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## TITLE 3

### FINANCE AND TAXATION CODE

#### Chapter 329 PROCUREMENT OF GOODS AND SERVICES—SALE OF CITY PROPERTY

##### 329.01 Definitions.

As used in this chapter:

- (a) **At Risk Fee.** The portion of the construction fee attributable to the risk the construction manager at risk assumes by agreeing to be responsible for the performance of work on a public improvement project.
- (b) **Best Bidder.** The bidder who, considering all relevant factors set forth in this chapter, will be, on the whole, best for the public.
- (c) **Best Value.** A selection process in which proposals contain both pricing and performance components, and award is based upon a combination of pricing and performance considerations to determine the offer deemed most advantageous and of the greatest value to the City.
- (d) **Bidder.** An individual or business entity which has expressed an interest in obtaining a city contract by responding to an invitation for bids.
- (e) **Business Entity.** Any trade, occupation, or profession carried out for profit by any of the following organizations existing under the laws of the State of Ohio, the United States, or any other state: a corporation, trust, association, general or limited partnership, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal entity. Business entity does not include any not-for-profit entity as defined in this section, provided such entity is not in direct competition with a for-profit entity capable of delivering the same services.
- (f) **City Agency.** Any department of the government of the city of Columbus.
- (g) **Contract.** Any agreement for the procurement of materials, supplies, equipment, construction, service or professional service made between a city agency and a contractor.
- (h) **Construction.**
  - (1) **Construction, as it relates to a public improvement, includes the following:**
    - (a) The construction of new buildings and structures, including site preparation.
    - (b) Additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements of a building or structure, including, but not limited to, the complete replacement of a roof.
    - (c) Major mechanical and electrical system installations and upgrades, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, and other similar building services that are built into the facility.
    - (d) New, fixed outside structures or facilities, including, but not limited to, sidewalks and trails, highways and streets, bridges, parking lots, utility connections, outdoor lighting, water supply lines, sewers, water and signal towers, electric light and power distribution and transmission lines, playgrounds and equipment, parks with features, retaining walls, and similar facilities that are built into or fixed to the land, including site preparation.

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- (e) Additions, alterations, expansions, reconstruction, renovations, rehabilitations, and major replacements of a fixed, outside structure.
  - (f) Major earthwork for land improvements for parks and recreation fields.
  - (g) Blasting, demolition, dredging, drilling, excavating and/or shoring.
- (2) Construction, as it relates to a public improvement, does not include the following:
- (a) Annual, routine, or minor maintenance and repairs to existing buildings and structures, including, but not limited to, painting, patching, and carpet cleaning.
  - (b) Annual, routine, or minor maintenance and repairs to building systems, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, carpet replacement and other similar building services that are built into the facility.
  - (c) Annual, routine, or minor maintenance and repairs to fixed, outside structures or facilities, including, but not limited to, cleaning, sealing, landscaping, and tree removal.
  - (d) Cost and installation of special purpose equipment designed to prepare the structure for a specific use, including, but not limited to, furniture and equipment for an office.
- (3) For purposes of prequalification, as required by this Chapter, construction does not include demolition or deconstruction of any structure owned by the city's land bank or any structure located in an area zoned for residential use as defined in Title 33 of City Code.
- (i) Construction Contract. Any agreement for the procurement of services, including labor and materials, for the construction of public improvements, including but not limited to streets, highways, bridges, sewers, water lines, power lines and plant facilities.
  - (j) Construction Fee. A combination of home office overhead and profit for services provided by a Construction Manager at Risk during the construction phase of a construction project, as defined in the terms of a construction management contract.
  - (k) Construction Manager at Risk ("CMAR"). A business entity with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a construction project in accordance with Contract terms and who provides the City a guaranteed maximum price for the construction of public improvements. The term "manage," used in this context, includes approving bidders and awarding subcontracts for furnishing materials regarding, or performing, construction, demolition, alteration, repair, or reconstruction. The term "construct" may include performing, or subcontracting for performing, construction, demolition, alteration, repair, or reconstruction.
  - (l) Construction Management Contract. A contract between the City and a Construction Manager at Risk obligating the Construction Manager at Risk to provide construction management services.
  - (m) Construction Management Services. A range of services that a Construction Manager at Risk may provide.
  - (n) Contractor. Any individual or business entity which has a contract with a city agency.
  - (o) Director. The chief officer of any city agency.

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- (p) Electronic Agent. A computer program or an electronic or other automated means used independently to initiate action or respond to electronic records or performances in whole or in part, without review or action by an individual, as set forth in Ohio Revised Code Section 1306.01(F) or a successor to that section.
  - (q) Electronic Signatures. The receipt of any authorized signature by any photographic, photostatic, or mechanical, computer-generated or digital means.
  - (r) Employee. Has the same meaning as Section 361.07.
  - (s) Employer. Has the same meaning as Section 361.06.
  - (t) Environmentally Preferable Product or Service. Materials, supplies, equipment, construction and/or services which have a lesser or reduced negative impact on human health and the environment when compared to competing materials, supplies, equipment, construction and services that serve the same purpose.
  - (u) Executive Officer. As determined by the director of finance and management or designee, any of the following natural persons, based upon the organization of the business entity and provided that the individual's work is related to the business entity's industrial classification code as reported to the federal government: chair of the board, chief executive officer or other chief officer, president, general counsel, or vice president or equivalent in charge of a business unit or division of a corporation; sole proprietor; owner; managing partner, senior partner, administrative partner, member, manager or officer of a general or limited partnership, or limited liability company; trustee; or the equivalent of the aforementioned.
  - (v) First-tier subcontract. A subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs.
  - (w) Full-Time Employees. For persons directly performing construction service work in Ohio, full-time employees means the product of the total number of hours worked by all construction service work employees of the entity in the previous fiscal year divided by one thousand two hundred eighty (1,280). For all other persons performing work in Ohio, full-time employees means the product of the total number of hours worked by all other employees of the entity in the previous fiscal year divided by two thousand eighty (2,080).
  - (x) Health Insurance. An adequate and affordable health insurance benefit provided by an employer to an employee. The employer must provide the benefit as part of an overall compensation plan and the benefit cannot be limited to a specific project. A health insurance benefit is "adequate and affordable" if it meets both the minimum value and affordability requirements established in rules promulgated pursuant to Public Law 111-148, The Patient Protection and Affordable Care Act or a successor to that law. The benefit must otherwise meet the requirements of a "bona fide" fringe benefit, as defined in 29 CFR 4.171 or a successor to that section. An employer may provide a health insurance benefit through the Small Business Health Options Program, pursuant to Public Law 111-148, so long as it otherwise meets the criteria of this definition. For the purposes of construction prequalification, the foregoing shall apply only to those persons performing construction service work, as defined by rule of the director of finance and management or designee.
  - (y) Indefinite Quantity Contract. A contract that provides for an indefinite quantity of goods or services for a fixed time and fixed price, with deliveries or services to be scheduled at designated locations upon order.

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- (z) Licensed Construction Trade. A person or business entity who has a current and valid license issued or recognized by the city, the Ohio construction industry licensing board, pursuant to Ohio Revised Code Section 4740.01 or a successor to that section, or the Ohio state fire marshal, pursuant to Ohio Revised Code Section 3737.65 or a successor to that section, to perform work as a contractor or subcontractor in the following trades: heating, ventilating, and air conditioning, refrigeration, electrical, plumbing, hydronics, or fire protection or firefighting equipment installed within a public improvement, or any other skilled trade approved by the director of finance and management or designee.
- (aa) Life Cycle Costs. The cost of operating and maintaining an item or equipment over the duration of its useful life.
- (bb) Local Bidder. A bidder or offeror who meets the definition of a local business, as determined by the director of finance and management or his/her designee.
- (cc) Local Business. A business entity that has current and fixed local occupancy and is a taxpayer in good standing, as determined by the finance and management director or designee.
- (1) Current and Fixed Local Occupancy. A business entity that submits proof to the city demonstrating that it owns or leases office space within the corporate limits of the city of Columbus and that such office space meets all of the following criteria:
- (a) Is occupied and used by at least one (1) executive officer of the business entity; and
- (b) Has been owned or leased by the business entity for no less than twenty-four (24) consecutive months immediately preceding the date such proof is submitted; or if a business entity has relocated within the city of Columbus during the preceding twenty-four (24) months, it has owned or leased otherwise eligible office space for twenty-four (24) consecutive months immediately preceding the date such proof is submitted; and
- (c) Is none of the following: Post Office boxes or similar mailing addresses; moveable work sites, such as construction trailers or offices at a construction job site; locations zoned for residential use, unless such location is the sole office space owned and/or leased by the business entity; or locations occasionally rented or used by the business entity for temporary business functions, such as office meetings or teleconferences.
- (2) Taxpayer in Good Standing. A business entity that submits proof to the city demonstrating that it has filed returns for both net profits and payroll taxes with the city of Columbus for no less than two (2) consecutive fiscal years preceding the date such proof is submitted. The business entity must further submit proof to the city demonstrating one (1) of the following:
- (a) That the business entity is current and compliant in the payment of any city of Columbus taxes on payroll and net profits at the time such proof is submitted; or
- (b) If the business entity is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the business entity has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted.
- (dd) Local Workforce. A workforce whereby at least fifteen (15) percent of the business entity's full-time equivalent employees in Ohio reside in the city of Columbus, as determined by the finance and management director or designee.

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- (ee) Manifestly Impractical. Readily perceived or obvious to not be useful or advantageous.
- (ff) 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.
- (gg) 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.
- (hh) Open book pricing method. A method in which a construction manager at risk provides the city agency, at the city agency's request, all books, records, documents, and other data in its possession pertaining to the bidding, pricing, or performance of a construction management contract awarded to the construction manager at risk.
- (ii) Preconstruction fee. A combination of home office overhead and profit for services provided by a Construction Manager at Risk during the preconstruction phase of a construction project, as defined in the terms of a construction management contract.
- (jj) Prequalified Not Responsible. An entity who has not met the requisite criteria and/or not received a score necessary to be deemed responsible or provisionally responsible by prequalification and, as result, is not approved to bid or subcontract on construction service contracts with the city.
- (kk) Prequalified Provisionally Responsible. An entity who has met the requisite criteria and received a score necessary to be deemed provisionally responsible by prequalification, and, as result, is approved on a temporary basis, not to exceed twenty-four (24) consecutive months from the date of approval, to bid or subcontract on construction service contracts with the city.
- (ll) Prequalified Responsible. An entity who has met the requisite criteria and received a score necessary to be deemed responsible by prequalification and, as result, is approved to bid or subcontract on construction service contracts with the city.
- (mm) Procurement. The buying, purchasing, renting, leasing or acquisition by any other manner of any materials, supplies, equipment, construction, service or professional service.
- (nn) 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.
- (oo) Program Member. Has the same meaning as Section 3901.01(N).
- ~~(pp)~~(pp) Public Improvement. All buildings, roads, streets, alleys, sewers, ditches, sewage disposal plants, water works, and all other structures or works constructed by the city of Columbus or by any person or business entity who, pursuant to a contract with the city of Columbus, constructs any structure or works for the city of Columbus. For the purposes of this definition, "city of Columbus" means any officer, board, or commission of the city of Columbus authorized to enter into contract for the construction of a public improvement or to construct the same by the direct employment of labor, or any entity supported in whole or in part by funds from the city of Columbus and shall apply to such entities' expenditures made in whole or in part from such public funds.

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- ~~(pp)~~(qq) Quality Training. With respect to persons performing licensed construction trade work in Ohio, employees who have done at least one (1) of the following:
- (1) Graduated from or are participating in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council, as defined in the Ohio Administrative Code Section 4101:9-4-02(C) or a successor to that section, or the United States Department of Labor, as defined in 29 CFR 29.2(f) or a successor to that section, if such apprenticeship programs are available; or
  - (2) Have at least five (5) years of documented experience in the specific trade.
- ~~(qq)~~(rr) 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.
- ~~(rr)~~(ss) Responsible Wage. The wage paid to a bidder's employees for 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.
- ~~(ss)~~(tt) 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.
- ~~(tt)~~(uu) Responsibility Prequalification Application. A form prescribed by the director of finance and management whereby an entity may seek responsibility prequalification.
- ~~(uu)~~(vv) 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.
- ~~(vv)~~(ww) Retirement or Pension Plan. A retirement or pension benefit provided by an employer to an employee as part of an overall compensation plan and not as a benefit limited to a specific project. The plan must meet the requirements of a "bona fide" fringe benefit, as defined in 29 CFR 4.171 or a successor to that section. For the purposes of construction prequalification, the foregoing shall apply only to those persons performing construction service work, as defined by rule of the director of finance and management or designee.
- ~~(ww)~~(xx) Subcontractor. Any business entity who undertakes to perform any portion of work on a city project under a contract with an entity other than a city agency.
- ~~(xx)~~(yy) 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.
- ~~(yy)~~(zz) Unsatisfactory Judgment. A final decision, order, or verdict in a judicial, quasi-judicial or administrative proceeding, after all available appeals have either been exhausted or waived, in which a determination of civil liability, criminal conviction, or administrative penalty was imposed upon the individual or entity for violating any applicable federal, state, or local laws, rules, or regulations.

### **329.191 Sheltered Market Program.**

- (a) The finance and management director, in collaboration with the Office of Diversity and Inclusion, shall establish a Sheltered Market program for Program Members ~~Small Regional Business Enterprises~~, as defined in Columbus City Codes Section 3904.03.
- (b) The sheltered market program shall provide Program Members ~~SRBEs~~ the opportunity to receive prime contracts by limiting competition to similarly situated businesses. In collaboration with the

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Office of Diversity and Inclusion, the finance and management director or designee shall establish procedures for city agencies to follow in the implementation of any such program.

**329.192 ~~SRBE~~ Small Contracts Rotation Program.**

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

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

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

- (a) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the invitation for bid.
- (b) The finance and management director or designee shall prescribe the manner and form of bid submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of bid submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The bid submittal requirements and considerations herein shall apply equally to the bidder and any subcontractor of the bidder. The contracting agency must include the prescribed bid submittal forms in the invitation for bid.
- (c) When there is evidence of collusion among the bidders, the bids of those concerned in the collusion shall be rejected.
- (d) All successful bidders entering into a contract with the city, and their listed subcontractors, shall have a current and valid contract compliance certification number, pursuant to provisions set forth in Title 39.
- (e) Each bid shall contain the full name of every person or company interested in the same and such other relevant information as the city agency deems appropriate.
- (f) Regarding subcontractors, a bidder shall comply with all of the following requirements:

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- (1) Provide a list with its bid submission of all first-tier subcontractors the bidder intends to utilize for the project, as well as all subcontractors the bidder intends to utilize to demonstrate achievement of established MBE/WBE supplier program subcontracting goals. Each list shall be divided into two (2) parts, base bid (including contingency and allowances, if applicable) and alternate(s), if alternates are included in the city's bid document;
  - (2) List only subcontractors who are not currently suspended or debarred by the city and who have not been listed as having had an adverse determination by the Wage Theft Commission; and
  - (3) List one (1) subcontractor for each division of work to be performed as listed in the technical specifications, or section of work in the current edition of the City of Columbus Construction and Material Specifications, whichever is applicable, of the city's bid document. In circumstances where the bidder determines that more than one (1) subcontractor is needed to complete a division or section of work, a bidder shall explain in writing the reason(s) why multiple subcontractors are necessary, describe the work to be performed within any subdivision of a division or subsection of a section of work, and the dollar amount allocated to any subdivision of a division or subsection of work; and indicate which subcontractors are licensed construction trade subcontractors, as defined in Section 329.01;
  - (4) Demonstrate achievement of established MBE/WBE supplier program subcontracting goals or provide sufficient documentation of a good faith effort to meet established MBE/WBE supplier program Subcontracting Goals as defined and required under Title 39.
- (g) Failure to fulfill the requirements contained in division (f) may render the bid non-responsive. The bidder shall be given the opportunity to correct omissions in the requirements contained in division (f), so long as pricing does not change, and the bidder submits with the written correction an affidavit attesting that the subcontractors required to be listed in divisions (f)(1) through (f)(3) were engaged to be utilized at the time of the submission of the bid. The bidder shall be given seven (7) calendar days after notification from the City to correct any omissions.
- (h) A contractor must obtain written consent from the director or designee of the contracting agency prior to subletting, selling, transferring, assigning, or otherwise relinquishing any rights, title, or interest in the work to any subcontractor not listed in the bid submittal or contract. The director or designee must, within a reasonable time, approve or disapprove a contractor's request. The decision shall be final. The contractor may seek the aforementioned written consent for reasons including, but not limited to, the following:
- (1) After reasonable opportunity to do so, the subcontractor fails or refuses to execute a written contract for the scope of work specified in the bid and at the price specified in the bid;
  - (2) The subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;
  - (3) The subcontractor fails or refuses to meet the requisite licensing or bonding set before bid submittal;
  - (4) The contractor demonstrates to the contracting agency that the name of the subcontractor was listed as the result of an inadvertent clerical error;
  - (5) The subcontractor fails or refuses to perform its subcontract after reasonable opportunity to do so; or

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- (6) The contractor determines that additional specialty work not reasonably anticipated in the bid must be performed by subcontract.
  - (7) In the event the subcontractor to be replaced is a ~~certified MBE or WBE Program Member~~, the prime contractor is required to make good faith efforts to replace the ~~MBE/WBE Program Member~~ with another committed licensed and prequalified ~~MBE/WBE Program Member~~.
  - (i) Upon request, the contractor and its subcontractors shall promptly furnish copies of all subcontracts and supply agreements.
  - (j) A bidder shall not be awarded a construction contract if the bidder fails to comply with the provisions of this section.
  - (k) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.
  - (l) The finance and management director, in consultation with the city attorney, shall establish processes and standards to govern the conduct of any periodic random audits of the applications, bids and contracts provided for under this article.
  - (m) All payments to subcontractors and suppliers shall be in accordance with the provisions of Ohio Revised Code Section 4113.61 or a successor to that section. A contractor must fully and promptly comply with requests for documentation relative to such payments.

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

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

- (a) A bid shall be deemed non-responsive if the bidder has not been prequalified responsible or prequalified provisionally responsible at the time of bid due date, pursuant to Section 329.21.
- (b) A bid submitted by a bidder prequalified responsible or provisionally responsible shall be deemed non-responsive if the bidder fails to submit to the contracting agency as part of its bid submission an affidavit stating one (1) of the following, whichever is applicable:
  - (1) That as of the date of bid submission, there have been no changes in the information disclosed in its application for responsibility prequalification; or
  - (2) That changes in the information disclosed in the bidder's application for responsibility prequalification have been reported to the director of finance and management or designee and that the bidder is still prequalified responsible or provisionally responsible.
- (c) Regarding subcontractors, a bidder shall comply with all of the following requirements:
  - (1) Indicate which subcontractors are licensed construction trade subcontractors, as defined in Section 329.01;
  - (2) State, via affidavit, that the bidder's licensed construction trade subcontractors are prequalified responsible or prequalified provisionally responsible at the time of bid submission;
- (d) Failure to fulfill the requirements contained in division (c), unless waived under division (e) may render the bid non-responsive. The bidder shall be given the opportunity to correct omissions in the requirements contained in division (c), so long as pricing does not change, and

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

- (e) The finance and management director or designee may waive the requirements of Section 329.201(c), if either of the following occurs:
  - (1) There is not a licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available to subcontract at the time of the submission of the bid or
  - (2) The prequalified licensed construction trade subcontractor originally approved to subcontract discontinues performance on said subcontract and either of the following applies:
    - (a) There is not an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time; or
    - (b) There is an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time, but the use of that alternate would create an unreasonable delay in completion of the project.
- (f) In the event the originally approved licensed, prequalified construction trade subcontractor is a ~~certified MBE or WBE Program Member~~, the prime contractor is required to make good faith efforts to replace the ~~MBE/WBE Program Member~~ with another committed licensed and prequalified ~~MBE/WBE Program Member~~.

**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:

- (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

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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-responsive 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.

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- (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.
  - (f) 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.

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- (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 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;

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- (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~~ supplier program subcontracting goals or provide sufficient documentation of a good faith effort to meet established ~~MBE/WBE~~ supplier program 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 contractors designated as required by 329.23 (B)(g)(3)(i), including the reasons for the change, and will consult with the city agency prior to implementing any such change;
- (iv) 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.
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- (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.

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### **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 including any requirements established under Section 3903.10;
    - (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") and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar days prior to the deadline for submission of statements of qualification. If

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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 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 non-city employees so long as neither they, nor any member of their families, nor any of their business associates have an interest in the contract being awarded. 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), and one (1) for subsections (f), (g), and (h).
- (e) The committee shall evaluate all SOQs received based upon the evaluation criteria specified in the RFSQ. A ~~certified~~ MBE/WBE Program Member offeror's submitted SOQ may include a request for an incentive credit equal to five (5) percent of the offeror's evaluation score to be applied to the MBE/WBE Program Member offeror's final score. The Office of Diversity and Inclusion shall review the request, and approve its application, if the offeror is a certified MBE/WBE Program Member at the time the SOQ was received by the City. 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. If an incentive credit were approved under division (e) of this section, it shall also be applied in this division.
- (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

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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 including any requirements established under Title 39;
    - (3) A list of criteria by which offerors and proposals will be evaluated;
    - (4) Notice of any offeror's meeting or conference that will be held; and
    - (5) Where the city agency intends to evaluate offers using the environmentally preferable factor, the RFP shall so indicate that intention.

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

- (1) The competence of the offeror to perform the required service as indicated by the technical training, education and experience of the offeror's personnel who would be assigned to perform the work;
- (2) The quality and feasibility of the offeror's technical proposal;
- (3) The ability of the offeror to perform the required service competently and expeditiously as indicated by the offeror's workload and the availability of necessary personnel, equipment and facilities;
- (4) Past performance of the offeror as reflected by evaluations of the city agency, other city agencies and other previous clients of the offeror with respect to such factors as quality of work, success in controlling costs, and success in meeting deadlines; and
- (5) An environmentally preferable factor except when there is not an environmentally preferable manner in which to carry out the purpose of the contract.

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- (c) The city agency shall give notice of the RFP by advertisement in the Columbus City Bulletin no less than seven (7) days in advance of the deadline for submission of proposals and must be posted through an electronic agent approved by the finance and management director at least twenty-one (21) calendar days prior to the deadline for submission of proposals. If exigent circumstances warrant, the finance and management director may direct a shorter time period for the advertisement. The city agency may also advertise the RFP in newspapers, professional and trade publications, and any other appropriate publications. The city agency may also contact potential offerors directly.
  - (d) The city agency shall appoint an evaluation committee (hereinafter "committee") to evaluate proposals received. The committee shall consist of an odd number of members, no less than three (3), selected from the city agency, other city agencies, or both. Unless manifestly impractical, at least one (1) member of the selection committee shall hold the same professional license or certification required by the offerors. The committee may also include non-city employees so long as neither they, nor any member of their families, nor any of their business associates have an interest in the contract being awarded.
  - (e) The committee shall evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the RFP. A ~~certified MBE/WBE Program Member~~ offeror's proposal may include a request for an incentive credit equal to five (5) percent of the offeror's final evaluation score to be applied to the ~~MBE/WBE Program Member~~ offeror's final score. The Office of Diversity and Inclusion shall review the request, and approve its application if the offeror is a certified ~~MBE/WBE Program Member~~ at the time the RFPs are due. The committee may select two (2) or more of the highest qualified offerors with which to hold additional discussions. Offerors not selected for further discussions may be excluded from further consideration for the contract upon notification by the committee or city agency.

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

- (f) Based upon the content of the proposals received including any revisions thereto, and upon any additional discussions with the offerors the committee shall rank the remaining offerors based upon the evaluation criteria specified in the RFP. If an incentive credit were approved under division (e) of this section, it shall also be applied in this division.
  - (g) The committee shall submit its ranking of the offerors along with a written explanation to the director of the city agency. The ranking and written explanation shall become part of the contract file.
  - (h) The director of the city agency shall have discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The city agency shall enter into contract negotiations with the selected offeror to determine the terms and conditions of the contract, including compensation to be paid by the city. If negotiations fail, negotiations with this offeror shall be terminated, and the city agency may enter into contract negotiations with another offeror as selected by the director. This process may continue until a contract is successfully negotiated.
  - (i) After successfully negotiating a contract, the city agency shall submit legislation to city council requesting approval of the contract. In its request for approval, the city agency shall explain the basis for the selection of the chosen contractor. No contract awarded under this section shall be effective until approved by ordinance of city council.
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**Title 39**

**DIVERSITY AND INCLUSION CODE**

**Chapter 3901 DEFINITIONS**

**3901.01 Definition of terms.**

For the purpose of Title 39, the following words, phrases and terms shall be defined as set forth below:

- (A) "Commercially useful function" shall mean the performance of real and actual services in the discharge of any contractual endeavor. Services are real and actual if such services would be provided in the normal course of conducting business or trade activities. The contractor must perform a distinct element of work which the business has the skill and expertise as well as the responsibility of actually performing, managing and supervising.
- (B) "Construction" shall have the same meaning as set forth in Chapter 329.
- (C) "Contract" shall have the same meaning as set forth in Chapter 329.
- (D) "Contracting agency" shall have the same meaning as set forth in Chapter 329.
- (E) "Contractor" shall have the same meaning as set forth in Chapter 329.
- (F) "Controlled" for purposes of determining whether a business is minority-owned or women-owned means the owner(s) shall:
  - 1) Possess and exercise the legal authority and power to manage business assets, goodwill and daily operations of the business; and
  - 2) Actively and continuously exercise such managerial authority and power in determining the policies and directing the operations of the business.
- (G) "Diversity and Inclusion Code" means Title 39 of the Columbus City Codes.
- ~~(H) "Emerging Business Enterprise" shall mean a business enterprise that is an independent and continuing for profit operation located outside of the geographic boundaries of Franklin County, Ohio and is independently and directly owned, operated and controlled by one or more eligible minority group members or a certified women business enterprise owner(s) as defined by this code.~~
- ~~(H)~~ (H) "Employee Stock Ownership Plan (ESOP)" has the same meaning as that term is defined under 26 U.S.C. § 4975(e)(7).
- ~~(I)~~ (I) "Minority Group Members" shall mean Black or African Americans, Asian Americans, Hispanic Americans and Native Americans, that are eligible to do business or perform work in the state of Ohio.
  - 1) Black or African American means all persons having origins in any of the black racial groups of Africa.
  - 2) Native American means all persons who maintain culture and have origins in a federally recognized Indian tribe as listed in the current "Federal Register Notice of Indian Entities Recognized by and Eligible to Receive Services" from the U.S. Bureau of Indian Affairs.
  - 3) Asian American means all persons having origins in any of the original people of the Far East, including China, Japan and Southeast Asia.

- 4) Hispanic American means all persons of Spanish or Portuguese culture with origins in Mexico, South or Central America or the Caribbean Islands, regardless of race.
- ~~(K)~~(J) "Minority-Owned Business Enterprise (MBE)" shall mean a business which is not a subsidiary of another business and is an independent and continuing for profit operation, performing a commercially useful function, and is independently and directly owned, operated, and controlled by one or more eligible minority group members as defined by this code.
- ~~(L)~~(K) "Owned" shall mean:
- 1) At least fifty-one percent (51%) of the business is independently and directly owned, operated, and controlled by individuals eligible to do business or perform work in the state of Ohio;
  - 2) The ownership shall be real and continuing, and shall go beyond the mere indicia of ownership of the business reflected in the ownership document; and
  - 3) The owner(s) shall enjoy the customary incidence of ownership and shall share in the risks and profits commensurate with their ownership interest, as demonstrated by an examination of the substance, rather than the form of ownership arrangements.
  - 4) Ownership may not be through another business entity or trust (including through an Employee Stock Ownership Plan); and
  - 5) Notwithstanding section (L)(4) of this division, ownership by a trust, such as a living trust, may be treated as the functional equivalent of ownership by a Minority Group Member or woman if the trust is revocable and the owner is the grantor, the trustee, and the sole current beneficiary of the trust.
- ~~(M)~~(L) "Physical presence" means business operations that are conducted out of a building by at least one (1) full-time employee or full-time employee equivalent.
- (M) "Program" means the supplier initiatives authorized by City Council pursuant to Section 3907.08 which entitle program members to receive benefits such as bid discounts and/or incentive credits in the City's supplier or procurement processes.
- (N) "Program member" means a business certified as an MBE, SRBE, or WBE, as applicable, which may be eligible to receive benefits such as bid discounts and/or incentive credits in the City's supplier or procurement processes pursuant to City Council authorization of the applicable program under Section 3907.98.
- ~~(N)~~(O) "Small Regional Business Enterprise (SRBE)" means an independently and directly owned, operated, and controlled for-profit business concern that has been certified by the Office of Diversity and Inclusion as having met the SRBE eligibility requirements as provided for in the Diversity and Inclusion Code and with a physical presence in one or more of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union.
- ~~(O)~~(P) "Veteran" shall mean a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.
- ~~(P)~~(Q) "Women-Owned Business Enterprise (WBE)" shall mean a business which is not a subsidiary of another business and is an independent and continuing for profit operation, performing a commercially useful function, and is independently and directly owned, operated, and controlled by one or more women that are eligible to do business or perform work in the state of Ohio.

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## Chapter 3902 ORGANIZATION

### 3902.01 Office of Diversity and Inclusion.

There is hereby created the Office of Diversity and Inclusion. The Office of Diversity and Inclusion is dedicated to creating and implementing programs, policies and procedures that will deliver and capture value through supplier development and workforce diversity. Additionally, the office will assist underserved, under-utilized and economically disadvantaged small, regional businesses with gaining greater access to procurement opportunities and resources to build viable and sustainable businesses.

The Office of Diversity and Inclusion may exercise the following duties, responsibilities and authority:

- (A) Administration and enforcement of compliance with the Diversity and Inclusion Code;
- (B) Establishment of written policy and procedures to execute the Diversity and Inclusion Code;
- (C) Development and refinement of workforce policy and procedures;
- (D) Development, refinement and coordination of supplier diversity development and procurement activities such as outreach, verification, solicitation for small contracts, bid specification review and prompt payment/contract dispute resolution procedures;
- (E) Development, refinement and coordination of assistance programs such as financing, bonding/insurance and technical assistance;
- (F) Development and coordination of mentor/protégé and on-the-job training demonstration projects;
- (G) Development, refinement, and implementation of MBE/WBE and SRBE certification procedures and coordination of such procedures with the Purchasing vendor registration system;
- (H) Consideration of ~~price preference and~~ sheltered market solicitation, based upon criteria set forth in the applicable sections of the Diversity and Inclusion Code;
- (I) Investigation of alleged violations of the Diversity and Inclusion Code;
- (J) Analysis and review of programs in accordance with the review and reporting requirements contained in the Diversity and Inclusion Code;
- (K) Analysis, review and recommendation for adjustments to the city's annual participation goals;
- (L) Establish and review of all applicable specific contract participation goals;
- (M) Establishment of committees and advisors to further the goals of the Diversity and Inclusion Code;
- (N) Recommendations to the mayor and city council regarding additional efforts necessary to ensure the effective operation of this office pursuant to periodic review and reporting requirements contained in the Diversity and Inclusion Code.

The Office of Diversity and Inclusion may hire staff or contract with outside firms or organizations to perform these and other duties as necessary to expand the role of the Office.

### **3902.02 Duties of the Director.**

The Director of the Office of Diversity and Inclusion shall be appointed by the Mayor and shall serve at the pleasure of the Mayor at a salary fixed by ordinance of Council. The Director shall be responsible for the administration and enforcement of the Diversity and Inclusion Code, the policies, rules and regulations issued hereunder, and for other duties pertinent thereto, including:

- (A) Investigating complaints, making inspections, and observing employment conditions related to City contracts;
- (B) Reviewing all submittals required by the Diversity and Inclusion Code and ensuring all contractors who are in compliance with its requirements;
- (C) Certifying qualified business enterprises and monitoring their participation on city contracts to ensure compliance with the Diversity and Inclusion Code;
- (D) Reviewing ordinances authorizing the entry into contracts and certifying the proposed contractor's compliance prior to the ordinance being submitted to council;
- (E) Promulgating and enforcing rules and regulations in the form of a Programs Manual to carry out the meaning and purpose of the MBE/WBE and SRBE ~~programs~~ Programs as authorized by Council pursuant to Section 3907.98 ~~this chapter~~;
- (F) Monitoring the workforce of contractors by desk audits and on-site inspections, as needed, to determine if any contractor is in violation of any applicable law related to contract compliance;
- (G) Receiving and reviewing all rules and regulations issued by the State of Ohio or the federal government relevant to contract compliance, and assuring that the City is conforming to those rules or regulations.

### **3902.04 Workforce diversity.**

The City of Columbus believes that a dynamic and diverse workforce drives economic growth, fosters greater creativity and creates a more ~~dynamic and~~ innovative workforce. Additionally, the ~~ethnic and gender~~ workforce composition of the City of Columbus should reflect the diversity and socioeconomic makeup of the residents ~~it serves that make up the population of the City of Columbus~~. As the City attracts, retains, and develops talent, the City will focus on new and innovative ways to help ensure that diversity representation is a part of that process and that the ~~diversity of the~~ City workforce is reflective ~~reflects that~~ of the City population.

The Office of Diversity and Inclusion Director, in conjunction with City departments and management, may develop guidelines, initiatives and programs to help advance the objectives of this section.

## **Chapter 3903 ASSISTANCE ACTIVITIES**

### **3903.01 Outreach.**

The Office of Diversity and Inclusion may provide for outreach efforts to solicit and encourage program members ~~MBE/WBEs~~ to bid on city contracts. Specific outreach efforts may be developed and coordinated by the Office of Diversity of Inclusion, in conjunction with the appropriate departments and divisions, and may include, but not be limited to, the following:

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- (A) The mailing, electronically or through the U.S. Postal Service, of opportunity alerts of upcoming procurement and contract bids by the city through utilization of the vendor registration system and the certification listing;
  - (B) Advertisement of upcoming city contracts and procurement on government television; the city bulletin; the City webpage, targeted newspapers, magazines, social media or other publications;
  - (C) Seminars to familiarize ~~program members~~ MBE/WBEs with city procurement and bidding procedures and with upcoming business opportunities;
  - (D) The establishment of plan rooms, as necessary, at several locations around the city to provide bid plans and specifications;
  - (E) Active and sustained encouragement of ~~program members~~ MBE/WBEs to apply for certification and registration;
  - (F) Develop partnerships with small business organizations and other supplier ~~diversity development~~ organizations to enhance the effectiveness of outreach efforts.

**3903.02 Certification of MBE/WBEs Program; Certification.**

(A) Operability. The MBE/WBE Program for certified MBE/WBEs shall be operative solely during a five-year period of extension reauthorized by Council as provided for in Section 3907.98.

~~(A)~~(B) Eligibility Criteria for MBE/WBE Certification. A business enterprise that wishes to make application to the Office of Diversity and Inclusion to be certified as an MBE/WBE shall submit a completed MBE/WBE Certification Form, a signed affidavit, and supporting documentation affirming that the MBE/WBE meets all of the following minimum eligibility criteria:

- 1) Is a for-profit business that is licensed to do business in the state of Ohio performing a commercially useful function that is not a subsidiary of another business and is either:
  - a. For an MBE: at least 51% independently and directly owned, operated, and controlled by an individual who is eligible to do business or perform work in the state of Ohio and who is an African American, Native American, Hispanic American, or Asian American;
  - b. For a WBE: at least 51% independently and directly owned, operated, and controlled by a female who is eligible to do business or perform work in the state of Ohio.
- 2) Has a physical presence ~~inside Franklin County~~ in one of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union;
- 3) Has been established for at least one (1) year;
- 4) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

~~(B)~~(C) Ineligible businesses. A business enterprise is ineligible for consideration for MBE/WBE Certification if:

- 1) The business enterprise has been placed on the adverse determination list by the ~~Wage Theft Prevention and Enforcement~~ Labor Commission in accordance with Chapter 377 of the Columbus City Codes.
- 2) It has been determined by the Office of Diversity and Inclusion that a representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a

certification determination during any certification process provided for in the Diversity and Inclusion Code within the prior three years.

- 3) The business enterprise has been or is currently facing suspension or debarment in accordance with provisions of Chapter 329 of the Columbus City Codes.

~~(C)~~(D) Certification.

- 1) Upon receipt of a submitted MBE/WBE Certification Application, the Office of Diversity and Inclusion will review and evaluate applications based upon the following criteria:
  - a. The applicant meets the MBE/WBE eligibility criteria;
  - b. The application is satisfactorily completed;
  - c. The application contains accurate and complete information of required in making a certification determination during the certification process; or
  - d. The applicant has provided materials or information as requested by the Director.
- 2) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an MBE/WBE, the Office of Diversity and Inclusion will determine the scope of the MBE/WBE's certification.
  - a. Certification will be granted for only the specific areas of work in which the MBE/WBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.
  - b. Certification for specific areas of work does not mean the MBE/WBE is prequalified to bid on any city contract, including contracts included in the MBE/WBE program. Certification does not constitute a finding that the MBE/WBE meets the requirements that the City may have for any given contract award.
- 3) Upon receipt of a submitted MBE/WBE Certification Application, the Office of Diversity and Inclusion will review and evaluate applications based upon the following criteria:
  - a. The applicant meets the MBE/WBE eligibility criteria;
  - b. The application is satisfactorily completed;
  - c. The application contains accurate and complete information of required in making a certification determination during the certification process; or
  - d. The applicant has provided materials or information as requested by the Director.
- 4) The Director will make a final certification determination within 90 days after the date the Office of Diversity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.
- 5) A business entity that has received a denial of certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.
- 6) Certification as an MBE/WBE expires two years from the date of certification. MBE/WBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change in its circumstances affecting its continued eligibility for the MBE/WBE program.

~~(D)~~(E) Re-Certification, De-Certification, and Suspension.

1) Re-Certification.

- a. MBE/WBEs seeking re-certification shall submit a completed MBE/WBE Re-certification Form (MBE/WBE-R) to the Office of Diversity and Inclusion no sooner than 60 days prior to the expiration of their MBE/WBE certificate.
- b. Failure of an MBE/WBE to seek re-certification by filing the necessary MBE/WBE-R form with the Office of Diversity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.

2) De-Certification and Suspension.

- a. An MBE/WBE may be De-Certified upon a finding by the Director that the MBE/WBE:
  - i. Ceases to meet the eligibility and/or certification requirements for their MBE/WBE Certificate; or
  - ii. Has provided materially false or misleading information to the city in seeking certification or re-certification; or
  - iii. Has failed to perform a Commercially Useful Function under a contract, or
  - iv. The MBE/WBE allows its MBE/WBE status to be fraudulently used for the benefit of a non-MBE/WBE firm or the owners of a non-MBE/WBE firm so as to provide the non-MBE/WBE firm or firm owners benefits from the Program for which the non-MBE/WBE firm and its owners would not otherwise be entitled; or
  - v. Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the operation of the business enterprise.
- b. Where the Director has reasonable grounds to believe, based upon information obtained by the Office of Diversity and Inclusion that an MBE/WBE may be subject to De-Certification, the Director may suspend the certification of the MBE/WBE while the De-Certification matter is pending. The Director shall provide the MBE/WBE with written notice of suspension and during the period of suspension, the MBE/WBE shall be prohibited from bidding upon or entering into City contracts as a certified MBE/WBE. Upon a finding that an MBE/WBE has failed to re-certify in accordance with ~~section~~ division (DE)(1) or has violated any provisions of ~~section~~ division (DE)(2)(a), the Director shall provide the MBE/WBE with written notice of De-Certification.
- c. A business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.
- d. Unless the suspension or de-certification decision of the Director is reversed on appeal, a business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall not apply for re-certification for one (1) year from the date of the notice of suspension or de-certification.

~~(E)~~(F) MBE/WBEs certified by other government agencies will be required to be certified by the Office of Diversity and Inclusion regardless of other certification. However, the Director may promulgate rules and regulations allowing for an expedited process for MBE/WBE certification by the city if the business entity has a current certification from agencies/organizations specifically approved by the Director.

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### 3903.03 Bid specifications review.

City departments shall be encouraged by the Office of Diversity and Inclusion to eliminate any unnecessarily restrictive bid specifications that may adversely affect the participation of program members MBE/WBE participation. A bid specification review process may be developed and coordinated by the Office.

### 3903.04 Prompt payment/contract dispute resolution

The Office of Diversity and Inclusion Director, in conjunction with the procurement manager, shall seek to streamline payment procedures and facilitate contract dispute resolution in accordance with ORC 4113.61, in order to enhance the ability of certified program members MBE/WBE businesses to have the necessary liquidity to maintain operations.

### 3903.05 Financing assistance.

A lack of access to capital, credit, and other financial tools limits the ability of program members MBE/WBEs to compete in the open marketplace. Therefore, the city may provide for financing assistance to program member firms. A "Financing Assistance" program may be developed and coordinated by the Office of Diversity and Inclusion to provide for the following:

- (A) A clearinghouse to inform program members MBE/WBEs of existing forms of financing;
- (B) Examination and implementation of alternative and innovative programs to assist program members MBE/WBEs in obtaining financing;
- (C) Examination of the feasibility of developing a linked deposit program, in conjunction with local area banks, which may require the banks that the city deposits funds with to establish comprehensive financing programs for program members MBE/WBEs. These financing programs may include, but not be limited to, special lending programs for equipment purchase and leasing, contract financing, lines of credit, inventory financing, and receivables financing.

### 3903.06 Bonding/insurance assistance.

A "Bonding/Insurance Assistance" program may be developed and coordinated by the Office of Diversity and Inclusion in conjunction with the Department of Finance and Management, and may provide assistance to program members firms including, but not limited to, the following:

- (A) Waiver of certain bonds for selected contracts to the extent permitted by federal, state and local law. Criteria for this bonding waiver shall be developed by the Office of Diversity and Inclusion for contracts under \$100,000 and shall include an assessment of the associated risks, liability and exposure to the city;
- (B) Unbundle selected large contracts into smaller parts and permit contractors/vendors to roll over their bonding limits for each phase or part of the contract;
- ~~(C) The Office of Diversity and Inclusion may examine the feasibility of permitting contractors/vendors to specify and document their expenses for bonding and insurance and deduct those expenses from their bids and provide for the city to pay those expenses directly as and to the extent permitted by federal, state and local law;~~
- ~~(D) The Office of Diversity and Inclusion shall examine the feasibility of establishing an independent bonding and insurance program that utilizes MBE/WBE owned A rated sureties~~

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~~and insurance companies or brokers to provide bonding and insurance to MBE/WBEs on public and private sector contracts;~~

(~~EC~~) The Office of Diversity and Inclusion shall examine the feasibility of using public funds to leverage private resources to establish a bonding pool for the issuance of bonds to program members ~~MBE/WBEs~~ on city contracts as and to the extent permitted by federal, state and local law;

(~~ED~~) The Office of Diversity and Inclusion may partner with other organizations to provide resources to assist program members ~~MBE/WBEs~~ with bonding assistance.

### **3903.07 Repealed.**

### **3903.08 Mentor/Protégé Program.**

The parameters of a Mentor/Protégé program may be established by the Office of Diversity and Inclusion to actively encourage ~~majority~~ construction firms to mentor program member ~~MBE/WBE~~ construction firms in an effort to grow capacity and increase sustainability.

### **3903.09 Joint ventures.**

(A) The Office of Diversity and Inclusion, in conjunction with the City Departments, shall promote, where economically feasible, the formation of joint ventures to facilitate additional prime contracting opportunities for ~~certified~~ program members ~~MBE/WBEs~~ on eligible projects or contracts. A joint venture shall be defined as an association of two (2) or more business enterprises, one or more of which is a program member ~~an MBE/WBE~~, established as a single business enterprise to carry on a single business activity that is limited in scope and duration. The Office of Diversity and Inclusion shall promulgate rules and regulations pertaining to the certification of project-specific ~~MBE/WBE~~ joint ventures, including the establishment of criteria for certification. The criteria shall include, but not be limited to:

- 1) The initial capital investment of each venture partner;
- 2) The proportional allocation of profits and losses to each venture partner;
- 3) The sharing of the right to control the ownership and management of the joint venture;
- 4) Actual participation of the venture partners in the performance of the contract;
- 5) The method of and responsibility for accounting;
- 6) The methods by which disputes are resolved; and
- 7) Other pertinent factors of the joint venture.

(B) The certification of a joint venture will be limited to the duration of the contract for which certification as a joint venture was requested and shall terminate upon completion of the city contract for which the joint venture was formed.

(C) An Employee Stock Ownership Plan (ESOP) or similar defined benefit or defined contribution plan shall not be eligible for certification as a joint venture.

### **3903.10 Good Faith Efforts.**

Good Faith Efforts are those steps taken by a bidder/proposer to achieve ~~targets~~ the MBE/WBE Program goals as set forth in the MBE/WBE Office of Diversity and Inclusion Programs Manual,

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including the required documentation demonstrating a contractor's efforts to meet the MBE/WBE subcontractor goal, and that are subject to the following:-

- (A) All terminations, substitutions, and reduction in scope by the prime contractor must be approved in writing by the Office of Diversity and Inclusion.
- (B) The prime contractor must demonstrate good faith efforts to replace a committed MBE/WBE program member subcontractor firm, which does not perform as intended, with another committed MBE/WBE program member subcontractor firm to perform at least the same amount of work under the contract as the DBE subcontractor that was terminated or replaced, to the extent needed to meet the contract goal target established for the project.
- (C) Replacement of program member subcontractor MBE/WBEs without the Office of Diversity and Inclusion's prior written approval is a material breach of the contract.

## **Chapter 3904 SMALL REGIONAL BUSINESS ENTERPRISE PROGRAM**

### **3904.01 Small Regional Business Enterprise Program.**

- (A) The City is committed to maximizing contracting opportunities for Small Regional Business Enterprises (SRBEs) on construction, professional services, and goods and services contracts for SRBEs located in the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union. The SRBE Program is intended to further the City's compelling interests in stimulating economic development through the support and empowerment of the region, ~~ensuring that the City is neither an active nor passive participant in marketplace discrimination, and promoting equal opportunity for all segments of the contracting community.~~
- (B) The SRBE Program provides a unique opportunity for eligible ~~regional-small~~ businesses to engage in the City's procurement process. The program includes a sheltered market program and a requirement that all departments shall take active affirmative steps to ensure that small, regional businesses are able to participate in City contracts as prime contractors, subcontractors, or both.

### **3904.02 ~~Certification of SRBE~~ Program Certification**

(A) Authority. The Program for Certified SRBEs shall be operative solely during a five-year period of extension reauthorized by Council as provided for in Section 3907.98.

~~(A)~~(B) Eligibility Criteria for SRBE Certification. A business enterprise that wishes to make application to the Office of Diversity and Inclusion to be certified as an SRBE shall submit a completed SRBE Certification Application, a signed affidavit, and supporting documentation affirming that the SRBE meets all of the following minimum eligibility criteria:

- 1) Is an independently and directly owned, operated, and controlled for-profit business that is licensed to do business in the state of Ohio performing a commercially useful function that is not a subsidiary of another business ~~and that is not~~ dominant in its field of operation;
- 2) Has a physical presence in one of the following counties: Delaware, Fairfield, Fayette, Franklin, Licking, Madison, Pickaway, or Union;
- 3) Has been established for at least one (1) year;
- 4) Has fewer than twenty five (25) full time employees or full time employee equivalents; Has fewer than fifty percent (50%) of the number of employees as calculated per the United States Small Business Administration employee size standards, in accordance with 13 C.F.R. Part 121, based on the average number of employees over twelve (12) months; OR

~~Has an average gross annual receipt in the prior three fiscal years that does not exceed \$1,000,000. If a business has not existed for three years, the gross annual receipts will be based upon the annual averages over the course of the existence of the business. Has an average gross annual receipt in the prior five (5) fiscal years that does not exceed 25% of the United States Small Business Administration revenue size standards, in accordance with 13 C.F.R. Part 121, based on the gross annual receipts averaged over five (5) years; and~~

5) Possesses all licenses and permits required by law to perform the scope of work within the classification requested for certification.

~~(B)~~(C) Ineligible businesses. A business enterprise is ineligible for consideration for SRBE Certification if:

- 1) Any of its principals or owners are also the principals or owners of another entity that does not meet the eligibility criteria for an SRBE.
- 2) The business enterprise has been placed on the adverse determination list by the ~~Wage Theft Prevention and Enforcement~~ Labor Commission in accordance with Chapter 377 of the Columbus City Codes.
- 3) It has been determined by the Office of Diversity and Inclusion that a representative of the business enterprise previously made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may have been considered in making a certification determination during any certification process provided for in the Diversity and Inclusion Code within the prior three years.
- 4) The business enterprise has been or is currently facing suspension or debarment in accordance with provisions of Chapter 329 of the Columbus City Codes.
- 5) Certification. Upon receipt of a submitted SRBE Certification Form, the Office of Diversity and Inclusion will review and evaluate applications and may reject an application based on one or more of the following:
  - a. The applicant does not meet the SRBE eligibility or the applicant is ineligible for certification as otherwise provided in division ~~(B)~~(C);
  - b. The application is not satisfactorily completed;
  - c. The application contains false information or a representative of the business enterprise has made a materially deceptive or fraudulent statement or omission or otherwise intentionally misrepresented any fact that may be considered in making a certification determination during the certification process; or
  - d. The applicant has not provided materials or information requested by the Director.
- 6) Once it is determined that a business enterprise meets the minimum eligibility requirements and is not otherwise ineligible for certification as an SRBE, the Office of Diversity and Inclusion will determine the scope of the SRBE's certification.
  - a. Certification will be granted for only the specific areas of work in which the SRBE has been found by the Office of Diversity and Inclusion to have the requisite skills, knowledge, and ability to perform in the field of endeavor in which certification is sought, as defined by normal industry practices, including licensure where required.
  - b. Certification for specific areas of work does not mean the SRBE is prequalified to bid on any city contract, including contracts included in the SRBE program. Certification does not constitute a finding that the SRBE meets the requirements that the City may have for any given contract award.

- 7) The Director will make a final certification determination within 90 days after the date the Office of Diversity and Inclusion receives a satisfactorily completed application from the applicant. If certification is denied, the Director will notify the applicant in writing and specify the reason(s) for the denial. Unless the applicant is successful in a timely appeal of the denial of certification, the applicant may not reapply for the same type of certification for a period of one year from the date of the notice of denial.
- 8) A business entity that has received a notice of denial of certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with ~~s~~Section 3907.03.
- 9) Certification as an SRBE expires two years from the date of certification. SRBEs have a continuing, affirmative obligation to notify the Office of Diversity and Inclusion of any change in ~~its~~ circumstances affecting its continued eligibility for the SRBE program.

~~(C)~~(D) Re-Certification, De-Certification and Suspension.

- 1) Re-Certification.
  - a. SRBEs seeking re-certification shall submit a completed SRBE Re-certification Form (SRBE-R) to the Office of Diversity and Inclusion no sooner than 60 days prior to the expiration of their certificate.
  - b. Failure of an SRBE to seek re-certification by filing the necessary SRBE-R form with the Office of Diversity and Inclusion within 60 days following the expiration of its certificate shall result in automatic decertification.
- 2) De-Certification and Suspension.
  - a. An SRBE may be De-Certified when the Director finds that the SRBE:
    - i. Ceases to meet the eligibility and/or certification requirements for their SRBE Certificate; or
    - ii. Has provided materially false or misleading information to the city in seeking certification or re-certification; or
    - iii. Has failed to perform a Commercially Useful Function under a contract, or
    - iv. Has allowed its SRBE status to be fraudulently used for the benefit of a non-SRBE firm or the owners of a non-SRBE firm so as to provide the non-SRBE firm or firm owners benefits from the Program for which the non-SRBE firm and its owners would not otherwise be entitled; or
    - v. Has exhibited gross negligence, incompetence, financial irresponsibility, or misconduct in the operation of the business enterprise.
  - b. Where the Director has reasonable grounds to believe, based upon information obtained by the Office of Diversity and Inclusion, that an SRBE may be subject to De-Certification, the Director may suspend the certification of the SRBE while the De-Certification matter is pending. The Director shall provide the SRBE with written notice of suspension and during the period of suspension, the SRBE shall be prohibited from bidding upon or entering into City contracts as a certified SRBE.
  - c. Upon a finding that an SRBE has failed to re-certify in accordance with ~~section~~ division ~~(DE)~~(1) or has violated any provisions of section ~~(DE)~~(2)(a), the Director shall provide the SRBE with written notice of De-certification.

- d. A business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall have a right of appeal in accordance with sSection 3907.03.
- e. Unless the suspension or de-certification decision of the Director is reversed on appeal, a business entity that has received a notice of suspension or de-certification from the Office of Diversity and Inclusion shall not apply for re-certification for one (1) year from the date of the notice of suspension or de-certification.

**Chapter 3906 DEPARTMENT/CONTRACTING AGENCY RESPONSIBILITY**

**3906.02 Equal opportunity clause.**

- (A) The contracting agencies of the City are directed to include the following equal opportunity clause in all contracts. The inclusion of this clause may be waived by the Office of Diversity and Inclusion Director where it is appropriate due to a similar clause requirement by state or federal law. The requirements contained in this clause will be considered by the Office of Diversity and Inclusion Director in determining whether a contractor is in compliance with Title 39.
- (B) Equal Opportunity Clause:
  - 1) The contractor/vendor/bidder will not unlawfully discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, sex, sexual orientation, gender identity or expression, color, religion, ancestry, national origin, age, disability, familial status or military status. Such action shall include, but not be limited to, the following: employment up-grading, demotion, or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices summarizing the provisions of this Equal Opportunity Clause.
  - 2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that the contractor is an equal opportunity employer.
  - 3) It is the policy of the City of Columbus that ~~program members business concerns independently and directly owned, operated, and controlled by MBE/WBEs~~ shall have the maximum practicable opportunity to participate in the performance of contracts awarded by the city.
  - 4) The contractor shall permit access to any relevant and pertinent reports and documents by the Office of Diversity and Inclusion Director for the sole purpose of verifying compliance with this Title 39 and the Office of Diversity and Inclusion regulations. All such materials provided to the Office of Diversity and Inclusion Director by the contractor shall be considered confidential.
  - 5) The contractor will not obstruct or hinder the Office of Diversity and Inclusion Director or his/her deputies, staff and assistants in the fulfillment of the duties and responsibilities imposed by Title 39 of the Columbus City Codes.
  - 6) The contractor and each subcontractor will include a summary of this Equal Opportunity Clause in every subcontract. The contractor will take such action with respect to any subcontractor as is necessary as a means of enforcing the provisions of the Equal Opportunity Clause.

- 7) The contractor agrees to refrain from subcontracting any part of this contract or contract modification thereto to a contractor not holding a valid certification number as provided for in Title 39.
- 8) Failure or refusal of a contractor or subcontractor to comply with the provisions of Title 39 may result in cancellation of this contract.

**3906.03 Department/agency reporting responsibilities.**

Each City department has a vested interest in ensuring that the city of Columbus is a diverse and inclusive city. Therefore, each department will have the following responsibilities:

- (A) Department Directors or designees shall participate in a cross functional process, to track and report supplier ~~diversity~~ diversity development and workforce diversity initiatives.
- (B) Regular reports shall be filed by all City agencies on forms provided by the Office of Diversity and Inclusion Director for the purpose of monitoring compliance with the provisions of Title 39.
- (C) Department Directors will designate staff who will utilize the designated Office of Diversity and Inclusion diversity tracking systems for the purposes of reporting on subcontractor participation and utilization within their department.
- (D) The Office of Diversity and Inclusion Director will be notified of all professional services evaluation committees as defined in ~~Title~~ Chapter 329, of the city's procurement code. The Office of Diversity and Inclusion shall have the option to be a voting member on each evaluation committee. Departments will give due notice to the Office of Diversity and Inclusion via electronic means so proper staff can be allocated to participate on the selected evaluation committees.
- (E) The Office of Diversity and Inclusion Director shall be notified by the department Director, contract administrator or department designee of any proposed subcontracting changes or contract issues that impact program members ~~MBE/WBEs~~ during the term of a contract. Additionally, the contract administrator shall notify the Office of Diversity and Inclusion if the work of a subcontractor has been inspected and approved and the subcontractor, after a valid invoice has been submitted, has not been paid for more than 10 days after the prime has received payment.
- (F) The Office of Diversity and Inclusion Director in conjunction with department Directors may create subcommittees to develop additional accountability measures, benchmarks and ~~goals~~ targets.

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## Chapter 3907 OTHER PROVISIONS

### 3907.02 Determination of compliance and non-compliance.

The Office of Diversity and Inclusion, along with the contracting staff of each City department, shall monitor contractor compliance requirements during the term of the contract. If it is determined that there is cause to believe that a prime contractor or subcontractor has failed to comply with applicable requirements of Title 39, the Office of Diversity and Inclusion shall so notify the originating department and the contractor. The Office of Diversity and Inclusion Director, or designee, may require such reports, information and documentation from contractors, respondents and the head of any City department, division or office as are reasonably necessary to determine compliance within fifteen (15) calendar days after a preliminary finding of non-compliance.

If non-compliance cannot be resolved, the Director of the contracting agency/department or designee shall submit written recommendations to the Office of Diversity and Inclusion Director or designee. If the Director agrees, the recommendation of the contracting agency/department shall be implemented. The contractor will be afforded a reasonable time to correct the situation.

If the Director is not in agreement, the reasons shall be stated.

If the Director makes a final determination that the contractor has violated or has failed to comply with this Title and the contractor has been given reasonable time to correct such situation and/or where negotiations have been of no avail, the Director shall transmit a finding of noncompliance thereon to the Director of Finance and Management in accordance with Section 329.16. A contractor that has received a notice of non-compliance from the Office of Diversity and Inclusion shall have a right of appeal in accordance with section 3907.03.