

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 this section, 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.
 - (1) Construction, as it relates to a public improvement, includes the following:
 - (a) The construction of new buildings and structures, including site preparation.
 - (b) Additions, alterations, conversions, expansions, reconstruction, renovations, rehabilitations, and major replacements of a building or structure, including, but not limited to, the complete replacement of a roof.
 - (c) Major mechanical and electrical system installations and upgrades, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, and other similar building services that are built into the facility.
 - (d) New, fixed outside structures or facilities, including, but not limited to, sidewalks and trails, highways and streets, bridges, parking lots, utility connections, outdoor lighting, water supply lines, sewers, water and signal towers, electric light and power distribution and transmission lines, playgrounds and equipment, parks with features, retaining walls, and similar facilities that are built into or fixed to the land, including site preparation.
 - (e) Additions, alterations, expansions, reconstruction, renovations, rehabilitations, and major replacements of a fixed, outside structure.
 - (f) Major earthwork for land improvements for parks and recreation fields.
 - (g) Blasting, demolition, dredging, drilling, excavating and/or shoring.
 - (2) Construction, as it relates to a public improvement, does not include the following:
 - (a) Annual, routine, or minor maintenance and repairs to existing buildings and structures, including, but not limited to, painting, patching, and carpet cleaning.
 - (b) Annual, routine, or minor maintenance and repairs to building systems, including, but not limited to, plumbing, heating and central air conditioning, boilers, ventilation systems, fire suppression systems, pump systems electrical work, elevators, escalators, carpet replacement and other similar building services that are built into the facility.

- (c) Annual, routine, or minor maintenance and repairs to fixed, outside structures or facilities, including, but not limited to, cleaning, sealing, landscaping, and tree removal.
 - (d) Cost and installation of special purpose equipment designed to prepare the structure for a specific use, including, but not limited to, furniture and equipment for an office.
- (3) For purposes of prequalification, as required by this Chapter, construction does not include demolition or deconstruction of any structure owned by the city's land bank or any structure located in an area zoned for residential use as defined in Title 33 of City Code.
- (g) Construction Contract. Any agreement for the procurement of services, including labor and materials, for the construction of public improvements, including but not limited to streets, highways, bridges, sewers, water lines, power lines and plant facilities.
 - (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 Section 361.07.
 - (m) Employer. Has the same meaning as Section 361.06.
 - (n) ~~Environmentally Preferable Bidder or Offeror. Environmentally Preferable Product or Service A bidder or offeror whose bid or offer consists of m~~Materials, supplies, equipment, construction and/or services which have a lesser or reduced ~~effect~~ negative impact 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) Full-Time Employees. For persons directly performing construction service work in Ohio, full-time employees means the product of the total number of hours worked by all construction service work employees of the entity in the previous fiscal year divided by one thousand two hundred eighty (1,280). For all other persons performing work in Ohio, full-time employees means the product of the total number of hours worked by all other employees of the entity in the previous fiscal year divided by two thousand eighty (2,080).
 - (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, or any other skilled trade approved by the director of finance and management or designee.
- (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 (1) executive officer of the business entity; and
 - (b) Has been owned or leased by the business entity for no less than twenty-four (24) consecutive months immediately preceding the date such proof is submitted; or if a business entity has relocated within the city of Columbus during the preceding twenty-four (24) months, it has owned or leased otherwise eligible office space for twenty-four (24) consecutive months immediately preceding the date such proof is submitted; and
 - (c) Is none of the following: Post Office boxes or similar mailing addresses; moveable work sites, such as construction trailers or offices at a construction job site; locations zoned for residential use, unless such location is the sole office space owned and/or leased by the business entity; or locations occasionally rented or used by the business entity for temporary business functions, such as office meetings or teleconferences.
 - (2) Taxpayer in Good Standing. A business entity that submits proof to the city demonstrating that it has filed returns for both net profits and payroll taxes with the city of Columbus for no less than two (2) consecutive fiscal years preceding the date such proof is submitted. The business entity must further submit proof to the city demonstrating one (1) of the following:
 - (a) That the business entity is current and compliant in the payment of any city of Columbus taxes on payroll and net profits at the time such proof is submitted; or
 - (b) If the business entity is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the business entity has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted.

- (v) Local Workforce. A workforce whereby at least fifteen (15) percent of the business entity's full-time equivalent employees in Ohio reside in the city of Columbus, as determined by the finance and management director or designee.
- (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 met the requisite criteria and/or not received a score necessary to be deemed responsible or provisionally responsible by prequalification and, as result, is not approved to bid or subcontract on construction service contracts with the city.
- (z) Prequalified Provisionally Responsible. An entity who has met the requisite criteria and received a score necessary to be deemed provisionally responsible by prequalification, and, as result, is approved on a temporary basis, not to exceed 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 met the requisite criteria and received a score necessary to be deemed responsible by prequalification and, as result, is approved to bid or subcontract on construction service contracts with the city.
- (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 (1) of the following:
 - (1) Graduated from or are participating in a bona fide apprenticeship program that is approved by the Ohio State Apprenticeship Council, as defined in the Ohio Administrative Code Section 4101:9-4-02(C) or a successor to that section, or the United States Department of Labor, as defined in 29 CFR 29.2(f) or a successor to that section, if such apprenticeship programs are available; or
 - (2) Have at least five (5) years of 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.
- (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.

329.17 - Environmentally preferable purchasing.

- (a) The city recognizes that the products and services the city buys have inherent social, health, and environmental impacts, and that the city should make procurement decisions that further the city's commitment to sustainability. City agencies will shall develop specifications to encourage require the purchase of materials, supplies, equipment, construction and services from an environmentally preferable bidder or offeror environmentally preferable products or services ("EPPS") unless a determination is made there is not an acceptable EPPS for such good or services 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. The director of finance and management or designee shall, where practicable, establish default EPPS specifications for goods and services and may waive such specifications on a case-by-case basis. For goods and services that are of a specialized or unique nature, city departments shall develop EPPS specifications on a case-by-case basis, in consultation with the director of finance and management or designee.
- (b) In determining whether an acceptable EPPS exists for a specific good or service, city departments shall consider the following:

- (1) If the EPPS is cost-effective, including, but not limited to, life-cycle costs;
- (2) If the EPPS is known or anticipated to perform as needed;
- (3) If the EPPS is available in the necessary timeframe;
- (4) If a competitive market exists for the EPPS; and
- (5) If reliance on an EPPS would adversely impact the quality and reliability of the good or service to be procured.

~~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 (\$20,000.00)) 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.~~

- ~~(c) For construction contracts procured under Article III, and if Section 329.212 applies to the evaluation, the local preference in Section 329.212 shall be applied first and the environmental preference in this section shall be applied second.~~

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 has attached an affidavit indicating that, at the time of bid submission, the applicant will provide a bid bond, certified check, cashier's check, or letter of credit pursuant to Chapter 1305 of the Ohio Revised Code for the amount specified in the bid; and the applicant shall provide a notarized letter from its surety company that does all of the following: is dated within the last thirty (30) days; is signed by the surety company's attorney in fact; includes the surety power of attorney; and states that the surety is prepared to provide a performance and payment bond.
 - (4) Whether the applicant has signed an affidavit agreeing to make the business entity's financial statement for the most recently completed fiscal year available to the city for viewing upon request.
 - (5) Whether the applicant is not currently debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project.
 - (6) Whether the applicant is one (1) of the following: current and compliant in the payment of any city of Columbus taxes on payroll and net profits; or, if the applicant is not current and compliant in the payment of any city of Columbus taxes on payroll and net profits, that the applicant has entered into an agreement to pay any delinquency and is abiding by the terms of the agreement at the time such proof is submitted.

- (b) No business entity may be deemed prequalified responsible or provisionally responsible unless it affirmatively meets at least three (3) of the following five (5) criteria:
- (1) Whether the applicant has a local workforce as defined in Section 329.01.
 - (2) Whether the applicant's employees meet the quality training criteria as defined Section 329.01, provided that, for purposes of full inclusion and creation of entry-level opportunities in the construction trades, up to ten (10) percent of a business entity's employees performing licensed construction trade work in Ohio may be participating in pre-apprenticeship programs, career technical programs, or otherwise have less training and experience.
 - (3) Whether the applicant provides health insurance as defined in Section 329.01.
 - (4) Whether the applicant provides a retirement or pension plan as defined in Section 329.01.
 - (5) Whether the applicant is a local business as defined in Section 329.01.
- (c) If a business entity affirmatively meets the requirements of subsections (a) and (b), the following criteria shall be used to determine responsibility prequalification:
- (1) Whether the applicant has been debarred or otherwise disqualified from bidding on or completing work on any government agency or public works project within the last five (5) years.
 - (2) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which a conviction was imposed for any crime related to its business conduct within the last ten (10) years.
 - (3) Whether the applicant has received an unsatisfactory judgment, as defined in Section 329.01, in which civil liability was imposed concerning the applicant's bid for and/or work on any public or private construction project within the last five (5) years.
 - (4) Whether the applicant has a history of breach of contract, or inferior or substandard performance on projects that have resulted in litigation being brought forth by the city within the last five (5) years.
 - (5) Whether the applicant has a record of claims against bonds secured on any public construction project within the last five (5) years.
 - (6) Whether the applicant has been assessed or paid liquidated damages for any construction project with either a public or private owner within the last five (5) years.
 - (7) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable federal, state and local laws and regulations within the last five (5) years.
 - (8) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with any applicable affirmative action programs, or any local, state or federal laws prohibiting discrimination against job applicants or employees within the last five (5) years.
 - (9) Whether the applicant has a record of unsatisfactory judgments, as defined in Section 329.01, with Ohio's Drug-Free Workplace requirements, pursuant to Ohio Revised Code Section 153.03 or a successor to that section, within the last five (5) years.
 - (10) Whether the applicant is a socially responsible business, which shall be evidenced by a continuing relationship with at least one organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons reentering the community or by the business' sponsorship or signatory status with non-profit entity which sponsors a construction apprenticeship program, certified by the Ohio Apprenticeship Council or U.S. Department of Labor, which has a continuing relationship with at least one (1) organization or program providing employment services for displaced workers and/or employment services for formerly incarcerated persons

reentering the community. Such organizations shall be certified by the director of finance and management or designee.

- (d) All members of a joint venture must be individually pre-qualified responsible or provisionally responsible by bid due date to be awarded a contract under Article III.