



# MEMORANDUM

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; and Sarah Gorsegner, Purchasing & Warehouse Supervisor  
DATE: July 26, 2019  
SUBJECT: Update to EWEB's Public Contracting Rule 3-0275  
OBJECTIVE: Approval of Resolution No. 1922

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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

At the July 9, 2019 Board meeting, Management proposed allowing the General Manager to delegate approval of Sole Source Purchases to Chief Executive Management. Under ORS 279B.075, the local contract review board (EWEB's Board) has authority to approve use of a sole source contract. Previously, the Board has delegated the General Manager authority to approve sole source contracts.

## Discussion

Management proposes that EWEB's Contracting 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. Management will indicate to the Board when proposed contracts are negotiated using a sole source exemption on the Board Consent request.

The proposed revision is in the first paragraph of EWEB Contracting Rule 3-0275, as follows:

### 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.

Exhibits below include:

Exhibit A: Proposed revised EWEB Contracting Rule 3-0275

Exhibit B: Resolution No. 1922

## Recommendation/Requested Board Action

Approval of Resolution No. 1922 to reflect the changes to EWEB's Public Contracting Rule 3-0275.

## Exhibit A: Proposed revised EWEB Contracting Rule 3-0275

### 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 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

**RESOLUTION NO. 1922  
AUGUST 2019**

**EUGENE WATER & ELECTRIC BOARD  
RESOLUTION APPROVING REVISIONS TO  
EWEB PUBLIC CONTRACTING RULE 3-0275**

**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 3-0275 at the July 9, 2019 Board meeting.

**BE IT RESOLVED** that the EWEB's Board of Commissioners hereby adopts the proposed revisions to its Public Contracting Rule 3-0275: Sole Source Procurements.

Dated this 6<sup>th</sup> day of August 2019.

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

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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 resolution adopted by the Board at its August 6, 2019 Board meeting.

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Assistant Secretary