



City of Columbus

Legislation Report File Number: 2605-2021

Office of City Clerk
90 West Broad Street
Columbus OH 43215-9015
columbuscitycouncil.org

Emergency

File ID: 2605-2021 **Type:** Ordinance **Status:** Passed
Version: 1 ***Committee:** Rules & Reference Committee
File Name: Chapter 329 Construction Amendments **File Created:** 10/05/2021

Final Action: 12/16/2021

Auditor Cert #:

Auditor: When assigned an Auditor Certificate Number I, the City Auditor, hereby certify that there is in the treasury, or anticipate to come into the treasury, and not appropriated for any other purpose, the amount of money specified hereon, to pay the within Ordinance.

Contact Name/No.: J. Bond 5-6272

Floor Action (Clerk's Office Only)

Mayor's Action

Council Action

Mayor	Date	Date Passed/ Adopted	President of Council
Veto	Date		City Clerk

Title:

To amend various sections of Chapter 329 of the Columbus City Codes to provide for an alternative construction delivery method called Construction Manager at Risk (CMAR) with these changes to be effective January 2, 2022; to repeal the existing Sections being amended; and to declare an emergency.

Sponsors: Elizabeth Brown



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Attachments: 2605-2021 Revisions to Chapter 329 Attachment.docx

Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	10/6/2021	Joe Lombardi	Approved	10/6/2021
1	2	10/6/2021	ODI APPROVER	Approved	10/7/2021
1	3	10/6/2021	Auditor Reviewer	Approved	10/7/2021
Notes: MNK/blp					
1	4	10/7/2021	AUDITOR APPROVER	Approved	10/7/2021
Notes: MNK/bam					
1	5	10/7/2021	ATTORNEY APPROVER	Approved	10/8/2021
Notes: LNB					

History of Legislative File

Ver.	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Columbus City Council	12/13/2021	Approved				Pass
1	COUNCIL PRESIDENT	12/13/2021	Signed				
1	MAYOR	12/14/2021	Signed				
1	CITY CLERK	12/16/2021	Attest				

ODI: Following the review and approval, when required, the Office of Diversity and Inclusion certifies compliance with Title 39 as of date listed.

City Attorney: Following review and approval, when required, this ordinance has been reviewed by the City Attorney's Office as to its form and legality only.



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Explanation

The City of Columbus, Department of Finance and Management has undertaken efforts to modernize various sections of Chapter 329 of the Columbus City Codes, 1959, which governs responsible public procurement of construction services, while continuing to provide for the fair and equitable treatment to all persons involved in public purchasing. The implementation of these modernizations will allow the City of Columbus to provide for an alternative construction delivery method called Construction Manager at Risk (CMAR).

The award standard for CMAR is best value based and uses a selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the City. The CMAR has substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a construction project in accordance with contract terms and provides the City a guaranteed maximum price for the construction of public improvements.

Emergency action is necessary to provide a date certain to address an immediate operational need in the Department of Finance and Management to implement CMAR as an alternative construction delivery method.

The effective date of these revisions and modernization will be January 2, 2022, to allow sufficient time for the Director of Finance and Management to prepare processes and update relevant documentation.

FISCAL IMPACT: This code change has no fiscal impact.

Title

To amend various sections of Chapter 329 of the Columbus City Codes to provide for an alternative construction delivery method called Construction Manager at Risk (CMAR) with these changes to be effective January 2, 2022; to repeal the existing Sections being amended; and to declare an emergency.

Body

WHEREAS, the City of Columbus, Department of Finance and Management has undertaken efforts to



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modernize various sections of Chapter 329 of the Columbus City Codes, 1959, which governs responsible public procurement of construction services, while continuing to provide for the fair and equitable treatment to all persons involved in public purchasing. The implementation of these modernizations will allow the City of Columbus to provide for an alternative construction delivery method called Construction Manager at Risk (CMAR); and

WHEREAS, the award standard for CMAR is best value based and uses a selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the City; and

WHEREAS, full implementation of this code modernization on January 2, 2022, will provide the Finance and Management Director with the necessary time to prepare processes and update necessary documentation; and

WHEREAS, an emergency exists in the usual daily operation of the Department of Finance and Management in that it is immediately necessary to amend various section of City Code Chapter 329 but to delay the effective date of same in order to allow the Department the immediate time necessary to prepare processes and update necessary documentation, thereby preserving the public health, peace, property, safety, and welfare; **NOW, THEREFORE**,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBUS:

SECTION 1. That Sections 329.01 and 329.23 of the Columbus City Codes are hereby amended as stated on the attached document ("**Ordinance 2605-2021 Revisions to Chapter 329 Attachment**").

SECTION 2. That prior existing sections 329.01 and 329.23 are hereby repealed.

SECTION 3. That Sections 1 and 2 of this ordinance shall take effect and be in force from and after January 2, 2022.

SECTION 4. That for reasons stated in the preamble hereto, which is hereby made a part hereof, this ordinance is declared to be an emergency measure and the remaining sections of this ordinance shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.

SECTION 1. That effective January 2, 2022, Sections 329.01 and 329.23 are hereby amended as follows:

329.01 - Definitions.

As used in this chapter:

- (a) At Risk Fee. The portion of the construction fee attributable to the risk the construction manager at risk assumes by agreeing to be responsible for the performance of work on a public improvement project.
- (~~a~~b) Best Bidder. The bidder who, considering all relevant factors set forth in this chapter, will be, on the whole, best for the public.
- (c) Best Value. A selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the City.
- (~~b~~d) Bidder. An individual or business entity which has expressed an interest in obtaining a city contract by responding to an invitation for bids.
- (~~e~~e) Business Entity. Any trade, occupation, or profession carried out for profit by any of the following organizations existing under the laws of the State of Ohio, the United States, or any other state: a corporation, trust, association, general or limited partnership, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal entity. Business entity does not include any not-for-profit entity as defined in this section, provided such entity is not in direct competition with a for-profit entity capable of delivering the same services.
- (~~d~~f) City Agency. Any department of the government of the city of Columbus.
- (~~e~~g) Contract. Any agreement for the procurement of materials, supplies, equipment, construction, service or professional service made between a city agency and a contractor.
- (~~f~~h) Construction.
 - (1) Construction, as it relates to a public improvement, includes the following:
 - (a) The construction of new buildings and structures, including site preparation.
 - (b) Additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements of a building or structure, including, but not limited to, the complete replacement of a roof.

- (c) Major mechanical and electrical system installations and upgrades, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, and other similar building services that are built into the facility.
 - (d) New, fixed outside structures or facilities, including, but not limited to, sidewalks and trails, highways and streets, bridges, parking lots, utility connections, outdoor lighting, water supply lines, sewers, water and signal towers, electric light and power distribution and transmission lines, playgrounds and equipment, parks with features, retaining walls, and similar facilities that are built into or fixed to the land, including site preparation.
 - (e) Additions, alterations, expansions, reconstruction, renovations, rehabilitations, and major replacements of a fixed, outside structure.
 - (f) Major earthwork for land improvements for parks and recreation fields.
 - (g) Blasting, demolition, dredging, drilling, excavating and/or shoring.
- (2) Construction, as it relates to a public improvement, does not include the following:
- (a) Annual, routine, or minor maintenance and repairs to existing buildings and structures, including, but not limited to, painting, patching, and carpet cleaning.
 - (b) Annual, routine, or minor maintenance and repairs to building systems, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, carpet replacement and other similar building services that are built into the facility.
 - (c) Annual, routine, or minor maintenance and repairs to fixed, outside structures or facilities, including, but not limited to, cleaning, sealing, landscaping, and tree removal.
 - (d) Cost and installation of special purpose equipment designed to prepare the structure for a specific use, including, but not limited to, furniture and equipment for an office.
- (3) For purposes of prequalification, as required by this Chapter, construction does not include demolition or deconstruction of any structure owned by the city's land bank or any structure located in an area zoned for residential use as defined in Title 33 of City Code.
- (gi) Construction Contract. Any agreement for the procurement of services, including labor and materials, for the construction of public improvements, including but not limited to streets, highways, bridges, sewers, water lines, power lines and plant facilities.
 - (j) Construction Fee. A combination of home office overhead and profit for services provided by a Construction Manager at Risk during the construction phase of a construction project, as defined in the terms of a construction management contract.

(k) Construction Manager at Risk (“CMAR”). A person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a construction project in accordance with Contract terms and who provides the City a guaranteed maximum price for the construction of public improvements. The term “manage,” used in this context, includes approving bidders and awarding subcontracts for furnishing materials regarding, or performing, construction, demolition, alteration, repair, or reconstruction. The term “construct” may include performing, or subcontracting for performing, construction, demolition, alteration, repair, or reconstruction.

(l) Construction Management Contract. A contract between the City and a Construction Manager at Risk obligating the Construction Manager at Risk to provide construction management services.

(m) Construction Management Services. A range of services that a Construction Manager at Risk may provide.

(n) Contractor. Any individual or business entity which has a contract with a city agency.

(o) Director. The chief officer of any city agency.

(p) Electronic Agent. A computer program or an electronic or other automated means used independently to initiate action or respond to electronic records or performances in whole or in part, without review or action by an individual, as set forth in Ohio Revised Code Section 1306.01(F) or a successor to that section.

(q) Electronic Signatures. The receipt of any authorized signature by any photographic, photostatic, or mechanical, computer-generated or digital means.

(r) Employee. Has the same meaning as Section 361.07.

(s) Employer. Has the same meaning as Section 361.06.

(t) Environmentally Preferable Product or Service. Materials, supplies, equipment, construction and/or services which have a lesser or reduced negative impact on human health and the environment when compared to competing materials, supplies, equipment, construction and services that serve the same purpose.

(u) Executive Officer. As determined by the director of finance and management or designee, any of the following natural persons, based upon the organization of the business entity and provided that the individual's work is related to the business entity's industrial classification code as reported to the federal government: chair of the board, chief executive officer or other chief officer, president, general counsel, or vice president or equivalent in charge of a business unit or division of a corporation; sole proprietor; owner; managing partner, senior partner,

administrative partner, member, manager or officer of a general or limited partnership, or limited liability company; trustee; or the equivalent of the aforementioned.

- (~~p~~v) Full-Time Employees. For persons directly performing construction service work in Ohio, full-time employees means the product of the total number of hours worked by all construction service work employees of the entity in the previous fiscal year divided by one thousand two hundred eighty (1,280). For all other persons performing work in Ohio, full-time employees means the product of the total number of hours worked by all other employees of the entity in the previous fiscal year divided by two thousand eighty (2,080).
- (~~q~~w) Health Insurance. An adequate and affordable health insurance benefit provided by an employer to an employee. The employer must provide the benefit as part of an overall compensation plan and the benefit cannot be limited to a specific project. A health insurance benefit is "adequate and affordable" if it meets both the minimum value and affordability requirements established in rules promulgated pursuant to Public Law 111-148, The Patient Protection and Affordable Care Act or a successor to that law. The benefit must otherwise meet the requirements of a "bona fide" fringe benefit, as defined in 29 CFR 4.171 or a successor to that section. An employer may provide a health insurance benefit through the Small Business Health Options Program, pursuant to Public Law 111-148, so long as it otherwise meets the criteria of this definition. For the purposes of construction prequalification, the foregoing shall apply only to those persons performing construction service work, as defined by rule of the director of finance and management or designee.
- (~~r~~x) Indefinite Quantity Contract. A contract that provides for an indefinite quantity of goods or services for a fixed time and fixed price, with deliveries or services to be scheduled at designated locations upon order.
- (~~s~~y) Licensed Construction Trade. A person or business entity who has a current and valid license issued or recognized by the city, the Ohio construction industry licensing board, pursuant to Ohio Revised Code Section 4740.01 or a successor to that section, or the Ohio state fire marshal, pursuant to Ohio Revised Code Section 3737.65 or a successor to that section, to perform work as a contractor or subcontractor in the following trades: heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, hydronics, or fire protection or firefighting equipment installed within a public improvement, or any other skilled trade approved by the director of finance and management or designee.
- (~~t~~z) Life Cycle Costs. The cost of operating and maintaining an item or equipment over the duration of its useful life.
- (~~u~~aa) Local Bidder. A bidder or offeror who meets the definition of a local business, as determined by the director of finance and management or his/her designee.

~~(v)~~bb) Local Business. A business entity that has current and fixed local occupancy and is a taxpayer in good standing, as determined by the finance and management director or designee.

(1) Current and Fixed Local Occupancy. A business entity that submits proof to the city demonstrating that it owns or leases office space within the corporate limits of the city of Columbus and that such office space meets all of the following criteria:

(a) Is occupied and used by at least one (1) executive officer of the business entity; and

(b) Has been owned or leased by the business entity for no less than twenty-four (24) consecutive months immediately preceding the date such proof is submitted; or if a business entity has relocated within the city of Columbus during the preceding twenty-four (24) months, it has owned or leased otherwise eligible office space for twenty-four (24) consecutive months immediately preceding the date such proof is submitted; and

(c) Is none of the following: Post Office boxes or similar mailing addresses; moveable work sites, such as construction trailers or offices at a construction job site; locations zoned for residential use, unless such location is the sole office space owned and/or leased by the business entity; or locations occasionally rented or used by the business entity for temporary business functions, such as office meetings or teleconferences.

(2) Taxpayer in Good Standing. A business entity that submits proof to the city demonstrating that it has filed returns for both net profits and payroll taxes with the city of Columbus for no less than two (2) consecutive fiscal years preceding the date such proof is submitted. The business entity must further submit proof to the city demonstrating one (1) of the following:

(a) That the business entity is current and compliant in the payment of any city of Columbus taxes on payroll and net profits at the time such proof is submitted; or

(b) If the business entity is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the business entity has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted.

~~(w)~~ee) Local Workforce. A workforce whereby at least fifteen (15) percent of the business entity's full-time equivalent employees in Ohio reside in the city of Columbus, as determined by the finance and management director or designee.

~~(x)~~dd) Manifestly Impractical. Readily perceived or obvious to not be useful or advantageous.

~~(y)~~ee) Not-for-Profit Contract. An agreement for the delivery of services to the public, which are not currently performed or provided by an existing city agency, for maintaining or improving the health and welfare of the citizens of the city, which is made between a city agency and another governmental agency or a not-for-profit organization as recognized by the Internal Revenue Service, the Department of Housing and Urban Development, or any other applicable

federal or state agency, which is not in direct competition with a private for-profit organization capable of delivering the same services.

(zff) Offeror. An individual or business entity which has expressed an interest in obtaining a city contract by responding to a request for statements of qualifications or request for proposals.

(gg) Open book pricing method. A method in which a construction manager at risk provides the city agency, at the city agency's request, all books, records, documents, and other data in its possession pertaining to the bidding, pricing, or performance of a construction management contract awarded to the construction manager at risk.

(hh) Preconstruction fee. A combination of home office overhead and profit for services provided by a Construction Manager at Risk during the preconstruction phase of a construction project, as defined in the terms of a construction management contract.

~~(aa)~~ ii) Prequalified Not Responsible. An entity who has not met the requisite criteria and/or not received a score necessary to be deemed responsible or provisionally responsible by prequalification and, as result, is not approved to bid or subcontract on construction service contracts with the city.

~~(bb)~~ jj) Prequalified Provisionally Responsible. An entity who has met the requisite criteria and received a score necessary to be deemed provisionally responsible by prequalification, and, as result, is approved on a temporary basis, not to exceed ~~twelve (12)~~ twenty-four (24) consecutive months from the date of approval, to bid or subcontract on construction service contracts with the city.

~~(ee)~~ kk) Prequalified Responsible. An entity who has met the requisite criteria and received a score necessary to be deemed responsible by prequalification and, as result, is approved to bid or subcontract on construction service contracts with the city.

~~(dd)~~ ll) Procurement. The buying, purchasing, renting, leasing or acquisition by any other manner of any materials, supplies, equipment, construction, service or professional service.

~~(ee)~~ mm) Professional Service. A service which usually requires advanced training and/or a significant degree of expertise to perform, and which often requires official certification or authorization by the state as a condition precedent to the rendering of such service. By way of example, professional services include the personal services rendered by architects, attorneys-at-law, certified public accountants, financial consultants, city and regional planners, management consultants and professional engineers.

~~(ff)~~ nn) Public Improvement. All buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by the city of Columbus or by any person or business entity who, pursuant to a contract with the city of Columbus, constructs any structure or works for the city of Columbus. For the purposes of this definition,

"city of Columbus" means any officer, board, or commission of the city of Columbus authorized to enter into contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any entity supported in whole or in part by funds from the city of Columbus and shall apply to such entities' expenditures made in whole or in part from such public funds.

~~(ggoo)~~ Quality Training. With respect to persons performing licensed construction trade work in Ohio, employees who have done at least one (1) of the following:

(1) Graduated from or are participating in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council, as defined in the Ohio Administrative Code Section 4101:9-4-02(C) or a successor to that section, or the United States Department of Labor, as defined in 29 CFR 29.2(f) or a successor to that section, if such apprenticeship programs are available; or

(2) Have at least five (5) years of experience in the specific trade.

~~(hhpp)~~ Responsible Bidder. A bidder who has the capability and capacity in all respects to fully perform the contract requirements and whose experience, integrity and reliability will assure good faith performance.

~~(iigg)~~ Responsible Wage. The wage paid to a bidder's employees for custodial, landscaping, guard and security services, cleaning and recycling services rendered to any city agency, which shall be equal to or better than the wage actually paid to the lowest paid city full-time employee per the city's effective contracts with its bargaining units.

~~(jjrr)~~ Responsibility Prequalification. The annual process by which an entity is approved or disapproved to bid or subcontract on construction service contracts with the city, based on a uniform evaluation of objective criteria related to the responsibility of the entity.

~~(kkss)~~ Responsibility Prequalification Application. A form prescribed by the director of finance and management whereby an entity may seek responsibility prequalification.

~~(Htt)~~ Responsive Bidder. A bidder who has submitted a bid which conforms in all material respects to the requirements set forth in an invitation for bids.

~~(mmuu)~~ Retirement or Pension Plan. A retirement or pension benefit provided by an employer to an employee as part of an overall compensation plan and not as a benefit limited to a specific project. The plan must meet the requirements of a "bona fide" fringe benefit, as defined in 29 CFR 4.171 or a successor to that section. For the purposes of construction prequalification, the foregoing shall apply only to those persons performing construction service work, as defined by rule of the director of finance and management or designee.

~~(nnvv)~~ Subcontractor. Any business entity who undertakes to perform any portion of work on a city project under a contract with an entity other than a city agency.

~~(ooww)~~ Universal Term Contract (UTC). An agreement authorized by ordinance of city council and established by the director of finance and management or designee, for the option to purchase or sell an estimated amount of goods or services at a specified rate or price schedule for a specified time period.

~~(ppxx)~~ Unsatisfactory Judgment. A final decision, order, or verdict in a judicial, quasi-judicial or administrative proceeding, after all available appeals have either been exhausted or waived, in which a determination of civil liability, criminal conviction, or administrative penalty was imposed upon the individual or entity for violating any applicable federal, state, or local laws, rules, or regulations.

329.23 - Process for awarding construction contracts exceeding one hundred thousand dollars (\$100,000.00).

The procurement of construction service contracts estimated to cost more than one-hundred thousand dollars (\$100,000.00) shall be conducted under this section per either division (A) or division (B) as determined by the contracting city agency and reflected in the invitation for bids as follows:

(A) Traditional Invitation for Bids

- (a) The city agency shall prepare an invitation for bids (hereinafter "IFB") containing the specifications, any requirements established under Section 3903.10, and all contractual terms and conditions applicable to the procurement.
- (b) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least seven (7) days prior to the deadline for submission of bids, and, if the bid is let using an electronic agent, must be posted through an electronic procurement system or on a website maintained by the city at least twenty-one (21) days prior to the deadline for submission of bids. If exigent circumstances warrant, the finance and management director may direct a shorter time period for the advertisement. The city agency may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of bid opening.
- (c) The city shall open bids publicly in the presence of one or more witnesses, one of whom must be another city employee, at the time and place, designated in the invitation for bids. The city shall record the name of each bidder, the amount of each bid and such other relevant information as the finance and management director or designee deems appropriate. The record and each bid shall be open to public inspection. If bids are opened through an electronic agent approved by the finance and management director or designee, the city shall

immediately publicly provide through the same electronic agent the required information. If bids are opened through an electronic agent approved by the finance and management director or designee, the requirement of a public opening in the presence of witnesses is not applicable.

- (d) The director authorized to make the expenditure shall evaluate each bid and award the contract to the lowest, responsive, responsible, and best bidder, subject to the provisions of Section 329.212.
- (e) The director shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest.
- (f) Each bid submitted under this section shall be evaluated as follows:
 - (1) The city reserves the right to reject a bid that is deemed non-responsive by the city. The following factors shall be used to determine whether a bid is responsive:
 - (a) Whether bidder has submitted more than one (1) bid for the same work from an individual or entity under the same or different name, or corporation under the same name, or corporations with one (1) or more of the same persons as officers or directors of such corporations, or corporations which are holding companies, parent companies or holding companies that are subsidiaries of such corporations.
 - (b) Whether bid prices are materially unbalanced as defined in the relevant sections of the technical specifications manual specified in the invitation for bid, where applicable.
 - (c) Whether bidder has failed to comply with pre-qualification requirements as defined in the relevant sections of the technical specifications manual specified in the invitation for bid, where applicable.
 - (d) Whether the bid contains conditions or qualifications not provided in the invitation for bid.
 - (e) Whether the bidder failed to acknowledge addenda or the bid does not contain complete forms required to be included in the bid and the city determines that the bidder's bid does not respond to the invitation for bid in all material respects or contains irregularities or deviations which affects the amount of the bid or otherwise gives the bidder a competitive advantage.
 - (f) Whether bidder adds a provision reserving the right to accept or reject an award.
 - (g) Whether bidder fails to submit a unit price for each contract item listed, when required by the invitation for bid.
 - (h) Whether bidder fails to submit a lump sum price where required.
 - (i) Whether the bidder fails to submit the required bid guarantee or submits an irregular bid guarantee for the amount required.

- (j) Whether the bid contains other alterations, omissions, or errors such that, in the judgment of the city, the bid does not respond to the invitation for bid in all material respects, or contains irregularities or deviations from the invitation for bid that affect the amount of the bid or otherwise gives the bidder a competitive advantage.
- (k) Whether the bidder has complied with the requirements of Section 329.20(f) regarding subcontractors.
- (2) The city reserves the right to reject a bid that is deemed non-responsible by the contracting agency. The following project specific factors shall be used to determine whether a bid is responsible:
 - (a) Whether the bidder has actively engaged in the construction industry and has experience in the area of construction service for which the bid has been submitted.
 - (b) Whether the bidder has a successful record of complying with and meeting completion deadlines as well as controlling costs on similar construction projects.
 - (c) Whether the bidder has demonstrated to the city's satisfaction adequate and appropriate resources, including, but not limited to, specialized equipment and human resources for the project.
 - (d) Whether the bidder has substantial uncompleted work that would hinder the success of the project.
 - (e) With respect to a bidder whose bid is determined to be ten (10) percent or more below that of the next lowest bidder, supplemental details regarding the bid and/or historical information regarding performance and costs on similar contracts to demonstrate the bidder's ability to complete the contract at the price specified.
- (3) No credit against price may be provided in evaluating the lowest bidder.
- (g) No contract awarded under this section shall be effective until approved by ordinance of city council.

(B) Construction Manager At Risk

- (a) The city agency shall prepare an invitation for proposals to contract with a construction manager at risk. The notice shall include a general description of the project, a statement of the specific construction management services required, any requirements established under Section 3903.10, and a description of the qualifications required for the project.
- (b) The city agency shall give notice that proposals will be received by advertisement in the Columbus City Bulletin at least seven (7) days prior to the deadline for submission of proposals, and, if the solicitation is let using an electronic agent, must be posted through an

electronic procurement system or on a website maintained by the city at least twenty-one (21) days prior to the deadline for submission of proposals. If exigent circumstances warrant, the finance and management director may direct a shorter time period for the advertisement. The city agency may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of proposal opening.

- (c) The city shall open proposals publicly in the presence of one or more witnesses, one of whom must be another city employee, at the time and place, designated in the invitation for proposals. The city shall record the name of each offeror and such other relevant information as the finance and management director or designee deems appropriate. The record and each proposal shall be open to public inspection. If proposals are opened through an electronic agent approved by the finance and management director or designee, the city shall immediately publicly provide through the same electronic agent the required information. If proposals are opened through an electronic agent approved by the finance and management director or designee, the requirement of a public opening in the presence of witnesses is not applicable.
- (d) The director for the city agency responsible for the expenditure shall appoint an evaluation committee (hereinafter "committee") to evaluate proposals received. The committee shall consist of an odd number of members, no less than three (3), selected from the funding city agency, other city agencies, or both. The committee may also include noncity employees so long as neither they, nor any member of their families, nor any of their business associates have an interest in the contract being awarded.
- (e) (1) The committee shall evaluate all proposals received and rank the proposals based upon the evaluation criteria specified in the invitation for proposals. The committee may select three (3) or more of the highest qualified offerors with which to hold additional discussions. Offerors not selected for further discussions may be excluded from further consideration for the contract upon notification by the committee chair. The evaluation criteria shall include competence to perform the required construction management services as indicated by the offeror's technical training, education, and experience, particularly of the construction manager at risk personnel who would be assigned to perform the services. Evaluation criteria may also include the offeror's experience, past performance, safety record, and methodology, and other appropriate factors that demonstrate the capability of the offeror.

(2) The committee shall select not fewer than three offerors considered to be the most qualified to provide the required construction management services, except that the committee may select fewer than three when it determines in writing that fewer than three qualified offerors are available.

(3) The committee shall provide each offeror selected under subsection (2) with a description of the project, including a statement of available design detail, a description of how the offeror's

proposed guaranteed maximum price for the project shall be determined, including the level of design detail upon which the guaranteed maximum price shall be based, the form of the construction management contract, and a request for a pricing proposal. Each pricing proposal shall contain at least the following regarding the construction manager at risk: a list of key personnel for the project; a statement of hourly rates, a statement of the general conditions and contingency requirements; and a fee proposal divided into a preconstruction fee, a construction fee, and the portion of the construction fee that constitutes the At risk fee.

(4) The committee shall evaluate the submitted pricing proposals and may hold discussions with individual construction managers at risk to explore their proposals further, including the scope and nature of the proposed services and potential technical approaches.

(5) After evaluating the pricing proposals, the committee shall rank the selected construction managers at risk based on its evaluation of the value of each pricing proposal, with such evaluation considering the proposed cost and qualifications.

(f) The director of the city agency responsible for the expenditure shall direct negotiations for a construction management contract with the construction manager at risk whose pricing proposal said director determines to be the best value.

(g) Contract negotiations for the construction management contract shall be directed toward:

(1) Ensuring that the construction manager at risk and the city agency mutually understand the essential requirements involved in providing the required construction management services, including the provisions for the use of contingency funds and the possible distribution of savings in the final costs of the project;

(2) Ensuring that the construction manager at risk will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the construction management contract;

(3) Agreeing upon a procedure and schedule for determining a guaranteed maximum price using an open book pricing method that shall represent the total maximum amount to be paid by the city agency to the construction manager at risk for the project and shall include a stipulated guaranteed maximum cost for the labor and materials, the cost of its general conditions, the contingency, and the fee payable to the construction manager at risk.

(i) Upon reaching an agreement between the construction manager at risk and the city agency regarding the procedure and schedule for determining a guaranteed maximum price, the construction manager at risk shall disclose to the city agency, in writing, all contractors it has solicited or that it plans to solicit bids or proposals from for the project;

(ii) The construction manager at risk will provide advance written notice to the city agency of its intention to use a contractor other than a contractors designated as required

by 329.23 (B)(g)(3)(i), including the reasons for the change, and will consult with the city agency prior to implementing any such change;

(iii) Written notices from construction managers at risk received by the city agency regarding changes to designated contractors shall be posted on the website of the Department of Finance and Management;

(4) Establishing the criteria for prequalification of prospective bidders on subcontracts that shall:

(i) Include the experience of the bidder, the bidder's financial condition, conduct and performance on previous contracts, facilities, management skills, and ability to execute the contract properly;

(ii) Further any goals set as part of a diversity and inclusion program required by the city or by applicable law;

(iii) Require prospective bidders to affirmatively state that they have not violated any affirmative action program during the last five years preceding the date of the prequalification application; and

(iv) Require a prospective bidder to submit proof of current licenses to perform the work as required by a public authority or by applicable law.

(v) Require prospective bidders to comply with the responsibility prequalification provisions of 329.21 and 329.211.

(vi) Require prospective bidders to provide the number of years in business under present and former business names.

(vii) Require prospective bidders to provide a complete listing of all ongoing and completed public and private construction contracts of the bidder in the last three years, including the nature and value of each contract and the name, address, and phone number of a representative of the owner of each related project.

(viii) Require prospective bidders to certify they have implemented an OSHA compliant safety Program and provide evidence of such upon request.

(ix) Require prospective bidders for a skilled contract (i.e., plumbing, electrical, HVAC or fire contract) to certify they will not subcontract greater than seventy-five percent (75%) of the awarded contract.

(x) Require prospective bidders to certify they do not have an Experience Modification Rating of greater than 1.5 with respect to the Bureau of Workers' Compensation risk assessment rating, as adjusted for comprehensive changes in the rating made by the Bureau from time to time.

(h) (1) If the city agency fails to negotiate a construction management contract with the construction manager at risk selected in subsection (f), the city agency shall inform the construction manager at risk, in writing, of the termination of negotiations.

(2) Upon terminating negotiations, the city agency may enter into negotiations as provided in this section with another construction manager at risk as the director of the city agency directs.

(i) No contract awarded under this section shall be effective until approved by ordinance of city council. If the city agency and construction manager at risk fail to agree on a stipulated guaranteed maximum cost for the labor and materials and/or fail to agree on a guaranteed maximum price, nothing in this section shall prohibit the City from allowing the construction manager at risk to provide the management services that a construction manager is authorized to provide. If the city agency and the construction manager at risk agree to a stipulated guaranteed maximum cost for the labor and materials and a guaranteed maximum price, no such modification of the construction management contract to incorporate the agreed to terms shall be effective until approved by ordinance of city council.

(j) Before construction begins pursuant to a construction management contract with a construction manager at risk, the construction manager at risk shall provide a surety bond to the city agency per Section 329.14.

(k) Nothing in this section affects the City's right to accept or reject any or all proposals in whole or in part.