



Public Contracting Rules

Construction Consultants

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Approved: _____

**Division 4
Architectural, Engineering, 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, and 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, or Land Surveying Services, or Related Services; and
 - (b) Two-tiered procedures for selection of Architects, Engineers, 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, 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 through 192.505) 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 Consultants to perform Architectural, Engineering, 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 to determine consultant compensation.

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 \$150,000; or
 - (c) The Architectural, Engineering, or Land Surveying Services, or Related Services to be performed under the Contract:
 - (A) Consist of or are related to Architectural, Engineering, 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, 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
 - (B) Consultant will be assisting 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 or other form of action, whether legal, equitable, administrative or otherwise.
- (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, 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, 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, or Related Services; and
 - (c) Any other provisions EWEB believes to be in EWEB's or its customers' best interest to negotiate.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C110, ORS 279C.115

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 \$150,000, when EWEB is selecting a Consultant on the basis of qualifications alone.
- (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, or

- Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, 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 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 available to perform the Architectural, Engineering, 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, or Land Surveying Services, or Related Services;
 - (ii) Proposed management techniques for the Architectural, Engineering, or Land Surveying Services, or Related Services described in the Request for Proposals;
 - (iii) Consultant's capabilities, specialized experience and technical competence that may be demonstrated by the proposed approach and methodology to meet the project requirements;
 - (iv) Past performance history and record in providing similar Architectural, Engineering, 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, 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) Pricing policies, proposals and other pricing information;
 - (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.
- (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, EWEB Public Contracting Rules, Division 4 - Page 4 of 12

Engineering, 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) If EWEB does not cancel the RFP after it reviews and ranks each Proposer, 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, 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, or Land Surveying Services, or Related Services; and
 - (c) Any other provisions EWEB believes to be in its best interest to negotiate.
- (4) 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).
- (5) If the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$150,000, EWEB may continue Contract negotiations with the Proposer selected under the informal selection procedure. EWEB shall document, in writing, its determination to continue negotiations without terminating the process and moving to a formal process. Determinations shall include, but are not limited to, findings that contracting with that Proposer will:
- (a) Promote efficient use of EWEB's resources and result in substantial cost savings to EWEB; or
 - (b) 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; or
 - (c) Prevent loss to EWEB or its customers from delaying work in order to satisfy the formal solicitation requirements.

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.
- (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, 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, 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, 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, or Land Surveying Services, or Related Services Agency 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.
 - (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, or Land Surveying Services, or Related Services described in the RFQ including Consultant's available resources and recent, current and projected workloads;
 - (C) A list of similar Architectural, Engineering, or Land Surveying Services, or Related Services and references concerning past performance, and a copy of all records, if any, of Consultant's performance under Contracts with any other Contracting

- Agency;
 - (D) The number of Consultant's experienced staff available to perform the Architectural, Engineering, 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;
 - (E) A statement describing the Consultant's approach to Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;
 - (F) A statement describing the proposer's geographic proximity to and familiarity with the physical location of the Project;
 - (G) A statement describing the ownership status and employment practices of the proposer regarding women, minorities and emerging small businesses or historically underutilized businesses;
 - (H) Pricing policies, other proposals, and other pricing information; and
 - (I) 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.
 - (J) 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 architecture, engineering, or land surveying, Related Services, construction or Public Contracting. EWEB may include on the evaluation committee private practitioners of architecture, engineering, 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 RFP.
- (e) After the evaluation committee reviews, scores and ranks the responding Consultants, EWEB shall establish a short list of at least three qualified Consultants, provided however, that if four or fewer Consultants responded to the RFQ, 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, 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, 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, or Land Surveying Services, or Related Services described in the RFP;
 - (ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, 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 available to perform the Architectural, Engineering, 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, or Land Surveying Services, or Related Services described in the RFP;
 - (vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, 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, and meeting financial obligations;
 - (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, or Land Surveying Services, or Related Services described in the RFP;
 - (xiii) Pricing policies, proposals and other pricing information when the conditions under ORS 279C.110(2) do not exist; and
 - (xiv) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, 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.
- (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 anytime 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, 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 architecture, engineering, land surveying, Related Services, construction 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, 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, or Related Services;

and

- (C) Any other provisions EWEB believes to be in the utility's best interest to negotiate.
- (d) 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, 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 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, or Land Surveying Services. The process shall 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, 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 Manager, or the Manager'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 anytime 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 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.

4-0300 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, or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, 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