

## Chapter 329

### Article One – General Provisions

#### **329.01 - Definitions.**

As used in this chapter:

- (a) Best Bidder. The bidder who, considering all relevant factors set forth in this chapter, will be, on the whole, best for the public.
- (b) Bidder. An individual or business entity which has expressed an interest in obtaining a city contract by responding to an invitation for bids.
- (c) City Agency. Any department of the government of the city of Columbus.
- (d) Contract. Any agreement for the procurement of materials, supplies, equipment, construction, service or professional service made between a city agency and a contractor.
- (e) Construction Contract. Any agreement for the procurement of services, including labor and materials, for the construction, reconstruction and maintenance of public improvements, including but not limited to streets, highways, bridges, sewers, water lines, power lines and plant facilities.
- (f) Contractor. Any individual or business entity which has a contract with a city agency.
- (g) Director. The chief officer of any city agency.
- (h) 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.
- (i) Electronic Signatures. The receipt of any authorized signature by any photographic, photostatic, or mechanical, computer-generated or digital means.
- (j) Environmentally Preferable Bidder or Offeror. A bidder or offeror whose bid or offer consists of materials, supplies, equipment, construction and/or services which have a lesser or reduced effect on human health and the environment when compared to competing materials, supplies, equipment, construction and services that serve the same purpose. This comparison may consider any aspect of the procurement cycle, including but not limited to raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the material, supply, equipment, construction or service. To be considered an environmentally preferable bidder or offeror, the bidder or offeror must clearly specify in their proposal how their materials, supplies, equipment, construction or services qualify their bid or offer as "environmentally preferable."
- (k) 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 divided by 1600. For all other persons in Ohio, full-time employees means the product of the total number of hours worked by all other employees of the entity divided by 2080.

(l) Health Insurance. A benefit provided to an employee as part of an overall compensation plan and not limited to a specific project whereby an employer pays directly, or through an agent, a portion of a premium on behalf of its employees into a health insurance program with a bona fide plan administrator, as defined in 29 CFR 4.171 or a successor to that section. Providing additional wages directly to the employee such that the employee then must obtain his/her own health insurance on the open market does not meet the criteria of this definition.

(m) Licensed Construction Trade. A 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 heating, ventilating, and air conditioning contractor, a refrigeration contractor, an electrical contractor, a plumbing contractor, a hydronics contractor, or a fire protection or firefighting equipment contractor.

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

(o) Local Bidder. A bidder, offeror, or licensed construction trade subcontractor who satisfies both of the following criteria, as determined by the finance and management director:

(1) The business entity must submit proof of local occupancy to the city by supplying at least one of the following demonstrating that the business entity is located within the city of Columbus or Franklin County:

- (a) A copy of a current and valid lease for office or similar work space; or
- (b) A copy of a valid deed proving ownership of office or similar work space.

(2) The business entity must submit proof to the city demonstrating at least one of the following:

- (a) For entities with 100 or more employees in Ohio, that at least 50 of the entity's full-time employees work from a location in the city of Columbus or Franklin County; or
- (b) For entities with less than 100 employees in Ohio, that at least 50% of the entity's full-time employees work from a location in the city of Columbus or Franklin County; or
- (c) That the business is headquartered in the city of Columbus or Franklin County. For the purposes of this section, the term "headquartered" shall mean that the entity conducts a majority of its Ohio executive functions from a location in the city of Columbus or Franklin County.

(p) Local Workforce. A workforce whereby at least one of the following applies, as determined by the finance and management director:

- (1) For entities with 100 or more employees in Ohio, that at least 50 of the entity's full-time employees reside in the city of Columbus, Franklin County or counties contiguous;  
or  
(2) For entities with less than 100 employees in Ohio, that at least 50% of the entity's full-time employees reside in the city of Columbus, Franklin County or counties contiguous.

(q) Non-compliance. A final adjudication, including exhaustion of all available appeals, in which a determination of civil or criminal liability was imposed upon the individual or entity for violating any applicable federal, state, or local laws, rules or regulations, including, but not limited to, equal opportunity, labor, environmental, wage, workers compensation, unemployment insurance, prevailing wage, and work safety requirements.

(r) 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.

(s) 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.

(t) Prequalified Not Responsible. An entity who has 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.

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

(v) Prequalified Responsible. An entity who has 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.

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

(x) 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.

(y) Quality Training Contractor. A contractor whose employees have done at least one of the following:

- (1) Graduated from or are participating in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council, as defined in the Ohio Administrative Code Section 4101:9-4-02(C) or a successor to that section, or the United States Department of Labor, as defined in 29 CFR 29.2(f) or a successor to that section, if such apprenticeship programs are available; or
- (2) Have at least five (5) years of experience in the specific trade.

(z) 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. Evaluation and determination of responsibility will be based upon consideration of the factors listed in the relevant sections of this code.

(aa) 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.

(bb) 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.

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

(dd) 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.

(ee) Retirement or Pension Plan. A benefit provided to an employee as part of an overall compensation plan and not limited to a specific project whereby an employer contributes directly, or through an agent, into a retirement or pension plan with a bona fide plan administrator, as defined in 29 CFR 4.171 or a successor to that section. Providing additional wages directly to the employee such that the employee then must obtain his/her own retirement or pension plan on the open market does not meet the criteria of this definition.

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

(gg) 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.

(hh) Unsatisfactory Judgment. A final adjudication, including exhaustion of all available appeals, in which a determination of civil liability was imposed upon the individual or entity for violating any applicable federal, state, or local laws, rules or regulations.

### **329.02 - Purpose.**

The purpose of this chapter is to establish a purchasing and procurement system of quality and integrity that will maximize the purchasing value of public funds and provide fair and equitable treatment to all persons involved in public purchasing.

### **329.03 - Application.**

This chapter applies to any purchase of materials, supplies, equipment, construction, service and/or professional service by a city agency and the sale of any city property, whether real or personal. It shall apply to every expenditure of public funds by a city agency for purchasing irrespective of the source of the funds. When the procurement involves the expenditure of federal and/or state assistance or contract funds, the procurement shall be conducted in accordance with all applicable federal and/or state laws and regulations. Nothing in this chapter shall prevent any city agency from complying with the terms and conditions of any grant, gift or bequest that is otherwise consistent with law.

### **329.04 - Operational procedures.**

The director of finance and management or designee shall adopt procedures and policies relating to the procurement process consistent with the provisions of this chapter. These procedures and policies shall be set forth in a written document which shall be available to the public and distributed to city agencies. The director of finance and management or designee shall develop and include in this document provisions regulating reimbursement of expenses incurred by contractors in performing city contracts for such items as follows: office space, office equipment, vehicles, hotels and other housing, relocation of contractor employees, meals, transportation, entertainment and personal expenses.

### **329.05 - Competitive sealed bidding the required procurement method.**

The procurement of all materials, supplies, equipment, construction, service and professional service shall be conducted in accordance with the provisions of Section 329.18 unless otherwise provided for in this chapter.

### **329.06 - Acceptance of electronic signatures.**

For the purpose of this chapter only, the finance and management director or designee may establish the procedures and policies under which electronic signatures will be accepted by the city agencies consistent with the provisions of this chapter.

### **329.07 - General contract provisions.**

All contracts shall be in writing and shall be executed in the name of the city by the director of the city agency, or director of finance and management or designee. Copies of the contract shall be filed with the city agency, the city auditor, and the contractor.

### **329.08 - City attorney review - Establishment of standard contracts and contract clauses.**

All contracts shall be reviewed by and approved as to form by the city attorney or a representative of the city attorney. Any contract which has not been reviewed and approved by the city attorney or his/her

designated representative shall be void and unenforceable against the city and its officials. The city attorney, in consultation with the director of finance and management or designee, may establish standard procurement contracts and standard contract language and clauses for use in or as procurement contracts where appropriate.

### **329.09 - Contract modifications.**

A city agency may enter into discussions with a contractor to modify an existing contract, or to procure additional goods or services in the event that unforeseen circumstances require additional purchases under a contract. After agreeing upon the terms of a modification, the city agency shall submit legislation to city council requesting approval of the modification and shall include in that legislation an explanation of the following, where applicable: (1) the amount of additional funds to be expended under the modification; (2) why the need for additional goods or services could not be foreseen at the time the contract was initially awarded; (3) why it would not be in the city's best interests to have the additional contract requirements awarded through other procurement processes specified in this chapter; and (4) how the price for the additional goods or services which are the subject of the modification was determined. This explanation shall become part of the contract file. No contract modification shall be effective until approved by ordinance of city council.

No modification shall be used to extend a contract with a contractor from year-to-year unless the contract was originally established with a multi-year renewal option. Any city agency entering into an agreement for a contract modification resulting in the purchase of additional goods or services shall submit a record of such modification to the director of finance and management or designee. The city agency shall maintain a public record of these contract modifications. For each modification, the record shall clearly state the city agency involved, the contract identification number, the contractor's identity, and the amount of the modification. The record shall also describe the additional materials, supplies, equipment and/or services procured under the modification.

### **329.10 - Contract administration and evaluation.**

Promptly after awarding any contract for services under Sections 329.22, 329.23, 329.25, 329.26, 329.27, or 329.28, the director of the city agency shall designate an employee of the city agency as contract administrator.

The contract administrator shall have the following responsibilities: (1) to determine whether the contractor is in compliance with the terms and conditions of the contract before any scheduled payment is made; (2) to initiate action in the event of nonperformance or other breach of the contract; and (3) to file an evaluation of the contractor's performance with the director of finance and management or designee and the city agency within sixty (60) days after the completion of the contract.

This evaluation shall be completed in a form prescribed by the director of finance and management or designee. The completed evaluation shall become part of the contract file, and a copy of such evaluation shall be retained by the director of finance and management or designee to assist in the evaluation of contractors for future city contracts.

The director of the city agency shall promptly fill any vacancy that occurs in the position of contract administrator for any contract prior to the completion of the contract.

**329.11 - Issuance of addenda - Cancellation of invitations for bids, request for statements of qualifications, and requests for proposals.**

The director of finance and management or designee or city agency may issue addenda to or cancel any invitation for bids, request for statements of qualifications, and/or request for proposals, and may reject any or all bids or proposals in whole or in part when it is in the best interests of the city. Each invitation for bids, request for statements of qualifications, and request for proposals issued by the city shall state that the bid or request may be cancelled and that any bid or proposal may be rejected in whole or in part when it is in the best interests of the city.

**329.12 - Correction or withdrawal of bids or offers.**

The director of finance and management or designee may allow a bidder responding to an invitation for bids to withdraw a bid by written notice prior to the opening of bids.

**329.13 - Cost for inspections.**

The various divisions and departments of the city may charge a party that is interested in matters before, regulated by, or doing or seeking to do business with the city for the cost of travel, meals and lodging incurred in inspecting or examining supplies, materials, equipment or services prior to entering into a contract with said party. The cost of travel, meals and lodging shall be consistent with guidelines established for general city travel.

All charges made and received pursuant to this section shall be deposited with the city treasurer.

**329.14 - Bonds.**

Each bid, if required by the bid specifications, shall contain the full name of every person or company interested in the same and shall be accompanied by a bid or proposal bond, certified check or cashier's check on a solvent bank as surety that if a bid is accepted a contract will be executed.

If the bidder submits a bond with its proposal, the bond shall be issued by a guaranty company authorized to do so under the Ohio Revised Code or by a surety who is: (1) a resident of this state; and (2) worth, in the aggregate, double the sum to be secured, beyond the amount of their debts; and (3) have property liable to execution in the state equal to the sum to be secured.

If a performance bond will be required, the advertisement will state the amount of such bond. Provided, however, that all contracts for public improvements shall require a minimum ten (10) percent bid bond and fifty (50) percent performance bond.

**329.15 - Waiver of regulations.**

Non-Emergency Waiver of Regulations. When city council determines that it is in the best interests of the city, city council, by ordinance, may waive any of the provisions of this chapter.

Emergency Waiver of Regulations. In the event of a clear and present danger to public health, safety, welfare or property, the mayor may declare a state of emergency, authorize and direct that a contract be entered into for the procurement of materials, supplies, equipment, construction or service without

complying with the provisions of any of the provisions of this chapter. The mayor shall provide city council with a written explanation of the basis for the emergency and for the selection of the chosen contractor whenever a contract is so awarded.

### **329.16 - Authority to debar or suspend.**

After consulting with the city attorney, the director of finance and management or designee is authorized to suspend an individual or entity from consideration for the award of city contracts if there is probable cause to believe that the individual or entity has engaged in any activity, as identified in this section, which might lead to debarment. The suspension shall be for a period not to exceed three (3) months.

After reasonable notice to the individual or entity involved and reasonable opportunity for that individual or entity to be heard, the director of finance and management or designee, after consulting with the city attorney, is authorized to debar a person or entity from consideration of award of city contracts. The debarment shall be for a period of not more than three (3) years.

The causes for debarment include the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which significantly affects responsibility as a contractor.
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.
- (4) Violation of contract provisions of a serious character including deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in a contract, and/or a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be a basis for debarment.
- (5) Any other cause which the director of finance and management or designee determines to be so serious and compelling as to affect responsibility as a contractor, including debarment by another governmental entity for any cause listed in this section.

The director of finance and management or designee shall issue a written decision to debar or suspend and shall send a copy of the decision to the debarred or suspended individual or entity. The decision shall state the reasons for the action taken and inform the debarred or suspended individual or entity involved of any available judicial or administrative review.

### **329.17 - Environmentally preferable purchasing.**

(a) City agencies will develop specifications to encourage the purchase of materials, supplies, equipment, construction and services from an environmentally preferable bidder or offeror unless there is not an environmentally preferable manner in which to carry out the purpose of the contract. The goal of such purchasing is to not only preserve and conserve natural resources and to help keep materials out of the solid waste stream, but to also leverage the city's buying power to nurture the marketplace for recycled and recyclable products.

(b) In evaluating bids or offers for materials, supplies, equipment, construction and services, preference will be given to an environmentally preferable bidder who offers a product or service equal to or superior to that of a non-environmentally preferable bidder or offeror where the environmentally preferable bid or offer does not exceed by more than five (5) percent (up to a maximum of twenty thousand dollars (\$20,000)) the lowest, responsive, responsible, and best bid from any non-environmentally preferable bid or offer. The environmentally preferable bidder will be required to demonstrate to the city agency procuring the product or service how their bid is equal to or superior to that of a non-environmentally preferable bidder and how the bid meets the agency's specifications as required above.

## Article Two – Competitive Sealed Bidding

### **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 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. 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 bids shall be opened and publicly read by the director of finance management or designee at the place, date and time specified in the advertisement, which in no case shall be less than seven (7) days after initial advertisement.

(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 non-compliance, as defined in Section 329.01, with federal, state or local laws or regulations such as fair labor standards, minimum wage levels; affirmative action 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, female business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.

(9) All contractors entering into a contract with the city shall have a current and valid contract compliance certification number, pursuant to provisions set forth in C.C. 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 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 and all contractual terms and conditions applicable to the procurement.

(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. 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 bids shall be opened and publicly read at the place, date and time specified in the advertisement, which in no case shall be less than seven (7) days after initial advertisement.

(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 non-compliance, as defined in Section 329.01, with federal, state or local laws or regulations such as fair labor standards, minimum wage levels; affirmative action 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, female business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.

(9) All contractors entering into a contract with the city shall have a current and valid contract compliance certification number, pursuant to provisions set forth in C.C. 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 awarded under this section shall be effective until 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 and all contractual terms and conditions applicable to the procurement.

(2) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one week prior to the deadline for submission of bids. 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 bids shall be opened and publicly read at the place, date and time specified in the advertisement, which in no case shall be less than seven (7) days after initial advertisement.

(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 non-compliance, as defined in Section 329.01, with federal, state or local laws or regulations such as fair labor standards, minimum wage levels; affirmative action 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, female 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 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 subsection (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 subsection (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 twenty thousand dollars (\$20,000.00).

(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 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 contractors entering into a contract with the city shall have a current and valid contract compliance certification number, provisions set forth in C.C. Title 39.

(15) No contract awarded under this section shall be effective until approved by ordinance of city council.

### **329.19 - Exceptions to competitive sealed bidding.**

(a) Procurement of Commodities with Fixed Prices. City agencies shall have general authority to purchase items for which fixed prices prevail, such as utility services, memberships, subscriptions, professional organization certifications, and postage stamps, without complying with the provisions of Section 329.18 or any other procurement procedure specified in this chapter.

(b) Petty Cash Fund Purchases. The director of any city agency in which a petty cash fund has been established may authorize expenditures for individual purchases not in excess of five hundred dollars (\$500.00). No expenditures shall be made from petty cash funds for items available in the purchasing office storerooms, copy and print shop, or universal term contract. No purchase shall be artificially divided into smaller purchases to avoid the provisions of competitive bidding in this chapter.

(c) Procurement Not Exceeding One Thousand Dollars (\$1,000.00).

(1) A city agency may enter into contract on behalf of the city without complying with the provisions of Section 329.18 when the total expenditures under any single contract do not exceed one thousand dollars (\$1,000.00) within any fiscal year. In awarding a contract under this section the city agency shall, where appropriate, undertake reasonable measures to provide for competition among potential contractors. No purchase shall be artificially divided to avoid the provisions of Section 329.18

(d) Procurement of Materials, Supplies, Equipment, and Services Other Than Construction and Professional Services not Exceeding Twenty Thousand Dollars (\$20,000.00).

(1) The director of finance and management or designee may enter into contracts on behalf of the city for the procurement of materials, supplies, equipment and services, other than construction and professional services, without complying with the provisions of Section 329.18 so long as total expenditures under any single contract do not exceed twenty thousand dollars (\$20,000.00) within any fiscal year. However, expenditures of

bond funds are subject to Ohio Revised Code Section 5705.41. Unless manifestly impractical, the finance and management director or designee shall publicly post all specifications for such contracts for a period of not less than twenty-four (24) hours, make reasonable efforts to secure bids from at least three (3) bidders and undertake reasonable measures to provide for competition among potential bidders. These requirements are satisfied if the director uses an electronic procurement system approved by the finance and management director, in consultation with the technology director. The finance and management director or designee shall maintain a record of the cause of manifest impracticality with the record of the procurement. No purchase shall be artificially divided into smaller purchases to avoid the provisions of Section 329.18.

(2) A city agency may enter into contracts on behalf of the city for service contracts, other than construction and professional services, without complying with the provisions of Section 329.18 so long as total expenditures under any single contract do not exceed twenty thousand dollars (\$20,000.00) within any fiscal year. Unless manifestly impractical, the city agency shall publicly post all specifications for such contracts for a period of not less than twenty-four (24) hours, make reasonable efforts to secure bids from at least three (3) bidders and undertake reasonable measures to provide for competition among potential bidders. These requirements are satisfied if the director uses an electronic procurement system approved by the finance and management director, in consultation with the technology director. The city agency shall maintain a record of the cause of manifest impracticality with the record of the procurement. No purchase shall be artificially divided into smaller purchases to avoid the provisions of Section 329.18.

(e) Sole Source Procurement.

(1) A city agency may award a contract without complying with the provisions of Section 329.18 when, after conducting reasonable investigation, the director of finance and management or designee and city agency determine that only one (1) individual or business entity is capable of supplying the required materials, supplies, equipment or services. After negotiating a contract with the contractor, the city agency shall submit legislation to city council requesting approval of the contract. In its submission to city council, the city agency shall explain or describe in writing: (1) why no other individual or business entity is capable of supplying the needed materials, supplies, equipment or services; (2) what efforts were undertaken to obtain other bidders or offerors; and (3) how the price or fee structure for the contract was determined. This explanation shall become part of the contract file.

(2) Any city agency awarding a contract under this section shall submit a record of the contract to the director of finance and management or designee in a format specified by the director of finance and management or designee. The director of finance and management or designee shall maintain a public record of all contracts awarded under this subsection, including those contracts awarded by the director of finance and management or designee. For each contract, the record shall clearly state the city agency

involved, the contract identification number, the contractor's identity and the amount of the contract. The record shall also describe the materials, supplies, equipment and/or service procured under the contract.

(3) As appropriate, this procurement method may be used by the director of finance and management or designee to establish a universal term contract (UTC).

(f) Procurement from a Universal Term Contract not Exceeding One Hundred Thousand Dollars (\$100,000.00).

(1) The director of finance and management or designee may, on behalf of a city agency, establish an order for goods or services without complying with the provisions of Section 329.18, where there exists a universal term contract for that good or service, so long as total expenditures do not exceed one hundred thousand dollars (\$100,000.00) in any fiscal year for that agency from the specified universal term contract.

(g) Procurement from Universal Term Contract Exceeding One Hundred Thousand Dollars (\$100,000.00).

(1) The director of finance and management or designee may, on behalf of a city agency, establish an order for goods or services without complying with the provisions of Section 329.18 where there exists a universal term contract for that good or service and total expenditures in any fiscal year for that agency from the specific universal term contract will or do exceed one hundred thousand dollars (\$100,000.00), only if the procurement is approved by ordinance of city council.

## Article Three – Construction Service Contracts

### **329.20 – General Provisions**

The requirements of this section apply to all construction service contracts to be awarded and approved under Sections 329.22 and 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 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.

(b) 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 submittal requirements and considerations herein shall apply equally to the bidder and any subcontractor of the bidder. The contracting agency must include the prescribed submittal forms in the bid specifications.

(c) A bidder shall not be awarded a contract if the bidder has not been prequalified responsible or prequalified provisionally responsible, pursuant to Section 329.21.

(d) A bidder prequalified responsible or provisionally responsible shall not be awarded a contract if the bidder fails to submit to the finance and management director an affidavit stating one of the following, whichever is applicable:

(1) As of the date of bid submission, there have been no changes in the information disclosed in its application for responsibility prequalification; or

(2) As of the date of bid submission, there have been changes in the information disclosed in its application for responsibility prequalification and an explanation for those changes is set forth in the affidavit.

(e) When there is evidence of collusion among the bidders, the bids of those concerned in the collusion shall be rejected.

(f) All contractors entering into a contract with the city shall have a current and valid contract compliance certification number, pursuant to provisions set forth in C.C. Title 39.

(g) 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.

(h) Bidders must list in their bid all subcontractors estimated to perform work valued in excess of 5% percent of the total price of its bid, or \$10,000, whichever is less; and shall list all licensed construction trade subcontractors who will perform any portion of work on the project. Bidders may only bid licensed construction trade subcontractors who have been prequalified responsible

or prequalified provisionally responsible. Bidders may only bid one subcontractor for each portion of work to be subcontracted.

(i) The successful bidder must obtain written consent from the director of the contracting city 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 documents. Upon request, the successful bidder and its subcontractors shall promptly furnish copies of all subcontracts and supply agreements.

(j) A bidder shall not be awarded a contract if any of the following occur:

(1) The bidder has not listed all subcontractors estimated to perform any portion of work valued in excess of 5% percent of the total price of its bid, or \$10,000, whichever is less; or

(2) The bidder has not listed all licensed construction trade subcontractors estimated to perform any portion of work on the project; or

(3) The bidder has not bid licensed construction trade subcontractors that are prequalified responsible or prequalified provisionally responsible, pursuant to Section 329.21, unless waived by the finance and management director.

(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 may waive the requirements of Sections 329.20(c), 329.20(d) 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 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.

**329.21 – Responsibility prequalification requirements for construction service contracts.**

A city agency may enter into contracts on behalf of the city for the procurement of 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 must propose and, upon approval by ordinance of council, shall apply a process for responsibility prequalification. The director 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 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;

(6) Provides that no entity may be deemed responsible unless it affirmatively meets at least three (3) of the first five (5) factors listed in Section 329.21(1); and

(7) Establishes the minimum and maximum score ranges by which the finance and management director shall deem an applicant prequalified not responsible, prequalified provisionally responsible, or prequalified responsible based on the applicant's score.

(b) The finance and management director shall prescribe the form of the annual responsibility prequalification application and may prescribe a standardized questionnaire for objectively evaluating such application.

(c) The finance and management director shall make a determination regarding a responsibility prequalification application pursuant to this section and shall notify applicants in writing of the director's determination. The notification must state the reasons for the director's 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 of the director regarding responsibility prequalification. The finance and management director, in consultation with the city attorney, shall promulgate rules governing the

appeals process, including deadlines for filing an appeal and for issuing a decision regarding an appeal.

(e) The finance and management director may, for good cause shown and in consultation with the city attorney, suspend or revoke any entity's prequalification as responsible or provisionally responsible, provided that the affected party must be afforded the opportunity to appeal the director's decision.

(f) 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 an annual basis, pursuant to this section.

(g) Only potential bidders prequalified responsible or prequalified provisionally responsible may receive city construction service work. Only licensed construction trade subcontractors prequalified responsible or prequalified provisionally responsible may subcontract or complete work on city construction service work.

(h) A potential bidder or licensed construction trade subcontractor that is prequalified responsible will retain that status for twelve (12) consecutive months immediately following notification of that determination.

(i) A potential bidder or licensed construction trade subcontractor that is prequalified provisionally responsible will retain that status for twelve (12) consecutive months following notification of that determination.

(j) If a provisionally responsible potential bidder or licensed construction trade subcontractor is not prequalified responsible by the end of the twelve (12) month provisional period, 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. The provisions of this paragraph shall not affect eligibility to continue a current contract or subcontract for city construction work.

(k) If a potential bidder has been awarded city construction service work or a licensed construction trade subcontractor has performed any portion of work on city construction project within three (3) years immediately preceding the effective date of this section, that entity may not be prequalified not responsible for twelve (12) consecutive months immediately following the effective date of this section.

(l) Responsibility prequalification shall be determined using the following criteria:

(1) Whether the applicant has a local workforce as defined in Section 329.01.

(2) Whether the applicant is a quality training contractor as defined Section 329.01.

(3) Whether the applicant provides health insurance as defined in Section 329.01.

(4) Whether the applicant offers a retirement or pension plan as defined in Section 329.01.

(5) Whether the applicant is a local bidder as defined in Section 329.01.

(6) Whether the applicant has a current and valid worker's compensation insurance policy or is legally self-insured.

(7) Whether the applicant has a current and valid unemployment compensation insurance policy.

(8) Whether the applicant has provided a notarized statement from a surety insurer that is approved by the Ohio Department of Insurance and is authorized to issue bonds in the State of Ohio, stating the applicant's current and available bonding capacity, or has attached an affidavit indicating that, at the time of bid submission, applicant will provide a certified check for the amount specified in the bid.

(9) Whether the applicant has been debarred or otherwise disqualified, or is in the process thereof, from bidding on or completing work on any government agency or public works project within the last seven (7) years.

(10) Whether the applicant has received an unsatisfactory judgment, as defined in 329.01, or criminal conviction for making any false claim or material misrepresentation to any public agency or entity, or an unsatisfactory judgment or conviction for any business-related conduct constituting a crime under federal, state or local government law including, but not limited to, fraud, extortion, theft, bribery, racketeering, price-fixing or bid collusion or any crime related to truthfulness and/or business conduct, within the last ten (10) years.

(11) Whether the applicant is current and compliant with city taxes on payroll and net profits.

(12) Whether the applicant has a record of non-compliance, as defined in Section 329.01, with any applicable federal, state and local laws and regulations within the last five (5) years.

(13) Whether the applicant has a record of non-compliance, as defined in Section 329.01, with any applicable affirmative action programs or with the city's Equal Business Opportunity Program within the last five (5) years.

(14) Whether the applicant has received an unsatisfactory judgment, as defined in 329.01, concerning the applicant's work on any public or private construction project within the last seven (7) years.

(15) Whether the applicant has a history of litigation with the city on issues such as bid award processes, contract language or project performance within the last seven (7) years.

(16) Whether the applicant has a record of claims against performance or payment bonds secured on any public improvement construction project within the last seven (7) years.

(17) Whether the applicant has been assessed or paid liquidated damages after completion of a contracted construction project with either a public or private owner within the last seven (7) years.

(18) Whether the applicant has a record of non-compliance, 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.

**329.22 - Process for awarding construction service 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 shall publicly post all specifications for such contracts for a period of not less than seventy-two (72) hours.

(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.

(d) Each bid submitted under this section shall be evaluated as follows:

(1) The city reserves the right to reject a proposal 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 proposal 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 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 bid documents, 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 bid documents, where applicable.

(d) Whether the proposal contains conditions or qualifications not provided in the bid documents.

(e) Whether the bidder failed to acknowledge addenda or the proposal does not contain complete forms required to be included in the proposal and the city determines that the bidder's proposal does not respond to the bid documents 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 bid specification.

(h) Whether bidder fails to submit a lump sum price where required.

(i) Whether bidder submits an irregular proposal bond or fails to furnish proposal guaranty or bond for the amount required.

(j) Whether the proposal contains other alterations, omissions, or errors such that, in the judgment of the city, the proposal does not respond to the bid documents in all material respects, or contains irregularities or deviations from the bid documents that affect the amount of the bid or otherwise gives the bidder a competitive advantage.

(2) Each bid submitted under this section shall be evaluated for the following project-specific responsibility factors:

(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, human resources and bonding capacity for the project.

(d) Whether the bidder has substantial uncompleted work that would hinder the success of the project.

(3) No credit against price may be provided in evaluating the lowest bidder.

(e) Any contract awarded under this section for more than \$100,000 but less than \$110,000 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 \$110,000 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 service 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 as follows:

(a) The city agency shall prepare an invitation for bids (hereinafter "IFB") containing the specifications 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 one (1) week 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 one (1) week prior to the deadline for submission of bids. 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 bids shall be opened and publicly read at the place, date and time specified in the advertisement, which in no case shall be less than seven (7) days after initial advertisement.

(d) The director authorized to make the expenditure shall evaluate each bid and award the contract to the lowest, responsive, responsible, and best bidder.

(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 proposal 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 proposal 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 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 bid documents, 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 bid documents, where applicable.

(d) Whether the proposal contains conditions or qualifications not provided in the bid documents.

(e) Whether the bidder failed to acknowledge addenda or the proposal does not contain complete forms required to be included in the proposal and the city determines that the bidder's proposal does not respond to the bid documents 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 bid specification.

(h) Whether bidder fails to submit a lump sum price where required.

(i) Whether bidder submits an irregular proposal bond or fails to furnish proposal guaranty or bond for the amount required.

(j) Whether the proposal contains other alterations, omissions, or errors such that, in the judgment of the city, the proposal does not respond to the bid documents in all material respects, or contains irregularities or deviations from the bid documents that affect the amount of the bid or otherwise gives the bidder a competitive advantage.

(2) Each bid submitted under this section shall be evaluated for the following project-specific responsibility factors:

(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, human resources and bonding capacity for the project.

(d) Whether the bidder has substantial uncompleted work that would hinder the success of the project.

(3) No credit against price may be provided in evaluating the lowest bidder.

(f) No contract awarded under this section shall be effective until approved by ordinance of city council.

## Article Four – Professional Service Contracts and Not for Profit Service Contracts

### **329.24 - Process for awarding professional service contracts not exceeding twenty thousand dollars (\$20,000.00).**

A city agency may enter into contracts on behalf of the city for the procurement of professional services so long as total expenditures under any single contract do not exceed twenty thousand dollars (\$20,000.00). In awarding a contract under this section, the city agency shall, where appropriate, undertake reasonable measures to provide for competition among potential contractors. No purchase shall be artificially divided into smaller purchases to avoid the provisions of Section 329.25.

### **329.25 - Process for awarding professional service contracts exceeding twenty thousand dollars (\$20,000.00), but not exceeding fifty thousand dollars (\$50,000.00).**

A city agency may award a professional service contract expected to cost over twenty thousand dollars (\$20,000.00), but not exceeding fifty thousand dollars (\$50,000.00) by any process chosen by the city agency so long as such process is designed to provide for competition among potential contractors and objectivity in the selection of a contractor. In awarding a contract under this section, the city agency may utilize the processes specified in Section 329.27, Section 329.28, a modified version of either Section 329.27, Section 329.28, or some other process. If either Section 329.27 or Section 329.28 is used to award a contract under this section, the city agency need not comply with the city council notification requirements included in Sections 329.27(a) and 329.28(a).

After selecting a contractor and agreeing upon the terms of 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 submit a written statement which: (1) identifies the potential contractors who were contacted with regard to the required service; (2) describes in detail the process through which the contract was awarded; (3) explains the basis for the selection of the chosen contractor; and (4) states how the cost of or the pricing structure for the contract was determined. No contract awarded under this section shall be effective until approved by ordinance of city council. No purchase shall be artificially divided into smaller purchases to avoid the provisions of Section 329.26.

### **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.

### **329.27 - Awarding professional service contracts through requests for statements of qualifications.**

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 professional service(s) cannot be provided by existing city employees; (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 statements of qualifications (hereinafter "RFSQ"). The RFSQ shall include: (1) a general description of the project; (2) a statement of the city agency's needs and requirements; (3) a list of criteria by which offerors 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 RFSQ 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 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; (3) past performance of the offeror as reflected by the 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 (4) 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 RFSQ by advertisement in the Columbus City Bulletin. Such advertisement shall be published at least one (1) week prior to the deadline by which offerors must submit statements of qualifications (hereinafter "SOQ"). The city agency may also advertise in newspapers, professional and trade publications, and other appropriate publications. The city agency may also contact potential offerors directly.

(d) The city agency shall form an evaluation committee (hereinafter "committee") to evaluate SOQs 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. 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. 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 agency may elect to utilize two (2) separate committees, one (1) for subsection (e) below, and one (1) for subsections (f), (g) , and (h) below.

(e) The committee shall evaluate all SOQs received based upon the evaluation criteria specified in the RFSQ. On the basis of these evaluations, the committee shall select three (3) or more of the highest qualified offerors for further consideration. If the committee received less than three (3) SOQs, or determines that fewer than three (3) offerors are qualified to perform the required service, then the committee may select less than three (3) offerors for further consideration, or cancel the selection process.

(f) The committee shall request technical proposals from each of the offerors selected for further consideration. The committee may also request that all offerors selected for further consideration make a presentation to the committee to elaborate upon their technical proposals, statements of qualifications, and/or any other pertinent information. The committee may permit revision of proposals so long as all offerors who have been selected for further consideration are given equal opportunity to revise their proposals.

(g) The committee shall rank all remaining offerors based upon the quality and feasibility of their proposals and any revisions thereto.

(h) The committee shall submit its ranking of the offerors, along with a written explanation of the basis for the ranking, to the director of the city agency. The ranking and written explanation shall become part of the contract file.

(i) 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 shall enter into contract negotiations with another offeror as selected by the director. This process shall continue until a contract is successfully negotiated. If the city agency is unable to successfully negotiate a contract with any of the contractors, it may cancel the selection process.

(j) 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 identify the contractors who were selected for further consideration under subsection (e), and 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.

### **329.28 - 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; (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. Such advertisement shall be published sufficiently in advance of the deadline for submission of proposals to allow offerors an adequate opportunity to submit a proposal given the nature and size of the project. In no case shall the advertisement be made less than seven (7) days in advance of the deadline for submission of proposals. 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 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) The committee shall evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the RFP. 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.

(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.

**329.29 - Process for awarding not-for-profit service contracts estimated to cost less than twenty thousand dollars (\$20,000.00).**

Not-for-profit service contracts, as defined in Section 329.01, which are estimated to cost less than twenty thousand dollars (\$20,000.00), shall be awarded by the process specified in Section 329.30 (a), but shall be exempt from the provisions of Section 329.30(b) and (c). No contract awarded under this section for more than \$20,000 shall be effective until approved by ordinance of city council.

**329.30 - Process for awarding not-for-profit service contracts estimated to exceed twenty thousand dollars (\$20,000.00).**

Not-for-profit service contracts shall be awarded under this section as follows:

(a) A city agency shall negotiate a not-for-profit service contract.

(b) After the not-for-profit service contract is negotiated, the city agency shall submit legislation to city council requesting approval of the contract. In its request for approval, the city agency shall explain: (1) the purpose of the contract; and (2) why the needed service or services cannot be provided by existing city employees.

(c) No contract awarded under this section shall be effective until approved by ordinance of city council.

**329.31 - Statements of expression of interest.**

Individuals and entities engaged in providing professional services may submit to the director of finance and management or designee and any city agency written statements expressing their interest in providing professional services to the city. The director of finance and management or designee may specify a uniform format for statements of expression of interest. The director of finance and management or designee and the city agencies shall retain these statements to assist city agencies in contacting individuals and entities interested in providing professional services to the city. Individuals and entities may amend these statements at any time by filing a new statement.

## Article Five – Sale or Lease of City-Owned Realty and Sale of City-Owned Real Property

### **329.32 - Sale of city-owned realty.**

Unless specifically approved by ordinance, no city agency shall offer for sale any real property without the recommendation of the land review commission. When such sale is approved, the director of finance and management or designee shall advertise such property for sale in the Columbus City Bulletin for a period of at least two (2) weeks. The director of finance and management or designee may also advertise the sale in newspapers and any other appropriate publications. Bids shall be opened at the date and time specified. When the bids are opened, the amounts of the bids shall be reported to city council. No property shall be conveyed until city council has approved the conveyance and terms of the sale by ordinance.

When the director of finance and management or designee has twice offered a tract of real estate for sale and it has not been sold, the director of finance and management or designee may sell it at private sale either as an entire tract or in parcels; however, no conveyance shall be made until the amount of the bid and the conditions of the sale are reported to and approved by city council. This section shall not apply to sales of real property acquired as part of an urban renewal project.

### **329.33 - Lease of city-owned realty.**

No city agency shall lease or authorize the sublease of any real property owned by the city, upon which private or public improvements are planned to be constructed, without first obtaining authorization by ordinance of council.

### **329.34 - Sale of city-owned personal property.**

(a) All personal property of the city no longer needed for public use shall be sold by the director of finance and management or designee upon written recommendation of the director of the city agency having control of such property. Such property shall first be offered for sale or transfer to any other city agency at its present value. If not sold to another city agency, such property shall be sold to the highest bidder in a manner prescribed by the director of finance and management or designee.

(b) All personal property of the city no longer needed and of value due to its recyclable materials content may be collected by the city or its contractor and may be sold to the highest bidder in a manner prescribed by the director of finance and management or designee.

(c) If after conducting the process in (a) or (b) above no successful bidder is identified, the property may be disposed of in a manner determined by the director of finance and management if the director or designee determines that the item has no resale or salvage value. If after conducting the process in (a) or (b) above no successful bidder is identified, the property may be offered as a donation to a charitable organization, if the director of finance and management or designee determines that the item has some value. The manner of donation shall be prescribed by the director of finance and management.