



City of Columbus

Legislation Report File Number: 1823-2022

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

Emergency

File ID:

1823-2022 **Type:**

Ordinance **Status:** Passed

Version:

1 ***Committee:** Rules & Reference Committee

File Name:

File Created: 06/17/2022

Final Action: 07/14/2022

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.:

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 in to order better implement policy recommendations from the 2019 Disparity Study; and to declare an emergency.(\$0.00)

Sponsors: Elizabeth Brown

Attachments: 1823-2022RevisionstoChapter329.docx



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Approval History

Version	Seq #	Action Date	Approver	Action	Due Date
1	1	6/17/2022	PURCHASING APPROVER	Approved	6/21/2022
1	2	6/17/2022	Adam Robins	Approved	6/21/2022
1	4	6/22/2022	Adam Robins	Delegated	
1	5	6/23/2022	Christopher Long	Approved	6/23/2022
1	6	6/23/2022	Kathy Owens	Approved	6/27/2022
1	7	6/23/2022	ATTORNEY APPROVER	Approved	6/27/2022
Notes: Inb					
1	8	6/24/2022	ODI APPROVER	Approved	6/27/2022
1	9	6/24/2022	Auditor Reviewer	Approved	6/28/2022
Notes: MNK/blp					
1	10	6/24/2022	AUDITOR APPROVER	Approved	6/28/2022
Notes: MNK/mah					
1	11	6/30/2022	ATTORNEY APPROVER	Approved	6/28/2022
Notes: Inb					

History of Legislative File

Ver.	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Columbus City Council	07/11/2022	Approved				Pass
1	COUNCIL PRESIDENT	07/11/2022	Signed				
1	MAYOR	07/13/2022	Signed				
1	CITY CLERK	07/14/2022	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



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Attorney's Office as
to its form and legality only.

Explanation

BACKGROUND: In July 2021, Ordinance 2074-2021 passed City Council, implementing changes to chapter 329 of the City Code. These changes were made to assist in implementing the results of the disparity study, which were announced in 2019. During the course of implementing the code changes, the need for corrections to be made to correct minor drafting errors became apparent. Additionally, as amendments were crafted to address these errors, suggested changes to the structure of the chapter were also incorporated to improve its readability.

The purpose of this ordinance is to make those minor structural changes to chapter 329 in order to provide greater clarity and to correct those minor drafting errors.

Title

To amend various sections of Chapter 329 of the Columbus City Codes in to order better implement policy recommendations from the 2019 Disparity Study; and to declare an emergency.(\$0.00)

Body

WHEREAS, in 2021, City Council passed ordinance 2074-2021, implementing recommendations made by the Office of Diversity and Inclusion as a result of an independent disparity study to determine whether statistical disparities exist between the City's procurement with businesses owned by minority groups or women and white male businesses; and

WHEREAS, minor drafting errors have been revealed during the course of implementing these important changes to chapter 329 of the City Code; and

WHEREAS, it is necessary to make corrective changes in order to clarify and harmonize chapter 329 of the Columbus City Codes; **NOW, THEREFORE**,

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

SECTION 1. That Sections 329.01, 329.14, 329.18, 329.192, 329.20, 329.201, 329.202, 329.21, 329.211, 329.212, 329.213, 329.22, 329.23, 329.26, and 329.28, are hereby amended to read as follows per the attached word document:

Ordinance 1823-2022 Revisions to Chapter 329 Attachment

SECTION 2. That existing Sections That Sections 329.01, 329.14, 329.18, 329.192, 329.20, 329.201,

329.202, 329.21, 329.211, 329.212, 329.213, 329.22, 329.23, 329.26, and 329.28, are hereby repealed.



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SECTION 3. 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.

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.
- (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.
- (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) **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.
- (f) **City Agency.** Any department of the government of the city of Columbus.
- (g) **Contract.** Any agreement for the procurement of materials, supplies, equipment, construction, service or professional service made between a city agency and a contractor.
- (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.
- (i) 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~~ business entity 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.
- (v) First-tier subcontract. A subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.
- (~~w~~W) 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).
- (~~w~~X) 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.
- (~~y~~Y) 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.
- (~~y~~Z) 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.

~~(z~~aa) Life Cycle Costs. The cost of operating and maintaining an item or equipment over the duration of its useful life.

~~(aabb)~~ 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.

~~(bbcc)~~ 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.

~~(eedd)~~ 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.

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

~~(eeff)~~ 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.

~~(ffgg)~~ 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.

~~(gggh)~~ 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.

~~(hhii)~~ 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.

~~(ijj)~~ 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.

~~(jjkk)~~ 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 twenty-four (24) consecutive months from the date of approval, to bid or subcontract on construction service contracts with the city.

~~(kkll)~~ 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.

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

~~(mmnn)~~ 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.

~~(nnoo)~~ 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.

~~(oopp)~~ 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 documented experience in the specific trade.
- ~~(ppqq)~~ 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.
- ~~(qqrr)~~ 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.
- ~~(rrss)~~ 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.
- ~~(sstt)~~ Responsibility Prequalification Application. A form prescribed by the director of finance and management whereby an entity may seek responsibility prequalification.
- ~~(ttuu)~~ 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.
- ~~(uuvv)~~ 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.
- ~~(vwww)~~ 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.
- ~~(wwwx)~~ 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.
- ~~(xyyy)~~ 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.

329.14 Bid and performance guarantees.

- (a) Construction Contracts. Each construction contract bid shall contain the full name of every person or company interested in the same and shall require a bid guarantee that if the bid is accepted a contract shall be executed. For construction contracts estimated to cost ~~valued at~~ over \$100,000.00 (One Hundred Thousand Dollars), the resulting contract shall require a performance and payment bond. Neither a performance bond nor a payment bond shall be required for construction contracts estimated to cost ~~valued at~~ \$100,000.00 (One Hundred Thousand Dollars) or under.
 - (1) The required type of bid guarantee shall be identified in the invitation for bid and may take the form of a bid or proposal bond, a certified or cashier's check drawn on a solvent bank, or a letter of credit pursuant to Chapter 1305 of the Ohio Revised Code. If a bid or performance and payment bond is required, the bid or performance and payment bond shall be issued by a guaranty company authorized to do so under the Ohio Revised Code or by a surety who is:
 - (a) A resident of this state;
 - (b) Worth, in the aggregate, double the sum to be secured, beyond the amount of their debts; and
 - (c) Have property liable to execution in the state equal to the sum to be secured.
 - (2) The bid guarantee shall be for a minimum ten (10) percent of the bid amount and the performance and payment bond shall be for a minimum of fifty (50) percent of the contract amount and as identified in the invitation for bid.
- (b) Supply and Service Contracts. The finance and management director or designee, or city agency director or designee, may require bid and/or performance bonds or other adequate security to protect the city's interests on those supply and service contracts valued at over \$100,000.00 (One Hundred Thousand Dollars). The city shall set forth any such guarantee requirements in the solicitation.
 - (1) If a bid or performance bond is required, the bid or performance bond shall be issued by a guaranty company authorized to do so under the Ohio Revised Code or by a surety who is:
 - (a) A resident of this state; and
 - (b) Worth, in the aggregate, double the sum to be secured, beyond the amount of their debts; and
 - (c) Have property liable to execution in the state equal to the sum to be secured.
 - (2) If a certified or cashier's check is required, it shall be drawn on a solvent bank. If a letter of credit is required, is shall be pursuant to Chapter 1305 of the Ohio Revised Code.

329.18 Competitive sealed bidding.

- (a) The establishment of universal term contracts and/or the procurement of all materials, supplies and equipment shall be conducted under this section as follows:
 - (1) The director of finance and management or designee 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.
 - (2) The director of finance and management or designee shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids, and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar 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 director of finance and management or designee 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.
 - (3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the director of finance and management or designee deems appropriate.
 - (4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.
 - (5) 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 outside witnesses is not applicable.
 - (6) After consulting with the city agency, the director of finance and management or designee shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.
 - (7) The director of finance and management or designee shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest, or to any bidder not recommended by the city agency.
 - (8) In determining the responsibility of a bidder, consideration shall be given to bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action or diversity and inclusion programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, women business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.

- (9) All successful bidders entering into a contract with the city, and their listed subcontractors, shall have a current and valid contract compliance certification number, pursuant to provisions set forth in Title 39.
 - (10) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.
 - (11) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.
 - (12) No contract greater than \$50,000.00 awarded under this section shall be effective until approved by ordinance of city council.
- (b) The procurement of all service contracts except construction, custodial, landscaping, guard and security services, cleaning and recycling services, and professional services shall be conducted under this section as follows:
- (1) 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. The city agency may prepare a bid for a definite quantity service contract or an indefinite quantity service contract.
 - (2) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids, and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar 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.
 - (3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the city agency deems appropriate.
 - (4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.
 - (5) 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 outside witnesses is not applicable.

- (6) The director authorized to make the expenditure shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.
 - (7) 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.
 - (8) In determining the responsibility of a bidder, consideration shall be given to bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action or diversity and inclusion programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, women business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.
 - (9) All successful bidders entering into a contract with the city, and their listed subcontractors, shall have a current and valid contract compliance certification number, pursuant to provisions set forth in Title 39.
 - (10) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.
 - (11) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.
 - (12) No contract greater than \$50,000.00 awarded under this section shall be effective until approved by ordinance of city council. A city agency may place periodic orders from an indefinite quantity service contract authorized in subsection (1), so long as total expenditures do not exceed fifty thousand dollars (\$50,000) in any fiscal year from the specified indefinite quantity service contract. A city agency may place periodic orders from an indefinite quantity services contract authorized in subsection (1), in an amount exceeding fifty thousand dollars (\$50,000), only if the contract is approved by ordinance of city council.
- (c) The procurement of all custodial, landscaping, guard and security service, cleaning and recycling service contracts shall be conducted under this section as follows:
- (1) 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. The city agency may prepare a bid for a definite quantity contract or an indefinite quantity contract.
 - (2) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids, and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar 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.

- (3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the city agency deems appropriate.
- (4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.
- (5) 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 outside witnesses is not applicable.
- (6) The director authorized to make the expenditure shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.
- (7) 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.
- (8) In determining the responsibility of a bidder, consideration shall be given to the following:
 - (a) Bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action or diversity and inclusion programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, women business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city;
 - (b) Whether the bidder employs a local workforce, as defined in Section 329.01; and
 - (c) That the bidder shall pay a responsible wage and provides its employees a health insurance benefit as defined in Section 329.01 to the employees proposed to directly perform the work specified in the city bid solicitation.
- (9) For the purpose of divisions (8)(b) and (c) only, exemption from these considerations is provided for bidders that employ twenty five (25) or fewer full-time people.
- (10) For the purpose of divisions (8)(b) and (c) only, exemption from these considerations is provided for bidders where the city solicits the bids for these services in accordance with Section 329.19(d) procurement of materials supplies, equipment, and services other than construction and professional services not exceeding fifty thousand dollars (\$50,000.00).
- (11) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.

- (12) The finance and management director or designee shall annually provide to city agencies the responsible wage, as defined in Section 329.01.
 - (13) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest responsive, responsible and best bidder awarded the contract.
 - (14) All successful bidders entering into a contract with the city, and their listed subcontractors, shall have a current and valid contract compliance certification number, provisions set forth in Title 39.
 - (15) No contract greater than \$50,000.00 awarded under this section shall be effective until approved by ordinance of city council. A city agency may place periodic orders from an indefinite quantity service contract authorized in division (c)(1), so long as total expenditures do not exceed fifty thousand dollars (\$50,000) in any fiscal year from the specified indefinite quantity service contract. A city agency may place periodic orders from an indefinite quantity services contract authorized in division (c)(1), in an amount exceeding fifty thousand dollars (\$50,000), only if the contract is approved by ordinance of city council.
- (d) Multiple-source contracting/Universal Term Contract
- (1) General. A multiple-source award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror.
 - (2) Limitations on use. A multiple-source award may be made when awards to two or more bidders or offerors for similar products are necessary for adequate delivery, service or product compatibility. Any multiple-source award shall be made in accordance with provisions of section 329.18.
 - (3) Contract and solicitation provisions. The city shall name all eligible users of the contract in the solicitation except that the city may add additional users to the contract upon approval of the contractor, where the needs are as described in the solicitation and doing so is in the best interests of the city. The city shall obtain the actual requirements of such users in accordance with the contract provided that:
 - (a) The city reserves the right to take bids separately if a particular quantity requirement arises which exceeds its normal requirement or an amount specified in the contract; and
 - (b) The city reserves the right to take bids separately if the finance and management director or designee approves a finding that the supply or service available under the contract will not meet a nonrecurring special need of the city.
 - (4) Intent to use. If a multiple-source award is anticipated prior to issuing a solicitation, the intent must be stated in the solicitation by informing potential bidders that the city shall reserve the right to make such an award and the criteria for award shall be stated in the solicitation.
- (e) Best value competitive sealed proposals.
- (1) Conditions for use. The city may award contracts estimated to cost in excess of \$50,000.00 by competitive sealed proposals. The requirements of 329.18(c)(8) and (9) shall be applicable for best value competitive sealed proposals utilized for custodial, landscaping, guard and security service, cleaning and recycling service contracts conducted under this section. This procurement method may only be used by the purchasing office with the express permission of the finance and management director. This authority cannot be delegated. This method may be used by the purchasing office for purchases on behalf of other city agencies.
 - (2) Invitation for proposals. An invitation for proposals shall be issued and shall contain the specifications, any requirements established under Section 3903.10, and all contractual terms,

and conditions applicable to the procurement. The relative importance of price and the other evaluation factors must be clearly identified in the request for proposals.

- (3) Other evaluation factors that may be included in the city's invitation for proposals. In determining which proposal offers the best value for the city, the city shall when applicable, consider factors including:
 - (a) any relevant criteria specifically listed in the request for proposals;
 - (b) overall life of the system or equipment;
 - (c) cost of acquisition, operation, and maintenance of hardware or software included with, associated with, or required for the system or equipment during the city's ownership or lease;
 - (d) estimated cost of other supplies needed because of the acquisition;
 - (e) estimated cost of employee training needed because of the acquisition;
 - (f) estimated cost of necessary additional permanent employees because of the acquisition
 - (g) purchase price
 - (h) quality of the offeror's goods or services
 - (i) extent to which the goods or services meet the city's needs
 - (j) total long-term cost to the city to acquire the offeror's goods or services
 - (k) installation costs
- (4) Public notice. The city shall give adequate public notice of invitations for proposals of not less than twenty-one (21) calendar days prior to the date set forth therein for the opening of proposals, unless exigent circumstances require a shorter period, as determined by the finance and management director or designee. Such notice may include the use of an electronic solicitation system. The public notice shall state the place, date and time of bid opening.
- (5) Proposal opening. 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 bids. The city shall record the name of each proposer and such other relevant information as the finance and management director or designee deems appropriate. Once a contract is awarded, the record and each proposal shall be open to public inspection in accordance with section 329.05 of this chapter. If proposals are opened through a secure electronic agent approved by the finance and management director or designee, the requirement of a public opening in the presence of outside witnesses is not applicable.
- (6) Late Proposals. The city shall not open proposals it receives after the due date and time and shall reject such proposals as late.
- (7) The finance and management director or designee 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 non-city 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. An employee of the purchasing office as assigned by the finance and management director or designee shall serve as a non-scoring chair of the committee, not to be counted as a member of the committee. The non-scoring chair will facilitate the evaluation process.

- (8) The committee shall evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the invitation for proposals. The committee may select two (2) 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 discussions identified in this subsection may include, but are not limited to, presentations by the offerors to the committee to elaborate upon their qualifications, proposals, and/or other pertinent information. The committee may permit revisions of proposals so long as all offerors who are selected for additional discussions are given equal opportunity to revise their proposals.

- (9) Based upon the content of the proposals received including any revisions thereto, and upon any additional discussions with the offerors the committee shall rank the remaining offerors based upon the evaluation criteria specified in the invitation for proposals.
- (10) The committee chair shall submit the committee's ranking of the offerors along with a written explanation to the finance and management director or designee. The ranking and written explanation shall become part of the contract file.
- (11) The finance and management director or designee shall have discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The finance and management director or designee shall enter into contract negotiations with the selected offeror to determine the terms and conditions of the contract, including compensation to be paid by the city. If negotiations fail, negotiations with this offeror shall be terminated, and the finance and management director or designee may enter into contract negotiations with another offeror as selected by the director. This process may continue until a contract is successfully negotiated.
- (12) After successfully negotiating a contract, the finance and management director or designee shall submit legislation to city council requesting approval of the contract. In its request for approval, the finance and management director or designee shall explain the basis for the selection of the chosen contractor. No contract awarded under this section shall be effective until approved by ordinance of city council.

329.192 SLBE Small Contracts Rotation Program.

- (a) The finance and management director, in collaboration with the Office of Diversity and Inclusion, may establish a Small Contracts Rotation program for SLBEs, as defined in Chapter 3904, applied to the categories of construction, professional services, services, and goods contracts where the estimated contracts are anticipated to be valued at under one hundred thousand dollars (\$100,000.00). The director of finance and management is authorized to promulgate all rules and procedures necessary to establish said program.
- (b) The purpose of the Small Contracts Rotation program would be to provide an orderly and efficient method of awarding and equitably distributing low dollar value contracts among qualified SLBEs.
- (c) The director of finance and management, in collaboration with the Office of Diversity and Inclusion, shall be authorized to establish approved lists of not less than two SLBEs for each industry included within the program, and, as needed, compile specialized lists within industries. The City shall advertise, at least twice annually, for no less than twenty-one (21) days on an approved electronic procurement system, open enrollment in contract areas to be included in the small contracts rotation program.
- (d) SLBE contractors must retain sixty (60) percent of the contract value in any contract or purchase authorized by this section.

329.20 General provisions for construction contracts not exceeding five-hundred thousand dollars (\$500,000.00).

The requirements of this section apply to all construction service contracts, estimated ~~to not to~~ exceed five-hundred thousand dollars (\$500,000), to be awarded and approved under Section 329.23.

- (a) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the invitation for bid.
- (b) The finance and management director or designee shall prescribe the manner and form of bid submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of bid submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The bid submittal requirements and considerations herein shall apply equally to the bidder and any subcontractor of the bidder. The contracting agency must include the prescribed bid submittal forms in the invitation for bid.
- (c) When there is evidence of collusion among the bidders, the bids of those concerned in the collusion shall be rejected.
- (d) All successful bidders entering into a contract with the city, and their listed subcontractors, shall have a current and valid contract compliance certification number, pursuant to provisions set forth in Title 39.
- (e) Each bid shall contain the full name of every person or company interested in the same and such other relevant information as the city agency deems appropriate.
- (f) Regarding subcontractors, a bidder shall comply with all of the following requirements:
 - (1) Provide a list with its bid submission of all first-tier subcontractors the bidder intends to utilize for the project, as well as all subcontractors the bidder intends to utilize to demonstrate achievement of established MBE/WBE subcontracting goals. ~~and~~ Each the list shall be divided into two (2) parts, base bid (including contingency and allowances, if applicable) and alternate(s), if alternates are included in the city's bid document;
 - (2) List only subcontractors who are not currently suspended or debarred by the city and who have not been listed as having had an adverse determination by the Wage Theft Commission; and
 - (3) List one (1) subcontractor for each division of work to be performed as listed in the technical specifications, or section of work in the current edition of the City of Columbus Construction and Material Specifications, whichever is applicable, of the city's bid document. In circumstances where the bidder determines that more than one (1) subcontractor is needed to complete a division or section of work, a bidder shall explain in writing the reason(s) why multiple subcontractors are necessary, describe the work to be performed within any subdivision of a division or subsection of a section of work, and the dollar amount allocated to any subdivision of a division or subsection of work; and indicate which subcontractors are licensed construction trade subcontractors, as defined in Section 329.01;
 - (4) Demonstrate achievement of established MBE/WBE subcontracting goals or provide sufficient documentation of a good faith effort to meet established MBE/WBE Subcontracting Goals as defined and required under Title 39.
- (g) Failure to fulfill the ~~above-stated~~ requirements contained in divisions (f)(1) through (f)(3) shall may render the bid non-responsive. The bidder shall be given the opportunity to correct omissions in the requirements contained in division (f), so long as pricing does not change, and

the bidder submits with the written correction an affidavit attesting that the subcontractors required to be listed in divisions (f)(1) through (f)(3) were engaged to be utilized at the time of the submission of the bid. The bidder shall be given seven (7) calendar days after notification from the City to correct any omissions.

- (h) A contractor must obtain written consent from the director or designee of the contracting agency prior to subletting, selling, transferring, assigning, or otherwise relinquishing any rights, title, or interest in the work to any subcontractor not listed in the bid submittal or contract. The director or designee must, within a reasonable time, approve or disapprove a contractor's request. The decision shall be final. The contractor may seek the aforementioned written consent for reasons including, but not limited to, the following:
 - (1) After reasonable opportunity to do so, the subcontractor fails or refuses to execute a written contract for the scope of work specified in the bid and at the price specified in the bid;
 - (2) The subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;
 - (3) The subcontractor fails or refuses to meet the requisite licensing or bonding set before bid submittal;
 - (4) The contractor demonstrates to the contracting agency that the name of the subcontractor was listed as the result of an inadvertent clerical error;
 - (5) The subcontractor fails or refuses to perform its subcontract after reasonable opportunity to do so; or
 - (6) The contractor determines that additional specialty work not reasonably anticipated in the bid must be performed by subcontract.
 - (7) In the event the subcontractor to be replaced is a certified MBE or WBE, the prime contractor is required to make good faith efforts to replace the MBE/WBE with another committed licensed and prequalified MBE/WBE.
- (i) Upon request, the contractor and its subcontractors shall promptly furnish copies of all subcontracts and supply agreements.
- (j) A bidder shall not be awarded a construction contract if the bidder fails to comply with the provisions of this section.
- (k) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.
- (l) The finance and management director, in consultation with the city attorney, shall establish processes and standards to govern the conduct of any periodic random audits of the applications, bids and contracts provided for under this article.
- (m) All payments to subcontractors and suppliers shall be in accordance with the provisions of Ohio Revised Code Section 4113.61 or a successor to that section. A contractor must fully and promptly comply with requests for documentation relative to such payments.
- ~~(n) For any contract authorizing the demolition or deconstruction of a structure zoned for residential use, the contracting agency shall consider the criteria set forth under Section 329.211 in determining the lowest, responsive, responsible and best bidder.~~
- ~~(o) The Director shall provide to Council a bi-annual report, no later than September 30th of every other calendar year, beginning in 2023, reviewing the Construction Prequalification requirements to ensure the policy is meeting city and community goals.~~

329.201 General provisions for construction contracts exceeding five-hundred thousand dollars (\$500,000.00), but not exceeding two million dollars (\$2,000,000).

The requirements of this section, in addition to the requirements of Section 329.20 above, apply to all construction service contracts, estimated to exceed five-hundred thousand dollars (\$500,000), but not exceeding two million dollars (\$2,000,000), to be awarded and approved under Section 329.23.

- (a) A bid shall be deemed non-responsive if the bidder has not been prequalified responsible or prequalified provisionally responsible at the time of bid due date, pursuant to Section 329.21.
- (b) A bid submitted by a bidder prequalified responsible or provisionally responsible shall be deemed non-responsive if the bidder fails to submit to the contracting agency as part of its bid submission an affidavit stating one (1) of the following, whichever is applicable:
 - (1) That as of the date of bid submission, there have been no changes in the information disclosed in its application for responsibility prequalification; or
 - (2) That changes in the information disclosed in the bidder's application for responsibility prequalification have been reported to the director of finance and management or designee and that the bidder is still prequalified responsible or provisionally responsible.
- (c) Regarding subcontractors, a bidder shall comply with all of the following requirements:
 - (1) Indicate which subcontractors are licensed construction trade subcontractors, as defined in Section 329.01;
 - (2) State, via affidavit, that the bidder's licensed construction trade subcontractors are prequalified responsible or prequalified provisionally responsible at the time of bid submission;
- (d) Failure to fulfill the ~~above-stated~~ requirements contained in divisions (c), unless waived under division (e) below, (1) through (e)(2) may shall render the bid non-responsive. The bidder shall be given the opportunity to correct omissions in the requirements contained in division (c), so long as pricing does not change, and the bidder submits with the written correction an affidavit attesting that the subcontractors required to be listed in division (c) were engaged to be utilized at the time of the submission of the bid. The bidder shall be given seven (7) calendar days after notification from the City to correct any omissions.
- (e) The finance and management director or designee may waive the requirements of Sections 329.201(ca), 329.201(b) and 329.21 ~~as applied to a licensed construction trade subcontractor~~ if either of the following occurs:
 - (1) There is not a licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available to subcontract at the time of the submission of the bid ~~contract award~~; or
 - (2) The prequalified licensed construction trade subcontractor originally approved to subcontract discontinues performance on said subcontract and either of the following applies:
 - (a) There is not an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time; or
 - (b) There is an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time, but the use of that alternate would create an unreasonable delay in completion of the project.

- (f) In the event the originally approved licensed, prequalified construction trade subcontractor is a certified MBE or WBE, the prime contractor is required to make good faith efforts to replace the MBE/WBE with another committed licensed and prequalified MBE/WBE.

329.202 General provisions for construction contracts exceeding two million dollars (\$2,000,000.00).

The requirements of this section, in addition to the requirements of Sections 329.20 and 329.201, apply to all construction service contracts, estimated to exceed two million dollars (\$2,000,000), to be awarded and approved under Section 329.23.

- (a) Subcontractors performing any portion of work exceeding fifty thousand dollars (\$50,000) shall be required to meet all of the following at the time of the submission of the bid:
- (1) That the subcontractor provides health insurance as defined in Section 329.01.
 - (2) That the subcontractor provides a retirement or pension plan as defined in Section 329.01.
 - (3) For licensed construction trade subcontractors, that the subcontractor's employees meet the quality training criteria as defined in Section 329.01, provided that, for purposes of full inclusion and creation of entry-level opportunities in the construction trades, up to ten (10) percent of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.
- (b) Failure to fulfill the requirements contained in division (a) of this Section, unless waived under division (c) below, may render the bid non-responsive. The bidder shall be given the opportunity to correct omissions in the requirements contained in division (a), so long as pricing does not change, and the bidder submits with the written correction an affidavit attesting that the subcontractors required in division (a) were engaged to be utilized at the time of the submission of the bid. The bidder shall be given seven (7) calendar days after notification from the City to correct any omissions.
- (c) The finance and management director or designee may waive the requirements of Sections 329.202(a) if either of the following occurs:
- (1) There is not a subcontractor able to fulfill the requirements contained in divisions (a)(1) through (a)(3) of this Section at the time of submission of the bid; or
 - (2) The subcontractor originally approved to subcontract discontinues performance on said subcontract and either of the following applies:
 - (i) There is not an alternate eligible subcontractor available at that time and able to fulfill the above-stated requirements contained in divisions (a)(1) through (a)(3); or
 - (ii) There is an alternate eligible subcontractor available at that time that is able to fulfill the above-stated requirements contained in divisions (a)(1) through (a)(3), but the use of that alternate would create an unreasonable delay in completion of the project.

329.21 ~~Overall responsibility prequalification requirements for construction contracts exceeding five hundred thousand dollars (\$500,000.00).~~ Process for determination of responsibility prequalification.

The requirements of this section apply to all construction service contracts, estimated to exceed five hundred thousand dollars (\$500,000), to be awarded and approved under Section 329.23.

A city agency may enter into contracts on behalf of the city for construction services so long as it is in compliance with the provisions of this section. The provisions of this section are as follows:

- (a) The finance and management director or designee must propose and, ~~upon approval by ordinance of council,~~ shall apply a process for responsibility prequalification. The director or designee shall utilize the aforementioned process to deem an applicant prequalified not responsible, prequalified provisionally responsible, or prequalified responsible, whichever is applicable. Such process shall use a quantified point system which does all of the following:
 - (1) Allocates specific maximum and minimum points for each responsibility factor listed herein, provided that one (1) or more factors may be used to screen applicants for the purpose of summarily deeming an applicant prequalified not responsible;
 - (2) Establishes criteria for uniformly assigning points based on an objective evaluation of the application for each responsibility factor, such that similarly situated applicants are assigned the same point value for the same factor;
 - (3) Conducts an objective evaluation of the information provided in the application and any supporting evidence that has been received by the city or adduced as a result of an investigation by the city;
 - (4) Based on the aforementioned objective evaluation and based on the aforementioned criteria, assigns points to each responsibility factor considered in the application;
 - (5) Provides a score for the application by totaling the points assigned to each responsibility factor; and
 - (6) Establishes the minimum and maximum score ranges by which an applicant shall be deemed prequalified not responsible, prequalified provisionally responsible, or prequalified responsible based on the applicant's score.
- (b) The finance and management director or designee shall prescribe the form of the bi-annual (every other year) responsibility prequalification application and may prescribe a standardized questionnaire for objectively evaluating such application.
- (c) The finance and management director or designee shall make a determination regarding a responsibility prequalification application pursuant to this section and shall notify applicants of the determination in writing. The notification must state the reasons for the determination and inform the applicant of any available administrative review or appeal.
- (d) An applicant may appeal to the finance and management director or designee, in writing, the determination regarding the applicant's responsibility prequalification. After reasonable notice to the business entity involved and reasonable opportunity for that business entity to be heard, the finance and management director or designee shall make a determination regarding the appeal. The director of finance and management or designee shall issue a written decision and shall send a copy of the decision to the business entity involved. The decision shall state the reasons for the action taken. The decision of the finance and management director shall be final absent an appeal pursuant to this section.

- (e) After reasonable notice to the business entity involved and reasonable opportunity for that business entity to be heard, the finance and management director or designee may, for good cause shown and in consultation with the city attorney, revoke any entity's prequalification as responsible or provisionally responsible. Such revocation may not exceed three (3) years. The director of finance and management or designee shall issue a written decision and shall send a copy of the decision to the business entity involved. The decision shall state the reasons for the action taken. The decision of the finance and management director shall be final absent an appeal pursuant to this section.
- (f) (1) Within ten days, an individual or entity may appeal, in writing on a form determined by the director, a determination of prequalification denied by the director of finance and management under division (d) or a determination of revocation exercised by the director of finance and management under division (e) to an independent hearing officer appointed by the finance and management director. A failure by an individual or entity to exercise this right to appeal shall constitute a waiver of such right.
 - (2) Notification of the opportunity to be heard by the hearing officer shall be given at least ten (10) days prior to the hearing.
 - (3) The independent hearing officer shall determine by a preponderance of the evidence whether there are sufficient grounds to uphold the determination of the director and the length of time of the revocation, if applicable. Based on the evidence presented by all parties, the independent hearing officer may increase, decrease, or accept the director of finance and management's recommendation regarding the length of revocation.
 - (4) The independent hearing officer decision on prequalification or revocation shall be in writing.
 - (5) The failure of an individual or entity to appear at a prequalification or revocation hearing after notice may constitute a waiver of that person's right to contest the director's decision on prequalification or revocation. If the independent hearing officer determines that the person has waived the right to contest the director's decision under this division, the director of finance and management's decision shall become final.
- (g) All potential bidders and all licensed construction trade subcontractors seeking to perform any portion of work on city construction service work must submit to the finance and management director, or designee, a full and complete application for responsibility prequalification on a bi-annual basis (every other year), pursuant to this section. Entities currently prequalified responsible may sign an affidavit in the intervening years stating there has been no material changes to their previous application. Any material changes will require the submission of a new, full and complete application. The director of finance and management or designee may promulgate a renewal application for business entities currently prequalified responsible, which shall satisfy the requirements of this section.
- (h) Only potential bidders prequalified responsible or prequalified provisionally responsible by bid opening due date may be awarded a contract for city construction service work. Only licensed construction trade subcontractors prequalified responsible or prequalified provisionally responsible by bid opening due date may subcontract or perform on city construction service work. No business entity prequalified not responsible may receive or perform city construction service work.
- (i) A potential bidder or licensed construction trade subcontractor that is prequalified responsible may retain that status for twenty-four (24) consecutive months immediately following the date of that status determination.

- (j) A potential bidder or licensed construction trade subcontractor that is prequalified provisionally responsible may retain that status for twenty-four (24) consecutive months following the date of that status determination.
- (k) If a potential bidder or licensed construction trade subcontractor is deemed provisionally responsible and such bidder or subcontractor is not prequalified responsible within ~~twelve (12)~~ twenty-four (24) consecutive months following the date of the original status determination, they may not receive new city construction work or perform any portion of work on any new construction service project until they apply for responsibility prequalification as outlined in Section 329.21 and are determined to be prequalified responsible by the finance and management director or designee. The provisions of this division shall not affect eligibility to continue a current contract or subcontract for city construction work.
- (l) If a potential bidder or licensed construction trade subcontractor is deemed not responsible and such bidder or subcontractor is not prequalified responsible within twelve (12) consecutive months following the date of the original status determination, they may not receive new city construction work or perform any portion of work on any new construction service project until they apply for responsibility prequalification as outlined in Section 329.21 and are determined to be prequalified responsible by the finance and management director or designee. The provisions of this division shall not affect eligibility to continue a current contract or subcontract for city construction work.
- (m) The finance and management director or designee must promulgate rules regarding the following, at a minimum:
 - (1) The number of times a business entity may apply for responsibility prequalification in a set period of time;
 - (2) The length of time a business entity must wait prior to reapplying for responsibility prequalification after receiving a status determination;
 - (3) The length of time a business entity deemed provisionally responsible must wait to reapply for responsibility prequalification if such entity fails to be prequalified responsible within ~~twelve (12)~~ twenty-four (24) consecutive months following the date of the original status determination;
 - (4) The length of time a business entity deemed not responsible must wait to reapply for responsibility prequalification if such entity fails to be prequalified responsible within twelve (12) consecutive months following the date of the original status determination; and
 - (5) If a renewal application has been promulgated by the director or designee, the number of consecutive renewal applications that may be filed before a business entity must submit a full application for responsibility prequalification.

(n) The Director shall provide to Council a bi-annual report, no later than September 30th of every other calendar year, beginning in 2023, reviewing the Construction Prequalification requirements to ensure the policy is meeting city and community goals.

329.211 Responsibility prequalification criteria for construction contracts exceeding five-hundred thousand dollars (\$500,000.00), but not exceeding two million dollars (\$2,000,000).

The requirements of this section apply to all construction service contracts, estimated to cost no less than five hundred thousand dollars (\$500,000.00) and no more than two million dollars (\$2,000,000).

Responsibility prequalification, ~~as provided for in Section 329.21~~, shall be determined using the following criteria:

- (a) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets all of the following mandatory criteria:
 - (1) Whether the applicant has a current and valid worker's compensation insurance policy or is legally self-insured.
 - (2) Whether the applicant has a current and valid unemployment compensation insurance policy.
 - (3) Whether the applicant has attached an affidavit indicating that, at the time of bid submission, the applicant will provide a bid bond, certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code for the amount specified in the bid; and the applicant shall provide a notarized letter from its surety company that does all of the following: is dated within the last thirty (30) days; is signed by the surety company's attorney in fact; includes the surety power of attorney; and states that the surety is prepared to provide a performance and payment bond.
 - (4) Whether the applicant has signed an affidavit agreeing to make the business entity's financial statement for the most recently completed fiscal year available to the city for viewing upon request.
 - (5) Whether the applicant is not currently debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project.
 - (6) Whether the applicant is one (1) of the following: current and compliant in the payment of any city of Columbus taxes on payroll and net profits; or, if the applicant is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the applicant 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.
- (b) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets at least three (3) of the following five (5) criteria:
 - (1) Whether the applicant has a local workforce as defined in Section 329.01.
 - (2) Whether the applicant's employees meet the quality training criteria as defined Section 329.01, provided that, for purposes of full inclusion and creation of entry-level opportunities in the construction trades, up to ten (10) percent of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.
 - (3) Whether the applicant provides health insurance as defined in Section 329.01.
 - (4) Whether the applicant provides a retirement or pension plan as defined in Section 329.01.
 - (5) Whether the applicant is a local business as defined in Section 329.01.
- (c) If a business entity affirmatively meets the requirements of subsections (a) and (b), the following criteria shall be used to determine responsibility prequalification:
 - (1) Whether the applicant has been debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project within the last five (5) years.

- (2) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which a conviction was imposed for any crime related to its business conduct within the last ten (10) years.
 - (3) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which civil liability was imposed concerning the applicant's bid for and/or work on any public or private construction project within the last five (5) years.
 - (4) Whether the applicant has a history of breach of contract, or inferior or substandard performance on projects that have resulted in litigation being brought forth by the city within the last five (5) years.
 - (5) Whether the applicant has a record of claims against bonds secured on any public construction project within the last five (5) years.
 - (6) Whether the applicant has been assessed or paid liquidated damages for any construction project with either a public or private owner within the last five (5) years.
 - (7) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state and local laws and regulations within the last five (5) years.
 - (8) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable affirmative action or diversity and inclusion programs, or any local, state or federal laws prohibiting discrimination against job applicants or employees within the last five (5) years.
 - (9) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with Ohio's Drug-Free Workplace requirements, pursuant to Ohio Revised Code Section 153.03 or a successor to that section, within the last five (5) years.
 - (10) Whether the applicant is a socially responsible business, which shall be evidenced by a continuing relationship with at least one organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons reentering the community or by the business' sponsorship or signatory status with non-profit entity which sponsors a construction apprenticeship program, certified by the Ohio Apprenticeship Council or U.S. Department of Labor, which has a continuing relationship with at least one (1) organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons reentering the community. Such organizations shall be certified by the director of finance and management or designee.
- (d) All members of a joint venture must be individually pre-qualified responsible or provisionally responsible by bid opening due date to be awarded a contract under this provision. ~~Article III.~~

329.212 Responsibility prequalification criteria for construction contracts exceeding two million dollars (\$2,000,000).

The requirements of this section apply to all construction service contracts, estimated to exceed two million dollars (\$2,000,000). Responsibility prequalification, ~~as provided for in Section 329.21~~, shall be determined using the following criteria:

- (a) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets all of the following mandatory criteria:

- (1) Whether the applicant has a current and valid worker's compensation insurance policy or is legally self-insured.
- (2) Whether the applicant has a current and valid unemployment compensation insurance policy.
- (3) Whether the applicant has attached an affidavit indicating that, at the time of bid submission, the applicant will provide a bid bond, certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code for the amount specified in the bid; and the applicant shall provide a notarized letter from its surety company that does all of the following: is dated within the last thirty (30) days; is signed by the surety company's attorney in fact; includes the surety power of attorney; and states that the surety is prepared to provide a performance and payment bond.
- (4) Whether the applicant has signed an affidavit agreeing to make the business entity's financial statement for the most recently completed fiscal year available to the city for viewing upon request.
- (5) Whether the applicant is not currently debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project.
- (6) Whether the applicant is one (1) of the following: current and compliant in the payment of any city of Columbus taxes on payroll and net profits; or, if the applicant is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the applicant 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.
- (7) Whether the applicant's employees meet the quality training criteria as defined Section 329.01, provided that, for purposes of full inclusion and creation of entry-level opportunities in the construction trades, up to ten (10) percent of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.
- (8) Whether the applicant provides health insurance as defined in Section 329.01.
- (9) Whether the applicant provides a retirement or pension plan as defined in Section 329.01.
- (b) If a business entity affirmatively meets the requirements of subsection (a), the following criteria shall be used to determine responsibility prequalification:
 - (1) Whether the applicant has been debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project within the last five (5) years.
 - (2) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which a conviction was imposed for any crime related to its business conduct within the last ten (10) years.
 - (3) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which civil liability was imposed concerning the applicant's bid for and/or work on any public or private construction project within the last five (5) years.
 - (4) Whether the applicant has a history of breach of contract, or inferior or substandard performance on projects that have resulted in litigation being brought forth by the city within the last five (5) years.

- (5) Whether the applicant has a record of claims against bonds secured on any public construction project within the last five (5) years.
 - (6) Whether the applicant has been assessed or paid liquidated damages for any construction project with either a public or private owner within the last five (5) years.
 - (7) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state and local laws and regulations within the last five (5) years.
 - (8) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable affirmative action or diversity and inclusion programs, or any local, state or federal laws prohibiting discrimination against job applicants or employees within the last five (5) years.
 - (9) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with Ohio's Drug-Free Workplace requirements, pursuant to Ohio Revised Code Section 153.03 or a successor to that section, within the last five (5) years.
 - (10) Whether the applicant is a socially responsible business, which shall be evidenced by a continuing relationship with at least one organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons reentering the community or by the business' sponsorship or signatory status with non-profit entity which sponsors a construction apprenticeship program, certified by the Ohio Apprenticeship Council or U.S. Department of Labor, which has a continuing relationship with at least one (1) organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons reentering the community. Such organizations shall be certified by the director of finance and management or designee.
- (c) All members of a joint venture must be individually pre-qualified responsible or provisionally responsible by bid opening due date to be awarded a contract under this provision. ~~Article III.~~
- ~~(d) An applicant under this category shall affirm that any subcontractors Regarding subcontractors, a bidder shall comply with all of the following requirements:~~
- ~~(1) Provide a list with its bid submission of all subcontractors the bidder intends to utilize for the project, and the list shall be divided into two (2) parts, base bid (including contingency and allowances, if applicable) and alternate(s), if alternates are included in the city's bid document;~~
 - ~~(2) State, via affidavit, that the bidder's s Listed Subcontractors that who will perform any portion of work on the project exceeding fifty thousand dollars (\$50,000) shall be required to meet all of the following at the time of bid opening submission:~~
 - ~~(a) That the subcontractor provides health insurance as defined in Section 329.01.~~
 - ~~(b) That the subcontractor provides a retirement or pension plan as defined in Section 329.01.~~
 - ~~(c) For licensed construction trade subcontractors, that the subcontractor's employees meet the quality training criteria as defined in Section 329.01, provided that, for purposes of full inclusion and creation of entry level opportunities in the construction trades, up to ten (10) percent of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.~~

- ~~(3) Failure to fulfill the requirements contained in divisions (d)(2)(a) through (d)(2)(e) of this Section may shall render the bid non-responsive.~~
- ~~(4) The finance and management director or designee may waive the requirements of Sections 329.212(d)(2) as applied to a subcontractor if either of the following occurs:
 - ~~(a) There is not a subcontractor able to fulfill the requirements contained in divisions (d)(2)(a) through (d)(2)(e) of this Section at the time of the contract award; or~~
 - ~~(b) The subcontractor originally approved to subcontract discontinues performance on said subcontract and either of the following applies:
 - ~~(i) There is not an alternate eligible subcontractor available at that time and able to fulfill the above stated requirements contained in divisions (d)(2)(a) through (d)(2)(e); or~~
 - ~~(ii) There is an alternate eligible subcontractor available at that time, but the use of that alternate would create an unreasonable delay in completion of the project.~~~~~~
- ~~(5) In the event the originally approved contractor was a certified MBE or WBE, the prime contractor is required to make good faith efforts to replace the MBE/WBE with another MBE/WBE able to~~

329.213 - Local preference for construction contracts.

The award of construction service contracts shall comply with this section. Invitations for bids must notify potential bidders of these provisions and state that submission of a bid constitutes acknowledgement and acceptance of these provisions.

(a) If the lowest, responsive, responsible bid is not from a local bidder, and one (1) or more responsive, responsible bids submitted by local bidders are within one (1) percent of that non-local bid, the following shall apply:

(1) The contracting agency shall notify, in writing, any local bidders within one (1) percent of the non-local bid that they may be awarded the contract if they meet the lowest bid price, and shall provide a copy of this notification, in writing, to the non-local bidder who submitted the lowest, responsive, responsible bid.

(2) The notified local bidder(s) shall have two (2) business days from the date of notification to inform the city in writing if they agree to meet the lowest bid price and to provide a revised bid to demonstrate the same.

(3) If one (1) notified local bidder agrees to meet the lowest price and the city is satisfied that the revised bid is the lowest, responsive, responsible, and best, the city shall award the contract to that local bidder.

(4) If two (2) or more notified local bidders agree to meet the lowest bid price and the city is satisfied that one (1) or more of the revised bids is the lowest, responsive, responsible, and best, the city shall award the contract to such local bidder with the lowest original bid.

(5) If no notified local bidder agrees to meet the lowest price or if the city is not satisfied that any notified local bidder's revised bid is the lowest, responsive, responsible, and best, the city shall award the contract to the bidder with the lowest, responsive, responsible and best bid.

(6) Submission of a revised bid does not constitute a tie bid for the purposes of subsection (b).

(b) A tie bid shall be broken as follows:

(1) If a local bidder and a non-local bidder submit lowest, responsive, responsible, and best bids with the same bid price, such tie bid shall be award to the local bidder.

(2) If two (2) or more local bidders submit lowest, responsive, responsible, and best bids with the same bid price, such tie bid shall be awarded to a local bidder by chance using the process established in writing by the finance and management director or designee.

(3) In all other cases where two (2) or more bidders submit lowest, responsive, responsible, and best bids with the same bid price, such tie bid shall be awarded by chance using the process established in writing by the finance and management director or designee.

(c) The provisions of this section shall not apply to joint ventures unless all members of the joint venture are local businesses, as defined in Section 329.01.

329.22 Process for awarding construction contracts not exceeding one-hundred thousand dollars (\$100,000.00).

The procurement of construction service contracts estimated to cost no more than one-hundred thousand dollars (\$100,000.00) shall be conducted under this section as follows, provided that no purchase shall be artificially divided into smaller purchases to avoid the provisions of Section 329.23:

- (a) The city agency must make all specifications for such contracts available for a period of not less than five (5) days.
- (b) The city agency shall make reasonable efforts to secure bids from at least three (3) bidders and shall undertake reasonable measures to provide for competition among potential bidders. These requirements shall be satisfied if the director uses an electronic procurement system approved by the finance and management director.
- (c) 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 ~~329.213242~~.
- (d) 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 the bid contains conditions or qualifications not provided in the invitation for bid.
 - (d) 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.
 - (e) Whether bidder adds a provision reserving the right to accept or reject an award.
 - (f) Whether bidder fails to submit a unit price for each contract item listed, when required by the invitation for bid.
 - (g) Whether bidder fails to submit a lump sum price where required.

- (h) Whether the bidder fails to submit a required bid guarantee or submits an irregular bid guarantee for the amount required.
 - (i) 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.
- (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.~~
- (e) Any contract awarded under this section for more than one hundred thousand dollars (\$100,000.00) but less than one hundred ten thousand dollars (\$110,000.00) shall not require a bid waiver, pursuant to Section 329.15, but shall not be effective until approved by ordinance of council.
- (f) Any contract awarded under this section for more than one hundred ten thousand dollars (\$110,000.00) shall require a bid waiver, pursuant to Section 329.15, and shall not be effective until approved by ordinance of council. If council rejects the request for a bid waiver, the contract must be re-bid under the provisions of Section 329.23.
- (g) Any contract awarded under this section funded in whole or in part by capital funds shall not be effective until approved by ordinance of council.

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:

- (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.~~213~~ 242.
- (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 subcontractors 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~~. 329.211 and 329.212.
 - (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.

329.26 - Processes for awarding professional service contracts exceeding fifty thousand dollars (\$50,000.00).

- (a) Any professional service contract which the city agency expects to cost in excess of fifty thousand dollars (\$50,000.00) must be awarded either through the process specified in Section 329.27 or the process specified in Section 329.28. The choice between the two (2) processes is within the discretion of the city agency.
- (b) In using Section 329.27 or 329.28, the director of a city agency may, at their discretion, promulgate rules and regulations to allow for a "prequalification process." The purpose of a prequalification process is to allow an agency to accept statements of qualification from offerors on an annual or biennial basis.

329.28 Awarding professional service contracts through requests for proposals.

Professional service contracts shall be awarded under this section as follows:

- (a) Prior to initiating the selection process, the city agency shall send a written notice to city council which:
- (1) States that the city agency anticipates awarding a professional service contract expected to cost in excess of fifty thousand dollars (\$50,000.00); and
 - (2) Describes the project for which the service is needed.

In this notice, the city agency shall also explain or state:

- (1) Why the needed service or services cannot be provided by existing city employees; and
 - (2) The frequency with which such services have been needed in the past and the anticipated need for such services in the future; and
 - (3) Whether it would be cost effective for the city to hire city employees to provide the required service in the future.
- (b) The city agency shall prepare a request for proposals (hereinafter "RFP"). The RFP shall include:
- (1) A general description of the project;
 - (2) A statement of the city agency's needs and requirements including any requirements established under ~~3903.10~~ Title 39;
 - (3) A list of criteria by which offerors and proposals will be evaluated;
 - (4) Notice of any offeror's meeting or conference that will be held; and
 - (5) Where the city agency intends to evaluate offers using the environmentally preferable factor, the RFP shall so indicate that intention.

The evaluation criteria for any contract awarded under this section shall include, but need not be limited to, the following:

- (1) The competence of the offeror to perform the required service as indicated by the technical training, education and experience of the offeror's personnel who would be assigned to perform the work;
- (2) The quality and feasibility of the offeror's technical proposal;

- (3) The ability of the offeror to perform the required service competently and expeditiously as indicated by the offeror's workload and the availability of necessary personnel, equipment and facilities;
 - (4) Past performance of the offeror as reflected by evaluations of the city agency, other city agencies and other previous clients of the offeror with respect to such factors as quality of work, success in controlling costs, and success in meeting deadlines; and
 - (5) An environmentally preferable factor except when there is not an environmentally preferable manner in which to carry out the purpose of the contract.
- (c) The city agency shall give notice of the RFP by advertisement in the Columbus City Bulletin no less than seven (7) days in advance of the deadline for submission of proposals and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar 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 the RFP in newspapers, professional and trade publications, and any other appropriate publications. The city agency may also contact potential offerors directly.
- (d) The city agency 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 city agency, other city agencies, or both. Unless manifestly impractical, at least one (1) member of the selection committee shall hold the same professional license or certification required by the offerors. The committee may also include non-city 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) The committee shall evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the RFP. A certified MBE/WBE offeror's proposal may include a request for an incentive credit equal to five (5) percent of the offeror's final evaluation score to be applied to the MBE/WBE offeror's final score. The Office of Diversity and Inclusion shall review the request, and approve its application if the offeror is a certified MBE/WBE at the time the RFPs are due. ~~SOQ were received by the City.~~ The committee may select two (2) 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 or city agency.

The discussions identified in this subsection may include, but are not limited to, presentations by the offerors to the committee to elaborate upon their qualifications, proposals, and/or other pertinent information. The committee may permit revisions of proposals so long as all offerors who are selected for additional discussions are given equal opportunity to revise their proposals.

- (f) Based upon the content of the proposals received including any revisions thereto, and upon any additional discussions with the offerors the committee shall rank the remaining offerors based upon the evaluation criteria specified in the RFP. If an incentive credit were approved under division (e) of this section, it shall also be applied in this division.
- (g) The committee shall submit its ranking of the offerors along with a written explanation to the director of the city agency. The ranking and written explanation shall become part of the contract file.
- (h) The director of the city agency shall have discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The city agency shall enter into contract negotiations with the selected offeror to determine the

terms and conditions of the contract, including compensation to be paid by the city. If negotiations fail, negotiations with this offeror shall be terminated, and the city agency may enter into contract negotiations with another offeror as selected by the director. This process may continue until a contract is successfully negotiated.

- (i) After successfully negotiating a contract, the city agency shall submit legislation to city council requesting approval of the contract. In its request for approval, the city agency shall explain the basis for the selection of the chosen contractor. No contract awarded under this section shall be effective until approved by ordinance of city council.