

Chapter 329

Article One – General Provisions

**329.01 - Definitions.**

As used in this chapter:

(a) Best Bidder. The bidder who, considering all relevant factors set forth in this chapter, will be, on the whole, best for the public.

(b) Bidder. An individual or business entity which has expressed an interest in obtaining a city contract by responding to an invitation for bids.

(c) 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 320.01, provided such entity is not in direct competition with a for-profit entity capable of delivering the same services.

(d) City Agency. Any department of the government of the city of Columbus.

(e) Contract. Any agreement for the procurement of materials, supplies, equipment, construction, service or professional service made between a city agency and a contractor.

(f) Construction. Any reconstruction, enlargement, alteration, repair, remodeling, renovation or new development of any public improvement. Construction includes, but is not limited to, dredging, shoring, demolition, deconstruction, drilling, blasting, excavating, scaffolding, installation and any other change to or new development of the physical structure of a public improvement. For purposes of prequalification, construction does not include demolition or deconstruction of a structure zoned for residential use as defined in 3303.21 of the Columbus City Code.

(g) Construction Contract. Any agreement for the procurement of services, including labor and materials, for the construction, reconstruction and maintenance of public improvements, including but not limited to streets, highways, bridges, sewers, water lines, power lines and plant facilities.

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

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

(j) 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.

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

(l) Employee. Has the same meaning as 361.07.

(m) Employer. Has the same meaning as 361.06.

(n) Environmentally Preferable Bidder or Offeror. A bidder or offeror whose bid or offer consists of materials, supplies, equipment, construction and/or services which have a lesser or reduced effect on human health and the environment when compared to competing materials, supplies, equipment, construction and services that serve the same purpose. This comparison may consider any aspect of the procurement cycle, including but not limited to raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance or disposal of the material, supply, equipment, construction or service. To be considered an environmentally preferable bidder or offeror, the bidder or offeror must clearly specify in their proposal how their materials, supplies, equipment, construction or services qualify their bid or offer as "environmentally preferable."

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

(p) 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 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 2,080.

(q) Health Insurance. An adequate and affordable health insurance benefit provided by an employer to an employee. The employer must provide the benefit as part of an overall compensation plan and the benefit cannot be limited to a specific project. A health insurance benefit is "adequate and affordable" if it meets both the minimum value and affordability requirements established in rules promulgated pursuant to Public Law 111-148, The Patient Protection and Affordable Care Act or a successor to that law. The benefit must otherwise meet the requirements of a "bona fide" fringe benefit, as defined in 29 CFR 4.171 or a successor to that section. An employer may provide a health insurance benefit through the Small Business Health Options Program, pursuant to Public Law 111-148, so long as it otherwise meets the criteria of this definition. For the purposes of construction prequalification, the foregoing shall apply only to those persons performing construction service work, as defined by rule of the director of finance and management or designee.

(r) 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.

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

(t) 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.

(u) 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 executive officer of the business entity;  
and

(b) Has been owned or leased by the business entity for no less than 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 24 months, it has owned or leased otherwise eligible office space for 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 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.

(v) Local Workforce. A workforce whereby at least 15% 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.

(w) 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.

(x) 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.

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

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

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

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

(cc) 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.

(dd) 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.

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

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

(ff) Responsible Bidder. A bidder who has the capability and capacity in all respects to fully perform the contract requirements and whose experience, integrity and reliability will assure good faith performance. Evaluation and determination of responsibility will be based upon consideration of the factors listed in the relevant sections of this code.

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

(hh) 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.

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

(jj) 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.

(kk) 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.

(ll) 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.

(mm) 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.

(nn) 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.

**329.02 - Purpose.**

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

**329.03 - Application.**

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

**329.04 - Operational procedures.**

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

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

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

**329.06 - Acceptance of electronic signatures.**

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

**329.07 - General contract provisions.**

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

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

All contracts shall be reviewed by and approved as to form by the city attorney or a representative of the city attorney. Any contract which has not been reviewed and approved by the city attorney or his/her designated representative shall be void and unenforceable against the city and its officials. The city attorney, in consultation with the director of finance and management or designee, may establish standard procurement contracts and standard contract language and clauses for use in or as procurement contracts where appropriate.

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

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

No modification shall be used to extend a contract with a contractor from year-to-year unless the contract was originally established with a multi-year renewal option.

Any city agency entering into an agreement for a contract modification resulting in the purchase of additional goods or services shall submit a record of such modification to the director of finance and management or designee. The city agency shall maintain a public record of these contract modifications. For each modification, the record shall clearly state the city agency involved, the contract identification number, the contractor's identity, and the amount of the modification. The record shall also describe the additional materials, supplies, equipment and/or services procured under the modification.

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

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

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

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

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

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

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

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

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

**329.13 - Cost for inspections.**

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

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

**329.14 - Bonds.**

Each bid, if required by the bid specifications, shall contain the full name of every person or company interested in the same and shall be accompanied by a bid or proposal bond, a certified check or cashier's check on a solvent bank, or a letter of credit pursuant to Chapter 1305 of the Ohio Revised Code as surety that if a bid is accepted a contract will be executed.

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

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

**329.15 - Waiver of regulations.**

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

Emergency Waiver of Regulations. In the event of a clear and present danger to public health, safety, welfare or property, the mayor may declare a state of emergency, authorize and direct that a contract be entered into for the procurement of materials, supplies, equipment, construction or service without complying with the provisions of any of the provisions of this chapter. The mayor shall provide city council with a written explanation of the basis for the emergency and for the selection of the chosen contractor whenever a contract is so awarded.

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

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

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

The causes for debarment include the following:

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

The director of finance and management or designee shall issue a written decision to debar or suspend and shall send a copy of the decision to the debarred or suspended individual or entity. The decision shall

state the reasons for the action taken and inform the debarred or suspended individual or entity involved of any available judicial or administrative review.

**329.17 - Environmentally preferable purchasing.**

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

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

Article Two – Competitive Sealed Bidding

**329.18 - Competitive sealed bidding.**

(a) The establishment of universal term contracts and/or the procurement of all materials, supplies and equipment shall be conducted under this section as follows:

(1) The director of finance and management or designee shall prepare an invitation for bids (hereinafter "IFB") containing the specifications and all contractual terms and conditions applicable to the procurement.

(2) The director of finance and management or designee shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids. The director of finance and management or designee may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of bid opening.

(3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the director of finance and management or designee deems appropriate.

(4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.

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

(6) After consulting with the city agency, the director of finance and management or designee shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.

(7) The director of finance and management or designee shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest, or to any bidder not recommended by the city agency.

(8) In determining the responsibility of a bidder, consideration shall be given to bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, female business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.

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

(10) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.

(11) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.

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

(b) The procurement of all service contracts except construction, custodial, landscaping, guard and security services, cleaning and recycling services, and professional services shall be conducted under this section as follows:

(1) The city agency shall prepare an invitation for bids (hereinafter "IFB") containing the specifications and all contractual terms and conditions applicable to the procurement.

(2) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids. The city agency may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of bid opening.

(3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the city agency deems appropriate.

(4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.

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

(6) The director authorized to make the expenditure shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.

(7) The director shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest.

(8) In determining the responsibility of a bidder, consideration shall be given to bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, female business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city.

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

(10) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.

(11) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest, responsive, responsible, and best bidder awarded the contract.

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

(c) The procurement of all custodial, landscaping, guard and security service, cleaning and recycling service contracts shall be conducted under this section as follows:

(1) The city agency shall prepare an invitation for bids (hereinafter "IFB") containing the specifications and all contractual terms and conditions applicable to the procurement.

(2) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one week prior to the deadline for submission of bids. The city agency may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of bid opening.

(3) Each bid shall contain the full name of every person or company interested in the same, and such other relevant information as the city agency deems appropriate.

(4) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic

agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director or designee.

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

(6) The director authorized to make the expenditure shall award the contract to the lowest, responsive, responsible, and best bidder. Life cycle costs may be considered in determining the lowest bid if they are objectively measurable and specified in the IFB.

(7) The director shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest.

(8) In determining the responsibility of a bidder, consideration shall be given to the following:

(a) Bidder's record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state or local laws or regulations; affirmative action programs which the city is required by law to enforce in connection with funds to be spent under the procurement contract; whether the bidder is a local bidder; and the bidder's compliance with any minority business enterprise, female business enterprise or equal business opportunity programs or good faith efforts to comply with such programs adopted by the city;

(b) Whether the bidder employs a local workforce, as defined in 329.01; and

(c) That the bidder shall pay a responsible wage and provides its employees a health insurance benefit as defined in Section 329.01 to the employees proposed to directly perform the work specified in the city bid solicitation.

(9) For the purpose of subsection (8)(b) and (c) only, exemption from these considerations is provided for bidders that employ twenty five (25) or fewer full-time people.

(10) For the purpose of subsection (8)(b) and (c) only, exemption from these considerations is provided for bidders where the city solicits the bids for these services in accordance with Section 329.19 (d) procurement of materials supplies, equipment, and services other than construction and professional services not exceeding twenty thousand dollars (\$20,000.00).

(11) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The contracting city agency must include the prescribed submittal forms in the bid specifications.

(12) The finance and management director or designee shall annually provide to city agencies the responsible wage, as defined in 329.01.

(13) The city agency shall maintain in the contract file a record of the bid evaluation for the purposes of determining the lowest responsive, responsible and best bidder awarded the contract.

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

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

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

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

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

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

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

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

(1) The director of finance and management or designee may enter into contracts on behalf of the city for the procurement of materials, supplies, equipment and services, other than construction and professional services, without complying with the provisions of Section 329.18 so long as total expenditures under any single contract do not exceed twenty thousand dollars (\$20,000.00) within any fiscal year. However, expenditures of bond funds are subject to Ohio Revised Code Section 5705.41. Unless manifestly impractical, the finance and management director or designee must make all

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

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

(e) Sole Source Procurement.

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

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

the contract. The record shall also describe the materials, supplies, equipment and/or service procured under the contract.

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

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

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

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

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

Article Three – Construction Service Contracts

**329.20 – General Provisions**

The requirements of this section apply to all construction service contracts to be awarded and approved under Sections 329.22 and 329.23.

(a) Bids may be submitted in either traditional hardcopy format or through an electronic agent as determined by the city agency and stated in the specifications. Any electronic agent used to receive bids must be approved prior to use by the finance and management director or designee, in consultation with the technology director.

(b) The finance and management director or designee shall prescribe the manner and form of submittals for the purpose of evaluating the considerations herein. Prior to prescribing said manner and form of submittals, the finance and management director shall consult with the directors of city agencies responsible for performing any contract-related function referred to in this section. The submittal requirements and considerations herein shall apply equally to the bidder and any subcontractor of the bidder. The contracting agency must include the prescribed submittal forms in the bid specifications.

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

(d) A bidder prequalified responsible or provisionally responsible shall not be awarded a contract if the bidder fails to submit to the contracting agency as part of its bid submission an affidavit stating one 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 director of finance and management or designee and that the bidder is still prequalified responsible or provisionally responsible.

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

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

(g) Each bid shall contain the full name of every person or company interested in the same and such other relevant information as the city agency deems appropriate.

(h) Regarding subcontractors, a bidder shall:

(1) Provide a list with its bid submission of all proposed subcontractors;

(2) Indicate which proposed subcontractors are licensed construction trade subcontractors, as defined in 329.01(r);

(3) State, via affidavit, that the bidder's proposed licensed construction trade subcontractors are, or will be, prequalified responsible or prequalified provisionally responsible at the time of contract award;

(4) Bid only subcontractors who are not currently suspended or debarred by the city; and

(5) Bid one subcontractor for each portion of work to be subcontracted.

(i) Failure to fulfill the above-stated requirements contained in Section 329.20(h)(1) through (5) shall render the bid non-responsive.

(j) 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 documents. The director or designee must, within a reasonable time, approve or disapprove a contractor's request. The decision shall be final. The contractor may seek the aforementioned written consent for reasons including, but not limited to, the following:

(1) After reasonable opportunity to do so, the subcontractor fails or refuses to execute a written contract for the scope of work specified in the bid and at the price specified in the bid;

(2) The subcontractor becomes insolvent or the subject of an order for relief in bankruptcy;

(3) The subcontractor fails or refuses to meet the requisite licensing or bonding set before bid submittal;

(4) The contractor demonstrates to the contracting agency that the name of the subcontractor was listed as the result of an inadvertent clerical error;

(5) The subcontractor fails or refuses to perform its subcontract after reasonable opportunity to do so; or

(6) The contractor determines that additional specialty work not reasonably anticipated in the bid must be performed by subcontract.

(k) Upon request, the contractor and its subcontractors shall promptly furnish copies of all subcontracts and supply agreements.

(l) A bidder shall not be awarded a contract if the bidder fails to comply with the provisions of this section.

(m) 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.

(n) The finance and management director may waive the requirements of Sections 329.20(c), 329.20(d) and 329.21 as applied to a licensed construction trade subcontractor if either of the following occurs:

(1) There is not a licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available to subcontract at the time of the contract award; or

(2) The prequalified licensed construction trade subcontractor originally approved to subcontract discontinues performance on said subcontract and either of the following applies:

(a) There is not an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time; or

(b) There is an alternate licensed construction trade subcontractor prequalified responsible or prequalified provisionally responsible available at that time, but the use of that alternate would create an unreasonable delay in completion of the project.

(o) 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.

(p) 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.

(q) For any contract authorizing the demolition or deconstruction of a structure zoned for residential use, the contracting agency shall consider the criteria set forth under 329.211 in determining the lowest, responsive, responsible and best bidder.

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

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

(a) The finance and management director or designee must propose and, upon approval by ordinance of council, shall apply a process for responsibility prequalification. The director or designee shall utilize the aforementioned process to deem an applicant prequalified not

responsible, prequalified provisionally responsible, or prequalified responsible, whichever is applicable. Such process shall use a quantified point system which does all of the following:

- (1) Allocates specific maximum and minimum points for each responsibility factor listed herein, provided that one or more factors may be used to screen applicants for the purpose of summarily deeming an applicant prequalified not responsible;
- (2) Establishes criteria for uniformly assigning points based on an objective evaluation of the application for each responsibility factor, such that similarly situated applicants are assigned the same point value for the same factor;
- (3) Conducts an objective evaluation of the information provided in the application and any supporting evidence that has been received by the city or adduced as a result of an investigation by the city;
- (4) Based on the aforementioned objective evaluation and based on the aforementioned criteria, assigns points to each responsibility factor considered in the application;
- (5) Provides a score for the application by totaling the points assigned to each responsibility factor; and
- (6) Establishes the minimum and maximum score ranges by which an applicant shall be deemed prequalified not responsible, prequalified provisionally responsible, or prequalified responsible based on the applicant's score.

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

(c) The finance and management director or designee shall make a determination regarding a responsibility prequalification application pursuant to this section and shall notify applicants of the determination in writing. The notification must state the reasons for the determination and inform the applicant of any available administrative review or appeal.

(d) An applicant may appeal to the finance and management director or designee, in writing, the determination regarding the applicant's responsibility prequalification. After reasonable notice to the business entity involved and reasonable opportunity for that business entity to be heard, the finance and management director or designee shall make a determination regarding the appeal. The director of finance and management or designee shall issue a written decision and shall send a copy of the decision to the business entity involved. The decision shall state the reasons for the action taken. The decision of the finance and management director shall be final. The finance and management director or designee, in consultation with the city attorney, shall promulgate rules governing the appeals process, including deadlines for filing an appeal and for issuing a decision regarding an appeal.

(e) After reasonable notice to the business entity involved and reasonable opportunity for that business entity to be heard, the finance and management director or designee may, for good cause

shown and in consultation with the city attorney, revoke any entity's prequalification as responsible or provisionally responsible. Such revocation may not exceed three (3) years. The director of finance and management or designee shall issue a written decision and shall send a copy of the decision to the business entity involved. The decision shall state the reasons for the action taken. The decision of the finance and management director shall be final.

(f) All potential bidders and all licensed construction trade subcontractors seeking to perform any portion of work on city construction service work must submit to the finance and management director, or designee, a full and complete application for responsibility prequalification on an annual basis, pursuant to this section. The director or designee may promulgate a renewal application for business entities currently prequalified responsible, which shall satisfy the requirements of this section.

(g) Only potential bidders prequalified responsible or prequalified provisionally responsible may be awarded a contract for city construction service work. Only licensed construction trade subcontractors prequalified responsible or prequalified provisionally responsible may subcontract or perform on city construction service work. No business entity prequalified not responsible may receive or perform city construction service work.

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

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

(j) If a potential bidder or licensed construction trade subcontractor is deemed provisionally responsible and such bidder or subcontractor is not prequalified responsible within twelve (12) consecutive months following the date of the original status determination, they may not receive new city construction work or perform any portion of work on any new construction service project until they apply for responsibility prequalification as outlined in Section 329.21 and are determined to be prequalified responsible by the finance and management director or designee. The provisions of this paragraph shall not affect eligibility to continue a current contract or subcontract for city construction work.

(k) If a potential bidder or licensed construction trade subcontractor is deemed not responsible and such bidder or subcontractor is not prequalified responsible within twelve (12) consecutive months following the date of the original status determination, they may not receive new city construction work or perform any portion of work on any new construction service project until they apply for responsibility prequalification as outlined in Section 329.21 and are determined to be prequalified responsible by the finance and management director or designee. The provisions of this paragraph shall not affect eligibility to continue a current contract or subcontract for city construction work.

(l) The finance and management director or designee must promulgate rules regarding the following, at a minimum:

- (1) The number of times a business entity may apply for responsibility prequalification in a set period of time;
- (2) The length of time a business entity must wait prior to reapplying for responsibility prequalification after receiving a status determination;
- (3) The length of time a business entity deemed provisionally responsible must wait to reapply for responsibility prequalification if such entity fails to be prequalified responsible within twelve (12) consecutive months following the date of the original status determination;
- (4) The length of time a business entity deemed not responsible must wait to reapply for responsibility prequalification if such entity fails to be prequalified responsible within twelve (12) consecutive months following the date of the original status determination; and
- (5) If a renewal application has been promulgated by the director or designee, the number of consecutive renewal applications that may be filed before a business entity must submit a full application for responsibility prequalification.

**329.211 – Responsibility prequalification criteria.**

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

- (a) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets all of the following mandatory criteria:
  - (1) Whether the applicant has a current and valid worker's compensation insurance policy or is legally self-insured.
  - (2) Whether the applicant has a current and valid unemployment compensation insurance policy.
  - (3) Whether the applicant provided either a notarized letter from its surety company that does all of the following: is dated within the last 30 days; is signed by the surety company's Attorney in Fact; and states the applicant's current and available bonding capacity; or has attached an affidavit indicating that, at the time of bid submission, the applicant will provide a certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code for the amount specified in the bid.
  - (4) Whether the applicant has signed an affidavit agreeing to make the business entity's financial statement for the most recently completed fiscal year available to the city for viewing upon request.

(5) Whether the applicant is not currently debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project.

(6) Whether the applicant is one of the following: current and compliant in the payment of any city of Columbus taxes on payroll and net profits; or, if the applicant is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the applicant has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted.

(b) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets at least three (3) of the following five (5) criteria:

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

(2) Whether the applicant's employees meet the quality training criteria as defined Section 329.01, provided that, for purposes of full inclusion and creation of entry-level opportunities in the construction trades, up to ten percent (10%) of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.

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

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

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

(c) If a business entity affirmatively meets the requirements of subsections (a) and (b), the following criteria shall be used to determine responsibility prequalification:

(1) Whether the applicant has been debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project within the last five (5) years.

(2) Whether the applicant has received an unsatisfactory judgment, as defined in 329.01, in which a conviction was imposed for any crime related to its business conduct within the last ten (10) years.

(3) Whether the applicant has received an unsatisfactory judgment, as defined in 329.01, in which civil liability was imposed concerning the applicant's bid for and/or work on any public or private construction project within the last five (5) years.

(4) Whether the applicant has a history of breach of contract, or inferior or substandard performance on projects that have resulted in litigation being brought forth by the city within the last five (5) years.

(5) Whether the applicant has a record of claims against bonds secured on any public construction project within the last five (5) years.

(6) Whether the applicant has been assessed or paid liquidated damages for any construction project with either a public or private owner within the last five (5) years.

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

(8) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable affirmative action programs, or any local, state or federal laws prohibiting discrimination against job applicants or employees within the last five (5) years.

(9) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with Ohio's Drug-Free Workplace requirements, pursuant to Ohio Revised Code Section 153.03 or a successor to that section, within the last five (5) years.

**329.212. Local preference for competitive sealed bidding.**

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

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

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

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

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

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

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

best, the city shall award the contract to the bidder with the lowest, responsive, responsible and best bid.

(6) Submission of a revised bid does not constitute a tie bid for the purposes of Section 329.212(b).

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

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

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

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

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

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

(a) The city agency must make all specifications for such contracts available for a period of not less than seventy-two (72) hours.

(b) The city agency shall make reasonable efforts to secure bids from at least three (3) bidders and shall undertake reasonable measures to provide for competition among potential bidders. These requirements shall be satisfied if the director uses an electronic procurement system approved by the finance and management director.

(c) The director authorized to make the expenditure shall evaluate each bid and award the contract to the lowest, responsive, responsible, and best bidder, subject to the provisions of Section 329.212.

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

(1) The city reserves the right to reject a proposal that is deemed non-responsive by the city. The following factors shall be used to determine whether a bid is responsive:

(a) Whether bidder has submitted more than one proposal for the same work from an individual or entity under the same or different name, or corporation under the same name, or corporations with one or more of the same persons as officers or directors of such corporations, or corporations which are holding

companies, parent companies or holding companies that are subsidiaries of such corporations.

(b) Whether bid prices are materially unbalanced as defined in the relevant sections of the technical specifications manual specified in the bid documents, where applicable.

(c) Whether bidder has failed to comply with pre-qualification requirements as defined in the relevant sections of the technical specifications manual specified in the bid documents, where applicable.

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

(e) Whether the bidder failed to acknowledge addenda or the proposal does not contain complete forms required to be included in the proposal and the city determines that the bidder's proposal does not respond to the bid documents in all material respects or contains irregularities or deviations which affects the amount of the bid or otherwise gives the bidder a competitive advantage.

(f) Whether bidder adds a provision reserving the right to accept or reject an award.

(g) Whether bidder fails to submit a unit price for each contract item listed, when required by the bid specification.

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

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

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

(k) Whether the bidder has complied with the requirements of section 329.20(h) regarding subcontractors.

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

(a) Whether the bidder has actively engaged in the construction industry and has experience in the area of construction service for which the bid has been submitted.

(b) Whether the bidder has a successful record of complying with and meeting completion deadlines as well as controlling costs on similar construction projects.

(c) Whether the bidder has demonstrated to the city's satisfaction adequate and appropriate resources, including, but not limited to, specialized equipment, human resources and bonding capacity for the project.

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

(e) With respect to a bidder whose bid is determined to be 10% or more below that of the next lowest bidder, supplemental details regarding the bid and/or historical information regarding performance and costs on similar contracts to demonstrate the bidder's ability to complete the contract at the price specified.

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

(e) Any contract awarded under this section for more than \$100,000 but less than \$110,000 shall not require a bid waiver, pursuant to Section 329.15, but shall not be effective until approved by ordinance of council.

(f) Any contract awarded under this section for more than \$110,000 shall require a bid waiver, pursuant to Section 329.15, and shall not be effective until approved by ordinance of council. If council rejects the request for a bid waiver, the contract must be re-bid under the provisions of Section 329.23.

(g) Any contract awarded under this section funded in whole or in part by capital funds shall not be effective until approved by ordinance of council.

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

The procurement of construction service contracts estimated to cost more than one-hundred thousand dollars (\$100,000.00) shall be conducted under this section as follows:

(a) The city agency shall prepare an invitation for bids (hereinafter "IFB") containing the specifications and all contractual terms and conditions applicable to the procurement.

(b) The city agency shall give notice that bids will be received by advertisement in the Columbus City Bulletin at least one (1) week prior to the deadline for submission of bids, and, if the bid is let using an electronic agent, must be posted through an electronic procurement system or on a website maintained by the city at least one (1) week prior to the deadline for submission of bids. The city agency may also advertise in newspapers, professional and trade journals, and any other appropriate publications. The notice shall state the place, date and time of bid opening.

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

(d) The director authorized to make the expenditure shall evaluate each bid and award the contract to the lowest, responsive, responsible, and best bidder, subject to the provisions of Section 329.212.

(e) The director shall provide city council with a written explanation of the circumstances whenever a contract is awarded to any bidder other than the lowest.

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

(1) The city reserves the right to reject a proposal that is deemed non-responsive by the city. The following factors shall be used to determine whether a bid is responsive:

(a) Whether bidder has submitted more than one proposal for the same work from an individual or entity under the same or different name, or corporation under the same name, or corporations with one or more of the same persons as officers or directors of such corporations, or corporations which are holding companies, parent companies or holding companies that are subsidiaries of such corporations.

(b) Whether bid prices are materially unbalanced as defined in the relevant sections of the technical specifications manual specified in the bid documents, where applicable.

(c) Whether bidder has failed to comply with pre-qualification requirements as defined in the relevant sections of the technical specifications manual specified in the bid documents, where applicable.

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

(e) Whether the bidder failed to acknowledge addenda or the proposal does not contain complete forms required to be included in the proposal and the city determines that the bidder's proposal does not respond to the bid documents in all material respects or contains irregularities or deviations which affects the amount of the bid or otherwise gives the bidder a competitive advantage.

(f) Whether bidder adds a provision reserving the right to accept or reject an award.

(g) Whether bidder fails to submit a unit price for each contract item listed, when required by the bid specification.

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

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

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

(k) Whether the bidder has complied with the requirements of section 329.20(h) regarding subcontractors.

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

(a) Whether the bidder has actively engaged in the construction industry and has experience in the area of construction service for which the bid has been submitted.

(b) Whether the bidder has a successful record of complying with and meeting completion deadlines as well as controlling costs on similar construction projects.

(c) Whether the bidder has demonstrated to the city's satisfaction adequate and appropriate resources, including, but not limited to, specialized equipment, human resources and bonding capacity for the project.

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

(e) With respect to a bidder whose bid is determined to be 10% or more below that of the next lowest bidder, supplemental details regarding the bid and/or historical information regarding performance and costs on similar contracts to demonstrate the bidder's ability to complete the contract at the price specified.

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

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

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

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

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

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

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

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

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

(a) Any professional service contract which the city agency expects to cost in excess of fifty thousand dollars (\$50,000.00) must be awarded either through the process specified in Section 329.27 or the process specified in Section 329.28. The choice between the two (2) processes is within the discretion of the city agency.

(b) In using Section 329.27 or 329.28, the director of a city agency may, at their discretion, promulgate rules and regulations to allow for a "prequalification process." The purpose of a prequalification process is to allow an agency to accept statements of qualification from offerors on an annual or biennial basis.

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

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

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

In this notice, the city agency shall also explain or state: (1) why the needed professional service(s) cannot be provided by existing city employees; (2) the frequency with which such services have been needed in the past and the anticipated need for such services in the future; and (3) whether it would be cost effective for the city to hire city employees to provide the required service in the future.

(b) The city agency shall prepare a request for statements of qualifications (hereinafter "RFSQ"). The RFSQ shall include: (1) a general description of the project; (2) a statement of the city agency's needs and requirements; (3) a list of criteria by which offerors will be evaluated; (4) notice of any offeror's meeting or conference that will be held; and (5) where the city agency intends to evaluate offers using the environmentally preferable factor, the RFSQ shall so indicate that intention.

The evaluation criteria for any contract awarded under this section shall include, but need not be limited to, the following: (1) the competence of the offeror to perform the required service as indicated by the technical training, education and experience of the offeror's personnel who would be assigned to perform the work; (2) the ability of the offeror to perform the required service competently and expeditiously as indicated by the offeror's workload and the availability of necessary personnel, equipment and facilities; (3) past performance of the offeror as reflected by the evaluations of the city agency, other city agencies and other previous clients of the offeror with respect to such factors as quality of work, success in controlling costs, and success in meeting deadlines; and (4) an environmentally preferable factor except when there is not an environmentally preferable manner in which to carry out the purpose of the contract.

(c) The city agency shall give notice of the RFSQ by advertisement in the Columbus City Bulletin. Such advertisement shall be published at least one (1) week prior to the deadline by which offerors must submit statements of qualifications (hereinafter "SOQ"). The city agency may also advertise in newspapers, professional and trade publications, and other appropriate publications. The city agency may also contact potential offerors directly.

(d) The city agency shall form an evaluation committee (hereinafter "committee") to evaluate SOQs received. The committee shall consist of an odd number of members, no less than three (3), selected from the city agency, other city agencies or both. The committee may also include noncity employees so long as neither they, nor any member of their families, nor any of their business associates have an interest in the contract being awarded. Unless manifestly impractical, at least one (1) member of the selection committee shall hold the same professional license or certification required by the offerors. The agency may elect to utilize two (2) separate committees, one (1) for subsection (e) below, and one (1) for subsections (f), (g), and (h) below.

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

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

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

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

(i) The director of the city agency shall have discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The city agency shall enter into contract negotiations with the selected offeror to determine the terms and conditions of the contract, including compensation to be paid by the city. If negotiations fail, negotiations with this offeror shall be terminated, and the city agency shall enter into contract negotiations with another offeror as selected by the director. This process shall continue until a contract is successfully negotiated. If the city agency is unable to successfully negotiate a contract with any of the contractors, it may cancel the selection process.

(j) After successfully negotiating a contract, the city agency shall submit legislation to city council requesting approval of the contract. In its request for approval, the city agency shall identify the contractors who were selected for further consideration under subsection (e), and shall explain the basis for the selection of the chosen contractor. No contract awarded under this section shall be effective until approved by ordinance of city council.

### **329.28 - Awarding professional service contracts through requests for proposals.**

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

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

In this notice, the city agency shall also explain or state: (1) why the needed service or services cannot be provided by existing city employees; and (2) the frequency with which such services

have been needed in the past and the anticipated need for such services in the future; and (3) whether it would be cost effective for the city to hire city employees to provide the required service in the future.

(b) The city agency shall prepare a request for proposals (hereinafter "RFP"). The RFP shall include: (1) a general description of the project; (2) a statement of the city agency's needs and requirements; (3) a list of criteria by which offerors and proposals will be evaluated; (4) notice of any offeror's meeting or conference that will be held; and (5) where the city agency intends to evaluate offers using the environmentally preferable factor, the RFP shall so indicate that intention.

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

(c) The city agency shall give notice of the RFP by advertisement in the Columbus City Bulletin. Such advertisement shall be published sufficiently in advance of the deadline for submission of proposals to allow offerors an adequate opportunity to submit a proposal given the nature and size of the project. In no case shall the advertisement be made less than seven (7) days in advance of the deadline for submission of proposals. The city agency may also advertise the RFP in newspapers, professional and trade publications, and any other appropriate publications. The city agency may also contact potential offerors directly.

(d) The city agency shall appoint an evaluation committee (hereinafter "committee") to evaluate proposals received. The committee shall consist of an odd number of members, no less than three (3), selected from the city agency, other city agencies, or both. Unless manifestly impractical, at least one (1) member of the selection committee shall hold the same professional license or certification required by the offerors. The committee may also include noncity employees so long as neither they, nor any member of their families, nor any of their business associates have an interest in the contract being awarded.

(e) The committee shall evaluate all offerors and proposals received and rank the offerors based upon the evaluation criteria specified in the RFP. The committee may select two (2) or more of the highest qualified offerors with which to hold additional discussions. Offerors not selected for further discussions may be excluded from further consideration for the contract upon notification by the committee or city agency.

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

(f) Based upon the content of the proposals received including any revisions thereto, and upon any additional discussions with the offerors the committee shall rank the remaining offerors based upon the evaluation criteria specified in the RFP.

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

(h) The director of the city agency shall have discretion consistent with appropriate departmental and/or citywide administrative rules in selecting the offeror with which to enter into contract negotiations. The city agency shall enter into contract negotiations with the selected offeror to determine the terms and conditions of the contract, including compensation to be paid by the city. If negotiations fail, negotiations with this offeror shall be terminated, and the city agency may enter into contract negotiations with another offeror as selected by the director. This process may continue until a contract is successfully negotiated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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