



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown
FROM: Deborah Hart, Finance Manager; Sarah Gorsegner, Purchasing & Warehouse Supervisor
DATE: December 3, 2019
SUBJECT: Update to EWEB's Public Contracting Rules
OBJECTIVE: Information and Feedback Request

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/Discussion

Management proposes to update EWEB's Contracting Rules to align with changes to the Oregon Revised Statutes approved in the recent legislative session. The changes are summarized below. In addition, attached are the proposed redlined sections as well as the finalized versions. The proposed changes have been prepared with support by legal counsel.

Division 1: Definitions

- *No revisions*

Division 2: Authority; General Provisions; Protests and Remedies

- *No revisions*

Division 3: Public Contracting & Procurement of Goods and Services

- *Updates references to ORS for Public records/trade secret rules, these references are throughout the rules and will be applied consistently, every iteration of the change is not provided in the reference materials in an effort to minimize the board materials length.*
- *Requires review of liquidated or delinquent debt owed to the state of Oregon when reviewing qualifications of contractors*

Division 4: Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services, or Related Services

- *Updates references to ORS for Public records/trade secret rules*
- *Revises the Qualification Based Selection process to allow pricing to be part of the evaluation criteria*

Division 5: Construction Contracts

- *Updates references to ORS for Public records/trade secret rules, these references are throughout the rules and will be applied consistently, every iteration of the change is not*

- provided in the reference materials in an effort to minimize the board materials length.*
- *Updates rules allocating financial resources for the use of Green Energy Technology in Public Buildings*
 - *Updates requirements for paying interest on retainage for construction services*

Division 6: Particular Contract and Class Special Procurement Exclusions and Exemptions

- *Updates payment obligations when contracting for services provided by individuals with disabilities*

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.

QUALIFICATIONS AND DUTIES

3-0500 Responsibility of Bidders and Proposers

- (1) EWEB shall prepare a written determination of nonresponsibility of a bidder or proposer if EWEB determines that the bidder or proposer does not meet the standards of responsibility.
- (2) In determining whether a bidder or proposer has met the standards of responsibility, EWEB shall consider whether a bidder or proposer has:
 - (a) Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to indicate the capability of the bidder or proposer to meet all contractual responsibilities;
 - (b) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. EWEB shall document the record of performance of a bidder or proposer if EWEB finds under this paragraph that the bidder or proposer is not responsible;
 - (c) A satisfactory record of integrity. In evaluating the bidder's or proposer's record of integrity, EWEB may consider, among other things, whether the bidder or proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's performance of a contract or subcontract. EWEB shall document the record of integrity of a bidder or proposer if EWEB finds under this paragraph that the bidder or proposer is not responsible;
 - (d) Qualified legally to contract with EWEB;
 - (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that EWEB requests, EWEB shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible; ~~and~~
 - (f) Not been debarred by EWEB under Rule 3-0575; and
 - (g) Liquidated or delinquent debt owed to the state of Oregon.
- (3) EWEB may refuse to disclose outside of EWEB confidential information furnished by a bidder or proposer under this section when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and EWEB has authority under ORS 192.~~410-311~~ to 192.~~505-478~~ to withhold the identified information from disclosure.
- (4) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.


Stats. Implemented: ORS 279B.110, 279B.145

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 - (d) Qualified legally to contract with EWEB;
 - (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that EWEB requests, EWEB shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible;
 - (f) Not been debarred by EWEB under Rule 3-0575; and
 - (g) Liquidated or delinquent debt owed to the state of Oregon.
- (3) EWEB may refuse to disclose outside of EWEB confidential information furnished by a bidder or proposer under this section when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and EWEB has authority under ORS 192.311 to 192.478 to withhold the identified information from disclosure.
- (4) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

Stats. Implemented: ORS 279B.110, 279B.145

 Public Contracting Rules	Adopted: <u>1/4/2005</u> Effective: <u>3/1/2005</u>
Construction Consultants	Revised: <u>2/3/2015</u> Revised: <u>8/18/2017</u> <u>Revised: 1/7/2020</u>

**Division 4
Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and
Land Surveying Services, or Related Services**

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RULES

4-0100 Application

- (1) These Division 4 rules apply to the screening and selection of consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services under Contracts, and set forth the following procedures:
 - (a) Procedures through which EWEB will select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
 - (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners and Land Surveyors for certain Public Improvements owned and maintained by EWEB, where a State Agency will serve as lead Contracting Agency and will enter into Contracts with architects, engineers and land surveyors.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065

4-0110 Definitions

Definitions applicable to **EWEB Public Contracting Rules** Division 4 are set forth at **EWEB Public Contracting Rules**, Division 1.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065

4-0120 List of Interested Consultants; Performance Record

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to EWEB's Purchasing Office. The Purchasing Office will use this information to create a list of prospective Consultants and will periodically update this list.
- (2) EWEB may compile and maintain a record of each Consultant's performance under a Contract, including information obtained from Consultants during an exit interview, if requested by the utility. Compiled information may include, but is not limited to, the satisfactory completion of the work, EWEB's estimated additional costs resulting from the Consultant's failure to meet project requirements, EWEB's judgment of the Consultants ability to perform work for which the Consultants has indicated it is qualified to perform, and any additional benefit to the utility from the use of the Consultant. Upon request and in accordance with the Oregon Public Records Law (ORS 192.~~410-311~~ through 192.~~478505~~) EWEB may make copies of the records available.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0130 Applicable Selection Procedures; Pricing Information

- (1) When selecting the most qualified Consultant to perform Architectural, Engineering, EWEB Public Contracting Rules, Division 4 -Page 2 of 20

Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure), or EWEB Rule 4-0200 (Direct Appointment Procedure).

- (2) EWEB may solicit or use copies of pricing policies and other proposals or other pricing information including the number of hours, proposed for the services required, expenses, hourly rates and overhead, to determine consultant compensation only after EWEB has selected the most qualified Consultant in accordance with the applicable selection procedure. In following the Direct Appointment Procedure under EWEB Rule 4-0200, EWEB may base its initial selection of a Consultant on any information available to EWEB prior to beginning the Direct Appointment Procedure for the Project involved.
- (3) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, EWEB shall comply with these Division 4 rules in procuring those Services.
- (4) When selecting Consultants to perform Related Services EWEB shall follow one of the following selection procedures:
 - (a) When selecting a Consultant on the basis of qualifications alone, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure) or EWEB Rule 4-0220 (Formal Selection Procedure);
 - (b) When selecting a Consultant on the basis of price competition alone, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Bids, or EWEB Rule 4-0200 (Direct Appointment Procedure) if the requirement of EWEB Rule 4-0200 apply; and
 - (c) When selecting a Consultant on the basis of price and qualifications, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Proposals, or EWEB Rule 4-0200~~—apply~~. EWEB may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.
- (5) EWEB is not required to follow the procedures in Section (1) or Section (4) of this rule, when EWEB has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Relating Services under an individual work order or task order. Provided, however, the criteria and procedures EWEB uses to select a single Consultant, when EWEB has established Price Agreements with more than one Consultant, must meet the requirements of EWEB Rule 4-0280.
- (6) For purposes of these Division 4 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. EWEB's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. EWEB will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If

the majority of the total Estimated Fee to be paid under the contract is for Architectural Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, EWEB shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (4) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, EWEB shall comply with the applicable provisions of the EWEB Public Contracting Rules that match the predominant purpose of the Contract.

- (7) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration, or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, the Contracting Agency shall comply with these Division 4 rules in procuring those Services.
- (8) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by EWEB for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:
 - (a) The term “competitive proposal” for purposes of ORS 279C.107 includes proposals under EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure) or EWEB Rule 4-0130 (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under EWEB Rule 4-0280 (Price Agreements).
 - (b) For purposes of proposals received under EWEB Rule 4-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while EWEB may make proposals under EWEB Rule 4-0200 (Direct Appointment Procedure) open for public inspection following EWEB’s decision to begin Contract negotiations with the selected Consultant, Rule 4-0200 proposals are not required to be open for public inspection until after EWEB has executed a Contract with the selected Consultant.
 - (c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where EWEB is conducting discussions or negotiations with proposers who submit proposals that EWEB has determined to be closely competitive or to have a reasonable chance of being selected for award, EWEB may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107.
 - (d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

Stat. Auth.: ORS 279A.070; Or Laws 2011, Chapter 458

Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0140 Personal Services for Oversight of Public Contract

- (1) Except as provided in subsection (2), when EWEB procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to Division 4 or Division 5 of these

Rules, it may not:

- (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
 - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
- (2) Subsection (1) of this Rule does not apply to:
- (a) A procurement that qualifies as a design-build procurement under EWEB Rule 5-0680; or
 - (b) A procurement for construction manager/general contractor services.
- (3) As used in this section, “affiliate” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

Stat. Auth.: ORS 279A.065(3); ORS 279A.070; 2013 Or Laws Ch 522, Sec. 2, 6;

Stat. Implemented: ORS 279A.065(3); ORS 279C.307; 2013 Or Laws Ch 522, Sec. 2, 6;

4-0150 Qualification Based Selection

- (1) In accordance with the requirements of ORS279.110 and preserving all rights and provisions afforded a local contracting agency therein, EWEB shall select a consultants to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services on the basis of the consultant’s qualifications for the type of professional service required. See EWEB Rule 4-0130.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

SELECTION PROCEDURES

4-0200 Direct Appointment Procedure

- (1) EWEB may enter a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these EWEB Rules if:
- (a) EWEB finds that an Emergency exists; or
 - (b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
 - (c) A Project is being continued, the Estimated Fee will not exceed \$250,000, and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services rendered under the earlier

- Contract; and EWEB used Rule 4-0220, or formal selection procedure pursuant to statute, at the time EWEB selected the Consultant for the earlier Contract; or
- (d) A project is being continued, the Estimated Fee is expected to exceed \$250,000 and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract meet the following requirements:
- (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied, under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;
 - (B) EWEB used either the formal selection procedure under EWEB Rules Division 4-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier Contract; and
 - (C) EWEB makes written findings that entering into a Contract with the consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:
 - (i) Promote efficient use of public funds and resources and result in substantial cost savings to EWEB; and
 - (ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.
- (2) EWEB may select Consultants for Contracts under this rule from the following sources:
- (a) EWEB's list of Consultants created under EWEB Rule 4-0120 (List of Interested Consultants; Performance Record);
 - (b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 or their own rules (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or
 - (c) All Consultants offering the required Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services that EWEB reasonably can identify under the circumstances.
- (3) EWEB shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:
- (a) Consultant's performance obligations and performance schedule;
 - (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services; and
 - (c) Any other provisions EWEB believes to be in EWEB's or its customers' best interest to negotiate.

4-0210 Informal Selection Procedure

- (1) EWEB may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee to be paid under the Contract does not exceed \$250,000.
- (2) EWEB, when using the informal selection procedure, shall:
 - (a) Create a Request for Proposals that includes at a minimum the following:
 - (A) A description of the Project for which Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that will be required under the resulting Contract;
 - (B) Anticipated Contract performance schedule;
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
 - (D) The deadline (date and time), and other directions, for submitting Proposals;
 - (E) Criteria for selection, including relative weight of each factor of the most qualified Consultant. Selection criteria may include, but are not limited to, the following:
 - (i) Amount and type of resources and number of experienced staff Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services;
 - (ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals;
 - (iii) Specialized experience, capabilities and technical competence which the Consultant may demonstrate by the proposed approach and methodology to meet the project requirements;
 - (iv) Past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control methods and contract administration practices;
 - (v) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;
 - (vi) Proposer's geographic proximity to and familiarity with the physical location of the Project;
 - (vii) Volume of work, if any, previously awarded to Proposer, with the objective

of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

- (viii) Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
 - (ix) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - (x) Availability to project locale;
 - (xi) Familiarity with the project locale; and
 - (xii) Proposed project management techniques.
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFP; and
- (G) A statement notifying Proposers of the protest procedures set forth in EWEB Rules, Division 4.
- (H) A Statement that provides an estimate of the cost of the services.
- (b) Provide a Request for Proposals to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
- (A) EWEB's list of Consultants created and maintained under Rule 4-0120 (List of Interested Consultants; Performance Record);
 - (B) Another Contracting Agency's list of Consultants created and maintained under OAR 137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
 - (C) All Consultants believed by EWEB to offer the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that EWEB reasonably can identify under the circumstances.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and determine the highest ranked Proposers.

(3) Pricing may be requested and evaluated from Proposers

(a) If EWEB does not cancel the RFP after it reviews and ranks each Proposer, EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants.

The pricing proposal:

(A) Must consist of:

- (i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
- (ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and

(B) May include additional pricing information that is limited to:

(i) A description of each task that the prospective consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(b) A prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(c) EWEB will complete the evaluation and select a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (b) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.

(4) EWEB may begin negotiating a Contract with the highest ranked Proposer. EWEB shall direct negotiations toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract where the payment methodology and maximum amount payable are both fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services; and

(c) Any other provisions EWEB believes to be in its best interest to negotiate.

(45) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520. EWEB shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if EWEB and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time, such time period shall be determined solely by EWEB. EWEB may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top ranked Proposers do not result in a Contract within a reasonable amount of time, EWEB may end the particular informal solicitation and thereafter may proceed with a direct appointment under Rule 4-0200, proceed with a new informal solicitation under this Rule 4-0210, or proceed with a formal solicitation under Rule 4-0220 (Formal Selection Procedure).

(6) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most qualified prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is

reached or the contracting agency terminates the selection process.

- (57) If the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000, EWEB shall terminate the informal selection procedure and proceed with the formal selection procedure under EWEB Rule 4-0220.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0220 Formal Selection Procedures

- (1) Subject to 4-0130 (Applicable Selection Procedures; Pricing Information), EWEB shall use the formal selection procedure described in this rule to select Consultants under the Public Contracting Code if neither EWEB Rule 4-0200 (Direct Appointment Procedure) nor EWEB Rule 4-0210 (Informal Selection Procedure) are applicable to the selection. The formal selection procedure may otherwise be used at the discretion of EWEB.
- (2) EWEB, when using the formal selection procedure, shall obtain Contracts through public advertisement for either a Request for Proposals or a Request for Qualifications followed by a Request for Proposals, as described in this rule.
 - (a) Except as provided in subsection (b) of this section, EWEB shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in any other publications EWEB may select. Other publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
 - (A) EWEB shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.
 - (B) EWEB shall include a brief description of the following items in the advertisement:
 - (i) The Project;
 - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
 - (iii) How and where Consultants may obtain a copy of the RFP or RFQ; and
 - (iv) The deadline for submitting a Proposal or response to the RFQ.
 - (C) EWEB may send notice of the RFP or RFQ directly to all Consultants on its list of Consultants created and maintained under 4-0120 (List of Interested Consultants; Performance Record).
 - (b) In the alternative, EWEB may use the procedure for electronic advertisement under EWEB Rule 3-0330, which would remove any necessity of posting the solicitation in newspapers or other publications.
- (3) EWEB may use the Request for Qualifications Procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom EWEB may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ.
 - (a) EWEB shall include the following, at a minimum, in each RFQ:
 - (A) A brief description of the Project for which EWEB is seeking Consultants;

- (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks for the Project;
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
 - (D) The deadline for submitting a response to the RFQ;
 - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
 - (F) The RFQ evaluation criteria, including weights or points applicable to each criterion, where the criteria could be solely qualifications, solely price, other factors, or any combination of these criteria; and
 - (G) A statement whether or not EWEB will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory.
 - (H) A Statement that provides an estimate of the cost of the services.**
- (b) EWEB may include a request for any or all of the following in each RFQ:
- (A) A statement describing Consultant's general qualifications and related performance information;
 - (B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ including Consultant's committed resources and recent, current and projected workloads;
 - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (D) A copy of all records, if any, of Consultant's performance under Contracts with any other Contracting Agency;
 - (E) The number of Consultant's experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;
 - (F) A statement describing the Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;
 - (G) A statement describing the proposer's geographic proximity to and familiarity with the physical location of the Project;
 - (H) A statement describing the ownership status and employment practices of the proposer regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (I) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - (J) A Statement that Proposers responding to the RFQ do so solely at their

- expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFQ; and
- (K) Any other information EWEB deems reasonably necessary to evaluate Consultant's qualifications.
- (c) EWEB shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. EWEB may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions, who are not responding to the RFQ. The utility shall designate one member of the evaluation committee as the evaluation committee chairperson.
 - (d) EWEB may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:
 - (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
 - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
 - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole opinion of EWEB, and were announced as required in the RFQ.
 - (e) After the evaluation committee reviews, scores and ranks the responding Consultants, EWEB shall establish a short list of at least three qualified Consultants, if feasible; provided however, that if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet EWEB's minimum requirements, then:
 - (A) EWEB may establish a short list of fewer than three qualified Consultants; or
 - (B) EWEB may cancel the RFQ and issue an RFP.
 - (f) No Consultant will be eligible for placement on the utility's short list established under subsection (3)(d) of this rule if such Consultant or any of Consultant's principals, partners or associates are members of EWEB's RFQ evaluation committee.
 - (g) Except when the RFQ is cancelled, EWEB shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) EWEB shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.
 - (a) EWEB, using the formal selection procedure, shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
 - (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought will be performed.
 - (B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If EWEB does not indicate the applicable number of points, then each criterion

is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:

- (i) Proposer's availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable Projects;
- (iii) The amount and type of resources, and number of experienced staff persons Proposer has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;
- (v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under 4-0120 (List of Interested Consultants; Performance Record);
- (vii) References and recommendations from past clients;
- (viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and project administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (xiii) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.
- ~~(xiv) If selecting a Consultant to provide Related Services, pricing Pricing policies and pricing proposals or other pricing information; including the number of hours proposed for the services required, expenses, hourly rates and overhead; may be requested and evaluated from Proposers if EWEB does not cancel the RFP after it reviews and ranks each Proposer. EWEB will announce the evaluation scores and~~

rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants. The pricing proposal:

(A) Must include:

(i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and

(ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and

(B) May include additional pricing information that is limited to:

(i) A description of each task that the prospective consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(B) Allow that a prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(3) Will be evaluated and a consultant selected from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (B) of this subsection, not more than 15 percent of the weight in the evaluation may be allocated to each prospective consultant's price proposal. and

~~(xiv) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.~~

- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
- (D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest

- of the utility;
 - (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by EWEB;
 - (I) A Statement that Proposers responding to the RFP do so solely at their expense, and EWEB is not responsible for any Proposer expenses associated with the RFP;
 - (J) A statement directing Proposers to the protest procedures set forth in these rules;
 - (K) Special Contract requirements, including but not limited to disadvantaged business enterprise (“DBE”), minority business enterprise (“MBE”), women business enterprise (“WBE”) and emerging small business enterprise (“ESB”) participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
 - (L) A statement whether or not EWEB will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
 - (M) A request for any information EWEB deems reasonably necessary to permit EWEB to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP; and
 - (N) A sample form of the Contract.
- (b) RFP Evaluation Committee. EWEB shall establish a committee of at least two individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, EWEB may include the same members who served on the RFQ evaluation committee. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting, who are not responding to the RFP. At least one member of the evaluation committee must be an EWEB employee. EWEB may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. EWEB shall designate one of its employees who, is also a member of the evaluation committee, as the evaluation committee chairperson.
- (A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer’s principals, partners or associates are members of EWEB’s RFP evaluation committee for the Contract;
 - (B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and
 - (C) The evaluation committee shall provide to the utility the results of the scoring and ranking for each Proposer.
- (c) If EWEB does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a Contract with the highest ranked Proposer. EWEB shall direct negotiations toward obtaining written agreement on:
- (A) Consultant’s performance obligations and performance schedule;
 - (B) Payment methodology and a maximum amount payable to Contractor for the

Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(C) Any other provisions EWEB believes to be in the utility's best interest to negotiate.

(d5) ~~_____ EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.~~

(a) ~~If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most qualified prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process. EWEB shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if EWEB and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. EWEB may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract.~~ If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by EWEB, EWEB may end the particular formal solicitation. Nothing in this rule precludes EWEB from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0230 Ties Among Proposers

(1) If EWEB is selecting a Consultant on the basis of qualifications alone and determines after the ranking of potential Consultants that two or more of them are equally qualified, EWEB may select a candidate through any process that the utility believes will result in the best value for EWEB taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by EWEB under this section (1) cannot ~~exceed 15% of the evaluation criteria, be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.~~ The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of EWEB and Proposers and shall protect the integrity

of the Public Contracting process. Once a tie is broken, EWEB and the selected Proposer shall proceed with negotiations under 4-0210(3) or 4-0220(4)(c), as applicable.

- (2) As part of the procedure for choosing between two or more equally qualified candidates, EWEB may follow the procedure set forth in EWEB Rule 3-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0240 Protest Procedures

- (1) Consultants may submit a written protest of any provision, specification or contract term contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than 5 p.m. on the day which is seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. EWEB will not consider any protest or request for change that is received at any time after the deadline.
- (2) EWEB shall provide to all Proposers a copy of the selection notice that EWEB sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to EWEB no later than 5 p.m. on the day which is seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP. EWEB will not consider any protest that is received after the deadline.
- (3) The EWEB Purchasing Supervisor, or the Supervisor's designee, shall resolve all timely submitted protests within a reasonable time following EWEB's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, EWEB shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0250 RFP or RFQ Cancellation; Costs

EWEB may cancel a solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability incurred by EWEB at any time after issuing an RFP or RFQ, if EWEB believes it is in EWEB's interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.070
Stats. Implemented: ORS 279A.065

4-0260 Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

If EWEB chooses not to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), and EWEB requires a State Agency to serve as the lead Contracting Agency and to enter into Contracts with Consultants for Architectural, Engineering, or Land Surveying Services, or Related Services, for a Public Improvement, the contracting procedures shall be those adopted by the State Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.125

4-0270 Limited Use of Estimated Fee

The Estimated Fee referenced in these EWEB Rules shall be used solely to determine the applicable Contract solicitation method, as expressly set forth in these EWEB Rules, Division 4. The Estimated Fee shall not be used to resolve other Public Contracting issues. The Estimated Fee is distinct from the total amount payable under the Contract.

4-280 Price Agreements

- (1) EWEB may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when EWEB cannot determine the precise quantities of those Services which EWEB will require over a specified time period.
- (2) When establishing Price Agreements under this rule, EWEB shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with EWEB Rule 4-0130(1) or 4-0130(2), as applicable. EWEB may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.
- (3) In addition to any other applicable solicitation requirements set forth in these ~~Division 48~~ rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:
 - (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;
 - (b) Specify whether EWEB intends to award a Price Agreement to one Consultant or to multiple Consultants. If EWEB will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures EWEB will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at EWEB's sole discretion; provided,

- however, in circumstances where a direct contract is not permitted under EWEB Rule 4-0200, ~~the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses hourly rates and overhead. In accordance with EWEB Rule 4-130(2) applicable to Related Services procurements,~~ the selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of EWEB Rule 4-0200; and
- (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.
- (4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by EWEB. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:
- (a) The Consultant's performance obligations and performance schedule;
 - (b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to EWEB, as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;
 - (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
 - (d) Any other provisions EWEB believes to be in EWEB's best interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120

4-0300 Effect of Material Alteration or Delay of Project

- (1) If EWEB delays or delays and then materially alters a Project for which it has entered a Contract, and the Contract has expired or been terminated, EWEB may enter a Contract with the same Consultant to perform either the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services as amended to reflect EWEB's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and EWEB makes written findings that entering a Contract with Consultant:
- (a) Will promote efficient use of public funds and resources and result in substantial cost savings to EWEB;
 - (b) Will not encourage favoritism in the contracting process; and
 - (c) Will not substantially diminish competition for future contracts with Consultants.

Stat. Auth.: ORS 279A.070


Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0310 Contract Amendments

- (1) EWEB may amend any contract made by Direct Appointment, in EWEB's sole discretion, so long as such amendment is within the scope of the Direct Appointment. EWEB may amend any Contract made by Informal or Formal Selection if EWEB, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP and that the amendment would not materially impact the field of competition for the services described in the RFP. In making this determination, EWEB shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the RFP if the utility reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.
- (2) EWEB may amend any Contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, or requirements of federal or state regulatory agencies, that affect or relate to performance of the original Contract.
- (3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and EWEB and must receive all required approvals before the amendments will be binding on EWEB.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

 Public Contracting Rules	Adopted: <u>1/4/2005</u> Effective: <u>3/1/2005</u>
Construction Consultants	Revised: <u>2/3/2015</u> Revised: <u>8/18/2017</u> Revised: <u>1/7/2020</u>

Division 4
Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and
Land Surveying Services, or Related Services

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RULES

4-0100 Application

- (1) These Division 4 rules apply to the screening and selection of consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services under Contracts, and set forth the following procedures:
 - (a) Procedures through which EWEB will select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
 - (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners and Land Surveyors for certain Public Improvements owned and maintained by EWEB, where a State Agency will serve as lead Contracting Agency and will enter into Contracts with architects, engineers and land surveyors.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065

4-0110 Definitions

Definitions applicable to **EWEB Public Contracting Rules** Division 4 are set forth at **EWEB Public Contracting Rules**, Division 1.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065

4-0120 List of Interested Consultants; Performance Record

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to EWEB's Purchasing Office. The Purchasing Office will use this information to create a list of prospective Consultants and will periodically update this list.
- (2) EWEB may compile and maintain a record of each Consultant's performance under a Contract, including information obtained from Consultants during an exit interview, if requested by the utility. Compiled information may include, but is not limited to, the satisfactory completion of the work, EWEB's estimated additional costs resulting from the Consultant's failure to meet project requirements, EWEB's judgment of the Consultants ability to perform work for which the Consultants has indicated it is qualified to perform, and any additional benefit to the utility from the use of the Consultant. Upon request and in accordance with the Oregon Public Records Law (ORS 192.311 through 192.478) EWEB may make copies of the records available.

Stat. Auth.: ORS 279A.070; 279C.105(1)
Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0130 Applicable Selection Procedures; Pricing Information

- (1) When selecting the most qualified Consultant to perform Architectural, Engineering,
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Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure), or EWEB Rule 4-0200 (Direct Appointment Procedure).

- (2) EWEB may solicit or use copies of pricing policies and other proposals or other pricing information including the number of hours, proposed for the services required, expenses, hourly rates and overhead, to determine consultant compensation only after EWEB has selected the most qualified Consultant in accordance with the applicable selection procedure. In following the Direct Appointment Procedure under EWEB Rule 4-0200, EWEB may base its initial selection of a Consultant on any information available to EWEB prior to beginning the Direct Appointment Procedure for the Project involved.
- (3) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, EWEB shall comply with these Division 4 rules in procuring those Services.
- (4) When selecting Consultants to perform Related Services EWEB shall follow one of the following selection procedures:
 - (a) When selecting a Consultant on the basis of qualifications alone, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure) or EWEB Rule 4-0220 (Formal Selection Procedure);
 - (b) When selecting a Consultant on the basis of price competition alone, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Bids, or EWEB Rule 4-0200 (Direct Appointment Procedure) if the requirement of EWEB Rule 4-0200 apply; and
 - (c) When selecting a Consultant on the basis of price and qualifications, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Proposals, or EWEB Rule 4-0200. EWEB may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.
- (5) EWEB is not required to follow the procedures in Section (1) or Section (4) of this rule, when EWEB has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Relating Services under an individual work order or task order. Provided, however, the criteria and procedures EWEB uses to select a single Consultant, when EWEB has established Price Agreements with more than one Consultant, must meet the requirements of EWEB Rule 4-0280.
- (6) For purposes of these Division 4 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. EWEB's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. EWEB will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If

the majority of the total Estimated Fee to be paid under the contract is for Architectural Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, EWEB shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (4) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, EWEB shall comply with the applicable provisions of the EWEB Public Contracting Rules that match the predominant purpose of the Contract.

- (7) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration, or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, the Contracting Agency shall comply with these Division 4 rules in procuring those Services.
- (8) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by EWEB for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:
 - (a) The term “competitive proposal” for purposes of ORS 279C.107 includes proposals under EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure) or EWEB Rule 4-0130 (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under EWEB Rule 4-0280 (Price Agreements).
 - (b) For purposes of proposals received under EWEB Rule 4-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while EWEB may make proposals under EWEB Rule 4-0200 (Direct Appointment Procedure) open for public inspection following EWEB’s decision to begin Contract negotiations with the selected Consultant, Rule 4-0200 proposals are not required to be open for public inspection until after EWEB has executed a Contract with the selected Consultant.
 - (c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where EWEB is conducting discussions or negotiations with proposers who submit proposals that EWEB has determined to be closely competitive or to have a reasonable chance of being selected for award, EWEB may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107.
 - (d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

Stat. Auth.: ORS 279A.070; Or Laws 2011, Chapter 458

Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0140 Personal Services for Oversight of Public Contract

- (1) Except as provided in subsection (2), when EWEB procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to Division 4 or Division 5 of these

Rules, it may not:

- (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
 - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
- (2) Subsection (1) of this Rule does not apply to:
- (a) A procurement that qualifies as a design-build procurement under EWEB Rule 5-0680; or
 - (b) A procurement for construction manager/general contractor services.
- (3) As used in this section, “affiliate” means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

Stat. Auth.: ORS 279A.065(3); ORS 279A.070; 2013 Or Laws Ch 522, Sec. 2, 6;

Stat. Implemented: ORS 279A.065(3); ORS 279C.307; 2013 Or Laws Ch 522, Sec. 2, 6;

4-0150 Qualification Based Selection

- (1) In accordance with the requirements of ORS279.110 and preserving all rights and provisions afforded a local contracting agency therein, EWEB shall select a consultant to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services on the basis of the consultant’s qualifications for the type of professional service required. See EWEB Rule 4-0130.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

SELECTION PROCEDURES

4-0200 Direct Appointment Procedure

- (1) EWEB may enter a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these EWEB Rules if:
- (a) EWEB finds that an Emergency exists; or
 - (b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
 - (c) A Project is being continued, the Estimated Fee will not exceed \$250,000, and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services rendered under the earlier

Contract; and EWEB used Rule 4-0220, or formal selection procedure pursuant to statute, at the time EWEB selected the Consultant for the earlier Contract; or

(d) A project is being continued, the Estimated Fee is expected to exceed \$250,000 and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract meet the following requirements:

(A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied, under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;

(B) EWEB used either the formal selection procedure under EWEB Rules Division 4-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier Contract; and

(C) EWEB makes written findings that entering into a Contract with the consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:

(i) Promote efficient use of public funds and resources and result in substantial cost savings to EWEB; and

(ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.

(2) EWEB may select Consultants for Contracts under this rule from the following sources:

(a) EWEB's list of Consultants created under EWEB Rule 4-0120 (List of Interested Consultants; Performance Record);

(b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 or their own rules (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or

(c) All Consultants offering the required Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services that EWEB reasonably can identify under the circumstances.

(3) EWEB shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:

(a) Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services; and

(c) Any other provisions EWEB believes to be in EWEB's or its customers' best interest to negotiate.

4-0210 Informal Selection Procedure

- (1) EWEB may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee to be paid under the Contract does not exceed \$250,000.
- (2) EWEB, when using the informal selection procedure, shall:
 - (a) Create a Request for Proposals that includes at a minimum the following:
 - (A) A description of the Project for which Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that will be required under the resulting Contract;
 - (B) Anticipated Contract performance schedule;
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
 - (D) The deadline (date and time), and other directions, for submitting Proposals;
 - (E) Criteria for selection, including relative weight of each factor. Selection criteria may include, but are not limited to, the following:
 - (i) Amount and type of resources and number of experienced staff Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services;
 - (ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals;
 - (iii) Specialized experience, capabilities and technical competence which the Consultant may demonstrate by the proposed approach and methodology to meet the project requirements;
 - (iv) Past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control methods and contract administration practices;
 - (v) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;
 - (vi) Proposer's geographic proximity to and familiarity with the physical location of the Project;
 - (vii) Volume of work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified

Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

- (viii) Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
 - (ix) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - (x) Availability to project locale;
 - (xi) Familiarity with the project locale; and
 - (xii) Proposed project management techniques.
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFP; and
- (G) A statement notifying Proposers of the protest procedures set forth in EWEB Rules, Division 4.
- (H) A Statement that provides an estimate of the cost of the services.
- (b) Provide a Request for Proposals to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
- (A) EWEB's list of Consultants created and maintained under Rule 4-0120 (List of Interested Consultants; Performance Record);
 - (B) Another Contracting Agency's list of Consultants created and maintained under OAR 137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
 - (C) All Consultants believed by EWEB to offer the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that EWEB reasonably can identify under the circumstances.
- (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and determine the highest ranked Proposers.
- (3) Pricing may be requested and evaluated from Proposers
- (a) If EWEB does not cancel the RFP after it reviews and ranks each Proposer, EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants.

The pricing proposal:

- (A) Must consist of:
- (i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
 - (ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and
- (B) May include additional pricing information that is limited to:
- (i) A description of each task that the prospective consultant understands as comprising

the professional services;

- (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
- (iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(b) A prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(c) EWEB will complete the evaluation and select a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (b) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.

- (4) EWEB shall direct negotiations toward obtaining written agreement on:
 - (a) Consultant's performance obligations and performance schedule;
 - (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract where the payment methodology and maximum amount payable are both fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services; and
 - (c) Any other provisions EWEB believes to be in its best interest to negotiate.
- (5) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
- (6) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most qualified prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process.
- (7) If the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000, EWEB shall terminate the informal selection procedure and proceed with the formal selection procedure under EWEB Rule 4-0220.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0220 Formal Selection Procedures

- (1) Subject to 4-0130 (Applicable Selection Procedures; Pricing Information), EWEB shall use
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the formal selection procedure described in this rule to select Consultants under the Public Contracting Code if neither EWEB Rule 4-0200 (Direct Appointment Procedure) nor EWEB Rule 4-0210 (Informal Selection Procedure) are applicable to the selection. The formal selection procedure may otherwise be used at the discretion of EWEB.

- (2) EWEB, when using the formal selection procedure, shall obtain Contracts through public advertisement for either a Request for Proposals or a Request for Qualifications followed by a Request for Proposals, as described in this rule.
 - (a) Except as provided in subsection (b) of this section, EWEB shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in any other publications EWEB may select. Other publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
 - (A) EWEB shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.
 - (B) EWEB shall include a brief description of the following items in the advertisement:
 - (i) The Project;
 - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
 - (iii) How and where Consultants may obtain a copy of the RFP or RFQ; and
 - (iv) The deadline for submitting a Proposal or response to the RFQ.
 - (C) EWEB may send notice of the RFP or RFQ directly to all Consultants on its list of Consultants created and maintained under 4-0120 (List of Interested Consultants; Performance Record).
 - (b) In the alternative, EWEB may use the procedure for electronic advertisement under EWEB Rule 3-0330, which would remove any necessity of posting the solicitation in newspapers or other publications.
- (3) EWEB may use the Request for Qualifications Procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom EWEB may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ.
 - (a) EWEB shall include the following, at a minimum, in each RFQ:
 - (A) A brief description of the Project for which EWEB is seeking Consultants;
 - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks for the Project;
 - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
 - (D) The deadline for submitting a response to the RFQ;
 - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
 - (F) The RFQ evaluation criteria, including weights or points applicable to each criterion, where the criteria could be solely qualifications, solely price, other

- factors, or any combination of these criteria; and
- (G) A statement whether or not EWEB will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory.
 - (H) A Statement that provides an estimate of the cost of the services.
- (b) EWEB may include a request for any or all of the following in each RFQ:
- (A) A statement describing Consultant's general qualifications and related performance information;
 - (B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ including Consultant's committed resources and recent, current and projected workloads;
 - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
 - (D) A copy of all records, if any, of Consultant's performance under Contracts with any other Contracting Agency;
 - (E) The number of Consultant's experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;
 - (F) A statement describing the Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;
 - (G) A statement describing the proposer's geographic proximity to and familiarity with the physical location of the Project;
 - (H) A statement describing the ownership status and employment practices of the proposer regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (I) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
 - (J) A Statement that Proposers responding to the RFQ do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFQ; and
 - (K) Any other information EWEB deems reasonably necessary to evaluate Consultant's qualifications.
- (c) EWEB shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. EWEB may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions, who

- are not responding to the RFQ. The utility shall designate one member of the evaluation committee as the evaluation committee chairperson.
- (d) EWEB may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:
 - (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
 - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
 - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole opinion of EWEB, and were announced as required in the RFQ.
 - (e) After the evaluation committee reviews, scores and ranks the responding Consultants, EWEB shall establish a short list of at least three qualified Consultants, if feasible; provided however, that if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet EWEB's minimum requirements, then:
 - (A) EWEB may establish a short list of fewer than three qualified Consultants; or
 - (B) EWEB may cancel the RFQ and issue an RFP.
 - (f) No Consultant will be eligible for placement on the utility's short list established under subsection (3)(d) of this rule if such Consultant or any of Consultant's principals, partners or associates are members of EWEB's RFQ evaluation committee.
 - (g) Except when the RFQ is cancelled, EWEB shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) EWEB shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.
- (a) EWEB, using the formal selection procedure, shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
 - (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought will be performed.
 - (B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If EWEB does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:
 - (i) Proposer's availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
 - (ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable Projects;
 - (iii) The amount and type of resources, and number of experienced staff persons Proposer has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land

- (iv) Surveying Services, or Related Services described in the RFP;
 - (v) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;
 - (vi) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
 - (vii) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under 4-0120 (List of Interested Consultants; Performance Record);
 - (viii) References and recommendations from past clients;
 - (ix) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and project administration;
 - (x) Status and quality of any required license or certification;
 - (xi) Proposer's knowledge and understanding of the Project and Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;
 - (xii) Results from interviews, if conducted;
 - (xiii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
 - (xiv) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.
- (xv) Pricing policies and pricing proposals or other pricing information may be requested and evaluated from Proposers if EWEB does not cancel the RFP after it reviews and ranks each Proposer. EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants. The pricing proposal:
- (A) Must include:
 - (i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
 - (ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and
 - (B) May include additional pricing information that is limited to:
 - (i) A description of each task that the prospective consultant understands

as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(B) Allow that a prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(3) Will be evaluated and a consultant selected from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (B) of this subsection, not more than 15 percent of the weight in the evaluation may be allocated to each prospective consultant's price proposal.

- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
 - (D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;
 - (E) The date and time Proposals are due, and the delivery location for Proposals;
 - (F) Reservation of the right to seek clarifications of each Proposal;
 - (G) Reservation of the right to negotiate a final Contract that is in the best interest of the utility;
 - (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by EWEB;
 - (I) A Statement that Proposers responding to the RFP do so solely at their expense, and EWEB is not responsible for any Proposer expenses associated with the RFP;
 - (J) A statement directing Proposers to the protest procedures set forth in these rules;
 - (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
 - (L) A statement whether or not EWEB will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
 - (M) A request for any information EWEB deems reasonably necessary to permit EWEB to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP; and
 - (N) A sample form of the Contract.
- (b) RFP Evaluation Committee. EWEB shall establish a committee of at least two individuals to review, score and rank Proposals according to the evaluation criteria

set forth in the RFP. If the RFP has followed an RFQ, EWEB may include the same members who served on the RFQ evaluation committee. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting, who are not responding to the RFP. At least one member of the evaluation committee must be an EWEB employee. EWEB may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. EWEB shall designate one of its employees who, is also a member of the evaluation committee, as the evaluation committee chairperson.

- (A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of EWEB's RFP evaluation committee for the Contract;
 - (B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and
 - (C) The evaluation committee shall provide to the utility the results of the scoring and ranking for each Proposer.
- (c) If EWEB does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a Contract with the highest ranked Proposer. EWEB shall direct negotiations toward obtaining written agreement on:
- (A) Consultant's performance obligations and performance schedule;
 - (B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
 - (C) Any other provisions EWEB believes to be in the utility's best interest to negotiate.
- (5) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
- (a) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most qualified prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by EWEB, EWEB may end the particular formal solicitation. Nothing in this rule precludes EWEB from proceeding

with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0230 Ties Among Proposers

- (1) If EWEB is selecting a Consultant on the basis of qualifications alone and determines after the ranking of potential Consultants that two or more of them are equally qualified, EWEB may select a candidate through any process that the utility believes will result in the best value for EWEB taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by EWEB under this section (1) cannot exceed 15% of the evaluation criteria.. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of EWEB and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, EWEB and the selected Proposer shall proceed with negotiations under 4-0210(3) or 4-0220(4)(c), as applicable.
- (2) As part of the procedure for choosing between two or more equally qualified candidates, EWEB may follow the procedure set forth in EWEB Rule 3-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

4-0240 Protest Procedures

- (1) Consultants may submit a written protest of any provision, specification or contract term contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than 5 p.m. on the day which is seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. EWEB will not consider any protest or request for change that is received at any time after the deadline.
- (2) EWEB shall provide to all Proposers a copy of the selection notice that EWEB sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to EWEB no later than 5 p.m. on the day which is seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP. EWEB will not consider any protest that is received after the deadline.

- (3) The EWEB Purchasing Supervisor, or the Supervisor's designee, shall resolve all timely submitted protests within a reasonable time following EWEB's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, EWEB shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0250 RFP or RFQ Cancellation; Costs

EWEB may cancel a solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability incurred by EWEB at any time after issuing an RFP or RFQ, if EWEB believes it is in EWEB's interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

4-0260 Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects

If EWEB chooses not to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), and EWEB requires a State Agency to serve as the lead Contracting Agency and to enter into Contracts with Consultants for Architectural, Engineering, or Land Surveying Services, or Related Services, for a Public Improvement, the contracting procedures shall be those adopted by the State Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.125

4-0270 Limited Use of Estimated Fee

The Estimated Fee referenced in these EWEB Rules shall be used solely to determine the applicable Contract solicitation method, as expressly set forth in these EWEB Rules, Division 4. The Estimated Fee shall not be used to resolve other Public Contracting issues. The Estimated Fee is distinct from the total amount payable under the Contract.

4-280 Price Agreements

- (1) EWEB may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when EWEB cannot determine the precise quantities of those Services which EWEB will require over a specified time period.
- (2) When establishing Price Agreements under this rule, EWEB shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with EWEB Rule 4-0130(1) or 4-0130(2), as applicable. EWEB may select a single Consultant, when a Price Agreement is awarded to

obtain services for a specific Project or a closely-related group of Projects.

- (3) In addition to any other applicable solicitation requirements set forth in these rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:
 - (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;
 - (b) Specify whether EWEB intends to award a Price Agreement to one Consultant or to multiple Consultants. If EWEB will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures EWEB will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at EWEB's sole discretion; provided, however, in circumstances where a direct contract is not permitted under EWEB Rule 4-0200. The selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of EWEB Rule 4-0200; and
 - (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.

- (4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by EWEB. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:
 - (a) The Consultant's performance obligations and performance schedule;
 - (b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to EWEB, as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;
 - (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
 - (d) Any other provisions EWEB believes to be in EWEB's best interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120

4-0300 Effect of Material Alteration or Delay of Project

- (1) If EWEB delays or delays and then materially alters a Project for which it has entered a
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Contract, and the Contract has expired or been terminated, EWEB may enter a Contract with the same Consultant to perform either the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services as amended to reflect EWEB's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and EWEB makes written findings that entering a Contract with Consultant:

- (a) Will promote efficient use of public funds and resources and result in substantial cost savings to EWEB;
- (b) Will not encourage favoritism in the contracting process; and
- (c) Will not substantially diminish competition for future contracts with Consultants.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

4-0310 Contract Amendments

- (1) EWEB may amend any contract made by Direct Appointment, in EWEB's sole discretion, so long as such amendment is within the scope of the Direct Appointment. EWEB may amend any Contract made by Informal or Formal Selection if EWEB, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP and that the amendment would not materially impact the field of competition for the services described in the RFP. In making this determination, EWEB shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the RFP if the utility reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.
- (2) EWEB may amend any Contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, or requirements of federal or state regulatory agencies, that affect or relate to performance of the original Contract.
- (3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and EWEB and must receive all required approvals before the amendments will be binding on EWEB.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

5-0170 Inclusion of Green Energy Technology in Public Buildings

(1) (a) Except as otherwise provided in this section, a public improvement contract with a total contract price of \$5 million or more for the construction of a public building or for the reconstruction or major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall contain and reserve an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology as part of the construction, reconstruction or major renovation of the public building.

(b) A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology, other than battery storage, at a site that is located away from the site of the public building if:

(A) Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;

(B) The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and

(C) The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:

(i) Employs solar energy and that existed on the date that the original building permit for the public building was issued; or

(ii) Employs geothermal energy and for which construction was completed before January 1, 2013.

(c) In making the determination required under paragraph (b)(A) of this subsection, EWEB shall:

(A) Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and

(B) Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.

(d) Of the amount that EWEB designates for the purpose of green energy technology as required in this subsection EWEB may expend as much as half, or if green energy technology is not appropriate for the public building, the entirety, as follows:

(A) If an analysis under subsection (2) of this section shows that the available total solar resource fraction at the site of the public building is 75 percent or less, EWEB may improve energy use efficiency in the public building by:

(i) Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use in accordance with guidelines the State Department of Energy adopts by rule; or

(ii) Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use in accordance with guidelines the department adopts by rule.

(B) EWEB may include woody biomass energy technology as part of constructing, reconstructing or performing a major renovation on the public building if the woody biomass energy technology creates new energy generation capacity that did not exist on the date on which the original building permit for the public building was issued and the adoption of the technology is allowed under the Department of Environmental Quality's standards and as described in ORS 279C.527.

(2) Before entering into a public improvement contract described in subsection (1) of this section, EWEB shall prepare a written determination of whether including green energy technology as part of the construction, reconstruction or major renovation of the public building is appropriate.

a. EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology as part of the construction, reconstruction or major renovation.; and

b. Will show the results of an analysis of the total solar resource fraction available for use at the site on which the contracting agency intends to install green energy technology that uses solar energy for space or water heating or to generate electricity. EWEB may conclude that the green energy technology described in this subsection is appropriate if the total solar resource fraction exceeds 75%.

~~(2)~~(3)(a) If EWEB determines that green energy technology is not appropriate for the public building, subsection (1) of this section does not apply to the public improvement contract. EWEB's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (1)(b) and (c) of this section is appropriate.

(b) If subsection (1) of this section does not apply to the public improvement contract:

- A. EWEB shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology as part of a future public building project; and
- B. The amount EWEB spends on the future public building project in accordance with subparagraph (A) of this paragraph is in addition to any amount required under subsection (1) of this section for including appropriate green energy technology as part of the future public building project.

~~(3)~~(4) Subsection (3)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used. EWEB may not use an amount described in subsection (3)(b) of this section to comply with the requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.

~~(4)~~(5) As used in this section:

(a) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:

- (A) Used or occupied by employees of the public body; or
- (B) Used for conducting public business.

Notwithstanding the provisions of ORS 174.108(3), this section applies to intergovernmental entities described in ORS 174.108(3).

(b) (A) "Total contract price" means all of the costs EWEB anticipates incurring in all contracts and subcontracts involved in constructing, reconstructing or performing a major renovation of a public building including design or architecture, engineering, transportation or environmental impact assessment and planning, construction management, labor, materials, land surveying and site preparation, demolition, hazardous material removal, required reinforcements or improvements to existing structures or appurtenant infrastructure, insurance, inspections and certifications and, except as provided in subparagraph (B) of this paragraph, other costs EWEB would not incur but for the construction, reconstruction or major renovation of the public building.

(B) "Total contract price" does not include:

(i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract;

(ii) Costs of moving contracting agency employees, equipment and furnishings from and to a public building;

(iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;

(iv) Ordinary operating costs for a public building during periods of reconstruction or renovation;

(v) Costs of storing equipment or furnishings at a site away from a public building;

(vi) Labor costs for employees of a contracting agency;

(vii) Direct costs that are solely for the purpose of retrofitting or improving a public building's ability to withstand a seismic event; and

(viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of a public building.

(b)(c) (A) "Green energy technology" means a system that employs:

(A)i) —Solar or geothermal energy directly for space or water heating or to generate electricity; or

—

(B)ii) —Building design that uses solar energy passively to reduce energy use from other sources by at least ~~20~~10 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.

(iii) Battery storage, if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public building.

(B) (c) —"Green energy technology" does not include a system that:

—(A)i) —Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or

—(B)ii) —Incorporates solar energy directly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.

(d) (A) "Woody biomass energy technology" means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from

trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:

- (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and
 - (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities.
- (B) "Woody biomass energy technology" does not include a system that uses for fuel:
- (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate or other chemical preservatives; or
 - (ii) Municipal solid waste.

~~(5)~~(6) Public improvement contracts subject to this section are also subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:

- A. Using particular green energy technologies in public improvements;
- B. Determining the cost-effectiveness of green energy technologies;
- C. Reporting the use of green energy technologies in public improvements or submitting documents to the department for review, as appropriate; and
- D. Determining whether a structure is a public building subject to the requirements of ORS297C.527.

Stats. Implemented: ORS 279C.527 to 279C.528

5-0840 Interest

- (1) Prompt payment policy. EWEB shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) Interest on progress payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after EWEB approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent. If the contract price exceeds \$500,000, the contracting agency shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.
- (3) Interest on final payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part

of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to EWEB in writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065; 279A.070

Stats. Implemented: ORS 279C.570

5-0170 Inclusion of Green Energy Technology in Public Buildings

- (1) (a) Except as otherwise provided in this section, a public improvement contract with a total contract price of \$5 million or more for the construction of a public building or for the reconstruction or major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall contain and reserve an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology as part of the construction, reconstruction or major renovation of the public building.
- (b) A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology, other than battery storage, at a site that is located away from the site of the public building if:
- (A) Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;
- (B) The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and
- (C) The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:
- (i) Employs solar energy and that existed on the date that the original building permit for the public building was issued; or
- (ii) Employs geothermal energy and for which construction was completed before January 1, 2013.
- (c) In making the determination required under paragraph (b)(A) of this subsection, EWEB shall:
- (A) Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and
- (B) Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.
- (d) Of the amount that EWEB designates for the purpose of green energy technology as required in this subsection EWEB may expend as much as half, or if green energy technology is not appropriate for the public building, the entirety, as follows:
- (A) If an analysis under subsection (2) of this section shows that the available total solar resource fraction at the site of the public building is 75 percent or less, EWEB may improve energy use efficiency in the public building by:
- (i) Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use in accordance with guidelines the State Department of Energy adopts by rule; or
- (ii) Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use in accordance with guidelines the department adopts by rule.

(B) EWEB may include woody biomass energy technology as part of constructing, reconstructing or performing a major renovation on the public building if the woody biomass energy technology creates new energy generation capacity that did not exist on the date on which the original building permit for the public building was issued and the adoption of the technology is allowed under the Department of Environmental Quality's standards and as described in ORS 279C.527.

- (2) Before entering into a public improvement contract described in subsection (1) of this section, EWEB shall prepare a written determination of whether including green energy technology as part of the construction, reconstruction or major renovation of the public building is appropriate.
 - a. EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology as part of the construction, reconstruction or major renovation; and
 - b. Will show the results of an analysis of the total solar resource fraction available for use at the site on which the contracting agency intends to install green energy technology that uses solar energy for space or water heating or to generate electricity. EWEB may conclude that the green energy technology described in this subsection is appropriate if the total solar resource fraction exceeds 75%.
- (3)
 - (a) If EWEB determines that green energy technology is not appropriate for the public building, subsection (1) of this section does not apply to the public improvement contract. EWEB's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (1)(b) and (c) of this section is appropriate.
 - (b) If subsection (1) of this section does not apply to the public improvement contract:
 - A. EWEB shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology as part of a future public building project; and
 - B. The amount EWEB spends on the future public building project in accordance with subparagraph (A) of this paragraph is in addition to any amount required under subsection (1) of this section for including appropriate green energy technology as part of the future public building project.
- (4) Subsection (3)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used. EWEB may not use an amount described in subsection (3)(b) of this section to comply with the requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.
- (5) As used in this section:
 - (a) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:
 - (A) Used or occupied by employees of the public body; or

- (B) Used for conducting public business.
Notwithstanding the provisions of ORS 174.108(3), this section applies to intergovernmental entities described in ORS 174.108(3).
- (b) (A) "Total contract price" means all of the costs EWEB anticipates incurring in all contracts and subcontracts involved in constructing, reconstructing or performing a major renovation of a public building including design or architecture, engineering, transportation or environmental impact assessment and planning, construction management, labor, materials, land surveying and site preparation, demolition, hazardous material removal, required reinforcements or improvements to existing structures or appurtenant infrastructure, insurance, inspections and certifications and, except as provided in subparagraph (B) of this paragraph, other costs EWEB would not incur but for the construction, reconstruction or major renovation of the public building.
- (B) "Total contract price" does not include:
- (i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract;
 - (ii) Costs of moving contracting agency employees, equipment and furnishings from and to a public building;
 - (iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;
 - (iv) Ordinary operating costs for a public building during periods of reconstruction or renovation;
 - (v) Costs of storing equipment or furnishings at a site away from a public building;
 - (vi) Labor costs for employees of a contracting agency;
 - (vii) Direct costs that are solely for the purpose of retrofitting or improving a public building's ability to withstand a seismic event; and
 - (viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of a public building.
- (c) (A) "Green energy technology" means a system that employs:
- (i) Solar or geothermal energy directly for space or water heating or to generate electricity; or
 - (ii) Building design that uses solar energy passively to reduce energy use from other sources by at least 10 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.
 - (iii) Battery storage, if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public building.
- (B) "Green energy technology" does not include a system that:
- (i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or
 - (ii) Incorporates solar energy directly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.
- (d) (A) "Woody biomass energy technology" means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:

- (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and
 - (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities.
 - (B) "Woody biomass energy technology" does not include a system that uses for fuel:
 - (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate or other chemical preservatives; or
 - (ii) Municipal solid waste.
- (6) Public improvement contracts subject to this section are also subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:
- A. Using particular green energy technologies in public improvements;
 - B. Determining the cost-effectiveness of green energy technologies;
 - C. Reporting the use of green energy technologies in public improvements or submitting documents to the department for review, as appropriate; and
 - D. Determining whether a structure is a public building subject to the requirements of ORS297C.527.

Stats. Implemented: ORS 279C.527 to 279C.528

5-0840 Interest

- (1) Prompt payment policy. EWEB shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) Interest on progress payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after EWEB approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent. If the contract price exceeds \$500,000, the contracting agency shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.
- (3) Interest on final payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after

the Contractor submitted a claim for payment to EWEB in writing or otherwise in accordance with the Contract requirements.

Stat. Auth.: ORS 279A.065; 279A.070

Stats. Implemented: ORS 279C.570

6-0110 Application of Public Contracting Code

Except as otherwise provided by law and under these EWEB Rules, the Public Contracting Code applies to all public contracting.

- (1) The Public Contracting Code does not apply to:
 - (a) Contracts between EWEB
 - (A) and another contracting agency;
 - (B) The Oregon Health and Science University;
 - (C) The Oregon State Bar;
 - (D) A governmental body of another state;
 - (E) The federal government;
 - (F) An American Indian tribe or an agency of an American Indian tribe;
 - (G) A nation, or a governmental body in a nation, other than the United States; or
 - (H) An intergovernmental entity formed between or among;
 - (i) Governmental bodies of this or another state;
 - (ii) The federal government;
 - (iii) An American Indian tribe or an agency of an American Indian tribe;
 - (iv) A nation other than the United States; or
 - (v) A governmental body in a nation other than the United States.
 - (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
 - (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
 - (d) Grants;
 - (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
 - (f) Acquisitions or disposals of real property or interest in real property;
 - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (see EWEB Rule 3-0275);
 - (h) Contracts for the procurement or distribution of textbooks;
 - (i) Procurements from an Oregon Corrections Enterprises program;
 - (j) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
 - (k) Note: EWEB is required to follow AG Rules as they may relate to Energy Savings performance Contracts
 - (l) Contracts, agreements or other documents entered into, issued or established in connection with:
 - (A) The incurring of debt by EWEB, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - (C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

- (m) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
 - (n) Any other public contracting of a public body specifically exempted from the code by another provision of law.
- (2) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. It is the policy of EWEB to identify contractual opportunities and to assist and encourage departments of EWEB to enter contractual relationships with qualified nonprofit agencies for provision of products and services, where feasible.

(a) (A) If a public agency or a qualified nonprofit agency for individuals with disabilities terminates or declines to renew a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated or nonrenewed contract.

(B) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated or nonrenewed contract.

(C) A successor service provider that provides the same services under a new contract as provided under the terminated or nonrenewed contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.

~~In the event of termination of a contract for products or services with a qualified nonprofit agency for individuals with disabilities and EWEB enters into a new contract for services with a second qualified nonprofit agency for individuals with disabilities, a new contractor must, per terms of the contract, offer employment within 90 days to the individuals with disabilities who performed work under the terminated contract at wages and, for individuals with disabilities who work 28 hours or more per week, with health benefits that are as favorable to the individuals with disabilities as, or more favorable to the individuals with disabilities than, the wages and health benefits that the individuals with disabilities had under the terminated contract.~~

~~(b)~~ (b) When more than one qualified nonprofit agency for individuals with disabilities provide the solicited products or services, EWEB may give a preference to the qualified nonprofit agency for individuals with disabilities that best demonstrate that they comply with local ordinances and resolutions governing labor standards and provide the best wages and aggregate benefits per ORS 279.850 (1).

(c) Contracts negotiated with a qualified non-profit agency shall provide compensation in accordance with ORS 653.010 to 653.261. After June 30, 2023, an employer who is authorized to employ individuals with disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in accordance with rules under ORS 653.030 or of the Department of Human Services may not employ or agree to employ individuals with disabilities at a rate lower than the hourly rate required under ORS 653.025.

- (3) EWEB may participate in, sponsor, conduct or administer a cooperative procurement pursuant to ORS 279A.200, et seq. for the procurement of any good, services, or public improvements (See Rule 2-0210).
- (4) Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:
 - (a) EWEB determines that competitive sealed bidding, competitive sealed proposals or other competition is not appropriate; and
 - (b) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.
- (5) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, EWEB may sell, transfer or dispose of personal property in the discretion of the Purchasing Supervisor, without complying with the competitive procurement requirements.

Stat. Auth: ORS 279A.065, 279A.070

Stat. Implemented: ORS 279A.025, 279A.065, 279A.180, 279A.185, 279A.200, et seq. and Or Laws 2007, Ch. 764, Sec. 2.

6-0110 Application of Public Contracting Code

Except as otherwise provided by law and under these EWEB Rules, the Public Contracting Code applies to all public contracting.

- (1) The Public Contracting Code does not apply to:
 - (a) Contracts between EWEB
 - (A) and another contracting agency;
 - (B) The Oregon Health and Science University;
 - (C) The Oregon State Bar;
 - (D) A governmental body of another state;
 - (E) The federal government;
 - (F) An American Indian tribe or an agency of an American Indian tribe;
 - (G) A nation, or a governmental body in a nation, other than the United States; or
 - (H) An intergovernmental entity formed between or among;
 - (i) Governmental bodies of this or another state;
 - (ii) The federal government;
 - (iii) An American Indian tribe or an agency of an American Indian tribe;
 - (iv) A nation other than the United States; or
 - (v) A governmental body in a nation other than the United States.
 - (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
 - (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
 - (d) Grants;
 - (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
 - (f) Acquisitions or disposals of real property or interest in real property;
 - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (see EWEB Rule 3-0275);
 - (h) Contracts for the procurement or distribution of textbooks;
 - (i) Procurements from an Oregon Corrections Enterprises program;
 - (j) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
 - (k) Note: EWEB is required to follow AG Rules as they may relate to Energy Savings performance Contracts
 - (l) Contracts, agreements or other documents entered into, issued or established in connection with:
 - (A) The incurring of debt by EWEB, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - (C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

- (m) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
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- (2) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. It is the policy of EWEB to identify contractual opportunities and to assist and encourage departments of EWEB to enter contractual relationships with qualified nonprofit agencies for provision of products and services, where feasible.
- (a) (A) If a public agency or a qualified nonprofit agency for individuals with disabilities terminates or declines to renew a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated or nonrenewed contract.

(B) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated or nonrenewed contract.

(C) A successor service provider that provides the same services under a new contract as provided under the terminated or nonrenewed contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.
 - (b) When more than one qualified nonprofit agency for individuals with disabilities provide the solicited products or services, EWEB may give a preference to the qualified nonprofit agency for individuals with disabilities that best demonstrate that they comply with local ordinances and resolutions governing labor standards and provide the best wages and aggregate benefits per ORS 279.850 (1).
 - (c) Contracts negotiated with a qualified non-profit agency shall provide compensation in accordance with ORS 653.010 to 653.261. After June 30, 2023, an employer who is authorized to employ individuals with disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in accordance with rules under ORS 653.030 or of the Department of Human Services may not employ or agree to employ individuals with disabilities at a rate lower than the hourly rate required under ORS 653.025.

- (3) EWEB may participate in, sponsor, conduct or administer a cooperative procurement pursuant to ORS 279A.200, et seq. for the procurement of any good, services, or public improvements (See Rule 2-0210).
- (4) Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:
 - (a) EWEB determines that competitive sealed bidding, competitive sealed proposals or other competition is not appropriate; and
 - (b) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.
- (5) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, EWEB may sell, transfer or dispose of personal property in the discretion of the Purchasing Supervisor, without complying with the competitive procurement requirements.

Stat. Auth: ORS 279A.065, 279A.070

Stat. Implemented: ORS 279A.025, 279A.065, 279A.180, 279A.185, 279A.200, et seq. and Or Laws 2007, Ch. 764, Sec. 2.