



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD



TO: Commissioners Helgeson, Brown, Mital, Simpson, and Carlson

FROM: Sue Fahey, Chief Financial Officer; Sarah Gorsegner, Purchasing & Warehouse Supervisor

DATE: April 21, 2017

SUBJECT: Update to EWEB’s Public Contracting Rule 2-0150 and Board Policy EL2, Purchasing Controls

OBJECTIVE: Board Direction

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### Issue

The Board and Management have requested review and clarification of the contract approval processes. As part of that process, Management is recommending updates to EWEB’s Public Contracting Rule 02-150 and Board Policy EL2.

### Background

The Board is the Local Contract Review Board as required under ORS279A.060. Board Policy (EL2) and EWEB Contracting Rules (2-0150) provide direction to the Board and staff for Board approval requirements and exemptions.

The last time that the rules were reviewed and approved by the Board was summer 2013 and revisions were approved August 6, 2013 (Resolution 1320). Staff has found that not all provisions were revised as stated in Resolution 1320. The attached drafts are based on the last Board approved language for EL2 and EWEB Contracting Rule 2-0150.

### Discussion

#### EWEB Public Contracting Rules and Board Purchasing Controls Policy Update

Management is recommending updates to the Rules and Policies to clarify and streamline approval processes. The key revisions are outlined in the table below, with drafts attached for review.

Applicable Rule	Recommended Revision	Previous
EL2 (1), EWEB Rule 2-0150 (1)	Makes the threshold consistent for all Purchasing contracts at \$150,000.	Construction Services approved by the Board at \$100,000 or above
EWEB Rule 2-0150 (4)(c); EL2 (4)(c), revision will be revised to item 3 for both documents	For cooperative procurements above \$150,000, the Board will approve contracts that EWEB is eligible to use.	Purchases were exempt from Board approval. Specified which cooperative agency EWEB was authorized to use.

Applicable Rule	Recommended Revision	Previous
EWEB Rule 2-0150 (4)(a), EL2 (4)(a); revision will be item (5)(a) for both documents	For contracts that are solicited and approved by the Board in 5 year terms, removes redundancy for additional annual review. Only appointed consultants retained beyond the 5 year term would be brought to the Board.	Retained professionals reported annually.
EL2 (6)	Clarifies which contracts are subject to Board Approval.	Non-purchasing and exempt contracts were not clarified by Policy.

- Exhibit A: Redlined existing EWEB Contracting Rule 2-0150
- Exhibit B: Proposed revised EWEB Contracting Rule 2-0150
- Exhibit C: Redlined existing Board Approved EL2
- Exhibit D: Proposed revised Board Approved EL2

**Recommendation/Requested Board Action**

Management is requesting Board feedback on the proposed revisions. The policies are scheduled to be approved at the June 6, 2017 Board meeting.

 <b>Public Contracting Rules</b>	Adopted: 1/4/2005 Effective: 3/1/2005
<b>GENERAL PROVISIONS</b>	Revised: <u>2/35/2</u> /2017 Approved: _____

## Division 2: Authority; General Provisions; Protests and Remedies

### 2-0150 Board Approval Thresholds

(1) The Board shall have the sole authority to approve award of all contracts for Goods, Services, Personal Services, Construction, and Equipment that meet or exceed \$150,000.~~the following thresholds:~~

~~— Purchase of all Goods, Services, Personal Services and Equipment: \$150,000 or greater  
 — Construction — \$100,000 or greater~~

(2) The Board shall have the sole authority to approve all change orders to Board awarded contracts that cause the contract to exceed 25 percent of the last Board approved amount. The Board shall also have the sole authority to approve any change orders where the change order would cause the contract to exceed the Board approval thresholds, as provided in (1) of this rule.

~~(3) The Board shall provide Authorization to Use Cooperative Procurement Contracts when purchases exceed \$150,000.~~

~~(34) The Board shall be notified of any proposed contract(s) with any known Leadership Team (LT) member's immediate Household Member or Relative, as defined in ORS 244.020 (11 and 16), family prior to that contract being placed on the Board's consent calendar for Board approval.~~

~~Notification to the Board of the proposed contract(s) shall initially be given to the General Manager as soon as practical. At a minimum, the notification shall include:~~

~~The name of the Leadership Team Manager,  
 The name of the proposed contractor,  
 That the Leadership Team Manager and proposed contractor are immediate family members,  
 A description of the proposed work,  
 Staff's findings,  
 The estimated potential cost of the contract, and  
 The contract term.~~

~~The General Manager will provide the information to the Board at his or her earliest convenience, by whatever means he or she determines to be most appropriate.~~

~~"Immediate Family Member," as used in this rule, means any spouse, domestic partner, child, sibling (of any kind, including in-law), parent (including in-law), or grandchild.~~

(5) This rule does not apply to the following procurements:

a. ~~Contracts for Existing Board Appointed Consultants and Attorneys, professional services, which are retained beyond the initial contract term, shall be reported to the Board annually for their ratification. The initial contract with any new consultants and attorneys shall be submitted to Board for approval. Any contracts with those persons thereafter will be ratified by the Board annually; Any contracts with those persons thereafter will be ratified by the Board annually;~~

b. Required **sole-source/single seller** contracts, which includes the following:

- Governmentally required taxes, fees, permits and payments;
- Software licenses, upgrades, and fees;
- Equipment and software maintenance ~~agreements; and~~
- ~~Commonly used~~ Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities, ~~and~~
- ~~Other sole-source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice, but to use to maintain business operations.~~

c. ~~Cooperative Procurement Contracts established for multiple-agency use by:~~  
State of Oregon,  
State of Washington  
Western States Contracting Alliance (WSCA),  
U.S. Communities,  
The federal General Services Administration, or  
Other governmental entity that is legally sufficient for EWEB's use.

d. ~~Board approved price agreements that specifically identify the contract as a price agreement and the purchases as being made on an "as needed" basis for the life of the contract (e.g. the purchase of stores items "as needed" to perform the utility's regular work).~~

This exception from Board approval does not apply to any contract(s) as set forth in section 34, above.

(6) Board Approval thresholds applicable under this EWEB Contracting Rule are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.

a. Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements with significant community impacts as determined by Management.

b. The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension, and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Contracts over \$150,000 will be included in the annual approved budgets and/or reported to the Board as part of an after action report.

~~Application of exception 4 above is at the sole judgment and discretion of the Purchasing Manager and shall only be applied to required single seller/sole-source contracts.~~

 <b>Public Contracting Rules</b>	Adopted: 1/4/2005 Effective: 3/1/2005
<b>GENERAL PROVISIONS</b>	Revised: 5/2/2017 Approved: _____

## Division 2: Authority; General Provisions; Protests and Remedies

### 2-0150 Board Approval Thresholds

- (1) The Board shall have the sole authority to approve award of all contracts for Goods, Services, Personal Services, Construction, and Equipment that meet or exceed \$150,000.
- (2) The Board shall have the sole authority to approve all change orders to Board awarded contracts that cause the contract to exceed 25 percent of the last Board approved amount. The Board shall also have the sole authority to approve any change orders where the change order would cause the contract to exceed the Board approval thresholds, as provided in (1) of this rule.
- (3) The Board shall provide Authorization to Use Cooperative Procurement Contracts when purchases exceed \$150,000.
- (4) The Board shall be notified of any proposed contract(s) with any known Leadership Team (LT) member's Household Member or Relative, as defined in ORS 244.020 (11 and 16), prior to that contract being placed on the Board's consent calendar for Board approval.
- (5) This rule does not apply to the following procurements:
  - a. Contracts for Board Appointed professional services, which are retained beyond the initial contract term, shall be reported to the Board annually for their ratification.
  - b. Required **sole-source/single seller** contracts, which includes the following:
    - Governmentally required taxes, fees, permits and payments;
    - Software licenses, upgrades, and fees;
    - Equipment and software maintenance; and
    - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

This exception from Board approval does not apply to any contract(s) as set forth in section 4, above.

- (6) Board Approval thresholds applicable under this EWEB Contracting Rule are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.
  - a. Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements with significant community impacts as determined by Management.

- b. The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension, and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Contracts over \$150,000 will be included in the annual approved budgets and/or reported to the Board as part of an after action report.

Proposed EL2 Language

**Policy Number:** EL2  
**Policy Type:** Executive Limitations  
**Policy Title:** Purchasing Controls  
**Effective Date:** August 6, 2013; Proposed May 2, 2017

## Board Approval Thresholds

1. The Board shall have the sole authority to approve the award of all contracts for Goods, Services, Personal Services, Construction, and Equipment that meet or exceed \$150,000.  
~~that meet or exceed the following thresholds:~~

~~Purchase of all Goods, Services, Personal Services and Equipment \$150,000 or greater  
Construction \$ 100,000 or greater~~

2. The Board shall have the sole authority to approve all change orders to Board awarded contracts that cause the contract to exceed 25 percent of the last Board approved amount. The Board shall also have the sole authority to approve any change orders where the change order would cause the contract to exceed the Board approval thresholds, as provided in (1) of this rule.

3. The Board shall provide Authorization to Use a Cooperative Procurement Contracts when purchases exceed \$150,000.

~~3.~~ 4. The Board shall be notified of any proposed contract(s) with any known Leadership Team (LT) member's Household Member or Relative, as defined in ORS 244.020 (11 and 16) immediate family, prior to that contract being placed on the Board's consent calendar for Board approval. ~~Notification to the Board of the proposed contract(s) shall initially be given to the General Manager as soon as practical.~~  
~~At a minimum, the notification shall include:~~

- ~~• The name of the Executive Manager,~~
- ~~• The name of the proposed contractor,~~
- ~~• That the Executive Manager and proposed contractor are immediate family members,~~
- ~~• A description of the proposed work,~~
- ~~• Staff's findings,~~
- ~~• The estimated potential cost of the contract, and~~
- ~~• The contract term.~~

~~The General Manager will provide the information to the Board at his or her earliest convenience, by whatever means he or she determines to be most appropriate.~~

~~"Immediate Family Member," as used in this rule, means any spouse, domestic partner, child, sibling (of any kind, including in law), parent (including in law), or grandchild.~~

5. This rule does not apply to the following procurements:

a. ~~Contracts for Existing~~ Board appointed ~~consultants and attorneys~~ professional services, which are retained beyond the initial contract term, shall be reported to the Board annually for their ratification. ~~The initial contract with any new consultants and attorneys shall be submitted to the Board for approval. Any contracts with those persons thereafter will be ratified by the Board annually;~~

b. Required sole-source/single seller contracts, which includes the following:

- Governmentally required taxes, fees, permits and payments;
- Software licenses, upgrades, and fees;
- Equipment and software maintenance ~~agreements~~; and
- ~~Commonly used~~ Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities. ~~and Other sole source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice, but to use to maintain business operations.~~

~~e. Cooperative Procurement Contracts established for multiple agency use by:  
State of Oregon,  
State of Washington  
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The federal General Services Administration, or  
Other governmental entity that is legally sufficient for EWEB's use.~~

~~d. Board approved price agreements that specifically identify the contract as a price agreement and the purchases as being made on an "as needed" basis for the life of contract (e.g. the purchase of stores items "as needed" to perform the utility's regular work)~~

This exception from Board approval does not apply to any contract(s) as set forth in section (34), above.

6. Board Approval thresholds applicable under this Board Policy are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.

- Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements with significant community impacts as determined by Management.
- The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension,

## **Proposed EL2 Language**

and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Contracts over \$150,000 will be included in the annual approved budgets and/or reported to the board as part of an after action report.

Source: EWEB Public Contracting Rules, Division 2, Section 2-0150 Approved 07/16/2013, Effective 07/17/2013, Ratified 08/06/2013, Proposed May 2, 2017

**Proposed EL2 Language**

**Policy Number:** EL2  
**Policy Type:** Executive Limitations  
**Policy Title:** Purchasing Controls  
**Effective Date:** October 4, 2016; Proposed May 2, 2017

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5. This rule does not apply to the following procurements:
  - a. Contracts for Board appointed professional services, which are retained beyond the initial contract term, shall be reported to the Board annually for their ratification.
  - b. Required sole-source/single seller contracts, which includes the following:
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    - Software licenses, upgrades, and fees;
    - Equipment and software maintenance; and
    - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

This exception from Board approval does not apply to any contract(s) as set forth in section (4), above.

6. Board Approval thresholds applicable under this Board Policy are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.
  - a. Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements with significant community impacts as determined by Management.

## **Proposed EL2 Language**

- b. The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension, and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Contracts over \$150,000 will be included in the annual approved budgets and/or reported to the Board as part of an after action report.

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