation documents for project design/build-outs. Depending upon the specified scope of the project, the winning bidder will be required to provide a complete, turn-key project, to include as specified but not necessarily limited to: professional design services (as well as engineering services, when required), site preparation, surfacing, parts, installation, labor, materials, supplies, equipment, and incidentals necessary; project scope may also include repair of existing parts or surfaces.

The winning bidder shall be responsible for a complete design/build process for play structure/fitness equipment, and the turn key process shall generally include but not be limited to the following:

- Design of site

- Design of play structure/fitness equipment
- Stamped engineering drawings for projects that equal or exceed \$50,000
- Site prep and excavation, to include delivery of clean fill/compaction material and sand, as needed
- Play or fitness apparatus, to include border, surfacing material, and associated items
- Border/curbs and install sidewalk connections to play structure/fitness equipment, as needed.
- Repair or renovation work to existing play or fitness structures, borders, and surfacing, as specified in the bid document.

Note the following requirements:

- Play area border types - Concrete curb 4” wide x 12” deep for PIP surfacing and bonded rubber mulch; concrete curb 6” wide x 12” deep for artificial turf; 4” wide x 12” deep x 4’ length molded plastic border with spikes for certified or rubber mulch
- New surfacing types shall vary between engineered wood fiber (EWF); rubber mulch; bonded rubber mulch; poured in place (PIP); and artificial turf (no rubber tile permitted)
- A concrete sub-surface shall be required for PIP and/or bonded rubber mulch surfacing when installed next to engineered wood fiber and/or rubber mulch surfacing.

VI. Minimum Qualifications

Submissions from interested parties must demonstrate the following minimum qualifications:

- Both contractors and their installers must be licensed to conduct business in the state of Tennessee and must have been in business for a minimum of one year;
- The manufacturer of the equipment being offered shall have been in the play structure supply business for a minimum of three years;
- Submitters must have the ability to provide computerized design documents and provide State of Tennessee stamped engineered drawings for all bids over \$50,000 or otherwise requested by the City of Knoxville. Engineer must be licensed in the State of Tennessee;
- Submitters must provide *current contact information* from at least three references.
- Bidders must demonstrate to the satisfaction of the City of Knoxville that employees or subcontractors who will be used on any City of Knoxville project are properly insured, trained and certified by the manufacturer to install and inspect their play structure equipment;

VII. Contract Requirements

Submitting entities, if selected, must be willing to sign a contract with the City which will include certain provisions, among which are the following:

7.1 Contract Documents. The contract shall consist of (1) the RFQ; (2) the qualifications submitted by the contractor to this RFQ; and (3) the contract. In the event of a discrepancy between the contract, the RFQ and the submitted qualifications, the terms that provide the greater benefit to the City and/or impose the greater obligation to the contractor will prevail.

7.2 Administration. The contract will be administered by the City of Knoxville Department of Parks and Recreation.

7.3 Invoices. Invoices for services will be submitted to the City in accordance with the contract terms.

7.4 Independent Contractor. The relationship of contractor to the City will be that of independent contractor. The contractor will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants and subcontractors done during the performance of the contract. All services performed by the contractor shall be provided in an independent contractor capacity and not in the capacity of officers, agents, or employees of the City.

7.5 Assignment. The contractor shall not assign or transfer any interest in this contract without prior written consent of the City of Knoxville.

7.6 Indemnification and Hold Harmless. The successful qualifier will be required to sign a contract with the City which contains the following indemnification clause. This indemnification clause will not be altered in any way. Failure to agree with this indemnification clause in the contract may result in the City moving to the next responsible responsive proposer.

Consultant shall defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all lawsuits, claims, liabilities, damages, losses, and expenses (including, but not limited to, court costs, reasonable attorney fees, and costs of claim processing, investigation, and litigation) to the extent arising out of, relating to, or resulting from the negligent or intentional acts, errors, or omissions of Consultant in performance of this Agreement or from Consultant's failure to perform this Agreement using a due and reasonable standard of professional care and skill ("Indemnified Claim"), and except where such injury, damage, or loss was caused by the sole negligence of the City, its agents or employees. The amount and type of insurance coverage requirements set forth in this Agreement will in no way be construed as limiting the scope of the indemnity in this section.

Consultant shall assume and take over the defense of the City in any such claim, demand, suit, or cause of action involving an Indemnified Claim upon written notice and demand for same by the City. Consultant will have the right to defend the City with counsel of its choice that is satisfactory to the City, and the City will provide reasonable cooperation in the defense as Consultant may request. Consultant will not consent to the entry of any judgment or enter into any settlement with respect to an Indemnified Claim without the prior written consent of the City, such consent not to be unreasonably withheld or delayed. The City shall have the right to participate in the defense against an Indemnified Claim with counsel of its choice at its own expense.

Consultant shall save, indemnify and hold City harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against City with respect to any Indemnified Claim.

The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

7.7 Termination. The City may this Agreement at any time, with or without cause, by written notice of termination to the Contractor.

If the City terminates this Agreement, and such termination is not a result of a default by the Contractor, the Contractor shall be entitled to receive as its sole and exclusive remedy the following amounts from the City, and the City shall have no further or other obligations to the Contractor: the amount due to the Contractor for work executed through the date of termination, not including any future fees, profits, or other compensation or payments which the Contractor would have been entitled to receive if this Agreement had not been terminated.

The City may, by written notice of default to the Contractor, terminate the whole or any part of this Agreement if the Contractor fails to perform any provisions of this Agreement and does not cure such failure within a period of ten (10) days (or such longer period as the Purchasing Agent may authorize in writing) after receipt of said notice from the Purchasing Agent specifying such failure. If this Agreement is terminated in whole or in part for default, the City may procure, upon such terms and in such manner as the Purchasing Agent may deem appropriate, supplies or services similar to those terminated.

7.8 Insurance. When applicable and prior to the commencement of the contract, contractor must, at its sole expense, obtain and maintain in full force and effect for the duration of the Agreement and any extension hereof at least the following types and amounts of insurance for claims which may arise from or in connection with this Agreement. Contractor shall furnish the City of Knoxville with properly executed certificates of insurance which shall clearly evidence all insurance required by the City. All insurance must be underwritten by insurers with an A.M. Best rating of A-VIII or better. Such insurance shall be at a minimum the following:

- A. **Commercial General Liability Insurance**; occurrence version commercial general liability insurance, and if necessary umbrella liability insurance, with a limit of not less than two million dollars each occurrence for bodily injury, personal injury, property damage, and products and completed operations. If such insurance contains a general aggregate limit, it shall apply separately to the work/location in this Agreement or be no less than \$3,000,000.

Such insurance shall:

(a.) Contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds. Proof of additional insured status up to and including copies of endorsements and/or policy wording will be required.

(b.) For any claims related to this project, Contractor's insurance coverage shall be primary insurance as respects the City, its officers, officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering the City, its officials,

officers, employees, and volunteers shall be excess of Contractor's insurance and shall not contribute with it.

(c.) At the sole discretion of the City, dedicated limits of liability for this specific project may be required.

- B. **Automobile Liability Insurance;** including vehicles owned, hired, and non-owned, with a combined single limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes the City, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of Contractor.
- C. **Workers' Compensation Insurance.** Contractor shall maintain workers' compensation insurance with statutory limits as required by the State of Tennessee or other applicable laws and employers' liability insurance with limits of not less than \$500,000. Contractor shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by Contractor's workers' compensation insurance coverage.
- D. **Professional Liability (including Errors & Omissions).** Consultant shall maintain professional liability insurance covering claims arising from real or alleged negligent errors, omissions, or acts committed in the performance of professional services under this contract with limits of \$2,000,000. If the coverage is written on a claims-made form:
- a. The "Retro Date" must be shown and must be before the date of the contract or the beginning of contract work.
 - b. Insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work and acceptance by the City.
 - c. If coverage is cancelled or non-renewed and not replaced with another claims-made policy form with a "Retro Date" prior to the contract effective date, Consultant must purchase "extended reporting" coverage for a minimum of three (3) years after completion of contract work.
 - d. A copy of the claims reporting requirements must be submitted to the City for review.
- E. **Other Insurance Requirements.** Contractor shall:
- Prior to commencement of services, furnish the City with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to the City Attorney of Knoxville; P.O. Box 1631; Knoxville, Tennessee 37901. Proof of policy provisions regarding notice of cancellation will be required.

- Upon the City's request, provide certified copies of endorsements and policies if requested by the City in lieu of or in addition to certificates of insurance. Copies of policies will only be requested when contracts are deemed to be extremely or uniquely hazardous, include a dollar amount that is significant to the overall budget of the City or a City Department, or the coverage(s) may not follow standard insurance forms. A policy will only be requested after the City's Risk Manager has reviewed the contract and proof of coverage has been provided. Should the certificate of insurance refer to specific coverage wording or endorsements(s), proof of such policy wording or endorsement(s) will be required.
- Replace certificates, policies, and endorsements for any such insurance expiring prior to completion of services.
- Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.
- If Contractor cannot procure insurance through an insurer having an A.M. Best rating of A-VIII, Contractor may, in the alternative, place such insurance with insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A. Modification of this standard may be considered upon appeal to the City Law Director.
- Require all subcontractors to maintain during the term of the Agreement Commercial General Liability insurance, Business Automobile Liability insurance, and Workers' Compensation/Employer's Liability insurance (unless subcontractor's employees are covered by Contractor's insurance) in the same manner as specified for Contractor. Contractor shall furnish subcontractors' certificates of insurance to the City without expense immediately upon request.
- Large Deductibles; Self-Insured Retentions. Any deductibles and/or self-insured retentions greater than \$50,000 must be disclosed to and approved by the City of Knoxville prior to the commencement of services. Use of large deductibles and/or self-insured retentions may require proof of financial ability as determined by the City.
- Waiver of Subrogation Required. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, and employees for losses arising from work performed by Contractor for the City. Proof of waiver of subrogation up to and including copies of endorsements and/or policy wording will be required.
- Occurrence Basis Requirement. All general liability policies must be written on an occurrence basis, unless the Risk Manager determines that a claims made basis is reasonable in the specific circumstance. Use of policies written on a claims made basis must be approved by the City. Risk Manager and retroactive dates and/or continuation dates must be provided to the City prior to commencement of any work performed. Professional Liability and Environmental Liability (Pollution Coverage) are most commonly written on a claims made basis and are generally acceptable in that form.

7.9 Ethical Standards. Attention of all firms is directed to the following provisions contained in the Code of the City of Knoxville: Chapter 24, Article II, Section 24-33 entitled “Debts owed by persons receiving payments other than Salary;” Chapter 2, Article VIII, Division 11. the Contractor hereby takes notice of and affirms that it is not in violation of, or has not participated, and will not participate, in the violation of any of the following ethical standards prescribed by the Knoxville City Code:

A. Section 2-1048. Conflict of Interest.

It shall be unlawful for any employee of the city to participate, directly or indirectly, through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing or otherwise, in any proceeding or application, request for ruling or other determination, claim or controversy or other matter pertaining to any contract or subcontract and any solicitation or proposal therefore, where to the employee’s knowledge there is a financial interest possessed by:

- (1) the employee or the employee’s immediate family;
- (2) A business other than a public agency in which the employee or member of the employee’s immediate family serves as an officer, director, trustee, partner or employee; or
- (3) Any person or business with whom the employee or a member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment.

B. Section 2-1049. Receipt of Benefits from City Contracts by Council Members, Employees and Officers of the City.

It shall be unlawful for any member of council, member of the board of education, officer or employee of the city to have or hold any interest in the profits or emoluments of any contract, job, work or service, either by himself or by another, directly or indirectly. Any such contract for a job, work or service for the city in which any member of council, member of the board of education, officer or employee has or holds any such interest is void.

C. Section 2-1050. Gratuities and Kickbacks Prohibited.

It is unlawful for any person to offer, give or agree to give to any person, while a city employee, or for any person, while a city employee, to solicit, demand, accept or agree to accept from another person, anything of a pecuniary value for or because of:

- (1) An official action taken, or to be taken, or which could be taken;
- (2) A legal duty performed, or to be performed, or which could be performed; or
- (3) A legal duty violated, or to be violated, or which could be violated by such person while a city employee.

Anything of nominal value shall be presumed not to constitute a gratuity under this section.

Kickbacks. It is unlawful for any payment, gratuity, or benefit to be made by or on behalf of a subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

D. Section 2-1051. Covenant Relating to Contingent Fees.

(a) Representation of Contractor. Every person, before being awarded a contract in excess of ten thousand dollars (\$10,000.00) with the city, shall represent that no other person has been

retained to solicit or secure the contract with the city upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for bona fide employees or bona fide established commercial, selling agencies maintained by the person so representing for the purpose of securing business.

(b) Intentional Violation Unlawful. The intentional violation of the representation specified in subsection (a) of this section is unlawful.

E. Section 2-1052. Restrictions on Employment of Present and Former City Employees. Contemporaneous employment prohibited. It shall be unlawful for any city employee to become or be, while such employee, an employee of any party contracting with the particular department or agency in which the person is employed.

For violations of the ethical standards outlined in the Knoxville City Code, the City has the following remedies:

- (1) Oral or written warnings or reprimands;
- (2) Cancellation of transactions; and
- (3) Suspension or debarment from being a Contractor or subcontractor under city or city-funded contracts.

The value of anything transferred in violation of these ethical standards shall be recoverable by the City from such person. All procedures under this section shall be in accord with due process requirements, included but not limited to a right to notice and hearing prior to imposition of any cancellation, suspension or debarment from being a Contractor or subcontractor under a city contract.

7.10 Firms must comply with the President's Executive Order No. 11246 and 11375 which prohibit discrimination in employment regarding race, color, religion, sex or national origin. Firms must also comply with Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

7.11 Firms shall give consideration to the inclusion of minority firms or individuals in this project, and shall advise the city in this submittal of qualifications of their efforts to do so.

7.12 Firms shall give consideration to the use of environmentally sustainable best practices, and shall advise the city in this submittal of qualifications of their efforts to do so.

7.13 Federal, State, and Local Requirements. Each submitting entity is responsible for full compliance with all applicable federal, state, and local laws, rules and regulations.

7.14 Licenses. The contractor must be a licensed professional as required by the State of Tennessee for any services in this contract requiring such licensure. Additionally, any and all sub-consultants/contractors employed by the prime consultant/contractor for the performance of the services requested in this RFQ must be licensed as professional service firms in the State of Tennessee if said

sub-consultants/contractors will perform services that are considered professional in nature. As such, the prime consultant/contractor submitting his/her statement of qualifications must submit an affidavit with his/her statement of qualifications stating that all sub-consultants/contractors he plans to use are indeed licensed as professional service firms in the State of Tennessee. This affidavit is located in the “submission forms” section of this RFQ.

7.15 Before a contract is signed by the City, the submitting entity, if selected, **must** provide the City Purchasing Division with a copy of its valid business license **or** with an affidavit explaining why it is exempt from the business licensure requirements of the city or county in which it is headquartered. If a contract is signed, the contractor’s business license shall be kept current throughout the duration of the contract, and the contractor shall inform the City of changes in its business name or location.

7.16 Funding. The City's performance and obligation to pay under this contract is subject to funding contingent upon an annual appropriation.

7.17 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Tennessee and its conflict of laws provisions. Venue for any action arising between the City and the Contractor from the Agreement shall lie in Knox County, Tennessee.

7.18. Subcontracts to the Agreement. Contractor shall not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the City.

7.19. Amendments. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of the Agreement.

7.20 Captions. The captions appearing in the Agreement are for convenience only and are not a part of the Agreement; they do not in any way limit or amplify the provisions of the Agreement.

7.21. Severability. If any provision of the Agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in the Agreement. Failure to enforce any provision of the Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

7.22 No Benefit for Third Parties. The services to be performed by the Contractor pursuant to the Agreement with the City are intended solely for the benefit of the City, and no benefit is conferred hereby, nor is any contractual relationship established herewith, upon or with any person or entity not a party to the Agreement. No such person or entity shall be entitled to rely on the Contractor's performance of its services hereunder, and no right to assert a claim against the City or the Contractor, its officers, employees, agents, or contractors shall accrue to the Contractor or to any subcontractors, independently retained professional consultant, supplier, fabricator, manufacturer, lender, tenant, insurer, surety, or any other third party as a result of this Agreement or the performance or non-performance of the Contractor's services hereunder.

7.23 Non-Reliance of Parties. Parties explicitly agree that they have not relied upon any earlier or

outside representations other than what has been included in the Agreement. Furthermore, neither party has been induced to enter into this Agreement by anything other than the specific written terms set forth herein.

7.24. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any of the services or obligations set forth in this Agreement due to causes beyond its reasonable control, and performance times shall be considered extended for a period of time equivalent to the time lost because of such delay plus a reasonable period of time to allow the parties to recommence performance of their respective obligations hereunder. Should a circumstance of force majeure last more than ninety (90) days, either party may by written notice to the other terminate this Agreement. The term "force majeure" as used herein shall mean the following: acts of God; strikes, lockouts or other industrial disturbances; acts of public enemies; orders or restraints of any kind of the government of the United States or of the State or any of their departments, agencies or officials, or any civil or military authority; insurrections, riots, landslides, earthquakes, fires, storms, tornadoes, droughts, floods, explosions, breakage or accident to machinery, transmission pipes or canals; or any other cause or event not reasonably within the control of either party.

7.25 EEO/AA/ The City of Knoxville is an EE/AA/Title VI/Section 504/ADA/ADEA Employer.

7.26 By submitting a statement of qualifications, the submitting entity agrees to all terms and conditions established in this RFQ, including its contract requirements.

VIII. Instructions to Submitting Entities

All submissions of qualifications shall comply with the following instructions. These instructions ensure that (1) submissions contain the information and documents required by the City RFQ; and (2) the submissions have a degree of uniformity to facilitate evaluation.

8.1 General

Submission forms and RFQ documentation may be obtained on or after September 28, 2017, at no charge from:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, Tennessee 37902

between 8:30 a.m. and 4:30 p.m. (Eastern Time), Monday through Friday or by calling 865-215-2070. Forms and RFQ information are also available on the City web site at www.knoxvilletn.gov/purchasing where it can be read or printed using Adobe Acrobat Reader software.

8.2 Submission Information

Submitters shall include five (5) hard copies (one original and four duplicates—**mark the original as**

such), as well as one electronic copy of their submission (.pdf format on CD only—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **Electronic submissions must be included with the sealed submissions; do not email your submission.**

Submissions of Qualifications shall clearly indicate the legal name, address and telephone number of the submitting entity (company, firm, partnership, individual). Original signature must be signed above the typed or printed name and title of the signer. All submissions of qualifications must be signed by an officer of the company authorized to bind the firm to a contract.

Qualifications will be received until 11:00:00 a.m. (Eastern Time) on September 18, 2017. Each submission of qualifications must be submitted in a sealed envelope addressed to:

City of Knoxville Purchasing Division
City/County Building
400 Main Street, Room 667
Knoxville, TN 37902

IMPORTANT NOTE: Each outermost mailing envelope or shipping carton containing a submission of qualifications must be plainly marked on the outside “Design and Installation of Playground and Fitness Equipment.” Those making submissions are reminded that the Purchasing Division receives many submissions for any number of solicitations; **unlabeled submissions are extremely difficult to match to their appropriate solicitations and therefore may be rejected.**

Any submissions of qualifications received after the time and date on the cover sheet will not be considered. It shall be the sole responsibility of the submitting entity to have the submissions of qualifications delivered to the City of Knoxville Purchasing Division on or before that date.

Late submissions will not be considered. Submissions that arrive late due to the fault of United States Postal Service, United Parcel Service, DHL, FEDEX, any delivery/courier service, or any other carrier of any sort are still considered late and shall not be accepted by the City. Such submissions shall remain unopened and will be returned to the submitting entity upon request.

8.3 Format

The City is committed to reducing waste. Submissions of qualifications must be typed on 8.5 x 11 inch wide white paper, printed on both sides. **DO NOT BIND** the document; instead, staple or binder clip the submission together and place in a sealed envelope (see Paragraph 7.2). Pages must be consecutively numbered. A table of contents must be included in the submission immediately after the title page, and each of the following numbered sections must be tabbed.

Submissions of qualifications shall be structured as follows:

- 1. Title Page**
- 2. Table of Contents**
- 3. Submission Forms:**
 - A. Form S-1

- B. Non-Collusion Affidavit
 - C. Child Crime Affidavit
 - D. Bidder Questionnaire
 - E. Licensure Affidavit of Prime Proposer
 - F. Iran Divestment Act Certification of Noninclusion
 - G. Diversity Business Enterprise Program form
- 4. Required Documents:**
- A. Tennessee Business License
 - B. Written Warranty for All Components of the Equipment Being Offered, Including Surfacing Types Offered
 - C. A copy of the in-house or third party safety inspector's latest certification.
 - D. A copy of the manufacturer's equipment catalog if available; if not available in hard copy, list the web address where the catalog may be viewed.
 - E. A sample play structure 2D site plan
 - F. A sample play structure 3D rendering
- 5. Body of Proposal:** Information that addresses the Minimum Qualifications outlined in Sections V and IX

NOTE: All required submission forms may be found in this solicitation document.

8.4 Evaluation of Qualifications

All qualified submissions received by the deadline will be analyzed by the Evaluation Committee according to the criteria outlined in these specifications. Failure to comply with the provisions of the RFQ may cause any submission of qualifications to be ineligible for evaluation. Each submittal of Qualifications will be initially analyzed and judged according to the evaluation criteria below. The maximum score is 100 points.

Firms and/or teams responding to this Request for Qualifications shall be available for interviews with the Evaluation Committee. Discussions may be conducted with responsible submitting entities for purposes of clarification to assure full understanding of and conformance to the RFQ requirements. Selection shall be based on the firms' qualifications applicable to the scope and nature of the services to be performed per this request for qualifications. Determination of firms' qualifications shall be based on their written responses to this Request for Qualifications and information presented to the Evaluation Committee during oral interviews, if any.

Each Statement of Qualifications will be initially analyzed and judged according to the evaluation criteria listed in Section VIII below. The maximum score is 100 points.

In addition to materials provided in the written responses to this Request for Qualifications, the Committee may request additional material, information, or references from the submitting entity or others.

Provided it is in the best interest of the City of Knoxville, the firm or team determined to be the most responsive to the City of Knoxville, taking into consideration the evaluation factors set forth in this Request for Qualifications, will be selected to begin contractual negotiations. The firm or team selected will be notified at the earliest practical date and invited to submit more comprehensive information if

necessary. If no satisfactory agreement can be reached with the “most responsive firm,” the City may elect to negotiate with the next best and most responsive firm or team.

IX. Evaluation Criteria

An evaluation team, composed of representatives of the City, will evaluate Statements of Qualifications on a variety of quantitative and qualitative criteria. Upon receipt of submissions, the City will review to determine whether the submission is acceptable or non-acceptable based on the criteria outlined below.

The criteria, and their associated weights, upon which the evaluation of the qualifications will be based includes, but is not limited to, the following:

- Business Operations and Quality of Proposed Product: 35 points
- Construction Procedures and Safety Compliance: 30 points
- Performance in providing similar type playground products and services (i.e., projects) within the past three years. List at least five projects with photographs of the finished product(s) with contact information for at least three of the projects: 20 points
- References for Supplier and Installer (if not in-house): 15 points

Submission Forms

**CITY OF KNOXVILLE
REQUEST FOR QUALIFICATIONS**

Design and Installation of Play Structure and Outdoor Fitness Equipment

Submission Form (S-1)

**Qualifications to be Received by 11:00 a.m., Eastern Time; September 18, 2017; in Room 667-674,
City/County Building; Knoxville, Tennessee.**

IMPORTANT: Submitters shall include five (5) hard copies (one original and four duplicates—**mark the original as such**), as well as one electronic copy of their submission (.pdf format on CD only—**mark the storage device with the company name**); the electronic version shall be an exact duplicate of the original, and the electronic version will be the official document exhibited in the contract. **Electronic submissions must be included with the sealed submissions; do not email your submission.**

Please complete the following:

Legal Name of Qualifier: _____

Address: _____

Telephone Number: _____

Fax Number: _____

Contact Person: _____

Email Address: _____

Signature: _____

Name and Title of Signer:

Note: Failure to use these response sheets may disqualify your submission.

NON-COLLUSION AFFIDAVIT

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

- (1) He/She is the _____ of _____, the firm that has submitted the attached Proposal;
- (2) He/She is fully informed respecting the preparation and contents of the attached Proposal and of all pertinent circumstances respecting such Proposal;
- (3) Such Proposal is genuine and is not a collusive or sham Proposal;
- (4) Neither the said firm nor any of its officers, partners, owners, agents, representatives, employees or parties in interest, including this affiant, has in any way colluded, conspired, connived or agreed, directly or indirectly, with any other vendor, firm or person to submit collusive or sham proposal in connection with the contract or agreement for which the attached Proposal has been submitted or to refrain from making a proposal in connection with such contract or agreement, or collusion or communication or conference with any other firm, or, to fix any overhead, profit, or cost element of the proposal price or the proposal price of any other firm, or to secure through any collusion, conspiracy, connivance, or unlawful agreement any advantage against the City of Knoxville or any person interested in the proposed contract or agreement; and
- (5) The proposal of service outlined in the Proposal is fair and proper and is not tainted by collusion, conspiracy, connivance, or unlawful agreement on the part of the firm or any of its agents, representatives, owners, employees, or parties including this affiant.

(Signed): _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 20__.

NOTARY PUBLIC

My Commission expires _____

Child Crime Affidavit

State of _____

County of _____

_____, being first duly sworn, deposes and says that:

(1) He/She is the owner, partner, officer, representative, or agent of _____
_____, the Bidder that has submitted the attached Bid;

(2) The Bidder _____ will abide by the following if chosen as
the successful bidder:

The Bidder _____ agrees not to allow any employee or
volunteer who is awaiting trial or has been convicted of a felony crime involving the sexual
exploitation of children, sexual offenses involving children or violent crimes to participate in this
Agreement at sites where children may be present. Failure by the Bidder to comply with this
requirement is grounds for immediate termination of the Agreement.

Signed: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2_____.

My commission expires: _____

BIDDER QUESTIONNAIRE

This form must be completed in its entirety and the requested documents submitted accordingly. Additional sheets may be included for lengthy responses but the question or line item number must be used as reference. Extraneous marketing materials or irrelevant information is not to be submitted. If any questions do not apply to your operation, so indicate with "Not Applicable."

1. BUSINESS OPERATIONS

1.1 What play structure manufacturer(s) do you represent?

1.2 How long has this manufacturer been in business?

1.3 How many years has your company been representing or selling this equipment?

1.4 Do you as the bidder perform a complete turnkey operation including full service design, supply and installation services? If not, provide the name and contact information for any sub-contractors you will use to perform each component of design, supply and installation?

1.5 If a third party installer, for how many years has the installer been installing this manufacturer's equipment and surfacing?

1.6 If a third party installer, does the installer perform installations for any company other than your own?

1.7 Do you agree to prepay freight and add the charges as part of a total project cost?

1.8 Describe the after warranty repair protocol and the source location for parts.

1.9 Do you agree to supply maintenance kits free of charge for awarded projects? If so, please confirm what will be included in the maintenance kit.

2. PROCEDURES AND SAFETY COMPLIANCE:

2.1 List the ISO and International Play Equipment Manufacturers Association (IPEMA) ASTM certifications for the equipment manufacturer and for each type of surfacing you represent/provide.

2.2 Is all the equipment you represent compliant with the Americans with Disabilities Act (ADA), ASTM, the Consumer Product Safety Act (CPSA), and the Consumer Product Safety Improvement Act (CPSIA)?

2.3 Are any of the components stamped with compliance to safety standards?

2.4 Whether in-house or third party, describe the training and/or certification process used by the play structure manufacturer to assure proper and safe installations.

2.5 Installation normally occurs within _____days of equipment availability (weather pending).

2.6 What is your installation sequence and protocol (i.e., do you have equipment shipped by the manufacturer directly to the site, or do you bring the equipment when you are ready to install)?

2.7 What safety measures do you use on the construction site (i.e., safety tape or orange safety fence to segregate the work area)?

2.8 Do you have an in-house safety inspector, or is this person an employee of the third party installer?

2.9 Has your company ever been terminated from a job? If yes, explain.

2.10 Has your company or this equipment manufacturer been party to any criminal litigation for any safety related issues in the last three years?

2.11 If yes, provide a brief summary of the case, whether your company and/or the manufacturer were found culpable, and what measures have been taken to correct this situation.

2.12 Can you provide a written and certified pre- and post-drop test for each surfacing type you provide? If "yes," provide with this questionnaire.

2.13 What is the maximum amount of your company's bonding capacity?

LICENSURE AFFIDAVIT OF PRIME PROPOSER

The undersigned “prime proposer” hereby states that any and all sub-contractors employed by the prime proposer in the performance of the services requested in this RFP are licensed as professional service firms in the State of Tennessee where said sub-contractors will perform services that are considered professional in nature.

Signed: _____

Title: _____

Subscribed and sworn to before me this ____ day of _____, 2____.

My commission expires: _____

IRAN DIVESTMENT ACT

Certification of Noninclusion

NOTICE: Pursuant to the Iran Divestment Act, Tenn. Code Ann. § 12-12-106 requires the State of Tennessee Chief Procurement Officer to publish, using creditable information freely available to the public, a list of persons it determines engage in investment activities in Iran, as described in § 12-12-105. Inclusion on this list makes a person ineligible to contract with the state of Tennessee; if a person ceases its engagement in investment activities in Iran, it may be removed from the list. A list of entities ineligible to contract in the State of Tennessee Department of General Services or any political subdivision of the State may be found here:

[https://www.tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn. Code Ann. 12-12-106, Iran Divestment Act-July.pdf](https://www.tn.gov/assets/entities/generalservices/cpo/attachments/List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106,_Iran_Divestment_Act-July.pdf)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief that each bidder is not on the list created pursuant to T.C.A. § 12-12-106.

Vendor Name (Printed)	Address
By (Authorized Signature)	Date Executed
Printed Name and Title of Person Signing	

NOTARY PUBLIC:

Subscribed and sworn to before me this _____ day of _____, 2_____.

My commission expires: _____

DIVERSITY BUSINESS ENTERPRISE (DBE) PROGRAM

The City of Knoxville strongly encourages prime contractors to employ diverse businesses in the fulfillment of contracts/projects for the City of Knoxville.

The City of Knoxville's Fiscal Year 2017 goal is to conduct 3.33% of its business with minority-owned businesses, 9.21% of its business with woman-owned businesses, and 45.5% with small businesses.

While the City cannot engage (pursuant to state law) in preferential bidding practices, the City does **strongly encourage** prime contractors to seek out and hire diverse businesses in order to help the City meet its goals as stated above. As such, the City encourages prime contractors to seek out and consider competitive sub-bids and quotations from diverse businesses.

For DBE tracking purposes, the City requests that prime contractors who are bidding, proposing, or submitting statements of qualifications record whether or not they plan to employ DBE's as sub-contractors or consultants. With that in mind, please fill out, sign and submit (with your bid/proposal) the following sub-contractor/ consultant statement.

CITY OF KNOXVILLE DIVERSITY BUSINESS DEFINITIONS

Diversity Business Enterprise (DBE's) are minority-owned (MOB), women-owned (WOB), service-disabled veteran-owned (SDVO), and small businesses (SB), who are impeded from normal entry into the economic mainstream because of past practices of discrimination based on race or ethnic background. These persons must own at least 51% of the entity and operate or control the business on a daily basis.

Minority: A person who is a citizen or lawful admitted permanent resident of the United States and who is a member of one (1) of the following groups:

- a. African American, persons having origins in any of the Black racial groups of Africa;
- b. Hispanic American, persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
- c. Native American, persons who have origin in any of the original peoples of North America ;
- d. Asian American, person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

Minority-owned business (MOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more minority individuals.

Woman-owned business (WOB) is a continuing, independent, for profit business that performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more women.

Service Disabled Veteran-owned business (SDOV) is a continuing, independent, for profit business that performs a commercially useful function, owned by any person who served honorably on active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service connected. Meaning such disability was incurred or aggravated in the line of duty in the active military, naval or air service, and is at least fifty-one percent (51%) owned and controlled by one (1) or more service disabled veteran.

Small Business (SB) is a continuing, independent, for profit business which performs a commercially useful function and has total gross receipts of not more than ten million dollars (\$10,000,000) average over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Subcontractor/Consultant Statement
(TO BE SUBMITTED IN THE BID/PROPOSAL ENVELOPE)

We _____ do certify that on the
(Bidder/Proposer Company Name)

_____ (Project Name)
\$ _____
(Amount of Bid)

Please select one:

Option A: Intent to subcontract using Diverse Businesses

A Diversity business will be employed as subcontractor(s), vendor(s), supplier(s), or professional service(s). The estimated **dollar value** of the amount that we plan to pay is:

\$ _____
Estimated Amount of Subcontracted Service

Diversity Business Enterprise Utilization			
Description of Work/Project	Amount	Diverse Classification (MOB, WOB, SB, SDOV)	Name of Diverse Business

Option B: Intent to perform work “without” using Diverse Businesses

We hereby certify that it is our intent to perform 100 % of the work required for the contract, work will be completed without subcontracting, or we plan to subcontract with non-Diverse companies.

DATE: _____ COMPANY NAME: _____

SUBMITTED BY: _____ TITLE: _____
(Authorized Representative)

ADDRESS: _____

CITY/STATE/ZIP CODE: _____

TELEPHONE NO: _____