



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Sue Fahey, Chief Financial Officer; Sarah Gorsegner, Purchasing & Warehouse Supervisor
DATE: July 24, 2017
SUBJECT: Update to EWEB's Public Contracting Rule 2-0150 and Board Policy EL2, Purchasing Controls
OBJECTIVE: Approval of Resolution No. 1706

Issue

The Board requested clarification regarding the approval of settlement agreements and has requested review of policy to ensure transparency to contract activities.

Background

On June 6, 2017, the Board reviewed proposed changes to EWEB's Public Contracting Rule 2-0150 and Board Policy EL2 that addressed previous requests for clarification of the Board Appointed Consultants approval and the Quarterly Contract Report processes. Further clarification was requested on settlement agreements.

In July the Board asked for Management to review reporting and approval processes to ensure that contract activities, including commission based and revenue generating activities, receive transparency to the Board and Customer-Owners.

Discussion

Regarding the settlement agreements clarification, staff proposes that the Board receive a Quarterly Claims Report and Rule 2-0150(6)c has been modified to include that proposed language. The report will provide an opportunity for the Board to routinely review claims activity. Unsettled claims are conditionally exempt from public records requests due to potential litigation and accordingly, the information will be provided under attorney-client privilege. For large claims and those with the potential for significant community impact, the Board will be provided an opportunity to review and approve claims as indicated in (6)a. of the proposed policy changes.

To address the Boards concerns for transparency, the phrase "including sales and revenue generating activities" is proposed to be added to 2-150(6)a. Adding this phrase expands Board authorization to include commissioned or revenue generating activities such as timber harvesting or personal property sales.

The exhibits, listed below, reflect these revisions.

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
Exhibit E: Resolution No. 1706

Recommendation/Requested Board Action

Approval of Resolution No. 1706 to reflect the changes to EWEB's Public Contracting Rules, 2-0150 and Board Policy, EL2.



Public Contracting Rules

GENERAL PROVISIONS

Adopted: 1/4/2005

Effective: 3/1/2005

Revised: 2/38/1/2017

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 where the value of the Goods, Services, Personal Services, Construction, or 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 a cooperative procurement contract 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 that 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; Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants 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 f~~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).~~

~~Thise~~ these ~~exceptions~~ exceptions 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, including sales and revenue generating activities, 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; personal services for 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. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the Board as part of

an after action report.

- c. -Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

~~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.~~

 Public Contracting Rules	Adopted: 1/4/2005 Effective: 3/1/2005
GENERAL PROVISIONS	Revised: 8/1/2017 Approved: _____

Division 2: Authority; General Provisions; Protests and Remedies

2-0150 Board Approval Thresholds

- (1) The Board shall have the sole authority to approve contracts where the value of the Goods, Services, Personal Services, Construction, or Equipment 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 a cooperative procurement contract 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 that are retained beyond the initial contract term shall be reported to the Board annually for their ratification. Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants 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; and
 - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

These exceptions from Board approval do not apply to contract(s) 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, including sales and revenue generating activities, 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; personal services for 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. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the Board as part of an after action report.
- c. Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

Policy Number: EL2
Policy Type: Executive Limitations
Policy Title: Purchasing Controls
Effective Date: August 6, 2013; Revised August 1, 2017

Board Approval Thresholds

1. The Board shall have the sole authority to approve ~~the award of all~~ contracts where the value of the Goods, Services, Personal Services, Construction, or Equipment 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 contract 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 that are retained beyond the initial contract term shall be reported to the Board annually for their ratification.

Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants annually.

~~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.~~

~~c. Cooperative Procurement Contracts established for multiple agency use by:~~

~~State of Oregon,~~

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~~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 contract (e.g. the purchase of stores items "as needed" to perform the utility's regular work)~~

~~These~~ exceptions 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.

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, including sales and revenue generating activities, 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; personal services for 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. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the board as part of an after action report.

- c. Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

Source: EWEB Public Contracting Rules, Division 2, Section 2-0150 Approved 07/16/2013, Effective 07/17/2013, Ratified 08/06/2013, Revised August 1, 2017

Policy Number: EL2
Policy Type: Executive Limitations
Policy Title: Purchasing Controls
Effective Date: August 6, 2013; Revised August 1, 2017

Board Approval Thresholds

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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 contract 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, that are retained beyond the initial contract term shall be reported to the Board annually for their ratification. Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants 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; and
 - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

These exceptions from Board approval do not apply to contract(s) 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

Proposed EL2 Language

agreements, including sales and revenue generating activities, 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; personal services for 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. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the board as part of an after action report.
- c. Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

Source: EWEB Public Contracting Rules, Division 2, Section 2-0150 Approved 07/16/2013, Effective 07/17/2013, Ratified 08/06/2013, Revised August 1, 2017

**RESOLUTION NO. 1706
AUGUST 2017**

**RESOLUTION APPROVING REVISIONS TO EWEB PUBLIC CONTRACTING
RULE 2-0150 AND
BOARD POLICY EL2 – PURCHASING CONTROLS**

WHEREAS, the Eugene Water & Electric Board (EWEB) is a state of Oregon local government; and maintains a Board Policy Manual that contains governing policies for the Board of Commissioners; and

WHEREAS, EWEB's Board of Commissioners is EWEB's governing body and Contract Review Board (ORS279A.60) with rulemaking authority to adopt its own rules of procedure for public contracts (ORS279A.065(5)(a)); and

WHEREAS, the Board of Commissioners periodically reviews said policies and determines that modifications or amendments are required to adequately document the work or intention of the Board with regard to governance, Board-staff linkage, strategic direction or executive limitations; and

WHEREAS, the Board of Commissioners has reviewed and discussed the provisions of proposed new EWEB Public Contracting Rule 2-0150 and Board Policy EL2 Purchasing Controls at the May 2 and June 6, 2017 Board meetings; and

BE IT RESOLVED that the EWEB's Board of Commissioners hereby adopts the proposed revisions to its Public Contracting Rule 2-0150: Board Approval Thresholds and Board Policy EL2: Purchasing Controls.

DATED, this 1st day of August 2017.

THE CITY OF EUGENE, OREGON
Acting by and through the
Eugene Water & Electric Board

President

I, ANNE M KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the amended resolution adopted by the Board at its August 1, 2017 Regular Board Meeting.

Assistant Secretary