



**Public Contracting Rules**

Adopted: 1/4/2005

Effective: 3/1/2005

Approved: \_\_\_\_\_

**GENERAL PROVISIONS**

**Division 2: Authority; General Provisions; Protests and Remedies**

<b>TABLE OF CONTENTS</b>	<u>Page No.</u>
2-0100 Authority .....	2
2-0105 Effective Date .....	2
2-0110 Public Contracting Rules.....	3
2-0120 Delegation of Authority to General Manager.....	3
2-0130 Purchasing Department .....	3
2-0140 Rules Management.....	3
2-0150 Board Approval Thresholds .....	4
2-0160 Affirmative Action; Limited Competition Permitted .....	4
2-0170 Subcontracting to and Contracting with Emerging Small Businesses.....	4
2-0180 Preference for Oregon Goods and Services; Nonresident Bidders.....	5
(1) Award When Offers Equal	5
(2) Determining if Offers are Equal	5
(3) Determining if Goods or Services are Manufactured or Produced in Oregon	5
(4) Procedure for Drawing Lots	6
(5) Offers from Local Contractors	6
2-0190 Reciprocal Preferences .....	6
2-0200 Preference for Recycled Materials.....	6
2-0210 Authority for Cooperative Procurements.....	7
2-0220 Responsibilities of Administering and Purchasing.....	7
2-0230 Advertisements of Intent to Establish Contracts or Price Agreements Through a Permissive Cooperative Procurement .....	8
2-0240 Advertisements of Interstate Cooperative Procurements .....	9

2-0250 Protests and Disputes In Cooperative Procurement Process.....	9
2-0260 Amendments to Cooperative Procurement Contracts .....	10
2-0270 Rejection of All Offers .....	10
2-0280 Protests and Disputes Generally .....	10

**RULES**

**2-0100 Authority**

The Board is the utility’s Contract Review Board, and has all authority specifically granted it under ORS 279A.050 through 279A.070 and as otherwise provided by law. The Board shall conduct its public contracting to further the policies set forth in the Public Contracting Code and EWEB Public Contracting Rules, Divisions 1-6 (“EWEB Rules”).

**2-0105 Effective Date**

These EWEB Rules become operative March 1, 2005, and apply only to public contracts first advertised, but if not advertised then entered into, on or after March 1, 2005, except as to Rule 6-0110(4) implementing ORS 279A.180, which statute became operative on September 30, 2003, and which Rule becomes operative on Board approval of these EWEB Rules. See Oregon Laws 2003, ch. 794, §§ 336 and 337.

**2-0110 Public Contracting Rules**

Pursuant to ORS 279A.065(5) and ORS 279A.070, the Board has adopted rules of procedure for all contracts subject to the Code. The Model Public Contracting Rules prepared by the Oregon Attorney General do not apply to EWEB. Reference should be made to EWEB Rules on all matters concerning contracts entered, or to be entered, into by EWEB.

Division 2 applies to contracts entered into by EWEB under EWEB’s Rules. Division 3 applies to contracts for goods or services. Division 4 applies to public consultant contracts. Division 5 applies to contracts for public construction. Where there is a conflict between the rules in Division 2 and those in Divisions 3, 4 or 5, the rules in Divisions 3, 4 or 5 shall be applied.

Except as otherwise expressly provided in ORS 279C.800 through ORS 279C.870, and notwithstanding ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations conflict with any provision of ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or these rules, or require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and ORS 279C.005 through 279C.670 or EWEB Rules.

**2-0120 Delegation of Authority to General Manager**

Pursuant to ORS 279A.075(1), the Board has delegated to the General Manager all its public contracting authority, except as specifically retained by the Board in the EWEB Rules.

**2-0130 Purchasing Department**

Subject to the control and supervision of the General Manager, the Purchasing Manager may process, negotiate and execute all contracts for EWEB in accordance with EWEB Rules and Oregon law.

**2-0140 Rules Management**

The Purchasing Manager, as approved and/or directed by the General Manager, shall update and revise EWEB Rules without Board approval to facilitate ongoing compliance by EWEB with changing legal requirements. Such revisions and updates do not include changes to dollar thresholds, Board review and approval limits or requirements, granting of any additional authority, reducing the Board’s authority, exempting whole classes of contracts, or any other changes which are not clearly defined or needed to assure legal compliance in EWEB’s public contracting activities.

The Purchasing Manager shall notify the Board of all updates and revisions made under this rule. The Board has the authority to revise changes made under this rule so long as such revisions do not conflict with law. The Board shall notify the Purchasing Manager and General Manager of such revisions in writing.

**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 (a) 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 can not 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

**2-0160 Affirmative Action; Limited Competition Permitted**

Pursuant to ORS 279A.100, EWEB may limit competition on public contracts for goods or services, or on other public contracts with an estimated cost of \$50,000 or less, to carry out affirmative action goals, policies or programs for disadvantaged or minority groups.

When goods, services, or work offered by persons disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability meet or exceed the utility's need, the Board may, at its sole discretion, directly award such person(s) a contract without following a competitive bid process. Documentation verifying the successful contractor's minority or disadvantaged class status, acceptable to the Board shall be filed in the Purchasing office.

If competition for the needed goods, services, or work exists within the minority or disadvantaged community, the Board reserves the right, at its discretion, to limit competition for the contract to only the minority or disadvantaged community or may select the contractor determined to best meet the utility's need through investigation and negotiation with qualified minority or disadvantaged contractors.

### **2-0170 Subcontracting to and Contracting with Emerging Small Businesses**

- (1) As set forth in ORS 279A.105, the Board may require a contractor to subcontract some part of a contract to, or to obtain materials to be used in performing the contract from:
  - (a) A business enterprise that is certified under ORS 200.055 as an emerging small business; or
  - (b) A business enterprise that is:
    1. Certified under ORS 200.055 as an emerging small business; and
    2. As identified by EWEB, is located in or draws its workforce from economically distressed areas, as designated by the Oregon Economic and Community Development Department.
- (2) A subcontractor certified under ORS 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:
  - (a) Its principal place of business is located in an area designated as economically distressed by the Oregon Economic and Community Development Department pursuant to administrative rules adopted by the Oregon Economic and Community Development Department; or
  - (b) The contractor certifies in writing to EWEB that a substantial number of the subcontractor's employees or subcontractors that will manufacture the goods or complete the services under the contract reside in an area designated as economically distressed by the Oregon Economic and Community Development Department. For the purposes of making the foregoing determination, EWEB shall determine in each particular instance what proportion of a contractor's subcontractor's employees or subcontractors constitute a substantial number.
- (3) EWEB should include in each solicitation document a requirement that Offerors certify in their offers in a form prescribed by the utility, that the Offeror has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged minority, women or emerging small business enterprise certified under ORS 200.055.

### **2-0180 Preference for Oregon Goods and Services; Nonresident Bidders**

- (1) Award When Offers. When EWEB receives offers which, in its sole judgment, are equal in price, fitness, availability and quality, and chooses to award a Contract, it shall award the contract based on the following order of precedence:
  - (a) To the Offeror among those submitting equal offers that is offering goods or services that have been manufactured or produced in Oregon.
  - (b) If two or more Offerors submit equal offers, and both offer goods or services

manufactured or produced in Oregon, EWEB shall award the contract by drawing lots among the equal offers offering goods or services that have been manufactured or produced in Oregon. The Offerors that submitted the equal offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.

- (c) If EWEB receives equal offers, and none of the equal offers offer goods or services manufactured or produced in Oregon, then the Board shall award the contract by drawing lots among the equal offers. The Offerors that submitted the equal offers subject to the drawing of lots shall be given notice and an opportunity to be present when the lots are drawn.
- (2) Determining if Offers are Equal. EWEB shall consider offers equal in price, fitness, availability, and quality as follows:
- (a) Bids received in response to an invitation to bid issued under ORS 279B.055 or ORS 279C.335 are identical in price, fitness, availability and quality if the bids are responsive, and offer the goods or services described in the Invitation to Bid at the same price.
  - (b) Proposals received in response to a request for proposals issued under ORS 279B.060, or ORS 279C.400 and corresponding EWEB Rules are identical in price, fitness, availability and quality if they are responsive and achieve equal scores when scored in accordance with the evaluation criteria set forth in the Request for Proposals.
  - (c) Proposals received in response to a Special Procurement conducted pursuant to ORS 279B.085 are equal in price, fitness, availability and quality if, after completing the approved contracting procedure, EWEB determines, in writing, that two or more proposals are equally advantageous.
- (3) Determining if Goods or Services are Manufactured or Produced in Oregon. For the purposes of complying with Section 1 of this Rule, EWEB may request, either in the Solicitation Document, following closing, or at any other time it determines appropriate, any information EWEB determines is appropriate and necessary to allow it to determine if the goods or services are manufactured or produced in Oregon. EWEB may use any reasonable criteria to determine if goods or services are manufactured or produced in Oregon, provided that the criteria reasonably relate to that determination, and provided that EWEB applies those criteria equally to each Bidder or Proposer.
- (4) Procedure for Drawing Lots. In any instance when this Rule calls for the drawing of lots, EWEB shall draw lots by a procedure that affords each Offeror subject to the drawing a substantially equal probability of being selected, and that does not allow the person making the selection the opportunity to manipulate the drawing of lots to increase the probability of selecting one Offeror over another. If lots are determined by the tossing of a coin, the coin shall be tossed in the air and allowed to land on the floor without being caught or touched.
- (5) Offers from Local Contractors. When EWEB receives offers equal in price, fitness, availability and quality, and chooses to award a Contract, in addition to the provisions provided by statute and this rule, EWEB may award the contract in favor of a local Contractor, without drawing lots if one or more of the following criteria exist:
- (a) When it is more advantageous for EWEB to secure goods, services, or work from a supplier or contractor in the area.
  - (b) When award of the contract would have an economic impact on the community beyond the benefit to the Contractor.
  - (c) When knowledge of EWEB and the local community is advantageous to EWEB and provides value beyond the basic acquisition.

Nothing herein shall be construed as to guarantee award of any contract to a local bidder. A local bid may have considerations that cause it to outweigh another offer. If those considerations do not exist, the Board shall award the contract to the Offeror who was successful in drawing the winning lot. The reasons for awarding the contract to a local bidder under this rule shall be documented and filed in the Purchasing Office.

### **2-0190 Reciprocal Preferences**

When evaluating Bids, EWEB will add a percentage increase to the Bid of a Nonresident Bidder equal to the percentage, if any, of the preference that would be given to that bidder in the state in which the bidder resides. EWEB may rely on the list prepared and maintained by the Oregon Department of Administrative Services pursuant to ORS 279A.120(4) to determine both (i) whether the Nonresident Bidder's state gives preference to in-state bidders, and (ii) the amount of such preference.

### **2-0200 Preference for Recycled Materials**

- (1) Notwithstanding provisions of law or EWEB Rules requiring EWEB to award a Contract to the lowest responsible bidder or best proposer or provider of a quotation, and in accordance with subsection (2) of this section, EWEB shall give preference to the procurement of goods manufactured from recycled materials.
- (2) In comparing goods from two or more Bidders or Proposers, if at least one Bidder or Proposer offers goods manufactured from recycled materials, and at least one Bidder or Proposer does not, EWEB shall select the Bidder or Proposer offering goods manufactured from recycled material if each of the following four conditions exists:
  - (a) The recycled product is available;
  - (b) The recycled product meets applicable and acceptable standards;
  - (c) The recycled product can be substituted for a comparable non-recycled product; and
  - (d) The recycled product's costs do not exceed the costs of non-recycled products by more than five percent or a higher percentage if a written determination is set forth in the Solicitation Document. For purposes of making the foregoing determination, EWEB shall consider the costs of the goods following any adjustments EWEB makes to the price of the goods for purposes of evaluation pursuant to Division 3.
- (3) For the purposes of Section 2-0200(3), EWEB shall determine if goods manufactured from recycled materials meet the standards established by or acceptable to EWEB.

### **2-0210 Authority for Cooperative Procurements**

- (1) EWEB may participate in, sponsor, conduct or administer Cooperative Procurements as follows:
  - (a) EWEB may participate in, sponsor, conduct or administer Joint Cooperative Procurements to establish Contracts or Price Agreements for goods or services, that use source selection methods substantially equivalent to those set forth in EWEB Rules, Division 3, or to establish Contracts for Public Improvements that use a competitive bidding process substantially equivalent to that set forth in EWEB Rules, Divisions 4 and 5, and only in accordance with ORS 279A.210.
  - (b) EWEB may participate in, sponsor, conduct or administer Permissive Cooperative Procurements to establish contracts or Price Agreements for the acquisition of goods or services that use source selection methods substantially equivalent to those set forth in EWEB Rules, Division 3, and only in accordance with ORS 279A.215.
  - (c) EWEB may participate in, sponsor, conduct or administer interstate Cooperative

Procurements to establish contracts or Price Agreements for the acquisition of goods or services that use source selection methods substantially equivalent to those set forth in EWEB Rules, Division 3, and only in accordance with ORS 279A.220.

- (2) A solicitation and award process uses source selection methods substantially equivalent to those identified in Division 3 when it has the characteristics set forth in ORS 279A.200(2). EWEB shall determine for itself, in a means that meets its procurement requirements, whether or not the solicitation and award process for an Original Contract arising out of a Cooperative Procurement is substantially equivalent to these rules or those identified in Division 3 in accordance with ORS 279A.200(2).

#### **2-0220 Responsibilities of Administering and Purchasing**

- (1) If EWEB is an Administering Contracting Agency of a Cooperative Procurement, it may establish the conditions under which persons may participate in the Cooperative Procurements. Such conditions may include, without limitation, whether each person that participates in the Cooperative Procurement must pay administrative fees to EWEB, whether the participants must enter into a written agreement with EWEB, or any other matters related to the administration of the Cooperative Procurement and the resulting Original Contract. EWEB may, but is not required to, include provisions in the Solicitation Document for a Cooperative Procurement or advertise the Solicitation Document in a manner to assist compliance with the Code and EWEB Rules by Purchasing Contracting Agencies.
- (2) If EWEB, acting as a Purchasing Contracting Agency, enters into a Contract or Price Agreement based on a Cooperative Procurement, EWEB shall comply with the Code and EWEB Rules, including without limitation, those sections of the Code and EWEB Rules that govern:
  - (a) The extent to which EWEB may participate in the Cooperative Procurement,
  - (b) The advertisement of the solicitation document related to the Cooperative Procurement, and
  - (c) Public notice of EWEB's intent to establish Contracts or Price Agreements based on a Cooperative Procurement.

#### **2-0230 Advertisements of Intent to Establish Contracts or Price Agreements Through a Permissive Cooperative Procurement**

- (1) If EWEB wishes to enter into a Contract or Price Agreement arising out of a Permissive Cooperative Procurement, it must publish notice of its intent to do so if it estimates that it will spend in excess of \$250,000 on goods and services acquired under the Contract or Price Agreement.
- (2) EWEB will spend in excess of \$250,000 for goods and services acquired under a Contract or Price Agreement arising out of a Permissive Cooperative Procurement if:
  - (a) The Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides that EWEB will make payments over the term of the Contract or Price Agreement that will, in aggregate, exceed \$250,000, whether or not the total amount or value of the payments is expressly stated;
  - (b) EWEB's Contract or Price Agreement arising out of the Permissive Cooperative Procurement expressly provides for a guaranteed maximum price, or a maximum not to exceed amount in excess of \$250,000; or
  - (c) At the time EWEB enters into the Contract or Price Agreement, EWEB reasonably contemplates, based on historical or other data available to it, that the total payments it

will make for goods or services under the Contract or Price Agreement will, in aggregate, exceed \$250,000 over the anticipated duration of the Contract or Price Agreement.

- (3) The notice of intent required by 2-0230(1) shall contain the information required by ORS 279A.215(2)(b), and EWEB shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). EWEB shall give the notice required by this rule no fewer than 7 days before the deadline for submitting comments regarding EWEB's intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement.
- (4) If EWEB intends to establish a Contract or Price Agreement arising out of the Permissive Cooperative Procurement that it administers, it may satisfy the notice requirements set forth in 2-0230(1) and (3) by including the information required by ORS 279A.215(2)(b) in the Solicitation Document related to the Permissive Cooperative Procurement, and including instructions in the Solicitation Document to potential Offerors describing how they may submit comments in response to EWEB's intent to establish a Contract or Price Agreement through the Permissive Cooperative Procurement. The content and timing of such notice shall comply in all respects with ORS 279A.215(2), ORS 279A.215(3) and EWEB Rules.
- (5) EWEB shall respond to any comments on its intent to establish a Contract or Price Agreement through a Permissive Cooperative Procurement as set forth in ORS 279A.215(3)(c), by making a written determination that establishing a Contract or Price Agreement through a Permissive Cooperative Procurement is in the best interest of EWEB and providing a copy of the written determination to any vendor that submitted comments.

#### **2-0240 Advertisements of Interstate Cooperative Procurements**

EWEB may only participate in an Interstate Cooperative Procurement if at least one of the following occurs:

- (1) The Solicitation Document for the Interstate Cooperative Procurement lists EWEB or the Cooperative Procurement Group of which EWEB is a member as a party that may enter into Contracts or Price Agreements under the terms and conditions of the Original Contract, and the Solicitation Document is advertised in Oregon in compliance with ORS 279B.055(4) or ORS 279B.060(4) by either:
  - (a) EWEB; or
  - (b) The Cooperative Procurement Group, or a member of the Cooperative Procurement Group, of which EWEB is a member; or
  - (c) Another Purchasing Contracting Agency that is subject to the Code, so long as such advertisement would, if given by EWEB, comply with ORS 279B.055(4) or ORS 279B.060(4) with respect to EWEB; or
- (2) If the Solicitation Document issued by EWEB was not advertised in accordance with 2-0240(1), EWEB gives notice of its intent to enter into a Public Contract or Price Agreement based on the terms of the Interstate Cooperative Procurement. The notice of intent shall contain the information required by ORS 279A.220(2)(b)(B), and EWEB shall advertise the notice in the same manner as provided in ORS 279B.055(4)(b) and (c). EWEB shall give the notice required by this Section no fewer than 7 days before the deadline for submitting comments regarding EWEB's intent to establish a contract or price agreement through an Interstate Cooperative Procurement. EWEB shall respond to any comments on its intent to establish a Contract or Price Agreement through an Interstate Cooperative Procurement as set forth in ORS 279A.220(3)(c), by making a written determination that establishing a contract or price agreement through an Interstate Cooperative Procurement is in EWEB's

best interest and providing a copy of the written determination to any vendor that submitted comments.

### **2-0250 Protests and Disputes In Cooperative Procurement Process**

- (1) Bidders or Proposers must make such protests in accordance with the processes and procedures established in Division 3.
- (2) The failure of EWEB to exercise any rights or remedies it has under a Contract or Price Agreement entered into through a Cooperative Procurement shall not affect the rights or remedies of any other Contracting Agency that participates in the Cooperative Procurement, including the Administering Contracting Agency, and shall not prevent EWEB from exercising any rights or seeking any remedies that may be available to it under its own Contract or Price Agreement arising out of the Cooperative Procurement.
- (3) Any other protests related to a Cooperative Procurement, or disputes related to a Contract or Price Agreement arising out of a Cooperative Procurement, shall be made and resolved as set forth in ORS 279A.225.

### **2-0260 Amendments to Cooperative Procurement Contracts**

EWEB may amend a Contract entered into pursuant to a Cooperative Procurement as set forth in Division 3 – Contract Amendments.

### **2-0270 Rejection of All Offers**

If EWEB rejects all Offers, it shall keep all Proposals and Bids in the Procurement file.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279B.100

### **2-0280 Protests and Disputes Generally**

Unless otherwise required by law, protests related to EWEB contracting shall be in accordance with the protest provisions of these Rules, as found in the various Divisions. The application of such provisions, including this Rule, shall be deemed to constitute EWEB's Administrative Review Process.

- (1) All protests are subject to the laws and EWEB Rules that specifically govern filing and response periods. Any protest must be received within seven business days after issuance of the notice of intent to award the Contract, unless a law or EWEB Rule provides a different protest period.
- (2) All protests must be in writing, signed by the protesting party or an authorized Agent and submitted to EWEB's Purchasing Manager. The protest must state all facts and arguments upon which the protesting party is basing their protest. EWEB will only consider protests identifying an issue of fact concerning a matter of bias, discrimination or conflict of interest, or non-compliance with procedures described in the Solicitation Documents, or non-compliance with state law or the EWEB Rules.
- (3) EWEB's Purchasing Manager will review the protest and will fax (if provided) and mail the protesting party a written response within three (3) business days of receipt of the written protest (unless a law or EWEB Rule provide for a different period) to the fax number and

address provided in the bid or proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.

(4) If the Purchasing Manager's determination [response] is adverse to the protester, any further appeal of the Purchasing Manager's determination by the party must be submitted in writing to EWEB's General Manager within three (3) business days of issuance of the Purchasing Manager's determination [response].

(5) EWEB's General Manager will review any appeal of the Purchasing Manager's determination and shall fax (if provided) and mail, in accordance with the fax number and address provided in the bid or proposal, the protesting party a written response within three (3) business days of receipt of written appeal.

(6) If the determination of the General Manager is adverse to the protesting party's interest, the protesting party may appeal to EWEB's Contract Review Board (Board) only by filing a written notice of appeal with the General Manager within two (2) business days of issuance of the General Manager's written determination.

(7) The Board, in considering the protest, shall review the documentation presented to the Purchasing Manager and the General Manager on or before the next regularly scheduled Board Meeting, but in no event shall the Board be required to review in less than ten (10) business days. The Contract Review Board will not review evaluation scores. The review by the Contract Review Board shall be based upon the documentation presented to the Purchasing Manager and the General Manager and shall be limited to evaluation of a matter of bias, discrimination or conflict of interest, or non-compliance with procedures described in the Solicitation Document, or non-compliance with state law or the EWEB Public Contracting Rules. The Contract Review Board's determination shall be EWEB's final decision.