



TO: Commissioners Farmer, Brown, Cassidy, Cunningham and Ernst
FROM: Ed Case
DATE: Friday, December 18, 2009
RE: Proposed Revisions to EWEB Contracting Rule 2-0150: Board Approval Thresholds

At the November 3rd Board meeting, the Board discussed their contract approval thresholds and requested staff to draft a new contracting provision that addresses contracting with EMT immediate family members. The proposed revision was placed under the Board's Division 2 contracting rule 2-0150 *Board Approval Thresholds* and was reviewed by legal counsel for legal sufficiency.

While executing the Board's direction, staff drafted proposed changes to other language in EWEB Rule 2-0150. Those proposed changes are as follows:

Background

In May 1999, the Board mandated the Board's review and approval of all services contracts over \$20,000 and all construction and goods contracts over \$100,000. That mandate was established in EWEB's contracting rules, and included the requirement that all contracts that crossed those respective thresholds were to be sent to the Board for approval prior to amending those contracts. That rule reads as follows:

2-0150 Board Approval Thresholds

- (1) *The Board shall have the sole authority to approve award of all contracts that meet or exceed the following thresholds:*
 - Purchase of all Goods, Equipment, and Construction:\$100,000 or greater*
 - Services and Personal Services\$20,000 or greater*
- (2) *The Board shall have the sole authority to approve all change orders to Board awarded contracts that cause the contract to exceed 25 percent of the last Board approved amount. The Board shall also have the sole authority to approve any change orders where the change order would cause the contract to exceed the Board approval thresholds, as provided in (1) of this rule.*

In 2005, during the drafting of new contracting rules to incorporate the creation and major changes to ORS279, 279A, B, and C in 2005, staff attempted to draft language that exempted certain contracts from the Board approval requirements. Those exemptions were as follows:

- (3) *Procurements that do not apply to this rule are as follows:*
 - a. *Board Appointed Consultants and Attorneys, which shall be reported to the Board annually;*
 - b. *Required **sole-source** contracts, which includes only the following: governmentally required taxes, fees, permits and payments; software licenses, upgrades, and fees; equipment and software maintenance agreements; and other sole-source contracts required to meet governmental requirements or required to maintain existing software and equipment.*
 - c. *State of Oregon and State of Washington contracts established for use by Oregon Cooperative Public Purchasing (ORCPP) members for the purchase of goods and services; and*
 - d. *Contracts established by the Western States Contracting Alliance (WSCA) as adopted by the State for use by ORCCP members.*
 - e. *This exception from Board approval does not apply to ORCPP contracts for:*
 - 1. *Services not directly associated to (3)(b) or which cannot be defined as required, routine services or as services for the maintenance of existing equipment; examples include, cell phones, copiers, armored car services, software, etc.*
 - 2. *Application of this exception (3) is at the sole-judgment and discretion of the Purchasing Manager and shall only be applied to required sole-source contracts and routine ORCPP contracts for goods, equipment, and supplies*

Procurements That Do Not Require Board Approval or Additional Board Approvals

EWEB contracting Rule 2-0150, as adopted by the Board, also contains some provisions that allow staff to proceed with contracts without Board approval under certain conditions. The original language has needed revision for some time to better clarify those conditions under which staff can act without Board approval or additional Board approvals.

These proposed revisions should be considered individually on their own merit without affecting the Board's acceptance or rejection of the other revisions proposed. The changes to EWEB Rule 2-0150 are as follows:

2-0150(4) "*Procurements that do not apply to [the Board's approval] requirements*" has five subsections (a through e)

(a): Subparagraph (a) is self-explanatory, because it simply recognizes the Board's ratification of Board appointed consultants and attorneys annually. This section was revised to clarify that the Board shall approve the initial contract, should a new consultant or attorney be added. Once the Board has approved the initial contract, the consultant may be added to this exemption.

- a. Existing Board Appointed Consultants and Attorneys, which shall be reported to the Board annually for their ratification. The initial contract with any new consultant or attorney shall be submitted to the Board for approval. Any contracts with those persons thereafter will be ratified by the Board annually;

(b): Subparagraph (b) as indicated in the last bullet point below basically exempts sole-source contracts that the utility generally has no choice but to acquire from a particular party. Bullet point 4 (financial, forecasting, credit...) may not be sole-sources, but have unique capabilities that require staff to go to that particular source to obtain the information needed.

- b. Required sole-source/single seller contracts, which includes the following:
 - Governmentally required taxes, fees, permits, and payments;
 - Software licenses, upgrades, and fees;
 - Equipment and software maintenance agreements;
 - Commonly used financial reporting, power trading forecasting, and credit agencies selected because of their unique, reliable reporting capabilities and
 - Other sole-source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice, but to use to maintain business operations.

(c): Subparagraph (c) refers to price agreements that were solicited and awarded by other governmental bodies that EWEB and other public entities (states, counties, cities, etc.) may use. Because these contracts have such a high volume of use by multiple agencies in various states, their pricing is generally better than prices EWEB could obtain on its own. These contracts fulfill all of EWEB's public contracting obligations and are generally for the purchase of goods and services.

Budgeted funds, approved by the Board, are expended according to the terms and conditions established by the contracting authority that solicited these contracts.

- c. Cooperative Procurement Contracts established for multiple-agency use by:
 - State of Oregon (Oregon Cooperative Purchasing Partners (ORCPP)),
 - State of Washington (ORCPP)
 - Western States Contracting Alliance (WSCA – the nine western state alliance),
 - U.S. Communities (nation-wide governmental contracts),
 - Federal General Services Administration (GSA contracts), or
 - Other sole-source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice but to use to maintain business operations.

(d): Subparagraph (d) is similar to subparagraph (c) above.

Price agreements establish pricing and acceptable terms and conditions for routinely purchased goods and services, so that the public entity does not have to repeat the solicitation process or renegotiate contractual terms every time it needs those specific goods or services. Examples of EWEB price agreements include such things as Warehouse stock items (fuel, transformers, cable, connectors, water valves, meters, etc.) that are used by EWEB crews in their routine work; or those routinely used for administrative purposes (billing envelopes, disposal of wastes, etc.). The actual quantity needed depends on the use of those items throughout the term of the contract, which may vary from year-to-year.

When staff brings price agreements to the Board for approval, they indicate that the contract is a price agreement and that purchases will be made on an “as needed” basis, no specific quantity or dollar amount has been specified in the contract. Once awarded, staff makes purchases as needed to replenish stock or maintain administrative operations.

The budget process is not affected by a price agreement. Budget is an internal control that limits the amount of funds that may be expended for a particular purpose during the year. A price agreement is an external control (contract) that defines the relationship between EWEB and a supplier or service provider (pricing, terms and conditions, contractual obligations, legal requirements, etc.)

The need to increase a specific budget item limit is performed through the Board's Budget Amendment process. Staff is responsible for ensuring that their work is within budgeted amounts regardless of what contracts they might have with any supplier, service provider, or contractor. As with their budgets, staff is responsible for working within the contract scope, statement of work, and contractual terms when making purchases off of a contract and for ensuring that those purchases do not go over budget. The existence of a price agreement does not give staff the authority to exceed budget limits.

The proposed language reads as follows:

- d. Board approved price agreements for the purchase of goods that specifically identify the contract as a “price agreement” and the purchases as being made on an “as needed” basis for the life of the contract (e.g. the purchase of stores stock “as needed” to replenish routine items used in performance of the utility’s regular work).

(e): Subparagraph (e) states the exemptions from board approval provided in this section do not apply to contracts to EMT family members regardless of the need.

1. This exception from Board approval does not apply to contract(s) as set forth in section 3, above.

Paragraph 5 further defines the limitations of subparagraph 4:

5. Application of exception (4) above is at the sole-judgment and discretion of the Purchasing Manager and shall only be applied to required single seller/sole-source contracts, established price agreements, or contracts approved by the Board in a specific contract approval process.

Options

1. The Board may reject the proposed revisions,
2. If this language is acceptable to the Board, staff will ask the Board to approve a Resolution to adopt this language into EWEB’s Contracting Rules,
3. If this language requires Board revisions, staff will note those revisions and bring the Resolution back to the Board at their next regularly scheduled meeting, or
4. If the revisions are minor and the Board does not wish to review the language a second time, staff would ask that the Board approve the Resolution with the Board’s requested revisions and a clean

draft of the Resolution incorporating the Board's revisions will be provided for the Board President to sign at his earliest convenience.

Summary

The Board has requested that staff draft proposed language related to Board notification of any proposed contract award to any EMT immediate family member prior to that contract being placed on the Board's consent calendar. During the drafting of that language, staff has made revisions to the remaining language in EWEB Rule 2-0150 to help provide a clearer understanding of those exemptions.

If these revisions are acceptable to the Board, staff will incorporate the new language or the Board's modification of that language, into EWEB's contracting rules.

All of the changes made to EWEB Rule 2-0150: Board Approval Thresholds is provided in Exhibit A (attached).

A copy of the original/current Rule 2-0150 is provided in Exhibit B (attached)

EXHIBIT A
Proposed 2-0150 Language

2-0150 Board Approval Thresholds (*Paragraphs 1 and 2 have no revisions*)

(1) *The Board shall have the sole authority to approve award of all contracts that meet or exceed the following thresholds:*

Purchase of all Goods, Equipment, and Construction:.....\$100,000 or greater

Services and Personal Services.....\$20,000 or greater

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

(3) The Board shall be notified of any proposed contract(s) with any known Executive Management Team (EMT) member's immediate family prior to any request for Board approval. Notification of the proposed contract shall be given to the General Manager as soon as possible. At a minimum, the notification shall include:

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

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

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

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

- a. Existing Board Appointed Consultants and Attorneys, which shall be reported to the Board annually for their ratification. The initial contract with any new consultants and attorneys shall be submitted to Board for approval. Any contracts with those persons thereafter will be ratified by the Board annually;
- b. Required **sole-source/single seller** contracts, which includes the following:
 - Governmentally required taxes, fees, permits and payments;
 - Software licenses, upgrades, and fees;
 - Equipment and software maintenance agreements;
 - Commonly used financial reporting and credit agencies selected because of their unique, reliable reporting capabilities and
 - Other sole-source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice, but to use to maintain business operations.
- c. Cooperative Procurement Contracts established for multiple-agency use by:
 - State of Oregon,
 - State of Washington
 - Western States Contracting Alliance (WSCA),
 - U.S. Communities,
 - The federal General Services Administration, or
 - Other governmental entity that is legally sufficient for EWEB's use.
- d. Board approved price agreements that specifically identify the contract as a price agreement and the purchases as being made on an "as needed" basis for the life of the contract (e.g. the purchase of stores items "as needed" to perform the utility's regular work).
- e. This exception from Board approval does not apply to any contract(s) as set forth in section 3, above.

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

EXHIBIT B
Original 2-0150 Language

2-0150 Board Approval Thresholds

- (1) The Board shall have the sole authority to approve award of all contracts that meet or exceed the following thresholds:
Purchase of all Goods, Equipment, and Construction:.....\$100,000 or greater
Services and Personal Services\$20,000 or greater

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

- (3) Procurements that do not apply to this rule are as follows:
 - a. Board Appointed Consultants and Attorneys, which shall be reported to the Board annually;
 - b. Required **sole-source** contracts, which includes only the following: governmentally required taxes, fees, permits and payments; software licenses, upgrades, and fees; equipment and software maintenance agreements; and other sole-source contracts required to meet governmental requirements or required to maintain existing software and equipment.
 - c. State of Oregon and State of Washington contracts established for use by Oregon Cooperative Public Purchasing (ORCPP) members for the purchase of goods and services; and
 - d. Contracts established by the Western States Contracting Alliance (WSCA) as adopted by the State for use by ORCCP members.
 - e. This exception from Board approval does not apply to ORCPP contracts for:
 1. Services not directly associated to (3)(b) or which cannot be defined as required, routine services or as services for the maintenance of existing equipment; examples include, cell phones, copiers, armored car services, software, etc.
 2. Application of this exception (3) is at the sole-judgment and discretion of the Purchasing Manager and shall only be applied to required sole-source contracts and routine ORCPP contracts for goods, equipment, and supplies

RESOLUTION NO. 1001

WHEREAS, the Eugene Water & Electric Board (EWEB) is a state of Oregon local government; and

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

WHEREAS, the Board is exercising that authority;

NOW, THEREFORE, BE IT RESOLVED that the EWEB Board adopts the following revisions to its public contracting rule 2-0150(4): Board Approval Thresholds:

2-0150 Board Approval Thresholds

- (4) This rule does not apply to the following procurements:
- a. Existing Board Appointed Consultants and Attorneys, which shall be reported to the Board annually for their ratification. The initial contract with any new consultants and attorneys shall be submitted to Board for approval. Any contracts with those persons thereafter will be ratified by the Board annually;
 - b. Required **sole-source/single seller** contracts, which includes the following:
 - Governmentally required taxes, fees, permits and payments;
 - Software licenses, upgrades, and fees;
 - Equipment and software maintenance agreements;
 - Commonly used financial reporting and credit agencies selected because of their unique, reliable reporting capabilities and
 - Other sole-source contracts required to meet governmental requirements, required to maintain existing software and equipment, or in which EWEB has no choice, but to use to maintain business operations.
 - c. Cooperative Procurement Contracts established for multiple-agency use by:
 - State of Oregon,
 - State of Washington
 - Western States Contracting Alliance (WSCA),
 - U.S. Communities,
 - The federal General Services Administration, or
 - Other governmental entity that is legally sufficient for EWEB's use.
 - d. Board approved price agreements that specifically identify the contract as a price agreement and the purchases as being made on an "as needed" basis for the life of the contract (e.g. the purchase of stores items "as needed" to perform the utility's regular work).
 - e. This exception from Board approval does not apply to any contract(s) as set forth in section 3, above.

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

EFFECTIVE DATED this 5th day of January 2010.

THE EUGENE WATER & ELECTRIC BOARD

By _____

I, Debra J. Smith, the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its regular meeting of _____, 2010.

Assistant Secretary