



**M E M O R A N D U M**

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown  
FROM: Sue Fahey, Assistant General Manager/CFO; Deborah Hart, Financial Services  
Manager; Sarah Gorsegner, Purchasing & Warehouse Supervisor  
DATE: June 26, 2019  
SUBJECT: Update to EWEB’s Public Contracting Rule 3-0275  
OBJECTIVE: Information and Feedback Request

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**Issue**

EWEB’s Public Contracting Rule 2-0140 provides the Board authority to update and revise EWEB Public Contracting Rules, so long as such revisions do not conflict with law.

**Background**

Under ORS 279B.075, the local contract review board (EWEB’s Board) has authority to approve use of a sole source contract. The Board has delegated the General Manager authority to approve sole source contracts in EWEB Rule 3-0275.

**Discussion**

Management proposes that EWEB’s Rule be updated to allow the General Manager to designate a Chief Executive to review findings of fact to determine that goods or services or a class of goods or services, are available from only one source. Contracts will continue to require approval by the Board at the currently established thresholds which are \$150,000 unless otherwise exempt.

If approved, EWEB Rule 3-0275 will be updated to reflect the proposed change below:

**3-0275 Sole-source Procurements**

EWEB may award a contract for goods or services without competition when the General Manager or Chief Executive Manager designee, after reviewing findings of fact, determines, after reviewing findings of fact, that the goods or services or class of goods or services, are available from only one source.

- (1) The determination of a sole-source must be based on written findings that may include:
  - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
  - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
  - (c) That the goods or services are for use in a pilot or an experimental project; or
  - (d) Other findings that support the conclusion that the goods or services are available from only one source.
  
- (2) In addition to the findings provided above, EWEB-specific findings may include the following:
  - (a) That EWEB’s ability to provide vital services to its customers may be jeopardized should another good or service fail to match exactly the features, characteristics, performance, compatibility,

- reliability, and functionality of the sole-source good or service.
- (b) EWEB lacks the time or expertise to responsibly investigate, analyze, or test an unfamiliar product(s) to assure that the product's capability, interface, features, components, durability, functionality, performance, safety, economy, and reliability are compatible with EWEB's infrastructure and will provide EWEB and its customers the most advantageous performance.
  - (c) Subparagraph (b) above shall not be used to avoid the bidding or proposal requirements provided in this Division.
- (3) To the extent reasonably practical, EWEB shall negotiate with the sole-source to obtain contract terms that are advantageous to EWEB.
  - (4) If there are multiple sellers for the sole-source manufacturer's good(s) or service(s), EWEB shall follow the appropriate solicitation process to encourage competition between the potential providers.
  - (5) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.
  - (6) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.075, 279B.145

### **Recommendation/Requested Board Action**

This item is presented as information and an opportunity to provide feedback. Based on any feedback, a resolution reflecting the recommendations will be presented at the next Board Meeting as a Board Consent Request. Feedback may be provided to Sarah Gorsegner, 541-685-7348.