

329.21 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).

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, 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 may be awarded a contract for city construction service work. Only licensed construction trade subcontractors prequalified responsible or prequalified provisionally responsible by bid opening 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 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 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.

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

Except as otherwise provided in division (B), the procurement of construction service contracts estimated to cost more than one-hundred thousand dollars (\$100,000.00) shall be conducted as follows: ~~under this section per either division (A). Construction contracts estimated to cost more than two~~

~~million dollars (\$2,000,000) 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.
- (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.
 - (gf) No contract awarded under this section shall be effective until approved by ordinance of city council.

(B) Construction Manager At Risk

Construction service contracts estimated to cost more than two million dollars (\$2,000,000) may be conducted under this division at the discretion of the contracting agency and if reflected in the invitation for proposals.

- (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, including whether the construction manager at risk will self-perform any of the project. All licensed construction trade subcontractors must comply with the responsibility prequalification provisions of 329.212. Before the construction manager at risk can self-perform on a contract, it must comply with the responsibility prequalification provisions of 329.212;
 - (ii) 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.
 - (iii) The construction manager at risk will provide advance written notice to the city agency of its intention to use a contractor other than a contractor 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;
 - (iiii) 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 329.211 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.