

**EUGENE WATER & ELECTRIC BOARD
REGULAR SESSION
EWEB BOARD ROOM
500 EAST 4TH AVENUE
November 7, 2017
5:30 P.M.**

Commissioners Present: Dick Helgeson, President; John Brown, Vice President; Sonya Carlson, Steve Mital, John Simpson; Commissioners

Absent: None

Others Present: Matt Barton, Chief Information Officer; Sue Fahey, Chief Financial Officer; Mark Hankins, Line Supervisor; Deborah Hart, Fiscal Services Supervisor; TiaMarie Harwood, Interim General Accounting & Treasury Supervisor; Frank Lawson, General Manager; Karl Morgenstern, Environmental Supervisor; Rod Price, Chief Electric Engineering & Operations Officer; Jerry Reller, Financial Analyst; Nate Shultz, Financial Analyst; Adam Rue, Energy Resource Analyst; Carol Samuels, Piper Jaffray Companies;

President Helgeson called the Regular Session to order at 5:30 p.m.

Agenda Check

Mr. Lawson noted that the General Business Items on the agenda had been sequenced by order of priority.

Commissioner Simpson said he would like to remove item 12, Information Services Strategic Plan, from the agenda.

President Helgeson suggested that the agenda be followed as written, but if time was running short when item 12 was reached, the Board reserves the option of removing it.

Items from Board Members and General Manager

- Vice President Brown said that Mr. Lawson's State of the Utility Address had been well received by multiple audiences. He asked staff for a report on the \$250,000 that was approved for a part-time upriver Game Officer. Vice President Brown wondered why staff had not yet contacted him surrounding his questions about EWEB's document storage. Lastly, he asked why the sale of the Headquarters was taking so long.

Mr. Lawson replied there were many details still being worked out on the sale of the Headquarters building; he added that it should not take much longer—perhaps as early as the beginning of next year.

- President Helgeson agreed with Vice President Brown concerning Mr. Lawson's State of the Utility Address.
- Commissioner Simpson announced that he attended a recent LTD Board meeting, where he had presented each Board member, and the General Manager, with a piece of art highlighting the art on the west end of the EMX line.

He added that after the major move to the ROC, he would like to see a small as possible downtown presence for the utility.

- Commissioner Carlson thanked staff for answering her several questions which she posited to them offline. She said she was looking forward to EWEB's Run to Stay Warm coming up on November 19.
- Mr. Lawson announced that later in the week, the Board would be provided the opportunity to provide feedback on Board-appointed consultants. He also said staff expected to receive initial materials on the E3 carbon study soon.

Public Input

Valerie Warner of Eugene, and the Housing Authority and Community Services Agency (HACSA) of Lane County, thanked the Board for their support of HACSA's weatherization program. She asked the Board for their continued support for the weatherization program in 2018, and said a proposal for that support had been submitted.

Marilyn Cross of Vida, and of the McKenzie ClearWater Coalition, thanked the Board for following up on the concerns with the Walterville Canal. She added that the data associated with the seepage stations in the Canal should be made public.

Roger Ebbage of Eugene, and Lane Community College (LCC), thanked EWEB for their Education Grants, especially as they applied to the Energy Management Department of LCC. He encouraged the Board to continue offering said grants.

Linda Heyl of Eugene, and of 350 Eugene, thanked the EWEB staff for reaching out to her organization. She lauded the utility's Strategic Plan, but encouraged the Board to add carbon mitigation as a goal of the Plan.

Jim Neu of Eugene, and of 350 Eugene, thanked Commissioner Carlson and staff for meeting with 350 Eugene. He encouraged the utility to use their clean energy generation sources to displace the burning of fossil fuels.

Patty Hine of Eugene, and of 350 Eugene, thanked the utility for shifting some of the resources to support the electrification of home heating, water heating, and transportation.

Laurie Powell of Eugene, and 350 Eugene, reminded the Board that EWEB was the largest, most influential community partner that will be called upon to participate in updating the Community Climate and Energy Action Plan 2.0, and as such, the utility's website would be a perfect vehicle for sharing how the utility is meeting the greenhouse gas reduction goals laid out in Eugene's Climate Recovery Ordinance.

Matt McRae of Eugene, said that he too would like to see carbon mitigation as a goal of EWEB's Strategic Plan. He encouraged the Board to continue pushing Advanced Metering Infrastructure (AMI) into the future.

Duncan Rhodes of Eugene, encouraged the Board to lower the monthly service charge on EWEB's energy bills, while raising the kilowatt hour charge, to encourage energy conservation. He expressed concern over no longer getting usage history on his monthly electric bill. Mr. Rhodes concluded that he was in favor of AMI, because it would allow him to track his own usage much more closely.

Commissioner Simpson thanked all those participating in public comment. He announced that people who have near real time access to their electric consumption save 15% on their electric bills. Commissioner Simpson said that he appreciated Mr. Rhodes' input as per AMI.

Vice President Brown offered that one of EWEB's main goals is weatherizing the low-income housing inventory. He addressed Mr. Rhodes, saying that if he wanted an AMI meter installed on his property, all he would have to do is let staff know.

Commissioner Mital said that he agreed with 350 Eugene's sentiment surrounding carbon mitigation. He also wanted to go on record saying that he hoped EWEB renegotiated their BPA contracts in 2028. He told Mr. Ebbage that, personally, he was very grateful for the Energy Management program at LCC, but the cost to EWEB might be a bit too high when compared to the relatively small number of students that are participating in said program.

President Helgeson thanked all public comment participants. He said that he found the backgrounder on the Walterville Canal especially helpful, and if there was supplemental information on Canal maintenance, he would appreciate looking at that as well.

BOARD ACTION ITEMS

Approval of Consent Calendar

MINUTES

1. a. **October 3, 2017 Executive Session**
- b. **October 3, 2017 Regular Session**

CONTRACTS

2. **Cascade Pacific Resource Conservation & Development** - for the development of an accounting system to manage disbursements for the McKenzie Watershed Conservation Fund. \$180,000.
3. **Whitlock Consulting Group** - for Customer Information System (CIS) Implementation Services. \$1,500,000.

COOPERATIVE CONTRACTS

4. **Cummins, Inc.** - to authorize the use of a cooperative contract for the purchase of backup generators. \$353,000.

5. **CVE Technologies** - to authorize the use of a cooperative contract for Cisco hardware and services. \$720,000 (over 3 years).
6. **Galt Foundation and Quantum Recruiters** - to authorize the use of cooperative contracts for temporary staffing services. Galt Foundation \$130,000 (over 3 years), Quantum Recruiters \$320,000 (for one year).
7. **Haworth Inc.** - to authorize the use of a cooperative contract for systems furniture reconfiguration and setup. \$95,000.
8. **LILE International** - to authorize the use of a cooperative contract for moving services. \$75,000.
9. **Verizon Wireless** - to authorize the use of a cooperative contract for the purchase of wireless devices and services. \$300,000 (over 2 years).

RESOLUTIONS

10. **Resolution No. 1726** - Update to Board Policy EL3, Public Requests for Board Expenditures.
11. **Resolution No. 1727** - 2017 Revised and 2018 Trojan Budgets.

Approval of Consent Calendar

Commissioner Mital pulled Items 2 and 10 from the Consent Calendar.

Vice President Brown pulled Item 8 from the Consent Calendar.

Commissioner Simpson moved to approve the Consent Calendar with the exception of items 2, 8, and 10. The motion carried unanimously 5:0.

Items Removed From Consent Calendar

Commissioner Mital said he was unclear on the purpose of the Cascade Pacific Resource Conservation & Development Contract.

Mr. Price responded that staff had a Source Protection Strategic Plan (SPSP) drafted, and it was on the calendar for January; he hoped the SPSP would clarify the contract.

Commissioner Mital asked if the contract was time-sensitive.

Mr. Morgenstern said they could make it work to push this issue until after the briefing in January.

Vice President Brown wondered if EWEB was putting up \$180k or \$60k.

Mr. Morgenstern clarified that EWEB was putting up \$60k over two years.

Commissioner Carlson wondered if the decision to match the \$60k was, or would be, a Board decision, or a staff decision.

Mr. Morgenstern said that it was a management decision.

Commissioner Carlson asserted that the Board should have been involved in this process before applying for the grant.

President Helgeson said that, with his knowledge of the utility, he was comfortable passing the contract.

Commissioner Mital said that he was 100% in support of the staff's work, but in this case, the contract should be looked over and discussed by the Board before its inception.

Commissioner Carlson reiterated that she would like to see more Board inclusion in this and other contracts; however, she did not think delaying this contract would benefit the utility in any way.

Commissioner Mital moved to defer the authorization of the contract in Consent Calendar item 2 until such time that the Board could be further briefed. There was no second.

Commissioner Simpson moved to approve Consent Calendar item 2. The motion passed 4:1 with Commissioner Mital voting against.

Vice President Brown announced that he was working for Lile International in a real estate matter, and to avoid any conflict of interest, he wished to recuse himself from voting on this particular Consent Calendar item.

Commissioner Simpson moved to approve Consent Calendar item 8. The motion passed 4:0, with Vice President Brown recusing himself.

Commissioner Mital expressed interest in an annual report to accompany the updated EL3 policy.

Mr. Lawson reported that staff had already added annual reporting to the updated policy.

Commissioner Mital moved to approve Consent Calendar item 10. The motion passed 5:0.

GENERAL BUSINESS ITEMS

PERS Liability Mitigation Strategy

President Helgeson stated that he was a retired EWEB employee, but, as an EWEB Commissioner, he receives no special consideration or privilege with regard to his retirement benefits. He also stated he had no personal role in the determination or administration of these benefits for himself or any other individual. President Helgeson furthered that his pension eligibility and benefits were established at his retirement eight

years ago. He concluded that any deliberation he may participate in concerning PERS liability mitigation as an EWEB Commissioner, would not affect his benefits in any way.

Ms. Fahey, Ms. Harwood, and Ms. Samuels offered the Board a report and Power Point presentation on the PERS Liability Mitigation Strategy.

Commissioner Carlson asked if they chose option three from the presentation—the EWEB Trust option—would the unfunded liability with regards to the rates EWEB pays into PERS, be counted from that Trust.

Ms. Fahey answered they would not. She further clarified that there would be funds periodically deposited into PERS from the Trust.

With regard to the employer incentive fund that would match funds for deposits, Vice President Brown asked, if they stayed with the 25% match, where the state puts in \$500 million to a billion, is that before or after the current \$1.4 billion deficit? What is the probability of them finding that money if they are in a deficit position?

Ms. Fahey responded that, in the proposal, it states that several State agencies have reserve funds that could be permanently loaned to the State to access as needed.

Vice President Brown asked how these PERS scenarios would be affected if the earnings were greater than 7.2% on excess funds.

Ms. Samuels clarified that if EWEB joined the State & Local Government Rate Pool (SLGRP), and the PERS fund consistently earned more than 7.2%, sometime in the future, it would cause rates to change, possibly lower. She continued that if EWEB imagined earning consistently more than 7.2% through their PERS fund excesses, a side account would be appropriate.

Commissioner Simpson offered that he was attracted to Option five, joining the SLGRP.

Commissioner Mital thanked staff for looking into the EWEB Trust idea, but he supported Option four (deposit funds into a side account) and Option five (join SLGRP). He asked how the transition liability would affect EWEB's unfunded PERS liability.

Ms. Samuels replied that if EWEB joined the SLGRP, their PERS shortfall would be compared globally. She added that the shortfall would be embedded into the utility's rate structure.

President Helgeson stated that he was in support of Options four or five, and he would need more information about the SLGRP before making a decision on the Pool.

Ms. Fahey stated that one of the salient positives of joining the Pool was that EWEB's risk would be spread across 363 separate employers.

Commissioner Carlson asked staff to inform the Board of the pro and con scenarios associated with joining the SLGRP sometime between now and the December meeting.

Commissioner Mital asked if the State Incentive applied to Option four.

Ms. Fahey said she did not know.

Commissioner Carlson posited that it was not an either/or situation, that EWEB could join the SLGRP, and fund option four as well.

Ms. Fahey clarified that both could be done at the same time. She said it was possible to join the SLGRP and have side accounts simultaneously.

Ms. Fahey offered that staff would bring back only Options four and five to the December meeting.

2018 Proposed Budgets, Revenue Requirements, and Prices: Update

Ms. Fahey, Ms. Hart, Mr. Reller, Mr. Rue, and Mr. Schultz offered the Board a report and Power Point presentation on 2018 Proposed Budgets, Revenue Requirements, and Pricing.

Public Hearing on 2018 Proposed Budgets and Prices

President Helgeson opened the Public Hearing at 7:42 p.m., and seeing no one who wished to speak, closed the Public Hearing.

2018 Proposed Budgets, Revenue Requirements, and Prices: Direction

Commissioner Simpson asked for staff's thoughts on what constituted the greatest contrast in the Electric COSA study. He also asked for reassurance of the industry standards.

Ms. Hart replied the industry standard is +/- 5%, and one of the classes was currently pushing that upper limit, but was still within it.

Commissioner Carlson asked if the reduction to water rates would affect EWEB's credit rating.

Ms. Fahey responded that since the rate reduction was associated with AWS, she did not believe it would impact the utility's credit rating.

In follow up to Commissioner Simpson's question, Commissioner Mital asked for clarification surrounding the Electric COSA recommendation to increase one of the rate classes. He asked if it was the utility's intention to instead absorb that recommended increase.

Ms. Fahey said that was correct, with the affordability initiative we are anticipating it will drop. Part of the principle of gradualism is that you do not want to increase rates and then reduce rates and then increase them again, so we wait until a more level period is

budgeted to run the COSA and then true up those rates. Ms. Fahey said she believes the recommended increase to Large General Service is due to the BPA rate increase; that rate class gets more of the BPA.

Commissioner Carlson wondered if the proposed standby charge would have any effect on the aforementioned rates.

Mr. Rue replied the standby charge was a sort of unique class, everyone gets their allocation from the cost of service. The standby charge takes their cost and puts it in different buckets within that class. The proposed change is not impacting allocations for any other classes.

President Helgeson asked if the proposed changes were consistent with industry standards.

Mr. Rue said that the proposed changes were consistent with industry standards and trends.

Commissioner Carlson asked why the aforementioned rate class would take on more of the BPA rate.

Ms. Hart responded that the different classes had different cost make-ups, so the cost was not being shouldered by all classes equally.

Mr. Lawson further clarified the class was typically higher quantity users, their bills were weighted to consumption instead of infrastructure, and since the BPA cost was a charge for consumption, it made sense to weight the bills for this class as such.

Break

President Helgeson called a Break at 7:55 p.m. He reconvened the meeting at 8:05 p.m.

Emergency Preparedness and Update on Storm Response Readiness

Mr. Price and Mr. Hankins offered the Board an update and Power Point presentation on Emergency Preparedness and Storm Response Readiness.

Commissioner Mital asked how the iPads used by staff in the field would be protected from the rain.

Mr. Hankins replied they used Otter Boxes to protect the tablets from the weather.

Commissioner Mital asked if the map in the presentation will be made available to the public, how can EWEB ensure the safety and security of places on said map that could be a potential lure for thieves.

Mr. Hankins replied that in the map, the polygons used to denote outages were kept generic for that reason.

Commissioner Simpson suggested rate payers could register their phones to receive private alerts on a specific address. He asked if the Assessment Coordinators would be concentrating on communication or repair.

Mr. Hankins responded that they would be focused on repair, but each Assessment Coordinator would have two Super Scribes with them—one for inflow, and one for outflow.

Commissioner Carlson asked if a Commissioner could sit in on staff's next table top exercise.

Mr. Price said of course.

Vice President Brown wondered if there was any outreach surrounding chronic problem areas on EWEB's electrical grid.

Mr. Hankins said there were, and they have gathered a lot of data over the years on the chronic outage areas, and underground electrical was being designed and built for some of those areas.

Information Services Strategic Plan

Mr. Barton offered the Board a report and Power Point presentation on the Information Services (IS) Strategic Plan.

Commissioner Carlson asked how many of the projects have been approved.

Mr. Barton answered \$270,000 had been approved in a Consent Calendar item, but as IS moves forward, they would be coming to the Board for further approval.

Commissioner Simpson wondered if the links between systems within IS are being monitored for use.

Mr. Barton said that historically, that has not been something EWEB has done, but as new systems are implemented, those links are assessed.

Vice President Brown asked if the utility had ever gone back to determine if the investment in Work & Asset Management (WAM) was wise.

Mr. Barton posited that the WAM system should have been pitched to the Board as a necessity; he said that it would be fairly difficult to retroactively assess the WAM system. Mr. Barton further clarified the \$2.5 million allocated to WAM in the Power Point, was to replace the system, not maintain it.

President Helgeson reminded his colleagues that one of the places in which the Board approves projects is the annual review of the Capital Plan.

2017 Third Quarter Operating Dashboard & Goals Review

Mr. Lawson offered the Board a review and Power Point presentation on the 2017 Third Quarter Operating Dashboard.

Correspondence & Board Agendas

Mr. Lawson offered the Board a report on correspondence and Board agendas. He said he would be happy to merge the questionnaire Commissioner Carlson created with the existing Board self-evaluation questionnaire.

Commissioner Mital offered that he thought the Energy Management program at LCC was a great program, but he could not see it fitting into EWEB's Strategic Plan. He further clarified that he was not suggesting pulling that funding quickly.

Vice President Brown asked when the Board would be having the monetary surplus discussion.

Mr. Lawson said it was scheduled for February.

Board Wrap Up

Commissioner Carlson posited that she would like to see more Board notification earlier on projects, as opposed to the Board being held liable for something—such as the upriver timber sale—when it is too late for Board input or action.

Adjournment

President Helgeson adjourned the Regular Session at 9:20 p.m.

Assistant Secretary

President



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Sue Fahey, Chief Financial Officer; Deborah Hart, Fiscal Services Supervisor
DATE: November 22, 2017
SUBJECT: Electric and Water Operations & Maintenance (O&M) Budget Amendment
OBJECTIVE: Board Action – Approval of Electric O&M Budget Amendment

Issue

Per Board Policy EL-1, the approved budgets are the maximum level of expenditure authorized by the Board. Both the Electric and Water Utilities are projecting to end 2017 higher than budget, and Management is requesting that the Board approve an amendment to the 2017 Water and Electric O & M budgets.

Discussion

Purchased power and transmission costs are projected to exceed budget by \$7 million. The primary driver for this variance is portfolio balancing activities resulting in increased trading. This is offset by an increase in wholesale revenue. Additionally, the Electric Utility defeased high interest debt, and the Water Utility repaid a portion of its intercompany loan from the Electric Utility. These debt transactions were not anticipated in the 2017 budget and produce unfavorable variances in Other expenses of \$15.7 million for the Electric Utility and \$3 million for the Water Utility due to the required accounting treatment.

Requested Board Action

Management recommends and requests that the Board approve Resolution No. 1730 to increase the 2017 Electric O&M budget by \$22.7 million and the Water O & M budget by \$3 million.

**RESOLUTION NO. 1730
DECEMBER 2017**

**EUGENE WATER & ELECTRIC BOARD
2017 BUDGET AMMENDMENT**

WHEREAS, the Eugene Water & Electric Board (EWEB) is the body designated by the City of Eugene Charter and Code to administer the Eugene Electric and Water Utilities;

WHEREAS, Oregon Revised Statute 225.230 requires municipal utilities to make an annual written estimate of probable expenses to establish spending authority;

WHEREAS, the Eugene Water & Electric Board anticipates expenditures in excess of that authority;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves an increase to the Electric Utility Operations & Maintenance budget of \$22.7 million and an increase to the Water Utility Operations & Maintenance budget of \$3.0 million.

Dated this 5th day of December 2017.

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

President

I, ANNE M. KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its December 5, 2017 Board meeting.

Assistant Secretary

EWEB Board Consent Calendar Request

For Contract Awards, Renewals, and Increases

The Board is being asked to approve new price agreements with **Christenson Electric, Inc., Key Line Construction, Inc., and Potelco, Inc.** for Electric Line Crews.

Board Meeting Date: December 5, 2017

Project Name/Contract#: Electric Line Crews, ITB 055-2017

Primary Contact: Rod Price Ext. 7122

Purchasing Contact: Carla Aguilar Ext. 7487

Contract Amount:

Original Contract Amount: \$ 5,000,000 (over 5 years between 3 contracts)

Additional \$ Previously Approved: \$ N/A

Invoices over last approval: \$ N/A

Percentage over last approval: N/A %

Amount this Request: \$ 5,000,000

Resulting Cumulative Total: \$ 5,000,000

Contracting Method:

Method of Solicitation: Formal ITB

If applicable, basis for exemption: N/A

Term of Agreement: January 2018 – December 2022

Option to Renew? Annually up to 5 years

Approval for purchases "as needed" for the life of the contract Yes

Proposals/Bids Received (Range): 6 (Combined Crew Rates: \$415- \$685)

Selection Basis: Multiple Awards to Lowest Responsive/Responsible Bidders

Narrative:

The Board is being asked to approve new price agreements with **Christenson Electric, Inc., Key Line Construction, Inc., and Potelco, Inc.** for Electric Line Crews.

EWEB requires the services of multiple electric line crews in order to complete emergent overhead capital work and regulatory work required by the PUC. In addition, having multiple contractors with EWEB system experience will enable EWEB to be more responsive for emergency and storm events. EWEB currently has a contract with Christenson Electric that provides crews for overhead regulatory work as well as emergency and storm events which expires at the end of 2017.

In October 2017, EWEB issued a Formal Invitation to Bid (ITB) for electric line crews with the potential for multiple awards to be made as a result of the solicitation process. Bids were received by Christenson Electric of Portland, OR, Key Line Construction of Myrtle Point, OR, Potelco of Sumner, WA, International Line Builders of Tualatin, OR, Magnum Power of Kelso, WA, and Northwest Metal Fab & Pipe of Wilsonville, OR. The bids were reviewed and contracts have been offered to the three lowest responsive and responsible offers.

Historical procurement data suggests that the total contract amount will be approximately \$5,000,000 over the total five-year period. The contract amounts will be monitored and the Board will be requested to approve increases according to the Board Approval Policy for change orders. The annual cost will be within the amount budgeted for that specific year. Emergency response work may be reimbursed through FEMA grants.

If approved, staff will purchase electric line crew services as needed at the established prices. The contract is for one-year with the option to renew for four additional one-year periods.

ACTION REQUESTED:

Management requests the Board approve 3 new price agreements with **Christenson Electric, Inc., Key Line Construction, Inc., and Potelco, Inc.** for Electric Line Crews. The Electric, Generation and Trading Operations budget for 2017 is \$162,000,000 and this item will be budgeted annually.

SIGNATURES:

Project Coordinator: _____

Manager: _____

Purchasing Supervisor: _____

Executive Officer: _____

Board Approval Date: _____

EWEB Board Consent Calendar Request

For Contract Awards, Renewals, and Increases

The Board is being asked to approve a contract with **Luvaas Cobb** for General Counsel Services.

Board Meeting Date: December 5, 2017

Project Name/Contract#: General Counsel Services / RFP 045-2017

Primary Contact: Sue Fahey Ext. 7688

Purchasing Contact: Ramie Alkire Ext. 7413

Contract Amount:

Original Contract Amount: \$ 750,000 (Over 5 years)

Additional \$ Previously Approved: \$ N/A

Invoices over last approval: \$ N/A

Percentage over last approval: N/A %

Amount this Request: \$ 750,000

Resulting Cumulative Total: \$ 750,000

Contracting Method:

Method of Solicitation: Formal RFP

If applicable, basis for exemption: N/A

Term of Agreement: December 6, 2017 – December 5, 2022

Option to Renew? Annually up to 5 years

Approval for purchases "as needed" for the life of the contract Yes

Proposals/Bids Received (Range): 2 (\$195/hourly rate - \$295/hourly rate)

Selection Basis: Highest Ranked Proposer

The Board is being asked to approve a new contract with **Luvaas Cobb** of Eugene, OR for General Counsel Services. EWEB requires the services of a qualified legal firm to provide general legal services. In addition to general counsel, EWEB may appoint special counsel for other projects if desired. EWEB currently utilizes the services of several other legal firms to provide specialized counsel in the areas of Human Resources, Bonds, and Power Resources.

In September 2017, EWEB issued a Formal Request for Proposals (RFP) for general counsel services. Twenty-one (21) entities reviewed the RFP between the State of Oregon's Procurement site (ORPIN) and EWEB's bid page. ORPIN sends out automatic notifications to registered firms interested in the specific type of services in our RFP. Staff also proactively reached out to several firms in advance of the closing date.

EWEB received two (2) responses: (1) Luvaas Cobb of Eugene, OR and (2) Harrang Long Gary Rudnick PC of Eugene, OR. The responses were evaluated by a cross-functional team based on the weighted criteria stated in the RFP which consisted of Knowledge of Laws, Rules, and Service Philosophy (25%); Staff and Resources (20%); Fees (15%); Firm Background and Experience (15%); Relevant Case Results (15%); Transition Management Plan (5%); and References (5%).

Luvaas Cobb was found to be responsive and received the highest score in the evaluation of proposals. They scored high in Knowledge of Laws, Rules, and Service Philosophy; and Fee Schedule. Luvaas Cobb maintains a valuable historical perspective and broad range of expertise in municipal utility legal matters. Luvaas Cobb has an extensive history of representing public entities, having served as legal counsel for school districts since the 1950's. Staff has successfully negotiated a contract, and has issued a Notice of Intent to Award, pending Board approval.

The total contract amount will be approximately \$750,000 over the total five-year period. The contract amount is based on historic costs of which the hourly rate has not changed since 2008.

ACTION REQUESTED:

Management requests the Board approve a new contract with **Luvaas Cobb** of Eugene, OR for General Counsel Services. The total Finance division budget is \$9 Million for 2017 and the proposed budget for 2018 is \$8.6 million. This item will be budgeted annually.

SIGNATURES:

Project Coordinator: _____

Manager: _____

Purchasing Supervisor: _____

Executive Officer: _____

Board Approval Date: _____



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Mike McCann, Interim Chief Energy Officer and Patty Boyle, Principal Project Manager
DATE: December 5, 2017
SUBJECT: Resolution to accept the Carmen-Smith Project License when issued by the FERC
OBJECTIVE: Approval of Resolution 1728 – Carmen-Smith License Acceptance

Issue

This Consent Calendar Item requests approval of Resolution 1728 authorizing the General Manager to accept the Carmen-Smith License if it is materially consistent with the Amended and Restated Settlement Agreement or file for rehearing if it is considered inconsistent. This resolution provides Board direction to staff regarding license acceptance allowing a timely response to the FERC when the license is issued.

Background

On November 8, 2016, the Board approved Resolution 1629 that authorized the General Manager to enter into the Carmen-Smith Amended and Restated Settlement Agreement and associated FERC filings related to the revisions of the Carmen-Smith Final License Application. Principally these revisions changed the upstream and downstream fish passage provisions from a fish ladder and screen system to a trap and haul system. The revisions also modified the recommended term of the license, established protocols for fish passage evaluation, resolved jurisdictional issues regarding the Wild and Scenic River, and provided for a set of interim measures to be implemented prior to license issuance. The revised contracts and filings were submitted to the FERC on November 30, 2016.

Discussion

License Issuance

Since submitting the Amended and Restated Settlement Agreement, staff have remained in close contact with the FERC on their progress for establishing additional required filings in order to issue the license. In collaboration with EWEB staff, the FERC completed a tour of the Carmen-Smith Project and convened a technical conference in March. The tour allowed FERC staff and other interested parties to learn first-hand about the features of the Project and the planned environmental improvements. The technical conference allowed the parties to agree on expectations regarding revisions to the required exhibits to the license in order to bring them up to date in required form and content from their original 2006 versions. Those updates have been completed and all required submissions from EWEB have been made.

There are three outstanding filings required before the FERC can complete its review of the Amended and Restated Settlement Agreement and License Application. Still pending are the Biological Opinions from US Fish and Wildlife and National Marine Fisheries respectively and the 401 Water Quality Certificate from the Oregon Department of Environment Quality. Those filings are expected sometime in the first quarter of 2018.

Issuance of the license will occur subsequent to the remaining filings. When issued, EWEB will have 30 days to either accept the license or file for rehearing. If the proposed resolution is approved and assuming the License is materially consistent with the Amended and Restated Settlement Agreement, EWEB will file its acceptance of the license and begin deployment activities. If the license is not consistent with the Agreement, EWEB would file for rehearing and likely request a stay of all or part of the license. Because EWEB only has 30 days to make this filing, and the timing of license issuance is highly uncertain, this resolution ensures a timely response from EWEB to the FERC.

Requested Board Action

Staff requests approval of Resolution 1728, Carmen-Smith License Acceptance. Please feel free to contact me with any questions.

**RESOLUTION NO. 1728
DECEMBER 2017**

**EUGENE WATER & ELECTRIC BOARD
CARMEN-SMITH LICENSE ACCEPTANCE**

WHEREAS, the Eugene Water & Electric Board (EWEB) has applied to the Federal Energy Regulatory Commission (FERC) for a “New Major License” (License) for operation of the Carmen-Smith Hydroelectric Project;

WHEREAS, EWEB negotiated an Amended and Restated Settlement Agreement with twelve (12) natural resource agencies, Native American tribes, environmental groups and other parties on environmental, recreation, cultural and other improvements to the Carmen-Smith Hydroelectric Project as part of the relicensing process;

WHEREAS, the EWEB Board of Commissioners approved the Amended and Restated Settlement Agreement on November 1, 2016 via Board Resolution No. 1629.

WHEREAS, the FERC is expected to issue a new license that is materially consistent with the Amended and Restated Settlement Agreement;

WHEREAS, EWEB must accept or dispute the license within 30 days of issuance;

NOW THEREFORE BE IT RESOLVED, that the General Manager is authorized to accept the License if it is materially consistent with the Amended and Restated Settlement Agreement or file for rehearing if it is considered inconsistent.

Dated this 5th day of December 2017

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

President

I, ANNE M. KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the resolution adopted by the Board at its December 5, 2017 Regular Board Meeting.

Assistant Secretary



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Rod Price, Chief Electric Engineering & Operations Officer and Richard Fatooh, Interim Supervisor, Distribution Engineering Dept.
DATE: November 13, 2017
SUBJECT: Electric Policy Revision- Resolution No. 1729
OBJECTIVE: Board Action

Issue

EWEB Electric Operations field staff (troubleshooters) are making return trips to re-inspect underground service lateral substructure installed by customer/contractor that do not meet EWEB construction standards (EC-5-B.1000). The multiple trips are creating scheduling inefficiencies as well as extra costs due to additional inspections(s).

Background

Last year (June 2016), EWEB had assumed the responsibility of inspecting underground service lateral substructure and conductor installations, a task that would no longer be performed by the City of Eugene. Notifications to the builder/developer/contractor community were sent to communicate the change. Since this time EWEB staff has worked with the community with the positive intention to further educate those who are installing facilities to be owned by EWEB upon connection.

Discussion

Unfortunately, EWEB field staff continues to return to sites that failed inspections and although a majority are properly installed, there are many times where field staff are being rescheduled to return to the same site only to find the substructure is still not installed correctly.

Our staff, Distribution Engineering Technicians, Building and Renovations' Customer Service Analysts, and Electric Operation's troubleshooters, will continue effort to communicate information (Construction Standard) to those that are installing this substructure.

Communication to customers affected will be provided prior to the implementation with several forms of outreach.

Recommendation

Existing EWEB policy and procedures do not include any means to charge for re-inspections due to incorrect installations. Amending the policy will provide the verbiage to allow EWEB to recuperate costs for return inspections as well as provide a means of deterrence to parties that do not install facilities per our Construction Standards.

Requested Board Action

EWEB staff requests the Board to approve and revise policy per approval and adoption of Resolution No. 1729.



V. ELECTRIC SERVICE CHARGES AND PRICES

For charges specific to Water; see Water Service Charges and Prices. For all other charges; see All Utilities Charges and Prices

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**A. Connect/Disconnect of Electric Service at Customers Request for Electrical repairs
(per call out)**

(Resolution No. 1414)

During regular business hours.....	No Charge
After regular business hours.....	\$150.00

B. Temporary Electric Service Installation Charges

(Resolution No. 1509)

- | | |
|--|-------------------|
| 1. Temporary Service (150 feet or less) | \$280.00 |
| 2. Temporary Service Conductor (over 150 feet) | \$3.58/ft |
| 3. Temporary Transformer (single)..... | At estimated cost |
| 4. Three-Phase Temporary Service with Primary | To be computed |

C. Customer-Damaged EWEB Facilities Actual Cost

D. Service Lateral Substructure Inspection Charge.....\$75.00 per additional visit
Incorrect installation by customer that require 2 or more visits for re-inspections.

**RESOLUTION NO. 1729
DECEMBER 2017**

**EUGENE WATER & ELECTRIC BOARD
RESOLUTION APPROVING ELECTRIC UTILITY CHARGE**

WHEREAS, The Eugene Water & Electric Board (EWEB) periodically reviews, revises and updates Customer Service Policies & Procedures – All Utilities, Electric and Water policies for consistency, legality, correctness and to reflect actual practices evolving as continual improvement;

WHEREAS, a change to the Electric Utility Customer Service Policies for the Service Lateral Substructure Inspection Charge has been presented at the December 5, 2017 Regular Board Meeting as follows:

Service Lateral Substructure Inspection Charge.....\$75.00 per additional visit
Incorrect installation by customer requiring 2 or more visits for inspections.
Based on cost for labor and equipment for return inspection.

NOW THEREFORE, BE IT RESOLVED, that the Eugene Water & Electric Board does hereby resolve to adopt the stated Electric Utility Charge for Service Lateral Substructure Inspections. Furthermore, be it resolved that the Board hereby authorizes the General Manager to update the current Customer Service Policies accordingly.

DATED this 5TH day of December, 2017.

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

President

I, ANNE M. KAH, the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board in its December 5, 2017 Regular Board Meeting.

Assistant Secretary



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Helgeson, Brown, Mital, Simpson, and Carlson
FROM: Sue Fahey, Chief Financial Officer; Sarah Gorsegner, Purchasing & Warehouse Supervisor
DATE: November 22, 2017
SUBJECT: Update to EWEB's Public Contracting Rules
OBJECTIVE: Review of proposed revisions and approval of Resolution 1732

Issue

During the recent Legislative Session, several bills were passed that impact the Oregon Public Contracting Code (ORS 279A, 279B, and 279C). Staff have reviewed the 2015-2017 Legislative changes and drafted language to align the EWEB rules with the Public Contracting Code. Additional revisions clarify software maintenance and support services, as well as advertising requirements.

Discussion

Below is a list of the proposed changes. Details include the impacted section of the rule, the reason for the change, and a summarized narrative of the change.

1. Public Works Definition-EWEB Division 1

Senate Bill 137 (2015) adds public private partnerships to the definition of public works, where a public agency contributes \$750,000 or more toward the project or the public agency will occupy 25% or more of the square footage of the completed project.

2. Minority or Disadvantaged Certification Status -EWEB Division 2-0160

House Bill 2716 (2015) and Senate Bill 584 (2015) require minority or disadvantaged contractors and subcontractors to maintain certifications during the entire term of the contract if the basis of the contract award included the contractor's certification. Requires EWEB to suspend minority and disadvantaged contractors from participating in public competitive process if they knowingly commit activities to misrepresent the nature of the work performed including failure to perform commercially useful functions in public contracting.

3. Advertisements of Interstate Cooperative Procurements-EWEB Division 2-0240(2)

Aligns EWEB Contracting Rule 2-0240 with the Oregon Revised Statutes ORS 279A.220(2) and allows EWEB to establish a contract or price agreement from an interstate cooperative procurement. Prior to using a cooperative contract, EWEB must comply with advertising requirements by either being included as a participating member in the solicitation documents or by issuing a Notice of Intent to use the cooperative contract.

4. Least Cost Contracting- EWEB Division 5-0115

House Bill 3203 (2017) requires EWEB to perform analysis to determine whether constructing a public improvement with EWEB's own equipment and personnel will result in least cost to EWEB as compared with contracting work to private sector. Defines factors to include when considering least cost.

5. Woody Biomass Energy Technology-EWEB Division 5-0170

Senate Bill 634 (2017) requires EWEB to consider use of Woody Biomass Energy Technology as an alternative to the required Green Energy Technology, such as solar or geothermal energy. For public building projects, 1.5% of the project budget is required to be used for these technologies when evaluated and determined feasible. Requires reporting to the State Department of Energy.

6. Notice and Advertising Requirements; Posting-EWEB Division 5-0210(2)

ORS 279C.360(1) allows EWEB the option to meet construction project advertising requirements by posting public notices electronically. The revised language maintains EWEB's obligation for advertising solicitations in at least one trade newspaper of general statewide circulation if the contract is for a Public Improvement with an estimated cost in excess of \$125,000.

7. Qualified Nonprofit Agencies Termination Requirements-EWEB Division 6-0110(2)

House Bill 3248 (2015) requires that in the event of termination of a contract for products or services with a qualified nonprofit agency for individuals with disabilities (Qualified Rehabilitation Facility "QRF") and EWEB enters into a new contract for the services with a different QRF, the new contractor must offer employment within 90 days to the individuals with disabilities who performed work under the terminated contract at wages and benefits that are as favorable to the individuals with disabilities than, the wages and benefits that the individuals with disabilities had under the terminated contract.

8. Software Maintenance and Support Services-EWEB Division 6-0170

Sole Source Rules 3-0275 (ORS 279B.075) allows an exemption for the maintenance, support, upgrades, and licensing fees for software products when the software was initially purchased under the exemption 6-0170 for non-mass marketed software, under a sole source, or when previously competitively solicited. The rule currently only exempts the purchase of software and the revision allows purchases for the continued support and use of the software.

The attached documents are provided to show the proposed language revisions to the existing rules and the clean versions if approved:

- Exhibit A: Redlined existing EWEB Contracting Rule Division 1
- Exhibit B: Proposed revised EWEB Contracting Rule Division 1
- Exhibit C: Redlined existing EWEB Contracting Rule Division 2
- Exhibit D: Proposed revised EWEB Contracting Rule Division 2
- Exhibit E: Redlined existing EWEB Contracting Rule Division 5 (through page 27)
- Exhibit F: Proposed revised EWEB Contracting Rule Division 5 (through page 26)
- Exhibit G: Redlined existing EWEB Contracting Rule Division 6
- Exhibit H: Proposed revised EWEB Contracting Rule Division 6
- Exhibit I: Proposed Resolution 1732

Recommendation/Requested Board Action

Management is requesting Board approval of Resolution 1732.

Exhibit A

 Public Contracting Rules	Adopted: Effective: 3/01/2005 Revised: 1/6/2006 Revised: 2/22/12 Revised: 12/5/17 Approved: _____
DEFINITIONS	

Division 1: Definitions

The following are definitions applicable to the **EWEB Public Contracting Rules** (also referred to as the **Rules**, **EWEB Rules** or **Public Contracting Rules**). These definitions apply unless the context or a specifically applicable definition require otherwise, or unless inconsistent with or contrary to statute, including, but not limited to, ORS chapters 279A, 279B, and 279C, or unless inconsistent with or contrary to **EWEB Public Contracting Rules** . Words in bold print within each definition are also defined in this section.

“**Addendum**” or “**Addenda**” means an addition or deletion to, a material change in, or general interest explanation of a **Solicitation Document**. Addenda shall be labeled as such and distributed to all interested Persons in accordance with these **EWEB Rules**.

“**Adequate**” for purposes of ORS 279C.305(3)(a) and **Rule 5-0120(2)**, means plans and **specifications** and the estimated unit cost of each classification of work sufficient to control the performance of the work and to ensure satisfactory quality of construction by **EWEB** personnel. (ORS 279C.305(3)(a))

“**Administering contracting agency**” means a contracting agency that solicits and establishes the original contract for **procurement** of **goods**, services or **public improvements** in a **cooperative procurement**. (See ORS 279A.200(a))

“**Advantageous**” means in **EWEB's** best interests, as assessed according to the judgment of **EWEB**.

“**Affected Person**” or “**Affected Offeror**” means a **Person** whose ability to participate in a **Procurement** is adversely affected by a decision by **EWEB**.

“**Affirmative action**” means a program designed to ensure equal opportunity in employment and business for **persons** otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical disability. (See ORS 279A.100(1))

“**Amendment,**” for purposes of a **Public Improvement Contract**, means a written modification to the terms and conditions of a **Public Improvement Contract**, other than a **Change Order**, within the general scope of the original **procurement** that requires mutual agreement between **EWEB** and the contractor.

“**Architect**” means a **person** who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms “**architect,**” “**licensed architect,**” and “**registered architect.**” (See ORS 279C.100(1))

“Architectural, engineering, photogrammetric mapping, transportation planning and land surveying services” or **“Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services”** means professional services that are required to be performed by an **architect, engineer, photogrammetrist, transportation planner or land surveyor**. (See ORS 279C.100(2))

“Award” means the identification of the Person with whom **EWEB** will enter into a **Contract**.

“Bidder” means a **person** that submits a bid in response to an **invitation to bid**. (279A.010(a)). **“Bidder”** includes a **person** who submits a **proposal** to **EWEB** pursuant to a **request for proposals**. (See ORS 279B.415(1))

“Bid” or **“Bids”** means a competitive **Offer(s)** or **Proposal(s)**, binding on the Bidder and submitted in response to an **Invitation to Bid** or **Request for Proposals**, respectively. (See ORS 279C.400(3))

“Board” means the Eugene Water & Electric Board of Commissioners (see also EWEB Contract Review Board).

“Brand name” means a **brand name specification**. (See ORS 279B.405(1)(a); 279B.200(2))

“Brand name or equal specification” means a **specification** that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet **EWEB’s** requirements and that authorizes **bidders** or **proposers** to offer **goods or services** that are equivalent or superior to those named or described in the **specification**. (See ORS 279B.200(1))

“Brand name specification” means a **specification** limited to one or more products, **brand names**, makes, manufacturer’s names, catalog numbers or similar identifying characteristics. (See ORS 279B.200(2))

“Business Enterprise Certification” (BEC) is the certification accorded to Disadvantaged, Women, Minority and Emerging Small Business Enterprises as authorized under ORS 200.005 to 200.200.

“Business Enterprise Certification “BEC” Disqualification, means a disqualification pursuant to ORS 200.065 or 200.075, and **Rule 5-0370(1)(b)**.

“Change Order” means a written order issued by **EWEB** to the contractor requiring a change in the work within the general scope of a **Public Contract** or **Public Improvement Contract** and issued under its changes provisions in administering the **Contract**. It includes the **EWEB’s** **written** change directives as well as changes reflected in a **writing** executed by the parties to the **Contract** and, if applicable, adjusting the **Contract Price** or **contract** time for the changed work.

“Local Contract Review Board” or **“Contract Review Board”** for EWEB means the Eugene Water & Electric Board of Commissioners (see also **“Board”**).

“Closing” means the date and time announced in the **Solicitation Document** as the deadline for submitting **Offers** or **Proposals**.

“**Code**” means the **Public Contracting Code**, ORS chapters 279A, 279B and 279C. (See ORS 279A.010(1)(z))

“**Conduct Disqualification**” means a **Disqualification** pursuant to ORS 279C.440, and **Rule 5-0370(1)(a)**.

“**Consultant**,” for purposes of **EWEB Rules**, Division 4, means an **architect, engineer, photogrammetrist, transportation planner, land surveyor**, or provider of **related services**. A **Consultant** includes a business entity that employs **Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors**, or providers of **related services**, or any combination of the foregoing. Provided, however, when entering into a direct Contract under 4-0200(c), the “Consultant” must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor as required by ORS 279C.115(1).

“**Contract**” or “**Contracts**” means the **Written** agreement(s), resulting from the **Solicitation Document** that sets forth the rights and obligations of the parties.

“**Contracting agency**” means a **public body**, such as **EWEB**, authorized by law to conduct a **procurement** or otherwise engage in **public contracting**. “**Contracting agency**” includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any **person** authorized by a **contracting agency** to conduct a **procurement** on the **contracting agency’s** behalf. “**Contracting agency**” does not include the **judicial department** or the **legislative department**. (See ORS 279A.010(1)(b))

“**Contractor**” means the **Person** with whom **EWEB** enters into a **Contract**.

“**Contract Price**” means the total maximum payments that **EWEB** is required to make under a **Contract**.

“**Contract-specific special procurement**,” means a contracting procedure that is for the purpose of entering into a single **contract** or a number of related **contracts** for the acquisition of specified **goods or services** on a one-time basis or for a single project.” (See ORS 279B.085(1)(b))

“**Cooperative procurement**” means a **procurement** conducted by or on behalf of one or more contracting agencies, and includes, but is not limited to, multiparty **contracts** and price agreements. (See ORS 279A.200(1)(b))

“**Cooperative procurement group**” means a group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating **cooperative procurements**. (See ORS 279A.200(1)(c))

“**Cost Estimate**” means, for purposes of **EWEB Rules**, Division 5, **EWEB’s** most recent pre-Bid, good faith assessment of anticipated **Contract** costs, consisting either of an estimate of an **architect, engineer** or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

“**Days**,” except as otherwise provided, means calendar **days**. (See ORS 279A.010(1)(c))

“**Descriptive Literature**” means the **Offeror’s** materials submitted to provide information concerning the products or services available in response to the **Solicitation Document**.

“Disqualification,” for purposes of **EWEB Rules**, Division 5, means the preclusion, by **disqualification**, debarment or suspension, of a **Person** from contracting with **EWEB** for a period of time in accordance with **Rule 5-0370**, and any other applicable statutes and rules. Disqualification includes **Conduct Disqualification**, **Business Enterprise Certification “BEC” Disqualification**, or Discrimination Disqualification.

“Electronic Advertisement” means Electronic Advertisement for Offers available over **EWEB’s** Purchasing Internet site (via The World Wide Web).

“Emergency” means circumstances that:

- (A) Could not have been reasonably foreseen;
- (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (C) Require prompt execution of a contract to remedy the condition. (See ORS 279A.010((1)(f))

“Energy savings performance contract” means a **public contract** between a **contracting agency**, such as **EWEB**, and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance. (See ORS 279A.010(1)(g)) (see ORS279C.335 (1)(e)) (see ORS279A.065(2))

“Engineer” means a **person** who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2). (See ORS 279C.100(3))

“Estimated Fee” means **EWEB’s** reasonably projected fee to be paid for a **Consultant’s** services under the anticipated **Contract**, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the **Contract**.

“EWEB” means the Eugene Water & Electric Board or any **persons** to whom **EWEB** has delegated its **public contracting** authority.

“EWEB Public Contracting Rules” or **“Rules,”** or **“EWEB Rules”** or **“Public Contracting Rules”** mean these **Rules**, Divisions 1-6, as amended.

“Executive Department” means, subject to ORS 174.108, all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the executive department of government as described in Section 1, Article III of the Oregon Constitution, and that are not in the judicial department or legislative department, not local governments and not special government bodies. (See ORS 279A.010(1)(h); 174.112)

“Facsimile” means a document that has been transmitted to and received by **EWEB** in a format that is capable of being received via a device commonly known as a facsimile machine (e.g. a Facsimile Bid). A facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.

“Findings,” with respect to public improvement competitive bidding exemptions, mean the justification for **EWEB’s** conclusion regarding exemptions that includes, but is not limited to, information regarding operational, budget and financial data; public benefits; **value engineering**; specialized expertise required; public safety; market conditions; technical

complexity; and funding sources. (See ORS 279C.330)

“Foreign Contractor” means a Contractor that is not domiciled in or registered to do business in the state of Oregon. See **Rule 5-0490**.

“Good cause,” for purposes of substituting an undisclosed first tier subcontractor in a **public improvement contract**, means **“good cause”** as defined by rule by the Construction Contractors Board, which reflects the least-cost policy for **public improvements**, and includes but is not limited to the financial instability of a subcontractor. (See ORS 279C.585(9)) Otherwise, **“good cause”** means any rational basis as determined in the sole discretion of **EWEB**, in accordance with the **Public Contracting Code** and the **EWEB Rules**.

“Goods” includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs. (See ORS 279B.115(1))

“Goods and services” or **“Goods or services”** means supplies, equipment, materials and services other than **personal services** designated under ORS 279A.055 and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that **EWEB** or another **contracting agency** is authorized by law to procure. **“Goods and services”** or **“Goods or services”** includes combinations of any of the items identified in this **Rule**. (See ORS 279B.005(1)(a))

“Grant,” when used as a noun, means:

(A) An agreement under which **EWEB** or another **contracting agency** receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a **grant** by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the **contracting agency** and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the **grant** conditions; or

(B) An agreement under which **EWEB** or another **contracting agency** provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a **grant** by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the **contracting agency** is anticipated in the program or activity other than involvement associated with monitoring compliance with the **grant** conditions. **“Grant”** does not include a **public contract** for a **public improvement**, for **public works**, or for **emergency** work, minor alterations or ordinary repair or maintenance necessary to preserve a **public improvement**, when under the **public contract** a **contracting agency** pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which **grant** funds were provided to the **contracting agency**, moneys that the **contracting agency** has received under a **grant**. (See ORS 279A.010(1)(i))

“Interstate cooperative procurement” means a permissive **cooperative procurement** in which the **administering contracting agency** is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into **public contracts** and in which one or more of the participating agencies are located outside this state. (See ORS 279A.200(1)(d))

“Invitation to bid” or **“ITB”** means, except to the extent otherwise defined in the **Code** or **EWEB Rules**, all documents, whether attached or incorporated by reference, used for soliciting **Bids** or

requesting **Proposals**, in accordance with the **Public Contracting Code**, and these **Rules**. (See ORS 279B.005(1)(b); 279C.400(3))

“Joint cooperative procurement” means a **cooperative procurement** in which the participating contracting agencies or the **cooperative procurement group** and the agencies’ or group’s contract requirements or estimated contract requirements for price agreements are identified. (See ORS 279A.200(1)(e))

“Labor dispute” includes any controversy concerning terms or conditions of employment, or concerning the association or representation of **persons** in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. (See ORS 279C.650; 662.010(1))

“Land surveyor” means a **person** who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2). (See ORS 279C.100(4))

“Local contracting agency” means a **local government** or special government body authorized by law to conduct a **procurement**. **“Local contracting agency”** includes any **person** authorized by a **local contracting agency** to conduct a **procurement** on behalf of the **local contracting agency**. (See ORS 279A.010(1)(n))

“Local government” means, subject to ORS 174.108, all cities, counties and local service districts located in Oregon, and all administrative subdivisions of those cities, counties and local service districts. (See ORS 279A.010(1)(o); 174.116(1)(a) and (b))

“Lowest responsible bidder” means the lowest **bidder** who:

- (A) Has substantially complied with all prescribed **public contracting** procedures and requirements;
- (B) Has met the applicable standards of responsibility;
- (C) Has not been debarred or disqualified by **EWEB**; and
- (D) If the advertised contract is a **public improvement contract**, is not on the list created by the Construction Contractors Board under ORS 701.227. (See ORS 279A.010(1)(p))

“Most Qualified Consultant,” for purposes of **EWEB Rules**, Division 4, means an **Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor**, or provider of **Related Services** whose qualifications, pricing, availability, and approach best meets the requirements of the work and whose offer is most advantageous to the utility. The determination of “most qualified” shall be in **EWEB’s** sole judgment and at **EWEB’s** sole discretion.

“Nonresident bidder” means a **bidder** who is not a **resident bidder**. (See ORS 279A.120(1)(a))

“Notice” means any form of public announcement, as required or allowed pursuant to the **Public Contracting Code** and/or the **EWEB Rules**.

“Offer” or **“Offers”** means a response(s) to a **Solicitation Document**.

“Offeror” means a **Person** who submits an **Offer**.

“Opening” means the date, time and place announced in the **Solicitation Document** for the public **Opening** of Written sealed **Offers, Bids, or Proposals**.

“Original contract” for purposes of **cooperative procurement** means the initial contract or price agreement solicited and awarded during a **cooperative procurement** by an **administering contracting agency**. (See ORS 279A.200(1)(f))

“Other options,” for purposes of **Rule 5-0430**, means those items generally considered appropriate for negotiation in the **RFP** process, relating to the details of Contract performance as specified in **Rule 5-0650**, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

“Permissive cooperative procurement” means a **cooperative procurement** in which the purchasing contracting agencies are not identified. (See ORS 279A.200(1)(g))

“Person” or **“Persons”** means a natural person(s) capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a **public body**. (See ORS 279A.010(1)(r)) **“Person”** or **“Persons”** includes an individual, limited liability entity, association, joint venture, governmental agency, and public corporation. For purposes of required conditions in construction contracts, unless the context requires otherwise, **“Person”** or **“Persons”** includes the State Accident Insurance Fund and the Department of Revenue. (See ORS 279C.500) For purposes of the determination of the **prevailing rate of wage**, **“Person”** or **“Persons”** includes any employer, labor organization or any official representative of an employee or employer association. (279C.815(1))

“Personal services” mean the services of a **person** or **persons** that are designated by the **Board** as **personal services**, and includes **architectural, engineering and land surveying services**, and **related services**, for purposes of **EWEB Rules**, Division 4. (See ORS 279C.100(5))

“Personal Services Contract” or **“Contract for Personal Services,”** for purposes of **EWEB Rules**, Division 3, means a **contract**, or member of a class of **contracts**, other than a **contract** for the services of an **Architect, Engineer, Land Surveyor** or Provider of **Related Services**, and other than a **contract** for services not designated by the **Board** as **personal services** (see **EWEB Rules**, Division 6), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a **contract** for the services of an accountant, physician or dentist, educator, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), or consultant (excluding an **Architect, Engineer, Land Surveyor**, or Provider of **Related Services**).

“Prevailing rate of wage” means the rate of hourly wage, including all **fringe benefits**, paid in the **locality** to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries, pursuant to ORS 279C.800(3). (See ORS 279C.800(3))

“Photogrammetric Mapping” has the meaning given that term in ORS 672.002.

“Photogrammetrist” has the meaning given that term in ORS 672.002.

“Price agreement” means a **public contract** for the **procurement of goods or services** at a

set price with:

- (A) No guarantee of a minimum or maximum purchase; or
- (B) An initial order or minimum purchase combined with a continuing contractor obligation to provide **goods or services** in which **EWEB** or another contracting agency does not guarantee a minimum or maximum additional purchase. (See ORS 279A.010(1)(v))

“**Procurement**” means the act of purchasing, leasing, renting or otherwise acquiring **goods or services**. “**Procurement**” includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a **public contract**, administer a **public contract** and obtain the performance of a **public contract** under the **Public Contracting Code**. (See ORS 279A.010(1)(u))

“**Product Sample**” means a representative specimen of the item offered by the **Offeror** in response to the **Solicitation Document**. Unless otherwise provided in the **Solicitation Document**, the **Product Sample** shall be the exact product or a representative portion of that product offered by the **Offeror**.

“**Project**,” for purposes of **EWEB Rules**, Division 4, means, depending on the context, a **public improvement** and/or all components of **EWEB**’s planned undertaking that give rise to the need for a **Consultant’s Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services** under a Contract.

“**Proposal**” or “**Proposals**” means a competitive **Offer(s)** submitted in response to a **Request for Proposals (RFP)**.

“**Proposer**” means a **person**, including a **Consultant**, that submits a proposal to **EWEB** in response to a **request for proposals**. (See ORS 279A.010(1)(v))

“**Public body**” means, subject to ORS 174.108, **state government bodies, local government bodies and special government bodies**. (See ORS 279A.010(1)(w); 174.109)

“**Public contract**” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including **personal services, public improvements, public works**, minor alterations, or ordinary repair or maintenance necessary to preserve a **public improvement**. “**Public contract**” does not include **grants**. (See ORS 279A.010(1)(x))

“**Public contracting**” means **procurement** activities described in the **Public Contracting Code** relating to obtaining, modifying or administering **public contracts** or **price agreements**. (See ORS 279A.010(1)(y))

“**Public Contracting Code**” or “**Code**” means ORS Chapters 279A, 279B and 279C. (See ORS 279A.010(1)(z))

“**Public improvement**” means a project for construction, reconstruction or major renovation on real property by or for a contracting agency such as **EWEB**. “**Public improvement**” does not include:

- (A) Projects for which no funds of **EWEB** are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (B) **Emergency** work, minor alteration, ordinary repair or maintenance necessary to preserve a **public improvement**. (See ORS 279A.010(1)(aa))

“**Public improvement contract**” means a **public contract** for a **public improvement**. “**Public**

improvement contract” does not include a **public contract** for **emergency** work, minor alterations, or ordinary repair or maintenance necessary to preserve a **public improvement**. (See ORS 279A.010(1)(bb))

“Public works” includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any **public agency**, ~~including EWEB,~~ to serve the public interest; ~~including projects that use \$750,000 or more of public agency funds for construction, reconstruction, painting or performing a major renovation on a road, highway, building, structure or improvement of any type or a project that uses funds of a private entity for constructing a privately owned road highway, building, structure or improvement of any type in which a public agency will use or occupy 25 percent or more of the square footage of the completed project, but does not include the reconstruction or renovation of privately owned property that is leased by a public agency.~~ (See ORS 279C.800(5))

“Purchasing contracting agency” means, for purposes of **cooperative procurement**, a contracting agency that procures **goods**, services or **public improvements** from a contractor based on the original contract established by an **administering contracting agency**. (See ORS 279A.200(1)(h))

“Recycled material” means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled. (See ORS 279A.010(1)(cc))

“Recycled product” means all materials, **goods** and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. **“Recycled product”** includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form. (See ORS 279A.010(1)(gg))

“Related services” means **personal services**, other than **architectural, engineering, photogrammetric mapping, transportation planning and land surveying services**, that are related to planning, designing, engineering or overseeing **public improvement** projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representative services or land-use planning services. (See ORS 279C.100(8))

“Request for proposals” or **“RFP”** means all documents, whether attached or incorporated by reference, used for soliciting **Proposals**. (See ORS 279B.005(1)(e))

“Request for Qualifications” or **“RFQ”** means a written document issued by **EWEB** to which **Consultants** respond with a description of their experience with and qualifications for the **Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services**, or **Related Services** described in the **RFQ** and from which **EWEB** creates a list of **Consultants** who are qualified to perform those services, but which is not intended to result in a **Contract** between a **Consultant** and **EWEB**.

“Resident bidder” means a **bidder** that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the **bidder** is a **“resident bidder”** under ORS 279A.120(1)(b). (See ORS 279A.120(1)(b))

“Responsible bidder” or **“Responsible proposer”** means, for purposes of the purchase of **goods or services**, EWEB’s determination whether a **bidder** or **proposer** has met the standards of responsibility, considering 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) A satisfactory record of performance. The contracting agency shall document the record of performance of a **bidder** or **proposer** if the contracting agency finds the **bidder** or **proposer** nonresponsible under this paragraph;
- (c) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a **bidder** or **proposer** if the contracting agency finds the **bidder** or **proposer** nonresponsible under this paragraph;
- (d) Qualified legally to contract with the contracting agency;
- (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a **bidder** or **proposer** fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information or may find the **bidder** or **proposer** nonresponsible; and
- (f) Not been debarred by the contracting agency under ORS 279B.130. (See ORS 279B.110(2))

For purposes of determining whether a **bidder** has met the emerging small business enterprise contract requirements, **“responsible bidder”** or **“responsible proposer”** has the meaning set forth in ORS 200.005 and 200.045. (See ORS 279A.105(3))

“Responsive bid” or **“responsive proposal”** means a bid or proposal that substantially complies with the **invitation to bid** or **request for proposals** and all prescribed **procurement** procedures and requirements. (See ORS 279B.005(1)(g))

“Retainage” means the difference between the amount earned by a contractor on a **public contract** and the amount paid on the contract by the contracting agency. (See ORS 279C.550)

“Rule” means a **Rule** within the **EWEB Public Contracting Rules**.

“Scope” means the range and attributes of the **Goods or Services** described in the applicable **Procurement** document.

“Signed” or **“Signature”** means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a **Person** with the intent to be bound.

“Solicitation Document” means an **Invitation to Bid, Request for Proposals** or any documents issued to invite offers in response to a **Special Procurement** pursuant to ORS 279B.085, and includes all documents incorporated into any of the foregoing by reference.

“Special government body” means, subject to ORS 174.108, a public corporation created under a statute of this state and specifically designated a public corporation; a school district; a public charter school established under ORS chapter 338; an education service district; a community college district or community college service district established under ORS chapter

341; an intergovernmental body formed by two or more public bodies; any entity that is created by statute, ordinance or resolution that is not part of **state government** or **local government**; any entity not otherwise described in this definition that is not part of **state government** or **local government**, created pursuant to authority granted by a statute, ordinance or resolution but not directly created by that statute, ordinance or resolution, and identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity without regard to the specific terms used by the statute, ordinance or resolution. (ORS 279A.010(ii); 174.117)

“Special procurement” means, unless the context requires otherwise, a **class special procurement**, a **contract-specific special procurement** or both. (See ORS 279B.085(1)(c))

“Specification” means any description of the physical or functional characteristics, or of the nature of a supply, equipment, service, or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. **“Specification”** may include a description of any requirement for inspecting, testing or preparing **goods or services** for delivery. **“Specification”** may also include any description of the characteristics or nature of **personal services**. (See ORS 279B.200(3))

“State agency” means the **executive department**, except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices. (See ORS 279A.010(1)(jj))

“State government” means, subject to ORS 174.108, the **executive department**, the **judicial department** and the **legislative department**. (ORS 279A.010(LL); 174.111)

“Transportation Planning Services” are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321, et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321, et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321, et. seq.

“Unnecessarily restricted” means that the **specifications** for **goods or services** limit competition arbitrarily, without reasonably promoting the fulfillment of the **procurement** needs of **EWEB**.

“Value Engineering” means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, **Specifications**, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the **Public Improvement**. Cost savings include those resulting from life cycle costing, which either increase or decrease absolute costs over varying time periods.

“Work” means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all

duties and obligations imposed by the Contract.

“Working hours” means **EWEB**’s regular business hours, which currently are Monday through Friday, 9 a.m. to 5 p.m., excluding **EWEB** recognized holidays.

“Written” or **“Writing”** means conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required or permitted by applicable law, or to the extent permitted by the **Solicitation Document** or **Contract**.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065.

Exhibit B

 Public Contracting Rules	Adopted: Effective: 3/01/2005 Revised: 1/6/2006 Revised: 2/22/12 Revised: 12/5/17 Approved: _____
DEFINITIONS	

Division 1: Definitions

The following are definitions applicable to the **EWEB Public Contracting Rules** (also referred to as the **Rules**, **EWEB Rules** or **Public Contracting Rules**). These definitions apply unless the context or a specifically applicable definition require otherwise, or unless inconsistent with or contrary to statute, including, but not limited to, ORS chapters 279A, 279B, and 279C, or unless inconsistent with or contrary to **EWEB Public Contracting Rules**. Words in bold print within each definition are also defined in this section.

“Addendum” or **“Addenda”** means an addition or deletion to, a material change in, or general interest explanation of a **Solicitation Document**. Addenda shall be labeled as such and distributed to all interested Persons in accordance with these **EWEB Rules**.

“Adequate” for purposes of ORS 279C.305(3)(a) and **Rule 5-0120(2)**, means plans and **specifications** and the estimated unit cost of each classification of work sufficient to control the performance of the work and to ensure satisfactory quality of construction by **EWEB** personnel. (ORS 279C.305(3)(a))

“Administering contracting agency” means a contracting agency that solicits and establishes the original contract for **procurement** of **goods**, services or **public improvements** in a **cooperative procurement**. (See ORS 279A.200(a))

“Advantageous” means in **EWEB's** best interests, as assessed according to the judgment of **EWEB**.

“Affected Person” or **“Affected Offeror”** means a **Person** whose ability to participate in a **Procurement** is adversely affected by a decision by **EWEB**.

“Affirmative action” means a program designed to ensure equal opportunity in employment and business for **persons** otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical disability. (See ORS 279A.100(1))

“Amendment,” for purposes of a **Public Improvement Contract**, means a written modification to the terms and conditions of a **Public Improvement Contract**, other than a **Change Order**, within the general scope of the original **procurement** that requires mutual agreement between **EWEB** and the contractor.

“Architect” means a **person** who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms **“architect,”** **“licensed architect,”** and **“registered architect.”** (See ORS 279C.100(1))

“Architectural, engineering, photogrammetric mapping, transportation planning and land surveying services” or **“Architectural, engineering, photogrammetric mapping, transportation planning or land surveying services”** means professional services that are required to be performed by an **architect, engineer, photogrammetrist, transportation planner or land surveyor**. (See ORS 279C.100(2))

“Award” means the identification of the Person with whom **EWEB** will enter into a **Contract**.

“Bidder” means a **person** that submits a bid in response to an **invitation to bid**. (279A.010(a)). **“Bidder”** includes a **person** who submits a **proposal** to **EWEB** pursuant to a **request for proposals**. (See ORS 279B.415(1))

“Bid” or **“Bids”** means a competitive **Offer(s)** or **Proposal(s)**, binding on the Bidder and submitted in response to an **Invitation to Bid** or **Request for Proposals**, respectively. (See ORS 279C.400(3))

“Board” means the Eugene Water & Electric Board of Commissioners (see also EWEB Contract Review Board).

“Brand name” means a **brand name specification**. (See ORS 279B.405(1)(a); 279B.200(2))

“Brand name or equal specification” means a **specification** that uses one or more manufacturers’ names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet **EWEB’s** requirements and that authorizes **bidders** or **proposers** to offer **goods or services** that are equivalent or superior to those named or described in the **specification**. (See ORS 279B.200(1))

“Brand name specification” means a **specification** limited to one or more products, **brand names**, makes, manufacturer’s names, catalog numbers or similar identifying characteristics. (See ORS 279B.200(2))

“Business Enterprise Certification” (BEC) is the certification accorded to Disadvantaged, Women, Minority and Emerging Small Business Enterprises as authorized under ORS 200.005 to 200.200.

“Business Enterprise Certification “BEC” Disqualification, means a disqualification pursuant to ORS 200.065 or 200.075, and **Rule 5-0370(1)(b)**.

“Change Order” means a written order issued by **EWEB** to the contractor requiring a change in the work within the general scope of a **Public Contract** or **Public Improvement Contract** and issued under its changes provisions in administering the **Contract**. It includes the **EWEB’s** **written** change directives as well as changes reflected in a **writing** executed by the parties to the **Contract** and, if applicable, adjusting the **Contract Price** or **contract** time for the changed work.

“Local Contract Review Board” or **“Contract Review Board”** for EWEB means the Eugene Water & Electric Board of Commissioners (see also **“Board”**).

“Closing” means the date and time announced in the **Solicitation Document** as the deadline for submitting **Offers** or **Proposals**.

“**Code**” means the **Public Contracting Code**, ORS chapters 279A, 279B and 279C. (See ORS 279A.010(1)(z))

“**Conduct Disqualification**” means a **Disqualification** pursuant to ORS 279C.440, and **Rule 5-0370(1)(a)**.

“**Consultant**,” for purposes of **EWEB Rules**, Division 4, means an **architect, engineer, photogrammetrist, transportation planner, land surveyor**, or provider of **related services**. A **Consultant** includes a business entity that employs **Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors**, or providers of **related services**, or any combination of the foregoing. Provided, however, when entering into a direct Contract under 4-0200(c), the “Consultant” must be an Architect, Engineer, Photogrammetrist, Transportation Planner or Land Surveyor as required by ORS 279C.115(1).

“**Contract**” or “**Contracts**” means the **Written** agreement(s), resulting from the **Solicitation Document** that sets forth the rights and obligations of the parties.

“**Contracting agency**” means a **public body**, such as **EWEB**, authorized by law to conduct a **procurement** or otherwise engage in **public contracting**. “**Contracting agency**” includes, but is not limited to, the Director of the Oregon Department of Administrative Services and any **person** authorized by a **contracting agency** to conduct a **procurement** on the **contracting agency’s** behalf. “**Contracting agency**” does not include the **judicial department** or the **legislative department**. (See ORS 279A.010(1)(b))

“**Contractor**” means the **Person** with whom **EWEB** enters into a **Contract**.

“**Contract Price**” means the total maximum payments that **EWEB** is required to make under a **Contract**.

“**Contract-specific special procurement**,” means a contracting procedure that is for the purpose of entering into a single **contract** or a number of related **contracts** for the acquisition of specified **goods or services** on a one-time basis or for a single project.” (See ORS 279B.085(1)(b))

“**Cooperative procurement**” means a **procurement** conducted by or on behalf of one or more contracting agencies, and includes, but is not limited to, multiparty **contracts** and price agreements. (See ORS 279A.200(1)(b))

“**Cooperative procurement group**” means a group of contracting agencies joined through an intergovernmental agreement for the purposes of facilitating **cooperative procurements**. (See ORS 279A.200(1)(c))

“**Cost Estimate**” means, for purposes of **EWEB Rules**, Division 5, **EWEB’s** most recent pre-Bid, good faith assessment of anticipated **Contract** costs, consisting either of an estimate of an **architect, engineer** or other qualified professional, or confidential cost calculation Worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

“**Days**,” except as otherwise provided, means calendar **days**. (See ORS 279A.010(1)(c))

“**Descriptive Literature**” means the **Offeror’s** materials submitted to provide information concerning the products or services available in response to the **Solicitation Document**.

“Disqualification,” for purposes of **EWEB Rules**, Division 5, means the preclusion, by **disqualification**, debarment or suspension, of a **Person** from contracting with **EWEB** for a period of time in accordance with **Rule 5-0370**, and any other applicable statutes and rules. Disqualification includes **Conduct Disqualification**, **Business Enterprise Certification “BEC” Disqualification**, or Discrimination Disqualification.

“Electronic Advertisement” means Electronic Advertisement for Offers available over **EWEB’s** Purchasing Internet site (via The World Wide Web).

“Emergency” means circumstances that:

- (A) Could not have been reasonably foreseen;
- (B) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and
- (C) Require prompt execution of a contract to remedy the condition. (See ORS 279A.010((1)(f))

“Energy savings performance contract” means a **public contract** between a **contracting agency**, such as **EWEB**, and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance. (See ORS 279A.010(1)(g)) (see ORS279C.335 (1)(e)) (see ORS279A.065(2))

“Engineer” means a **person** who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2). (See ORS 279C.100(3))

“Estimated Fee” means **EWEB’s** reasonably projected fee to be paid for a **Consultant’s** services under the anticipated **Contract**, excluding all anticipated reimbursable or other non-professional fee expenses. The Estimated Fee is used solely to determine the applicable Contract solicitation method and is distinct from the total amount payable under the **Contract**.

“EWEB” means the Eugene Water & Electric Board or any **persons** to whom **EWEB** has delegated its **public contracting** authority.

“EWEB Public Contracting Rules” or **“Rules,”** or **“EWEB Rules”** or **“Public Contracting Rules”** mean these **Rules**, Divisions 1-6, as amended.

“Executive Department” means, subject to ORS 174.108, all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the executive department of government as described in Section 1, Article III of the Oregon Constitution, and that are not in the judicial department or legislative department, not local governments and not special government bodies. (See ORS 279A.010(1)(h); 174.112)

“Facsimile” means a document that has been transmitted to and received by **EWEB** in a format that is capable of being received via a device commonly known as a facsimile machine (e.g. a Facsimile Bid). A facsimile machine allows hard copy documents (Written, typed or drawn material) to be sent over telephone lines and printed in another location.

“Findings,” with respect to public improvement competitive bidding exemptions, mean the justification for **EWEB’s** conclusion regarding exemptions that includes, but is not limited to, information regarding operational, budget and financial data; public benefits; **value engineering**; specialized expertise required; public safety; market conditions; technical

complexity; and funding sources. (See ORS 279C.330)

“Foreign Contractor” means a Contractor that is not domiciled in or registered to do business in the state of Oregon. See **Rule 5-0490**.

“Good cause,” for purposes of substituting an undisclosed first tier subcontractor in a **public improvement contract**, means **“good cause”** as defined by rule by the Construction Contractors Board, which reflects the least-cost policy for **public improvements**, and includes but is not limited to the financial instability of a subcontractor. (See ORS 279C.585(9)) Otherwise, **“good cause”** means any rational basis as determined in the sole discretion of **EWEB**, in accordance with the **Public Contracting Code** and the **EWEB Rules**.

“Goods” includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs. (See ORS 279B.115(1))

“Goods and services” or **“Goods or services”** means supplies, equipment, materials and services other than **personal services** designated under ORS 279A.055 and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that **EWEB** or another **contracting agency** is authorized by law to procure. **“Goods and services”** or **“Goods or services”** includes combinations of any of the items identified in this **Rule**. (See ORS 279B.005(1)(a))

“Grant,” when used as a noun, means:

(A) An agreement under which **EWEB** or another **contracting agency** receives moneys, property or other assistance, including but not limited to federal assistance that is characterized as a **grant** by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the **contracting agency** and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the **grant** conditions; or

(B) An agreement under which **EWEB** or another **contracting agency** provides moneys, property or other assistance, including but not limited to federal assistance that is characterized as a **grant** by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the **contracting agency** is anticipated in the program or activity other than involvement associated with monitoring compliance with the **grant** conditions. **“Grant”** does not include a **public contract** for a **public improvement**, for **public works**, or for **emergency** work, minor alterations or ordinary repair or maintenance necessary to preserve a **public improvement**, when under the **public contract** a **contracting agency** pays, in consideration for contract performance intended to realize or to support the realization of the purposes for which **grant** funds were provided to the **contracting agency**, moneys that the **contracting agency** has received under a **grant**. (See ORS 279A.010(1)(i))

“Interstate cooperative procurement” means a permissive **cooperative procurement** in which the **administering contracting agency** is a governmental body, domestic or foreign, that is authorized under the governmental body’s laws, rules or regulations to enter into **public contracts** and in which one or more of the participating agencies are located outside this state. (See ORS 279A.200(1)(d))

“Invitation to bid” or **“ITB”** means, except to the extent otherwise defined in the **Code** or **EWEB Rules**, all documents, whether attached or incorporated by reference, used for soliciting **Bids** or

requesting **Proposals**, in accordance with the **Public Contracting Code**, and these **Rules**. (See ORS 279B.005(1)(b); 279C.400(3))

“**Joint cooperative procurement**” means a **cooperative procurement** in which the participating contracting agencies or the **cooperative procurement group** and the agencies’ or group’s contract requirements or estimated contract requirements for price agreements are identified. (See ORS 279A.200(1)(e))

“**Labor dispute**” includes any controversy concerning terms or conditions of employment, or concerning the association or representation of **persons** in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee. (See ORS 279C.650; 662.010(1))

“**Land surveyor**” means a **person** who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2). (See ORS 279C.100(4))

“**Local contracting agency**” means a **local government** or special government body authorized by law to conduct a **procurement**. “**Local contracting agency**” includes any **person** authorized by a **local contracting agency** to conduct a **procurement** on behalf of the **local contracting agency**. (See ORS 279A.010(1)(n))

“**Local government**” means, subject to ORS 174.108, all cities, counties and local service districts located in Oregon, and all administrative subdivisions of those cities, counties and local service districts. (See ORS 279A.010(1)(o); 174.116(1)(a) and (b))

“**Lowest responsible bidder**” means the lowest **bidder** who:

- (A) Has substantially complied with all prescribed **public contracting** procedures and requirements;
- (B) Has met the applicable standards of responsibility;
- (C) Has not been debarred or disqualified by **EWEB**; and
- (D) If the advertised contract is a **public improvement contract**, is not on the list created by the Construction Contractors Board under ORS 701.227. (See ORS 279A.010(1)(p))

“**Most Qualified Consultant**,” for purposes of **EWEB Rules**, Division 4, means an **Architect**, **Engineer**, Photogrammetrist, Transportation Planner, **Land Surveyor**, or provider of **Related Services** whose qualifications, pricing, availability, and approach best meets the requirements of the work and whose offer is most advantageous to the utility. The determination of “most qualified” shall be in **EWEB**’s sole judgment and at **EWEB**’s sole discretion.

“**Nonresident bidder**” means a **bidder** who is not a **resident bidder**. (See ORS 279A.120(1)(a))

“**Notice**” means any form of public announcement, as required or allowed pursuant to the **Public Contracting Code** and/or the **EWEB Rules**.

“**Offer**” or “**Offers**” means a response(s) to a **Solicitation Document**.

“**Offeror**” means a **Person** who submits an **Offer**.

“**Opening**” means the date, time and place announced in the **Solicitation Document** for the public **Opening** of Written sealed **Offers**, **Bids**, or **Proposals**.

“Original contract” for purposes of **cooperative procurement** means the initial contract or price agreement solicited and awarded during a **cooperative procurement** by an **administering contracting agency**. (See ORS 279A.200(1)(f))

“Other options,” for purposes of **Rule 5-0430**, means those items generally considered appropriate for negotiation in the **RFP** process, relating to the details of Contract performance as specified in **Rule 5-0650**, but excluding any material requirements previously announced in the Solicitation process that would likely affect the field of competition.

“Permissive cooperative procurement” means a **cooperative procurement** in which the purchasing contracting agencies are not identified. (See ORS 279A.200(1)(g))

“Person” or **“Persons”** means a natural person(s) capable of being legally bound, a sole proprietorship, a corporation, a partnership, a limited liability company or partnership, a limited partnership, a for-profit or nonprofit unincorporated association, a business trust, two or more persons having a joint or common economic interest, any other person with legal capacity to contract or a **public body**. (See ORS 279A.010(1)(r)) **“Person”** or **“Persons”** includes an individual, limited liability entity, association, joint venture, governmental agency, and public corporation. For purposes of required conditions in construction contracts, unless the context requires otherwise, **“Person”** or **“Persons”** includes the State Accident Insurance Fund and the Department of Revenue. (See ORS 279C.500) For purposes of the determination of the **prevailing rate of wage**, **“Person”** or **“Persons”** includes any employer, labor organization or any official representative of an employee or employer association. (279C.815(1))

“Personal services” mean the services of a **person** or **persons** that are designated by the **Board** as **personal services**, and includes **architectural, engineering and land surveying services**, and **related services**, for purposes of **EWEB Rules**, Division 4. (See ORS 279C.100(5))

“Personal Services Contract” or **“Contract for Personal Services,”** for purposes of **EWEB Rules**, Division 3, means a **contract**, or member of a class of **contracts**, other than a **contract** for the services of an **Architect, Engineer, Land Surveyor** or Provider of **Related Services**, and other than a **contract** for services not designated by the **Board** as **personal services** (see **EWEB Rules**, Division 6), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a **contract** for the services of an accountant, physician or dentist, educator, information technology consultant, broadcaster, artist (including a photographer, filmmaker, painter, weaver or sculptor), or consultant (excluding an **Architect, Engineer, Land Surveyor**, or Provider of **Related Services**).

“Prevailing rate of wage” means the rate of hourly wage, including all **fringe benefits**, paid in the **locality** to the majority of workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries, pursuant to ORS 279C.800(3). (See ORS 279C.800(3))

“Photogrammetric Mapping” has the meaning given that term in ORS 672.002.

“Photogrammetrist” has the meaning given that term in ORS 672.002.

“Price agreement” means a **public contract** for the **procurement of goods or services** at a

set price with:

- (A) No guarantee of a minimum or maximum purchase; or
- (B) An initial order or minimum purchase combined with a continuing contractor obligation to provide **goods or services** in which **EWEB** or another contracting agency does not guarantee a minimum or maximum additional purchase. (See ORS 279A.010(1)(v))

“Procurement” means the act of purchasing, leasing, renting or otherwise acquiring **goods or services**. **“Procurement”** includes each function and procedure undertaken or required to be undertaken by a contracting agency to enter into a **public contract**, administer a **public contract** and obtain the performance of a **public contract** under the **Public Contracting Code**. (See ORS 279A.010(1)(u))

“Product Sample” means a representative specimen of the item offered by the **Offeror** in response to the **Solicitation Document**. Unless otherwise provided in the **Solicitation Document**, the **Product Sample** shall be the exact product or a representative portion of that product offered by the **Offeror**.

“Project,” for purposes of **EWEB Rules**, Division 4, means, depending on the context, a **public improvement** and/or all components of **EWEB’s** planned undertaking that give rise to the need for a **Consultant’s Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services** under a Contract.

“Proposal” or **“Proposals”** means a competitive **Offer(s)** submitted in response to a **Request for Proposals (RFP)**.

“Proposer” means a **person**, including a **Consultant**, that submits a proposal to **EWEB** in response to a **request for proposals**. (See ORS 279A.010(1)(v))

“Public body” means, subject to ORS 174.108, **state government bodies, local government bodies and special government bodies**. (See ORS 279A.010(1)(w); 174.109)

“Public contract” means a sale or other disposal, or a purchase, lease, rental or other acquisition, by a contracting agency of personal property, services, including **personal services, public improvements, public works**, minor alterations, or ordinary repair or maintenance necessary to preserve a **public improvement**. **“Public contract”** does not include **grants**. (See ORS 279A.010(1)(x))

“Public contracting” means **procurement** activities described in the **Public Contracting Code** relating to obtaining, modifying or administering **public contracts** or **price agreements**.(See ORS 279A.010(1)(y))

“Public Contracting Code” or **“Code”** means ORS Chapters 279A, 279B and 279C. (See ORS 279A.010(1)(z))

“Public improvement” means a project for construction, reconstruction or major renovation on real property by or for a contracting agency such as **EWEB**. **“Public improvement”** does not include:

- (A) Projects for which no funds of **EWEB** are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or
- (B) **Emergency** work, minor alteration, ordinary repair or maintenance necessary to preserve a **public improvement**. (See ORS 279A.010(1)(aa))

“Public improvement contract” means a **public contract** for a **public improvement**. **“Public**

improvement contract” does not include a **public contract** for **emergency** work, minor alterations, or ordinary repair or maintenance necessary to preserve a **public improvement**. (See ORS 279A.010(1)(bb))

“Public works” includes, but is not limited to, roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for by any **public agency** to serve the public interest; including projects that use \$750,000 or more of public agency funds for construction, reconstruction, painting or performing a major renovation on a road, highway, building, structure or improvement of any type or a project that uses funds of a private entity for constructing a privately owned road highway, building, structure or improvement of any type in which a public agency will use or occupy 25 percent or more of the square footage of the completed project.. (See ORS 279C.800(5))

“Purchasing contracting agency” means, for purposes of **cooperative procurement**, a contracting agency that procures **goods**, services or **public improvements** from a contractor based on the original contract established by an **administering contracting agency**. (See ORS 279A.200(1)(h))

“Recycled material” means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled. (See ORS 279A.010(1)(cc))

“Recycled product” means all materials, **goods** and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. **“Recycled product”** includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product’s form. (See ORS 279A.010(1)(gg))

“Related services” means **personal services**, other than **architectural, engineering, photogrammetric mapping, transportation planning and land surveying services**, that are related to planning, designing, engineering or overseeing **public improvement** projects or components thereof, including but not limited to landscape architectural services, facilities planning services, energy planning services, space planning services, hazardous substances or hazardous waste or toxic substances testing services, cost estimating services, appraising services, material testing services, mechanical system balancing services, commissioning services, project management services, construction management services and owner’s representative services or land-use planning services. (See ORS 279C.100(8))

“Request for proposals” or **“RFP”** means all documents, whether attached or incorporated by reference, used for soliciting **Proposals**. (See ORS 279B.005(1)(e))

“Request for Qualifications” or **“RFQ”** means a written document issued by **EWEB** to which **Consultants** respond with a description of their experience with and qualifications for the **Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services**, or **Related Services** described in the **RFQ** and from which **EWEB** creates a list of **Consultants** who are qualified to perform those services, but which is not intended to result in a **Contract** between a **Consultant** and **EWEB**.

“Resident bidder” means a **bidder** that has paid unemployment taxes or income taxes in this

state during the 12 calendar months immediately preceding submission of the bid, has a business address in this state and has stated in the bid whether the **bidder** is a “**resident bidder**” under ORS 279A.120(1)(b). (See ORS 279A.120(1)(b))

“**Responsible bidder**” or “**Responsible proposer**” means, for purposes of the purchase of **goods or services**, EWEB’s determination whether a **bidder** or **proposer** has met the standards of responsibility, considering 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) A satisfactory record of performance. The contracting agency shall document the record of performance of a **bidder** or **proposer** if the contracting agency finds the **bidder** or **proposer** nonresponsible under this paragraph;
- (c) A satisfactory record of integrity. The contracting agency shall document the record of integrity of a **bidder** or **proposer** if the contracting agency finds the **bidder** or **proposer** nonresponsible under this paragraph;
- (d) Qualified legally to contract with the contracting agency;
- (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a **bidder** or **proposer** fails to promptly supply information requested by the contracting agency concerning responsibility, the contracting agency shall base the determination of responsibility upon any available information or may find the **bidder** or **proposer** nonresponsible; and
- (f) Not been debarred by the contracting agency under ORS 279B.130. (See ORS 279B.110(2))

For purposes of determining whether a **bidder** has met the emerging small business enterprise contract requirements, “**responsible bidder**” or “**responsible proposer**” has the meaning set forth in ORS 200.005 and 200.045. (See ORS 279A.105(3))

“**Responsive bid**” or “**responsive proposal**” means a bid or proposal that substantially complies with the **invitation to bid** or **request for proposals** and all prescribed **procurement** procedures and requirements. (See ORS 279B.005(1)(g))

“**Retainage**” means the difference between the amount earned by a contractor on a **public contract** and the amount paid on the contract by the contracting agency. (See ORS 279C.550)

“**Rule**” means a **Rule** within the **EWEB Public Contracting Rules**.

“**Scope**” means the range and attributes of the **Goods or Services** described in the applicable **Procurement** document.

“**Signed**” or “**Signature**” means any mark, word or symbol attached to or logically associated with a document and executed or adopted by a **Person** with the intent to be bound.

“**Solicitation Document**” means an **Invitation to Bid, Request for Proposals** or any documents issued to invite offers in response to a **Special Procurement** pursuant to ORS 279B.085, and includes all documents incorporated into any of the foregoing by reference.

“**Special government body**” means, subject to ORS 174.108, a public corporation created under a statute of this state and specifically designated a public corporation; a school district; a public charter school established under ORS chapter 338; an education service district; a community college district or community college service district established under ORS chapter 341; an intergovernmental body formed by two or more public bodies; any entity that is created

by statute, ordinance or resolution that is not part of **state government** or **local government**; any entity not otherwise described in this definition that is not part of **state government** or **local government**, created pursuant to authority granted by a statute, ordinance or resolution but not directly created by that statute, ordinance or resolution, and identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity without regard to the specific terms used by the statute, ordinance or resolution. (ORS 279A.010(ii); 174.117)

“Special procurement” means, unless the context requires otherwise, a **class special procurement**, a **contract-specific special procurement** or both. (See ORS 279B.085(1)(c))

“Specification” means any description of the physical or functional characteristics, or of the nature of a supply, equipment, service, or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed. **“Specification”** may include a description of any requirement for inspecting, testing or preparing **goods or services** for delivery. **“Specification”** may also include any description of the characteristics or nature of **personal services**. (See ORS 279B.200(3))

“State agency” means the **executive department**, except the Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices. (See ORS 279A.010(1)(jj))

“State government” means, subject to ORS 174.108, the **executive department**, the **judicial department** and the **legislative department**. (ORS 279A.010(LL); 174.111)

“Transportation Planning Services” are defined in ORS 279C.100. Transportation Planning Services include only Project-specific transportation planning involved in the preparation of categorical exclusions, environmental assessments, environmental impact statements and other documents required for compliance with the National Environmental Policy Act, 42 USC 4321, et. seq. Transportation Planning Services do not include transportation planning for corridor plans, transportation system plans, interchange management plans, refinement plans and other transportation plans not directly associated with an individual Project that will require compliance with the National Environmental Policy Act, 42 USC 4321, et. seq. Transportation Planning Services also do not include transportation planning for Projects not subject to the National Environmental Policy Act, 42 USC 4321, et. seq.

“Unnecessarily restricted” means that the **specifications** for **goods or services** limit competition arbitrarily, without reasonably promoting the fulfillment of the **procurement** needs of **EWEB**.

“Value Engineering” means the identification of alternative methods, materials or systems which provide for comparable function at reduced initial or life-time cost. It includes proposed changes to the plans, **Specifications**, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the **Public Improvement**. Cost savings include those resulting from life cycle costing, which either increase or decrease absolute costs over varying time periods.

“Work” means the furnishing of all materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and successful completion of all duties and obligations imposed by the Contract.

“Working hours” means **EWEB**’s regular business hours, which currently are Monday through Friday, 9 a.m. to 5 p.m., excluding **EWEB** recognized holidays.

“Written” or **“Writing”** means conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or facsimile documents when required or permitted by applicable law, or to the extent permitted by the **Solicitation Document** or **Contract**.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065.

Exhibit C

 Public Contracting Rules	Adopted: 1/4/2005 Effective: 3/1/2005
GENERAL PROVISIONS	Revised: 8/18/17 <u>Revised: 12/5/17</u>

Division 2: Authority; General Provisions; Protests and Remedies

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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 exercise all procurement authority in accordance with the provisions of the Public Contracting Code and EWEB Public Contracting Rules, Divisions 1-6 (“EWEB Rules”). When EWEB has authority to make procurements under a provision of law other than the Public Contracting Code, EWEB is not required to exercise that authority in accordance with the provisions of the Code if, under ORS 279A.025, the Code does not apply to the contract.

Stats. Implemented: Or Laws 2007, Ch. 764, Sec. 3.

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.

January 1, 2012 rules revisions to EWEB Rules Divisions 1 through 6 from those previously in effect, apply to public contracts first advertised or solicited on or after January 1, 2012, unless otherwise specified by law.

2-0110 Public Contracting Rules

Pursuant to ORS 279A.065(5) and ORS 279A.070, the Board has adopted rules of procedure for contracts subject to the Code. The Model Public Contracting Rules prepared by the Oregon Attorney General do not apply to EWEB, except for contract procedures to procure construction manager/general contractor services. 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.

Statute implemented: ORS 279A.065

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 Supervisor may process, negotiate and execute all contracts for EWEB in accordance with EWEB Rules and Oregon law.

2-0140 Rules Management

The Purchasing Supervisor, 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 Supervisor 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 Supervisor and General Manager of such revisions in writing.

2-0150 Board Approval Thresholds

- (1) The Board shall have the sole authority to approve contracts where the value of the Goods, Services, Personal Services, Construction, or Equipment meet or exceed \$150,000.
- (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 provide authorization to use a cooperative procurement contract when purchases exceed \$150,000.
- (4) The Board shall be notified of any proposed contract(s) with any known Leadership Team (LT) member's Household Member or Relative, as defined in ORS 244.020 (11 and 16), prior to that contract being placed on the Board's consent calendar for Board approval.

- (5) This rule does not apply to the following procurements:
- (a) Contracts for Board Appointed professional services, that are retained beyond the initial contract term shall be reported to the Board annually for their ratification. Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants 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; and
 - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

These exceptions from Board approval do not apply to contract(s) set forth in section 4, above.

- (6) Board approval thresholds applicable under this EWEB Contracting Rule are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.
- (a) Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements, including sales and revenue generating activities, with significant community impacts as determined by Management.
 - (b) The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; personal services for issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension, and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the Board as part of an after action report.
 - (c) Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

2-0160 Affirmative Action; Limited Competition Permitted

(a) 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.

(b) 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. The contractor shall remain certified as a disadvantaged, minority, woman, or emerging small business enterprise under ORS 200.055 for the entire term of the contract if the public contract, in whole or in part, was awarded on the basis of the contractor's certification.

(c) 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.

(d) A contractor that is a disadvantaged, minority, woman, or emerging small business enterprise under ORS 200.055 that is awarded a contract on the basis of the contractor's certification may subcontract, upon approval by EWEB. If the subcontractor is awarded, in whole or in part, on the basis of the subcontractor's certification, the subcontractor must remain certified as a disadvantaged, minority, woman, or emerging small business enterprise during the entire term of the contract.

(e) Subsections (b) and (d) do not apply to a contractor that is an emerging small business as defined in ORS 200.005 that, because of growth in the number of full-time equivalent employees or average annual gross receipts that occurs during the term of the public contract, no longer qualifies as a tier one firm or tier two firm, as those terms are defined in ORS 200.005, or for which a certification under ORS 200.055 expires during the term of the public contract.

(f) EWEB shall suspend any bidder's, proposer's, contractor's or subcontractor's right to submit a bid or proposal for, or receive an award of, a public contract in the future if the bidder, proposer, contractor, or subcontractor knowingly commits any of the acts related to ~~representing and managing activities of disadvantaged, minority, women or emerging small business enterprises as listed in and~~ prohibited by ORS 200.075 (1). EWEB shall suspend the right only after providing notice and opportunity for hearing in a manner consistent with the protesting and appeal rights for debarring required in EWEB Contracting Rule 3-0575 (3), (4), (5), and Rule 3-0760.

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.
- (4) Effective January 1, 2008, EWEB may, by appropriate ordinance, resolution or rule, limit competition for a public contract to emerging small business enterprises certified under ORS 200.055 if the contract is estimated to cost \$100,000 or less and is funded by an Emerging Small Business Account established under ORS 200.180.

Stats. Implemented: Or. Laws 2007, Ch. 344, Sec. 2.

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

- (1) Award When Offers are Equal. 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, or both, or Personal Services that are manufactured, produced or to be performed entirely in Oregon and if the goods, services or Personal Services cost no more than 10 percent more than goods that are not fabricated or processed, or services that are not performed entirely in Oregon.
 - (b) If two or more Offerors submit equal offers, and both offer goods or services, or both, or Personal Services manufactured, produced or to be performed entirely in Oregon, EWEB may give preference to a qualifying Offeror that resides in or is headquartered in Oregon, or shall otherwise 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, or both, or Personal Services manufactured, produced or to be performed entirely 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, or both, or Personal 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 shall determine whether the proposed contract is predominantly for good, services or Personal Services. 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, services or Personal Services are manufactured, produced or to be performed entirely in Oregon. EWEB may use any reasonable criteria to determine if goods, services or Personal Services are manufactured, produced or to be performed entirely 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.

- (6) The preferences in this section do not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or other construction work described in EWEB Rule 5-0140.
- (7) For purposes of this section, "services" means services as defined in ORS 279A.010(1)(kk) and personal services designated under ORS 279A.055.

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.

2-0205 Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

- (1) EWEB, in its Solicitation Documents to award a contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, may provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.
 - (a) EWEB has discretion to adjust the amount or character of the preference to account for variations in the nature of the contract or project, and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.
 - (b) For example, in an invitation to bid procurement EWEB may authorize a range of preference price percentages to account for the various degrees to which the bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a bidder exceed ten percent of the total bid price.

(c) Similarly, under a request for proposals, EWEB may allocate and award evaluation points to reflect the degrees to which the proposers might exceed the applicable federal Buy America requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the request for proposals.

Stats. Implemented: 2012 OL, ch 58 (SB 1556)

2-0210 Authority for Cooperative and for Permissive Procurements

- (1) EWEB may participate in, sponsor, conduct or administer Cooperative Procurements as follows:
 - (a) EWEB may participate in, sponsor, conduct or administer a 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 (but not public improvements) 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 Supervisor. 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 Supervisor 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 Supervisor's determination [response] is adverse to the protester, any further appeal of the Purchasing Supervisor'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 Supervisor's determination [response].
- (5) EWEB's General Manager will review any appeal of the Purchasing Supervisor'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 Supervisor 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 Supervisor 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.

Exhibit D

 Public Contracting Rules	Adopted: 1/4/2005 Effective: 3/1/2005 Revised: 8/18/17 Revised: 12/5/2017 Approved: _____
GENERAL PROVISIONS	

Division 2: Authority; General Provisions; Protests and Remedies

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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 exercise all procurement authority in accordance with the provisions of the Public Contracting Code and EWEB Public Contracting Rules, Divisions 1-6 (“EWEB Rules”). When EWEB has authority to make procurements under a provision of law other than the Public Contracting Code, EWEB is not required to exercise that authority in accordance with the provisions of the Code if, under ORS 279A.025, the Code does not apply to the contract.
 Stats. Implemented: Or Laws 2007, Ch. 764, Sec. 3.

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.

January 1, 2012 rules revisions to EWEB Rules Divisions 1 through 6 from those previously in effect, apply to public contracts first advertised or solicited on or after January 1, 2012, unless otherwise specified by law.

2-0110 Public Contracting Rules

Pursuant to ORS 279A.065(5) and ORS 279A.070, the Board has adopted rules of procedure for contracts subject to the Code. The Model Public Contracting Rules prepared by the Oregon Attorney General do not apply to EWEB, except for contract procedures to procure construction manager/general contractor services. 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.

Statute implemented: ORS 279A.065

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 Supervisor may process, negotiate and execute all contracts for EWEB in accordance with EWEB Rules and Oregon law.

2-0140 Rules Management

The Purchasing Supervisor, 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 Supervisor 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 Supervisor and General Manager of such revisions in writing.

2-0150 Board Approval Thresholds

- (1) The Board shall have the sole authority to approve contracts where the value of the Goods, Services, Personal Services, Construction, or Equipment meet or exceed \$150,000.
- (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 provide authorization to use a cooperative procurement contract when purchases exceed \$150,000.
- (4) The Board shall be notified of any proposed contract(s) with any known Leadership Team (LT) member's Household Member or Relative, as defined in ORS 244.020 (11 and 16), prior to that contract being placed on the Board's consent calendar for Board approval.

- (5) This rule does not apply to the following procurements:
- (a) Contracts for Board Appointed professional services, that are retained beyond the initial contract term shall be reported to the Board annually for their ratification. Board appointed professionals may include attorneys, auditors, and other consultants appointed by and/or working directly for the Board. The Board will be asked for feedback on these consultants 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; and
 - Financial reporting and credit agencies selected because of their unique, reliable reporting capabilities.

These exceptions from Board approval do not apply to contract(s) set forth in section 4, above.

- (6) Board approval thresholds applicable under this EWEB Contracting Rule are for contracts subject to Oregon Public Contracting Code and EWEB Purchasing Rules.
- (a) Board approval will be required for the following exempted contracts when the contract amount exceeds \$150,000: real property, qualified rehabilitation facilities, grants, intergovernmental agreements for goods or services, and other agreements, including sales and revenue generating activities, with significant community impacts as determined by Management.
 - (b) The following exempt contracts or agreements will not require Board approval: Contracts under \$150,000; mutual aid; emergency declaration; personal services for issuance of bonds; investments; employee benefit plans; insurance policies; wholesale power contracts not requiring Board approval as per SD8; customer design, extension, and modification agreements; joint use agreements; settlement agreements; and power exchange contracts. Exempt contracts over \$150,000 will be included in the quarterly financial statements, annual approved budgets and/or reported to the Board as part of an after action report.
 - (c) Contracts over \$40,000 that are not approved by the Board or exempted by Oregon Public Contracting Code and claims reports will be provided to the Board quarterly. The Board will receive these quarterly reports unless they determine that the reports are no longer needed or that the reports should be provided at a different frequency.

2-0160 Affirmative Action; Limited Competition Permitted

(a) 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.

(b) 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. The contractor shall remain certified as a disadvantaged, minority, woman, or emerging small business enterprise under ORS 200.055 for the entire term of the contract if the public contract, in whole or in part, was awarded on the basis of the contractor's certification.

(c) 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.

(d) A contractor that is a disadvantaged, minority, woman, or emerging small business enterprise under ORS 200.055 that is awarded a contract on the basis of the contractor's certification may subcontract, upon approval by EWEB. If the subcontractor is awarded, in whole or in part, on the basis of the subcontractor's certification, the subcontractor must remain certified as a disadvantaged, minority, woman, or emerging small business enterprise during the entire term of the contract.

(e) Subsections (b) and (d) do not apply to a contractor that is an emerging small business as defined in ORS 200.005 that, because of growth in the number of full-time equivalent employees or average annual gross receipts that occurs during the term of the public contract, no longer qualifies as a tier one firm or tier two firm, as those terms are defined in ORS 200.005, or for which a certification under ORS 200.055 expires during the term of the public contract.

(f) EWEB shall suspend any bidder's, proposer's, contractor's or subcontractor's right to submit a bid or proposal for, or receive an award of, a public contract in the future if the bidder, proposer, contractor, or subcontractor knowingly commits any of the acts related to disadvantaged, minority, women or emerging small business enterprises and prohibited by ORS 200.075 (1). EWEB shall suspend the right only after providing notice and opportunity for hearing in a manner consistent with the protesting and appeal rights for debarring required in EWEB Contracting Rule 3-0575 (3), (4), (5), and Rule 3-0760.

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.
- (4) Effective January 1, 2008, EWEB may, by appropriate ordinance, resolution or rule, limit competition for a public contract to emerging small business enterprises certified under ORS 200.055 if the contract is estimated to cost \$100,000 or less and is funded by an Emerging Small Business Account established under ORS 200.180.

Stats. Implemented: Or. Laws 2007, Ch. 344, Sec. 2.

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

- (1) Award When Offers are Equal. 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, or both, or Personal Services that are manufactured, produced or to be performed entirely in Oregon and if the goods, services or Personal Services cost no more than 10 percent more than goods that are not fabricated or processed, or services that are not performed entirely in Oregon.
 - (b) If two or more Offerors submit equal offers, and both offer goods or services, or both, or Personal Services manufactured, produced or to be performed entirely in Oregon, EWEB may give preference to a qualifying Offeror that resides in or is headquartered in Oregon, or shall otherwise 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, or both, or Personal Services manufactured, produced or to be performed entirely 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, or both, or Personal 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 shall determine whether the proposed contract is predominantly for good, services or Personal Services. 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, services or Personal Services are manufactured, produced or to be performed entirely in Oregon. EWEB may use any reasonable criteria to determine if goods, services or Personal Services are manufactured, produced or to be performed entirely 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.

- (6) The preferences in this section do not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or other construction work described in EWEB Rule 5-0140.

- (7) For purposes of this section, "services" means services as defined in ORS 279A.010(1)(kk) and personal services designated under ORS 279A.055.

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.

2-0205 Federally Funded Transit Projects — Preference for Exceeding Federal Buy America Requirements

- (1) EWEB, in its Solicitation Documents to award a contract for a transit project that will be funded in whole or in part with funds from the federal government or a federal government agency, may provide for the application of a preference in favor of an Offeror whose bid or proposal exceeds the applicable federal Buy America requirements.
 - (a) EWEB has discretion to adjust the amount or character of the preference to account for variations in the nature of the contract or project, and the degree to which each Offeror's bid or proposal exceeds the federal Buy America requirements.
 - (b) For example, in an invitation to bid procurement EWEB may authorize a range of preference price percentages to account for the various degrees to which the bidders might exceed the federal Buy America requirements. In no event, however, may the percentage preference given to a bidder exceed ten percent of the total bid price.
 - (c) Similarly, under a request for proposals, EWEB may allocate and award evaluation points to reflect the degrees to which the proposers might exceed the applicable federal Buy America

requirements. In no event, however, may those percentage points exceed ten percent of the total number of points available for award under the request for proposals.

Stats. Implemented: 2012 OL, ch 58 (SB 1556)

2-0210 Authority for Cooperative and for Permissive Procurements

- (1) EWEB may participate in, sponsor, conduct or administer Cooperative Procurements as follows:
 - (a) EWEB may participate in, sponsor, conduct or administer a 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 (but not public improvements) 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 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 Supervisor. 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 Supervisor 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 Supervisor's determination [response] is adverse to the protester, any further appeal of the Purchasing Supervisor'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 Supervisor's determination [response].
- (5) EWEB's General Manager will review any appeal of the Purchasing Supervisor'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 Supervisor 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 Supervisor 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.

Exhibit E

 <p>Public Contracting Rules</p>	<p>Adopted: 1/4/2005 Revised : 2/3/2015 Revised : 8/18/2017 Revised: <u>12/5/17</u> Approved: _____</p>
<p>CONSTRUCTION CONTRACTS</p>	

**Division 5
Construction Contracts**

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RULES

5-0100 Application

- (1) EWEB Rules, Division 5, apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements (specifically Rule 5-0140 Contracts for Construction Other Than Public Improvements).
- (2) EWEB Rules, Division 5, address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying or Related Services, all of which are addressed in EWEB Rules, Division 4).

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

Stats. Implemented: ORS 279A.070; ORS chapter 279C.300, et seq

5-0105 Policies

The following statutory policies apply to these EWEB Rules, Division 5:

- (1) It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:
 - (a) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards.
 - (b) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.
 - (c) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.
 - (d) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds.
 - (e) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.
 - (f) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted.
- (2) It is the policy of the State of Oregon that public improvement contracts awarded under this chapter must be based on competitive bidding, except as otherwise specifically provided in ORS 279C.335 for exceptions and formal exemptions from competitive bidding requirements.
- (3) It is the policy of the State of Oregon that contracting agencies shall make every effort to

construct public improvements at the least cost to the contracting agency.

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

Stats. Implemented: ORS 279A.015, ORS 279C.300 & ORS 279C.305(1)

5-0110 Definitions

Definitions applicable to EWEB Rules, Division 5 are set forth at EWEB Rules, Division 1. For purposes of CM/GC alternative contracting, see additional defined terms adopted by OAR 137-049-0610.

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

Stats. Implemented: ORS 279C.300 et seq

5-0115 Budget Submittal to Oregon Bureau of Labor and Industries

(1) Not less than 30 days prior to adoption of EWEB's budget for the subsequent budget period, EWEB shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement subject to the Public Contracting Code and known to EWEB that EWEB plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether EWEB intends to perform the construction through a private contractor. The list is a public record and may be revised periodically by EWEB.

~~(2) If EWEB intends to perform construction work on a public improvement using EWEB's own equipment and personnel, and the value of the construction work to be performed with EWEB's equipment and personnel on a project is estimated to cost more than \$125,000, (\$125,000 for resurfacing highways, roads or streets at a depth of two or more inches), EWEB shall:~~

~~also show that EWEB's decision conforms to least cost policy set forth in Rule 5-0105(3). The list is a public record and may be revised periodically by EWEB.~~

~~(a) File with the Commissioner of the Bureau of Labor and Industries 180 days before construction begins on the public improvement an analysis that shows that EWEB's decision conforms to least cost policy set forth in Rule 5-0105(3). The analysis required under 5-0115 (2) shall include:~~

- ~~i. An estimate of the cost of contracting with a private contractor to construct the public improvement, including all necessary and related costs, that the private contractor would incur to construct the public improvement.~~
- ~~ii. An estimate EWEB would incur in constructing the public improvement with the contracting agency's own equipment or personnel including:~~

~~A. The cost of labor, including all benefits the contracting agency pays to or on behalf of employees of EWEB that will work on the public improvement, workers' compensation insurance premiums, and the cost of traveling to and from the site of the public improvements;~~

~~B. The cost of equipment, including costs associated with leasing, renting or acquiring and owning the equipment, costs for transporting the equipment to and from the site of the public improvement, costs for depreciation and costs for insuring, operating, storing, repairing, and maintaining the equipment;~~

~~C. The costs of administration and overhead including insurance, shop and~~

office costs that are allocable to the public improvement

D. The cost of tools and materials

E. The costs associated with any contracts into which the contracting agency must enter

F. The commercially reasonable value of quality control testing if EWEB would require quality control testing for the work that a private contractor performed on the public improvement; and

G. Any other necessary and related costs that EWEB will incur to construct the public improvement with EWEB's own equipment, or personnel

iii. Comparison of the costs which EWEB estimates under subsection (i) with the costs EWEB estimates under subsection (ii).

(3) Before EWEB constructs a public improvement with its own equipment or personnel, EWEB will prepare plans, specifications and estimates of the unit cost of each classification of construction work that are sufficient to control the performance of the construction work and ensure satisfactory construction quality if the estimated cost of the public improvement exceeds \$200,000; and prepare and preserve a full, true and accurate account of the actual costs of performing the work, including all categories of costs described in item (2).

(42) Subparts 1-3 does not apply to EWEB when the public improvement is to be used for the distribution or transmission of electric power.

(5) Subparts 1-3 do not apply when EWEB did not receive a responsive bid or proposal for constructing the public improvement from a responsible bidder or proposer after soliciting bids or proposals for constructing the public improvement if the solicitation was offered within one year of the date for which construction began and allowed a commercially reasonable time to perform the construction.

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

Stats. Implemented: ORS 279C.305(2) & (4).

5-0120 Limitation on EWEB Public Improvements with EWEB Personnel

(1) Cost Accounting Limitation. If EWEB fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services pursuant to section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555 (Municipal Audit Law), EWEB may not construct a public improvement with EWEB's own equipment or personnel if the cost exceeds \$125,000.

(2) Limitation on Exceeding \$125,000 Estimated Cost. Before EWEB constructs a public improvement with its own equipment or personnel, if the estimated cost exceeds \$125,000, EWEB shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work must include a reasonable allowance for the cost, including investment cost, of any equipment used.

(3) Accounting for Public Improvements using EWEB Personnel. EWEB shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment

costs, of any equipment used. The final account of the costs is a public record.

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

Stats. Implemented: ORS 279C.305(3); 279C.310

5-0125

Limitation on Waiver of Damages

- (1) Any clause in a public improvement contract that purports to waive, release or extinguish the rights of a contractor to damages or an equitable adjustment arising out of unreasonable delay in performing the contract, if the delay is caused by acts or omissions of EWEB or persons acting therefore, is against public policy and is void and unenforceable.
- (2) Subsection (1) of this section is not intended to render void any contract provision that:
 - (a) Requires notice of any delay;
 - (b) Provides for arbitration or other procedures for settlement of contract disputes; or
 - (c) Provides for reasonable liquidated damages.

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

Stats. Implemented: ORS 279C.315

5-0130Competitive Bidding Requirement

All public improvement contracts entered into by EWEB and subject to the Public Contracting Code shall be based upon competitive bids, except for the following that are not subject to competitive bids:

- (1) Contracts made with qualified nonprofit agencies providing employment opportunities for disable individuals under ORS 279.835 to 279.855;
- (2) To the extent exempted or otherwise required or allowed by the Code or EWEB Rules, including but not limited to EWEB Rules, Division 6;
- (3) As otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions,
- (4) A public improvement contract with a value of less than \$5,000; (see also EWEB Rule 6-0290 Class Exemption of All Construction Contracts Under \$20,000
- (5) Contracts not to exceed \$100,000, made under competitive quotes pursuant to Oregon Laws 2003, chapter 794, sections 132 and 133;
- (6) As exempted by 279A.030 on federal law overrides or by 279A.100 on affirmative action; or
- (7) Pursuant to Rules 5-0600 to 5-0690, including contracts subject to OAR 137-049-0690, which authorize the use of Alternative Contracting Methods under certain circumstances.
- (8) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS279A.065.
- (9) Emergency Contracts as provided for in EWEB Rule 5-0150 Emergency Contracts; Bidding and Bonding Exemptions
- (10) Public improvement contracts exempted from competitive bid requirements under subsection (1), (2), (4), (5), (6), and (9) of this rule are not subject to Class Exemption requirements.

Stat. Auth.: ORS 279A.065; 279A.070
Stats. Implemented: ORS 279C.335

5-0140 Contracts for Construction Other than Public Improvements

- (1) Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, may be procured as general trade services under the provisions of ORS Chapter 279B. Contracts for emergency work are regulated under ORS 279B.080. EWEB shall determine whether such Public Contracts are Public Works Contracts subject to the provisions of ORS 279C.800 to 279C.870 and if they are Public Works Contracts, EWEB shall comply with those provisions. EWEB may also impose requirements EWEB considers to be in the public interest, including bonding and insurance requirements typically imposed on Public Improvement Contracts.
- (2) For an emergency procurement of construction services that are not public improvements, the contracting agency shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the contracting agency shall set a solicitation time period that the contracting agency determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

Stat. Auth.: ORS 279A.065; 279A.070
Stats. Implemented: ORS 279C.320

5-0150 Emergency Contracts; Bidding and Bonding Exemptions

- (1) Emergency Declaration. Pursuant to ORS 279C.335(5) and this Rule 5-0150, EWEB may declare that Emergency circumstances exist that require prompt execution of a contract otherwise subject to EWEB Rules, Division 5, including Rules for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with both of the following procedures:
 - (a) With the General Manager's and/or the affected Division Director's concurrence, EWEB's Purchasing Supervisor may approve award of a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279C.335(5). When an Emergency Procurement is authorized, the procurement shall be made with competition that is practical under the circumstances. Such circumstances may, but are not limited to, EWEB moving forward as quickly as possible to prevent interruption to vital services, restoration of vital services, prevention of loss to EWEB, protection of the quality of services, or other circumstances necessary to responsibly carry out EWEB's services to its customers; and
 - (b) EWEB shall prepare a written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f) and Division 1, and the anticipated harm from failure to enter into an Emergency contract. The Emergency declaration shall thereafter be kept on file in the Purchasing office.
- (2) Contract Award. Any Contract Awarded under this rule must be awarded within 60 Days after declaration of the Emergency, unless an extension is granted by EWEB.
- (3) Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope

of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

- (4) Contract Modification. Emergency Contracts may be modified by Change Order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.
- (3) Excusing Bonds. Pursuant to ORS 279C.380(4) and this Rule 5-0150, EWEB, with the General Manager approval, may waive one or both of the requirements of furnishing a performance bond, payment bond and/or public works bond for the Emergency contract. After making such an Emergency declaration waiving the performance bond, payment bond, and/or public works bond, the bonding requirements are excused.
- (4) The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

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

Stats. Implemented: ORS 279C.335(5); 279C.380(4).

5-0160 Intermediate Procurements; Competitive Quotes and Amendments

- (1) General. EWEB may award Public Improvement Contracts, estimated by EWEB not to exceed \$100,000, in accordance with intermediate procurement procedures for competitive quotes established by this rule, except to the extent certain classes of contracts have been exempted by EWEB, pursuant to ORS 279C.335 and EWEB Rules, Divisions 4, 5 or 6. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this Rule 5-0160 or to circumvent competitive bidding requirements.
- (2) Selection Criteria. A written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.
- (3) Request for Quotes. EWEB shall utilize written requests for quotes whenever reasonably practicable for intermediate procurements. When requesting quotations orally, prior to requesting the price quote EWEB shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. Oral quotations may only be utilized when prevailing wage rates are not required to be included within the specifications. An oral quotation may be provided only when expressly authorized in writing by EWEB, in advance of the oral quote.
- (4) Number of Quotes; Record Required. EWEB shall seek at least three informally solicited

competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but EWEB shall make a written record of the effort made to obtain those quotes.

- (5) Award. If Awarded, EWEB shall award the Contract to the prospective Contractor whose quote will best serve the interests of EWEB, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If Award is not made to the prospective contractor offering the lowest price, EWEB shall make a written record of the basis for award.
- (6) Price Increases. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Change Order or Amendment within the following limitations:
 - (a) Up to an aggregate Contract Price increase of 25% over the original Contract amount as determined to be warranted for additional related work by the affected Division Director and the Purchasing Supervisor, or solely by the General Manager;
 - (b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when determined to be warranted by the General Manager, or when applicable, the Board for additional related work; or
 - (c) The Board, in its sole judgment and at its sole discretion, shall have authority to review and approve contract amendments for any dollar amount it believes to be in the best interest of EWEB and its customers for additional related work.
- (7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section 6(a), 6(b), and 6(c) are specifically authorized by ORS279A.065 and 279A.070, and Or Laws 2007, ch. 764, §32. Accordingly, such amendments are not considered new procurements and do not require competitive bidding.

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

Stats. Implemented: 279C.335(1)(d); ORS 279C.412.

5-0170 Inclusion of Green Energy Technology or Woody Biomass Energy Technology in Public Buildings

- (1) (a) Except as otherwise provided in this section, a public improvement contract for ~~the construction of~~ constructing a public building or ~~for the reconstruction of~~ reconstructing or performing a 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~~ first make a determination whether green energy technology is appropriate for the public building and if EWEB determined that green energy is appropriate, shall ensure that the public improvement contract provides an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology or Woody Biomass 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 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~~evaluating whether EWEB can construct green energy technology at a site away from the site of the public building in accordance with paragraph (b)(A) of this subsection, EWEB shall:

~~(A) Compare~~compare the costs of constructing green energy technology that employs ~~solar energy~~a particular fuel source or method of energy generation at the site of the public building only with the corresponding costs of green energy technology that employs ~~solar energy~~the same fuel source or method of energy generation 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) As an alternative to including appropriate green energy technology as part of the construction, reconstruction or major renovation of a public building, a contracting agency~~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.- EWEB shall~~has~~considered the potential costs of the Woody Biomass Energy Technology and the facility must comply with standards that the Department of Environmental Quality as defined in Subsection (6)(b).

(2) ~~Before entering into a public improvement contract described in subsection (1) of this section~~In making a determination as to whether green energy technology is appropriate, or whether woody biomass energy technology is a suitable alternative to green energy technology, in constructing, reconstructing or performing a major renovation of a public building, EWEB shall prepare a written determination of whether including green energy technology and/or Woody Biomass Energy Technology as part of the construction, reconstruction or major renovation of the public building is appropriate.- EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology and/or Woody Biomass Energy Technology as part of the construction, reconstruction or major renovation.

(3) (a) If EWEB determines that green energy technology and/or Woody Biomass Energy Technology is not appropriate for the public building, subsection (1) of this section does not apply to the public improvement contract, except that if EWEB determines that

woody biomass technology is a suitable alternative, then EWEB will make the determination in subsection (2) for the woody biomass technology. EWEB's determination under this paragraph must consider whether constructing green energy technology or woody biomass technology at the site of the public building is appropriate and whether constructing green energy technology or woody biomass technology away from the site of the public building and in accordance with subsections (1)(b), ~~and (c)~~ or (7d) of this section is appropriate.

(b) If subsections (1) ~~and (7)~~ 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 or Woody Biomass 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 or Woody Biomass Energy Technology as part of the future public building project.

~~B.C. (e) EWEB need not set aside the amount described in an account or otherwise reserve moneys for a future Public Building at the time the contracting agency makes the determination, but EWEB shall report the amount described in 5-0170, Section (3)(b)(A) and (B) to the State Department of Energy as provided in ORS 279C.528 (2)(a).~~

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

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

(B) Building design that uses solar energy passively to reduce energy use from other sources by at least 20 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.

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

(A) Uses water, groundwater or the ground as a heat source at temperatures less

than 140 degrees Fahrenheit; or

(B) 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) "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 a-s fuel material from trees and woody plants, such as limbs, tops, needles, leaves and other woody parts that:

(A) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and

(B) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities

(C) "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) (a) 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.

(b) For public improvements utilizing Woody Biomass Energy Technology public improvements, facilities must comply with standards that the Department of Environmental Quality has adopted as defined in ORS 279C.527, including:

— The facility is the facilities must be located in an area of the state that complies with standards that the Department of Environmental Quality has adopted allows for emission of particulate matter; or

b. if located in an area of the state that does not comply with the standards adopted by the Department of Environmental Quality for emissions of particulates, then EWEB must demonstrate to the Department of Environmental Quality that either,

i. The fuel used by the Woody Biomass Energy Technology is pelletizedMeets the conditions required for using pelletized materials; or

ii. The Woody Biomass Energy Technology produces particulate matter emissions at the same or lower level than a functionally equivalent system producing the same energy output functions with the same capabilities as those systems using pelletized matter.

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

FORMAL PROCUREMENT RULES

5-0200 Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Documents. Pursuant to ORS 279C.365 and this rule, the Solicitation Documents shall include the following:

- (a) Required General Information:
 - (A) The Public Improvement project, as well as identification of the character of the Work, and applicable plans, Specifications and other Contract documents;
 - (B) Notice of any pre-Offer conference as follows:
 - (i) The time, date and location of any pre-Offer conference;
 - (ii) Whether attendance at the conference will be mandatory or voluntary; and
 - (iii) That statements made by EWEB employees, representatives, and agents at the conference are not binding upon EWEB unless confirmed by Written Addendum, in the form required by EWEB.
 - (C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;
 - (D) The name and title of EWEB's authorized Person designated for receipt of Offers and contact Person (if different);
 - (E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 5-0300 regarding facsimile Bids or Proposals and Rule 5-0310 regarding electronic Procurement);
 - (F) The time, date and place of Opening;
 - (G) The time and date of Closing after which EWEB will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement, and may, in the sole discretion of EWEB, direct or permit the submission and receipt of bids by electronic means. The date of the last publication for publication of the advertisement on the EWEB Web site is the date of initial posting on the Web site. The date of initial posting on the website is not changed if the website is temporarily down and not available, but is later brought back on line, during the period between the initial posting and the date and time of closing. If EWEB is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, EWEB shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 5-0360. Timing issues relating to Addenda are governed by Rule 5-0250;
 - (H) The office where the Specifications for the Work may be reviewed;
 - (I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;
 - (J) If the Contract resulting from a Solicitation will be a Contract for a Public Work project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40

- U.S.C. 276a), or both the state and federal prevailing rates of wage, a statement that no Offer will be received or considered by EWEB unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838 or 279C.840 and/or 40 U.S.C. 3141, et seq. and Or Laws 2005, ch. 360, sec 7(1) or (2), whichever are applicable."
- (K) A statement that EWEB will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as required by Rule 5-0230;
 - (L) A statement whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
 - (M) A statement that the Contractor must provide certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) and Rule 5-0440(3);
 - (N) How EWEB will notify Offerors of Addenda and how EWEB will make Addenda available, pursuant to Rule 5-0250;
 - (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 5-0360;
 - (P) A statement setting forth the requirements of ORS 279C.525 for solicitation documents including (i) reference to specific federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources which must be complied with by the contractor in executing the public improvement contract, (ii) reference to known conditions at the construction site that may require the successful bidder to comply with the referenced federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources, and (iii) providing that the provisions in ORS 279C.525 will be applicable to the Contract;
 - (Q) A statement, at the option of EWEB, pursuant to ORS 279C.525(8), by which EWEB may allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the solicitation documents; and
 - (R) A statement pursuant to 279C.380(3) that the performance and payment bonds must be payable to EWEB or specified contracting agency or to the public agency or agencies for whose benefit the contract was awarded.
- (b) Required Evaluation Process Information:
- (A) A statement that EWEB may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon EWEB's finding that it is in EWEB's or the public's best interest to do so;
 - (B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - (C) Evaluation criteria, including the relative value applicable to each criterion, that EWEB will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 5-0620), along with the process EWEB will use to determine acceptability of the

Work. Additional evaluation criteria which may apply are as follows:

- (i) If the Solicitation Document is an Invitation to Bid, EWEB shall set forth any known special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information EWEB has available concerning future use;
 - (ii) If the Solicitation Document is a Request for Proposals, EWEB shall refer to the additional requirements of Rule 5-0650; and
- (c) Contract Provisions. EWEB shall include in the Contract all Contract terms and conditions, including, but not limited to, warranties, insurance and bonding requirements, that it considers appropriate for the Public Improvement project, and as required by law. EWEB shall also include in the Contract all of the following Contract provisions:
- (A) A condition, pursuant to ORS 279.505(1), that the contractor shall:
 - (i) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract;
 - (ii) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;
 - (iii) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished;
 - (iv) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;
 - (B) A condition requiring that the contractor must demonstrate that an employee drug testing program is in place (ORS 279C.505(2)). EWEB's requirements include the following:

EWEB Drug Testing Requirements

A Contract award for a Public Improvement shall not be final until the prospective Contractor certifies to EWEB that it has a drug-testing program in place for their employees that includes, at a minimum, the following:

- (a) A written employee drug-testing policy,
- (b) Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
- (c) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
 - (1) A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this rule, an employee is a "Subject Employee" only if that employee will be working on the Public Improvement project job site.

- (2) The Contractor shall represent and warrant to EWEB in the Public Improvement Contract that the Qualifying Employee Drug-testing Program is in place at the time of Contract execution and will continue in full force and effect for the duration of the Contract. Further, EWEB's performance obligation (which includes without limitation, EWEB's obligation to make payment) is contingent on Contractor's compliance with this representation and warranty.
- (d) The Public Improvement Contract shall contain Contractor's covenant that it will require each subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - (2) Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract;
- (C) If the Contract calls for demolition, a condition requiring the Contractor to salvage or recycle construction and demolition debris, if feasible and cost-effective, pursuant to ORS 279C.510(1);
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective, pursuant to ORS 279C.510(2);
- (E) A clause or condition, pursuant to ORS 279C.515(1), requiring that if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public contract as the claim becomes due, the proper officer that represents EWEB may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract;
- (F) A clause or condition, pursuant to ORS 279C.515(2), requiring that if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from EWEB or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580, and requiring that the interest shall be calculated as provided in ORS 279C.515(2) and may not be waived.
- (G) A clause or condition, pursuant to ORS 279C.515(3), requiring that if the contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580;
- (H) A condition, pursuant to ORS 279C.520(1) requiring that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely

requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:

- (i) (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (b) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - (ii) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;
- (I) In the case of contracts for personal services as described in ORS 279A.055, a provision pursuant to ORS 279C.520(3) requiring that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
 - (J) A provision pursuant to ORS 279C.520(5)(a) requiring that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;
 - (K) A provision pursuant to ORS 279C.525 referencing specific federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources which must be complied with by the contractor in executing the public improvement contract, and providing that the provisions in ORS 279C.525 are applicable to the Contract;
 - (L) A condition, pursuant to ORS 279C.530(1), requiring that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services;
 - (M) A clause or condition pursuant to ORS 279C.530(2), substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements";
 - (N) For public works contracts, a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 USC 276a) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, pursuant to ORS 279C.830(1), and generally 279C.800 to 279C.870;

- (O) If EWEB is required under section (N) to include the state and federal prevailing rates of wage in the contract, EWEB shall also include information showing which rate of wage is higher for workers in each trade or occupation in each locality as determined by the Bureau of Labor and Industries under ORS 279C.830(1) and 279C.815(2)(b);
- (P) For public works contracts, a provision that the workers performing work on the public works contract shall be paid not less than the specified prevailing minimum hourly rate of wage, and that every subcontract must include a provision that workers performing work on the public works subcontract shall be paid not less than the specified prevailing minimum hourly rate of wage, pursuant to ORS 279C.830(1), and Or Laws 2005, ch.360, section 7;
- (Q) A provision requiring that the contractor pay the required fee to Bureau of Labor and Industries (BOLI), and that the fee be paid to the commissioner of BOLI under the commissioner's administrative rule, pursuant to ORS 279C.825(1) and 279C.830(2);
- (R) A provision requiring the contract (a) to have a public works bond filed with the Construction Contractors Board before starting work on the project, and (b) to include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, as required by ORS 279C.830(2)(a), unless exempt under ORS 279C.836;
- (S) A provision requiring retainage, pursuant to ORS 279C.550 to 279C.570;
- (T) A clause pursuant to ORS 279C.580(3) requiring the contractor to include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for purpose of performing a construction contract:
 - (i) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts EWEB pays to the contractor under the public improvement contract.
 - (ii) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.
 - (iii) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:
 - (1) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and
 - (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
 - (iv) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from EWEB, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the

contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from EWEB or contractor when payment was due. The interest penalty:

- (1) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
 - (2) Is computed at the rate specified in ORS 279C.515(2).
- (U) A clause pursuant to ORS 279C.580(4) obligating the contractor in each of the contractor's subcontracts, to require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (R) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
- (V) A provision requiring notice of claim, pursuant to ORS 279C.605;
- (W) A provision requiring the contractor's certification of compliance with the Oregon tax laws; and
- (X) A provision requiring the contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.
- (Y) A provision requiring the contractor to comply with all state and federal laws and regulations, including the Public Contracting Code, and requiring the contractor to comply with the EWEB Public Contracting Rules, including, but not limited to, requiring that the contractor comply with (i) the payment of claims requirements of ORS 279C.515, (ii) the hours of labor requirements of 279C.520, (iv) federal, state and local statutes, ordinances, rules and regulations pertaining to environmental pollution and natural resources preservation, and the environmental pollution and natural resources preservation requirements of ORS 279C.525, (v) the maximum hours, holidays and overtime laws and regulations of ORS 279C.540, (vi) the time limitation claim requirements of ORS 279C.545, (vii) the prevailing wage rate requirements of ORS 279C.800 to 279C.870, (viii) the prompt payment policy, progress payments and rate of interest requirements of ORS 279C.570, (ix) the requirements of ORS 279C.580 pertaining to the contractor's relations with subcontractors, and (x) the payment bond requirements of ORS 279C.600 to 279C.610
- (2) Assignment or Transfer. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without EWEB's prior Written consent. Unless otherwise agreed by EWEB in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If EWEB consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to EWEB for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless EWEB otherwise agrees in Writing.

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

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 279C.800 to 870, ORS 305.385, ORS 468A.720, ORS 701.005, ORS 701.055

5-0210 Notice and Advertising Requirements; Posting

- (1) Notice; Distribution Fee. EWEB shall furnish “**Notice**” as set forth below in subsections (a) through (c). The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. EWEB may charge a fee or require a deposit for the Solicitation Document. EWEB may furnish Notice using any method it has, in its sole judgment, determined to foster and promote competition, including, but not limited to:
 - (a) Mailing, faxing, emailing or mailing a postcard Notice of the availability of Solicitation Documents to Persons that have expressed an interest in EWEB's Procurements. However, EWEB shall not be liable for any human, mechanical, or electronic failure or error that may cause the Notice to fail to reach the intended recipient;
 - (b) Posting Notice on the EWEB's Electronic Procurement System; or
 - (c) Posting Notice on the EWEB's Internet Web site.

EWEB's notice responsibility extends only to the posting, and it is the responsibility of interested persons to check the electronic site periodically for posted solicitation and other related information.

- (2) Advertising. Pursuant to ORS 279C.360 and this Rule 5-0210, EWEB shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless EWEB has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335, or unless another exemption, such as intermediate procurement, is applicable.
 - (a) Unless EWEB publishes by Electronic Advertisement as permitted under subsection 2(b), EWEB shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in any additional issues and publications selected by EWEB.
 - (b) EWEB may publish by Electronic Advertisement if:
 - (A) ~~EWEB published a notice that it may publish advertisements for Offers by Electronic Advertisement. EWEB shall publish such notice weekly, for no less than four consecutive weeks, in at least one newspaper of general circulation in the area where the business office of EWEB is located and in as many additional issues and publications as EWEB may determine to be necessary or desirable to provide notice to potential Offerors, prior to the establishment of the electronic site or prior to use of the electronic site for Electronic Advertisement, if the site is already established.~~

~~— EWEB notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where it will publish future Electronic Advertisements or alternatively, the Web location where EWEB will publish information on accessing the Electronic Advertisement via a Telnet application;~~
 - (B) ~~EWEB posts in its business office a notice that EWEB will publish~~

~~advertisements for Offers by Electronic Advertisement. The notice shall include the World Wide Web location (i.e., Uniform Resource Locator or URL) where EWEB publishes Electronic Advertisements or alternatively, the Web location where it publishes information on accessing the Electronic Advertisement via a Telnet application; and The Electronic Advertisement is published on a website that is accessible to the public and the location of the advertisement is either the purchasing page on the EWEB website or the information to access the solicitation is available on the purchasing page on the EWEB website; and~~

- (CB) EWEB determines Electronic Advertisement is likely to be cost effective.
- (c) In addition to the EWEB's publication required under subsection 2(a) or 2(b), EWEB shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
- (d) All advertisements for Offers shall set forth:
- (A) The Public Improvement project, which may include a general description of the project;
 - (B) The office where Contract terms, conditions and Specifications may be reviewed;
 - (C) If prequalification is a requirement, the date that Persons must file applications for prequalification under ORS 279C.430, and the class or classes of Work for which Persons must be prequalified;
 - (D) The scheduled Closing, which shall not be less than five Days after the date of the last required newspaper publication, if the advertisement is published as required in 2(a) or 2(c) of this section, and which shall not be less than five Days after the date of the first posting to the EWEB electronic or internet Web site, if the advertisement is published as required in 2(b) of this section;
 - (E) The name, title and address of EWEB Person authorized to receive Offers;
 - (F) The date, time and place of the scheduled Opening; and
 - (G) If applicable, that the Contract is for Public Works subject to ORS 279C.800 to 279C.870 and/or the Davis-Bacon Act (40 U.S.C. 3141, et seq.).
- (3) Posting Advertisement for Offers. EWEB may post a copy of each advertisement for Offers at EWEB's Purchasing office. An Offeror may obtain a copy of the advertisement for Offers upon request, for which EWEB may charge a reasonable fee.

Stat. Auth.: ORS 279A.065; 279A.070; 279C.360
Stats. Implemented: ORS 279C.360

5-0220 Prequalification of Offerors

- (1) Prequalification. Pursuant to ORS 279C.430 and this rule, two types of prequalification are authorized:
- (a) Mandatory Prequalification. EWEB will indicate in the Solicitation Documents if it will require mandatory prequalification. Mandatory prequalification occurs when EWEB conditions a Person's submission of an Offer upon the Person's prequalification. EWEB shall not consider an Offer from a Person that is not prequalified if EWEB required prequalification, unless the Person is known by EWEB, in EWEB's sole judgment, to be qualified for the work. Nevertheless, EWEB shall not be required to consider prequalification of any Offeror after the date and time required for submission of prequalification information, regardless of past working experience or

Exhibit F

 Public Contracting Rules	Adopted: 1/4/2005 Revised : 2/3/2015 Revised : 8/18/2017 Revised: 12/5/17 Approved: _____
CONSTRUCTION CONTRACTS	

**Division 5
Construction Contracts**

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RULES

5-0100 Application

- (1) EWEB Rules, Division 5, apply to Public Improvement Contracts as well as Public Contracts for ordinary construction services that are not Public Improvements (specifically Rule 5-0140 Contracts for Construction Other Than Public Improvements).
- (2) EWEB Rules, Division 5, address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, and Land Surveying or Related Services, all of which are addressed in EWEB Rules, Division 4).

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

Stats. Implemented: ORS 279A.070; ORS chapter 279C.300, et seq

5-0105 Policies

The following statutory policies apply to these EWEB Rules, Division 5:

- (1) It is the policy of the State of Oregon, in enacting the Public Contracting Code, that a sound and responsive public contracting system should:
 - (a) Simplify, clarify and modernize procurement practices so that they reflect the market place and industry standards.
 - (b) Instill public confidence through ethical and fair dealing, honesty and good faith on the part of government officials and those who do business with the government.
 - (c) Promote efficient use of state and local government resources, maximizing the economic investment in public contracting within this state.
 - (d) Clearly identify rules and policies that implement each of the legislatively mandated socioeconomic programs that overlay public contracting and accompany the expenditure of public funds.
 - (e) Allow impartial and open competition, protecting both the integrity of the public contracting process and the competitive nature of public procurement. In public procurement, as set out in ORS chapter 279B, meaningful competition may be obtained by evaluation of performance factors and other aspects of service and product quality, as well as pricing, in arriving at best value.
 - (f) Provide a public contracting structure that can take full advantage of evolving procurement methods as they emerge within various industries, while preserving competitive bidding as the standard for public improvement contracts unless otherwise exempted.
- (2) It is the policy of the State of Oregon that public improvement contracts awarded under this chapter must be based on competitive bidding, except as otherwise specifically provided in ORS 279C.335 for exceptions and formal exemptions from competitive bidding requirements.
- (3) It is the policy of the State of Oregon that contracting agencies shall make every effort to

construct public improvements at the least cost to the contracting agency.

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

Stats. Implemented: ORS 279A.015, ORS 279C.300 & ORS 279C.305(1)

5-0110 Definitions

Definitions applicable to EWEB Rules, Division 5 are set forth at EWEB Rules, Division 1. For purposes of CM/GC alternative contracting, see additional defined terms adopted by OAR 137-049-0610.

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

Stats. Implemented: ORS 279C.300 et seq

5-0115 Budget Submittal to Oregon Bureau of Labor and Industries

- (1) Not less than 30 days prior to adoption of EWEB's budget for the subsequent budget period, EWEB shall prepare and file with the Commissioner of the Bureau of Labor and Industries a list of every public improvement subject to the Public Contracting Code and known to EWEB that EWEB plans to fund in the budget period, identifying each improvement by name and estimating the total on-site construction costs. The list shall also contain a statement as to whether EWEB intends to perform the construction through a private contractor. The list is a public record and may be revised periodically by EWEB.
- (2) If EWEB intends to perform construction work on a public improvement using EWEB's own equipment and personnel, and the value of the construction work to be performed with EWEB's equipment and personnel is estimated to cost more than \$200,000 (\$125,000 for resurfacing highways, roads or streets at a depth of two or more inches), EWEB shall:
 - (a) File with the Commissioner of the Bureau of Labor and Industries 180 days before construction begins on the public improvement an analysis that shows that EWEB's decision conforms to least cost policy set forth in Rule 5-0105(3). The analysis required under 5-0115 (2) shall include:
 - i. An estimate of the cost of contracting with a private contractor to construct the public improvement, including all necessary and related costs, that the private contractor would incur to construct the public improvement.
 - ii. An estimate EWEB would incur in constructing the public improvement with the contracting agency's own equipment or personnel including:
 - A. The cost of labor, including all benefits the contracting agency pays to or on behalf of employees of EWEB that will work on the public improvement, workers' compensation insurance premiums, and the cost of traveling to and from the site of the public improvements;
 - B. The cost of equipment, including costs associated with leasing, renting or acquiring and owning the equipment, costs for transporting the equipment to and from the site of the public improvement, costs for depreciation and costs for insuring, operating, storing, repairing, and maintaining the equipment;
 - C. The costs of administration and overhead including insurance, shop and office costs that are allocable to the public improvement
 - D. The cost of tools and materials

- E. The costs associated with any contracts into which the contracting agency must enter
 - F. The commercially reasonable value of quality control testing if EWEB would require quality control testing for the work that a private contractor performed on the public improvement; and
 - G. Any other necessary and related costs that EWEB will incur to construct the public improvement with EWEB's own equipment, or personnel
- iii. Comparison of the costs which EWEB estimates under subsection (i) with the costs EWEB estimates under subsection (ii).

- (3) Before EWEB constructs a public improvement with its own equipment or personnel, EWEB will prepare plans, specifications and estimates of the unit cost of each classification of construction work that are sufficient to control the performance of the construction work and ensure satisfactory construction quality if the estimated cost of the public improvement exceeds \$200,000; and prepare and preserve a full, true and accurate account of the actual costs of performing the work, including all categories of costs described in item (2).
- (4) Subparts 1-3 do not apply to EWEB when the public improvement is to be used for the distribution or transmission of electric power.
- (5) Subparts 1-3 do not apply when EWEB did not receive a responsive bid or proposal for constructing the public improvement from a responsible bidder or proposer after soliciting bids or proposals for constructing the public improvement if the solicitation was offered within one year of the date for which construction began and allowed a commercially reasonable time to perform the construction.

Stat. Auth.: ORS 279A.065; ORS 279A.070
Stats. Implemented: ORS 279C.305(2) & (4).

5-0120 Limitation on EWEB Public Improvements with EWEB Personnel

- (1) **Cost Accounting Limitation.** If EWEB fails to adopt and apply a cost accounting system that substantially complies with the model cost accounting guidelines developed by the Oregon Department of Administrative Services pursuant to section 3, chapter 869, Oregon Laws 1979, as determined by an accountant qualified to perform audits required by ORS 297.210 and 297.405 to 297.555 (Municipal Audit Law), EWEB may not construct a public improvement with EWEB's own equipment or personnel if the cost exceeds \$125,000.
- (2) **Limitation on Exceeding \$125,000 Estimated Cost.** Before EWEB constructs a public improvement with its own equipment or personnel, if the estimated cost exceeds \$125,000, EWEB shall prepare adequate plans and specifications and the estimated unit cost of each classification of work. The estimated cost of the work must include a reasonable allowance for the cost, including investment cost, of any equipment used.
- (3) **Accounting for Public Improvements using EWEB Personnel.** EWEB shall cause to be kept and preserved a full, true and accurate account of the costs of performing the work, including all engineering and administrative expenses and the cost, including investment costs, of any equipment used. The final account of the costs is a public record.

Stat. Auth.: ORS 279A.065; ORS 279A.070
Stats. Implemented: ORS 279C.305(3); 279C.310

5-0125

Limitation on Waiver of Damages

- (1) Any clause in a public improvement contract that purports to waive, release or extinguish the rights of a contractor to damages or an equitable adjustment arising out of unreasonable delay in performing the contract, if the delay is caused by acts or omissions of EWEB or persons acting therefore, is against public policy and is void and unenforceable.
- (2) Subsection (1) of this section is not intended to render void any contract provision that:
 - (a) Requires notice of any delay;
 - (b) Provides for arbitration or other procedures for settlement of contract disputes; or
 - (c) Provides for reasonable liquidated damages.

Stat. Auth.: ORS 279A.065; ORS 279A.070
Stats. Implemented: ORS 279C.315

5-0130Competitive Bidding Requirement

All public improvement contracts entered into by EWEB and subject to the Public Contracting Code shall be based upon competitive bids, except for the following that are not subject to competitive bids:

- (1) Contracts made with qualified nonprofit agencies providing employment opportunities for disable individuals under ORS 279.835 to 279.855;
- (2) To the extent exempted or otherwise required or allowed by the Code or EWEB Rules, including but not limited to EWEB Rules, Division 6;
- (3) As otherwise allowed or required pursuant to ORS 279C.335 on Competitive Bidding exceptions and exemptions,
- (4) A public improvement contract with a value of less than \$5,000; (see also EWEB Rule 6-0290 Class Exemption of All Construction Contracts Under \$20,000
- (5) Contracts not to exceed \$100,000, made under competitive quotes pursuant to Oregon Laws 2003, chapter 794, sections 132 and 133;
- (6) As exempted by 279A.030 on federal law overrides or by 279A.100 on affirmative action; or
- (7) Pursuant to Rules 5-0600 to 5-0690, including contracts subject to OAR 137-049-0690, which authorize the use of Alternative Contracting Methods under certain circumstances.
- (8) Energy savings performance contracts entered into in accordance with rules of procedure adopted under ORS279A.065.
- (9) Emergency Contracts as provided for in EWEB Rule 5-0150 Emergency Contracts; Bidding and Bonding Exemptions
- (10) Public improvement contracts exempted from competitive bid requirements under subsection (1), (2), (4), (5), (6), and (9) of this rule are not subject to Class Exemption requirements.

Stat. Auth.: ORS 279A.065; 279A.070
Stats. Implemented: ORS 279C.335

5-0140 Contracts for Construction Other than Public Improvements

- (1) Pursuant to ORS 279C.320, Public Contracts for construction services that are not Public Improvement Contracts, may be procured as general trade services under the provisions of ORS Chapter 279B. Contracts for emergency work are regulated under ORS 279B.080. EWEB shall determine whether such Public Contracts are Public Works Contracts subject to the provisions of ORS 279C.800 to 279C.870 and if they are Public Works Contracts, EWEB shall comply with those provisions. EWEB may also impose requirements EWEB considers to be in the public interest, including bonding and insurance requirements typically imposed on Public Improvement Contracts.
- (2) For an emergency procurement of construction services that are not public improvements, the contracting agency shall ensure competition for a contract for the emergency work that is reasonable and appropriate under the emergency circumstances. In conducting the procurement, the contracting agency shall set a solicitation time period that the contracting agency determines to be reasonable under the emergency circumstances and may issue written or oral requests for offers or make direct appointments without competition in cases of extreme necessity.

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

Stats. Implemented: ORS 279C.320

5-0150 Emergency Contracts; Bidding and Bonding Exemptions

- (1) Emergency Declaration. Pursuant to ORS 279C.335(5) and this Rule 5-0150, EWEB may declare that Emergency circumstances exist that require prompt execution of a contract otherwise subject to EWEB Rules, Division 5, including Rules for Emergency construction or repair Work. The declaration shall be made at an administrative level consistent with both of the following procedures:
 - (a) With the General Manager's and/or the affected Division Director's concurrence, EWEB's Purchasing Supervisor may approve award of a Public Contract as an Emergency Procurement pursuant to the requirements of ORS 279C.335(5). When an Emergency Procurement is authorized, the procurement shall be made with competition that is practical under the circumstances. Such circumstances may, but are not limited to, EWEB moving forward as quickly as possible to prevent interruption to vital services, restoration of vital services, prevention of loss to EWEB, protection of the quality of services, or other circumstances necessary to responsibly carry out EWEB's services to its customers; and
 - (b) EWEB shall prepare a written declaration that describes the circumstances creating the Emergency as that term is defined at ORS 279A.010(1)(f) and Division 1, and the anticipated harm from failure to enter into an Emergency contract. The Emergency declaration shall thereafter be kept on file in the Purchasing office.
- (2) Contract Award. Any Contract Awarded under this rule must be awarded within 60 Days after declaration of the Emergency, unless an extension is granted by EWEB.
- (3) Contract Scope. Although no dollar limitation applies to Emergency Contracts, the scope of the Contract must be limited to Work that is necessary and appropriate to remedy the conditions creating the Emergency as described in the declaration.

- (4) Contract Modification. Emergency Contracts may be modified by Change Order or Amendment to address the conditions described in the original declaration or an amended declaration that further describes additional work necessary and appropriate for related Emergency circumstances.
- (3) Excusing Bonds. Pursuant to ORS 279C.380(4) and this Rule 5-0150, EWEB, with the General Manager approval, may waive one or both of the requirements of furnishing a performance bond, payment bond and/or public works bond for the Emergency contract. After making such an Emergency declaration waiving the performance bond, payment bond, and/or public works bond, the bonding requirements are excused.
- (4) The purpose of an exemption is to exempt one or more public improvement contracts from competitive bidding requirements. The representations in and the accuracy of the findings, including any general description of the resulting public improvement contract, are the bases for approving the findings and granting the exception. The findings may describe anticipated features of the resulting public improvement contract, but the final parameters of the contract are those characteristics or specifics announced in the solicitation document.

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

Stats. Implemented: ORS 279C.335(5); 279C.380(4).

5-0160 Intermediate Procurements; Competitive Quotes and Amendments

- (1) General. EWEB may award Public Improvement Contracts, estimated by EWEB not to exceed \$100,000, in accordance with intermediate procurement procedures for competitive quotes established by this rule, except to the extent certain classes of contracts have been exempted by EWEB, pursuant to ORS 279C.335 and EWEB Rules, Divisions 4, 5 or 6. A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this Rule 5-0160 or to circumvent competitive bidding requirements.
- (2) Selection Criteria. A written request for quotes shall include the selection criteria to be utilized in selecting a Contractor and, if the criteria are not of equal value, their relative value or ranking. The criteria may be limited to price or some combination of price, experience, specific expertise, availability, project understanding, contractor capacity, responsibility and similar factors.
- (3) Request for Quotes. EWEB shall utilize written requests for quotes whenever reasonably practicable for intermediate procurements. When requesting quotations orally, prior to requesting the price quote EWEB shall state any additional selection criteria and, if the criteria are not of equal value, their relative value. Oral quotations may only be utilized when prevailing wage rates are not required to be included within the specifications. An oral quotation may be provided only when expressly authorized in writing by EWEB, in advance of the oral quote.
- (4) Number of Quotes; Record Required. EWEB shall seek at least three informally solicited competitive quotes, and keep a written record of the sources and amounts of the quotes received. If three quotes are not reasonably available, fewer will suffice, but EWEB shall

make a written record of the effort made to obtain those quotes.

- (5) Award. If Awarded, EWEB shall award the Contract to the prospective Contractor whose quote will best serve the interests of EWEB, taking into account price as well as any other applicable factors such as, but not limited to, experience, specific expertise, availability, project understanding, contractor capacity and responsibility. If Award is not made to the prospective contractor offering the lowest price, EWEB shall make a written record of the basis for award.
- (6) Price Increases. Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of Award by Change Order or Amendment within the following limitations:
 - (a) Up to an aggregate Contract Price increase of 25% over the original Contract amount as determined to be warranted for additional related work by the affected Division Director and the Purchasing Supervisor, or solely by the General Manager;
 - (b) Up to an aggregate Contract Price increase of 50% over the original Contract amount, when determined to be warranted by the General Manager, or when applicable, the Board for additional related work; or
 - (c) The Board, in its sole judgment and at its sole discretion, shall have authority to review and approve contract amendments for any dollar amount it believes to be in the best interest of EWEB and its customers for additional related work.
- (7) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the thresholds stated in section 6(a), 6(b), and 6(c) are specifically authorized by ORS279A.065 and 279A.070, and Or Laws 2007, ch. 764, §32. Accordingly, such amendments are not considered new procurements and do not require competitive bidding.

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

Stats. Implemented: 279C.335(1)(d); ORS 279C.412.

5-0170 Inclusion of Green Energy Technology or Woody Biomass Energy Technology in Public Buildings

- (1) (a) Except as otherwise provided in this section, a public improvement contract for constructing a public building or reconstructing or performing a 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 first make a determination whether green energy technology is appropriate for the public building and if EWEB determined that green energy is appropriate, shall ensure that the public improvement contract provides an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology or Woody Biomass 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 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 evaluating whether EWEB can construct green energy technology at a site away from the site of the public building in accordance with paragraph (b)(A) of this subsection, EWEB shall: compare the costs of constructing green energy technology that employs a particular fuel source or method of energy generation at the site of the public building only with the corresponding costs of green energy technology that employs the same fuel source or method of energy generation at a location away from the site of the public building.

(d) As an alternative to including appropriate green energy technology as part of the construction, reconstruction or major renovation of a public building, 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, EWEB has considered the potential costs of the Woody Biomass Energy Technology and the facility complies with Subsection (6)(b).

(2) In making a determination as to whether green energy technology is appropriate, or whether woody biomass energy technology is a suitable alternative to green energy technology, in constructing, reconstructing or performing a major renovation of a public building, EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology and/or Woody Biomass Energy Technology as part of the construction, reconstruction or major renovation.

(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, except that if EWEB determines that woody biomass technology is a suitable alternative, then EWEB will make the determination in subsection (2) for the woody biomass technology. EWEB's determination under this paragraph must consider whether constructing green energy technology or woody biomass technology at the site of the public building is appropriate and whether constructing green energy technology or woody biomass technology away from the site of the public building and in accordance with subsections (1)(b), (c) or (d) 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 or Woody Biomass 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 or Woody Biomass Energy Technology as part of the future public building project.
 - C. EWEB need not set aside the amount described in an account or otherwise reserve moneys for a future Public Building at the time the contracting agency makes the determination, but EWEB shall report the amount described in 5-0170 (3)(b)(A) and (B) to the State Department of Energy as provided in ORS 279C.528 (2)(a).
- (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) “Green energy technology” means a system that employs:
 - (A) Solar or geothermal energy directly for space or water heating or to generate electricity; or
 - (B) Building design that uses solar energy passively to reduce energy use from other sources by at least 20 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.
- (c) “Green energy technology” does not include a system that:
 - (A) Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or
 - (B) 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) “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:
 - (A) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and
 - (B) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities
 - (C) “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) (a) 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.
- (b) For public improvements utilizing Woody Biomass Energy Technology, :
- b. the facilities must be located in an area of the state that complies with standards that the Department of Environmental Quality has adopted for emission of particulate matter; or if located in an area of the state that does not comply with the standards adopted by the Department of Environmental Quality for emissions of particulates, then EWEB must demonstrate to the Department of Environmental Quality that either,
 - i. The fuel used by the Woody Biomass Energy Technology is pelletized; or
 - ii. The Woody Biomass Energy Technology produces particulate matter emissions at the same or lower level than a functionally equivalent system producing the same energy output using pelletized matter.

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

FORMAL PROCUREMENT RULES

5-0200 Solicitation Documents; Required Provisions; Assignment or Transfer

(1) Solicitation Documents. Pursuant to ORS 279C.365 and this rule, the Solicitation Documents shall include the following:

- (a) Required General Information:
 - (A) The Public Improvement project, as well as identification of the character of the Work, and applicable plans, Specifications and other Contract documents;
 - (B) Notice of any pre-Offer conference as follows:
 - (i) The time, date and location of any pre-Offer conference;
 - (ii) Whether attendance at the conference will be mandatory or voluntary; and
 - (iii) That statements made by EWEB employees, representatives, and agents at the conference are not binding upon EWEB unless confirmed by Written Addendum, in the form required by EWEB.

- (C) The deadline for submitting mandatory prequalification applications and the class or classes of Work for which Offerors must be prequalified if prequalification is a requirement;
- (D) The name and title of EWEB's authorized Person designated for receipt of Offers and contact Person (if different);
- (E) Instructions and information concerning the form and submission of Offers, including the address of the office to which Offers must be delivered, any Bid or Proposal security requirements, and any other required information or special information, e.g., whether Offers may be submitted by facsimile or electronic means (See Rule 5-0300 regarding facsimile Bids or Proposals and Rule 5-0310 regarding electronic Procurement);
- (F) The time, date and place of Opening;
- (G) The time and date of Closing after which EWEB will not accept Offers, which time shall be not less than five Days after the date of the last publication of the advertisement, and may, in the sole discretion of EWEB, direct or permit the submission and receipt of bids by electronic means. The date of the last publication for publication of the advertisement on the EWEB Web site is the date of initial posting on the Web site. The date of initial posting on the website is not changed if the website is temporarily down and not available, but is later brought back on line, during the period between the initial posting and the date and time of closing. If EWEB is issuing an ITB that may result in a Public Improvement Contract with a value in excess of \$100,000, EWEB shall designate a time of Closing consistent with the first-tier subcontractor disclosure requirements of ORS 279C.370(1)(b) and Rule 5-0360. Timing issues relating to Addenda are governed by Rule 5-0250;
- (H) The office where the Specifications for the Work may be reviewed;
- (I) A statement that each Bidder to an ITB must identify whether the Bidder is a "resident Bidder," as defined in ORS 279A.120;
- (J) If the Contract resulting from a Solicitation will be a Contract for a Public Work project subject to the state prevailing rates of wage under ORS 279C.800 to 279C.870, the federal prevailing rates of wage under the Davis-Bacon Act (40 U.S.C. 276a), or both the state and federal prevailing rates of wage, a statement that no Offer will be received or considered by EWEB unless the Offer contains a statement by the Offeror as a part of its Offer that "Contractor agrees to be bound by and will comply with the provisions of ORS 279C.838 or 279C.840 and/or 40 U.S.C. 3141, et seq. and Or Laws 2005, ch. 360, sec 7(1) or (2), whichever are applicable."
- (K) A statement that EWEB will not receive or consider an Offer for a Public Improvement Contract unless the Offeror is registered with the Construction Contractors Board, or is licensed by the State Landscape Contractors Board, as required by Rule 5-0230;
- (L) A statement whether a Contractor or a subcontractor under the Contract must be licensed under ORS 468A.720 regarding asbestos abatement projects;
- (M) A statement that the Contractor must provide certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4) and Rule 5-0440(3);
- (N) How EWEB will notify Offerors of Addenda and how EWEB will make Addenda available, pursuant to Rule 5-0250;
- (O) When applicable, instructions and forms regarding First-Tier Subcontractor Disclosure requirements, as set forth in Rule 5-0360;
- (P) A statement setting forth the requirements of ORS 279C.525 for solicitation

documents including (i) reference to specific federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources which must be complied with by the contractor in executing the public improvement contract, (ii) reference to known conditions at the construction site that may require the successful bidder to comply with the referenced federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources, and (iii) providing that the provisions in ORS 279C.525 will be applicable to the Contract;

- (Q) A statement, at the option of EWEB, pursuant to ORS 279C.525(8), by which EWEB may allocate all or a portion of the known environmental and natural resource risks to a contractor by listing such environmental and natural resource risks with specificity in the solicitation documents; and
 - (R) A statement pursuant to 279C.380(3) that the performance and payment bonds must be payable to EWEB or specified contracting agency or to the public agency or agencies for whose benefit the contract was awarded.
- (b) Required Evaluation Process Information:
- (A) A statement that EWEB may reject any Offer not in compliance with all prescribed Public Contracting procedures and requirements, and may reject for good cause all Offers upon EWEB's finding that it is in EWEB's or the public's best interest to do so;
 - (B) The anticipated Solicitation schedule, deadlines, protest process, and evaluation process, if any;
 - (C) Evaluation criteria, including the relative value applicable to each criterion, that EWEB will use to determine the Responsible Bidder with the lowest Responsive Bid (where Award is based solely on price) or the Responsible Proposer or Proposers with the best Responsive Proposal or Proposals (where use of Competitive Proposals is authorized under ORS 279C.335 and Rule 5-0620), along with the process EWEB will use to determine acceptability of the Work. Additional evaluation criteria which may apply are as follows:
 - (i) If the Solicitation Document is an Invitation to Bid, EWEB shall set forth any known special price evaluation factors in the Solicitation Document. Examples of such factors include, but are not limited to, conversion costs, transportation cost, volume weighing, trade-in allowances, cash discounts, depreciation allowances, cartage penalties, ownership or life-cycle cost formulas. Price evaluation factors need not be precise predictors of actual future costs; but, to the extent possible, such evaluation factors shall be objective, reasonable estimates based upon information EWEB has available concerning future use;
 - (ii) If the Solicitation Document is a Request for Proposals, EWEB shall refer to the additional requirements of Rule 5-0650; and
- (c) Contract Provisions. EWEB shall include in the Contract all Contract terms and conditions, including, but not limited to, warranties, insurance and bonding requirements, that it considers appropriate for the Public Improvement project, and as required by law. EWEB shall also include in the Contract all of the following Contract provisions:
- (A) A condition, pursuant to ORS 279.505(1), that the contractor shall:
 - (i) Make payment promptly, as due, to all persons supplying to the

- contractor labor or material for the performance of the work provided for in the contract;
 - (ii) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract;
 - (iii) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation, or subdivision thereof, on account of any labor or material furnished;
 - (iv) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167;
- (B) A condition requiring that the contractor must demonstrate that an employee drug testing program is in place (ORS 279C.505(2)). EWEB's requirements include the following:

EWEB Drug Testing Requirements

A Contract award for a Public Improvement shall not be final until the prospective Contractor certifies to EWEB that it has a drug-testing program in place for their employees that includes, at a minimum, the following:

- (a) A written employee drug-testing policy,
 - (b) Required drug testing for all new Subject Employees or alternatively, required testing of all Subject Employees every 12 months on a random selection basis, and
 - (c) Required testing of a Subject Employee when the Contractor has reasonable cause to believe the Subject Employee is under the influence of drugs.
 - (1) A drug-testing program that meets the above requirements will be deemed a "Qualifying Employee Drug-testing Program." For the purposes of this rule, an employee is a "Subject Employee" only if that employee will be working on the Public Improvement project job site.
 - (2) The Contractor shall represent and warrant to EWEB in the Public Improvement Contract that the Qualifying Employee Drug-testing Program is in place at the time of Contract execution and will continue in full force and effect for the duration of the Contract. Further, EWEB's performance obligation (which includes without limitation, EWEB's obligation to make payment) is contingent on Contractor's compliance with this representation and warranty.
 - (d) The Public Improvement Contract shall contain Contractor's covenant that it will require each subcontractor providing labor for the project to:
 - (1) Demonstrate to the Contractor that it has a Qualifying Employee Drug-testing Program for the subcontractor's Subject Employees, and represent and warrant to the Contractor that the Qualifying Employee Drug-testing Program is in place at the time of subcontract execution and will continue in full force and effect for the duration of the subcontract; or
 - (2) Require that the subcontractor's Subject Employees participate in the Contractor's Qualifying Employee Drug-testing Program for the duration of the subcontract;
- (C) If the Contract calls for demolition, a condition requiring the Contractor to

- salvage or recycle construction and demolition debris, if feasible and cost-effective, pursuant to ORS 279C.510(1);
- (D) If the Contract calls for lawn or landscape maintenance, a condition requiring the Contractor to compost or mulch yard waste material at an approved site, if feasible and cost effective, pursuant to ORS 279C.510(2);
 - (E) A clause or condition, pursuant to ORS 279C.515(1), requiring that if the contractor fails, neglects or refuses to pay promptly a person's claim for labor or services that the person provides to the contractor or a subcontractor in connection with the public contract as the claim becomes due, the proper officer that represents EWEB may pay the amount of the claim to the person that provides the labor or services and charge the amount of the payment against funds due or to become due the contractor by reason of the contract;
 - (F) A clause or condition, pursuant to ORS 279C.515(2), requiring that if the contractor or a first-tier subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract within 30 days after receiving payment from EWEB or a contractor, the contractor or first-tier subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580, and requiring that the interest shall be calculated as provided in ORS 279C.515(2) and may not be waived.
 - (G) A clause or condition, pursuant to ORS 279C.515(3), requiring that if the contractor or a subcontractor fails, neglects or refuses to pay a person that provides labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580;
 - (H) A condition, pursuant to ORS 279C.520(1) requiring that a person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:
 - (i) (a) For all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or
 - (b) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - (ii) For all work performed on Saturday and on any legal holiday specified in ORS 279C.540;
 - (I) In the case of contracts for personal services as described in ORS 279A.055, a provision pursuant to ORS 279C.520(3) requiring that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime;
 - (J) A provision pursuant to ORS 279C.520(5)(a) requiring that persons employed under the contracts shall receive at least time and a half pay for work performed on the legal holidays specified in a collective bargaining agreement

or in ORS 279C.540(1)(b)(B) to (G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater;

- (K) A provision pursuant to ORS 279C.525 referencing specific federal, state and local statutes, ordinances, rules or regulations relating to the prevention of environmental pollution and the preservation of natural resources which must be complied with by the contractor in executing the public improvement contract, and providing that the provisions in ORS 279C.525 are applicable to the Contract;
- (L) A condition, pursuant to ORS 279C.530(1), requiring that the contractor shall promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services;
- (M) A clause or condition pursuant to ORS 279C.530(2), substantially as follows: "All employers, including Contractor, that employ subject Workers who Work under this Contract in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Contractor shall ensure that each of its subcontractors complies with these requirements";
- (N) For public works contracts, a provision stating the existing state prevailing rate of wage and, if applicable, the federal prevailing rate of wage required under the Davis-Bacon Act (40 USC 276a) that may be paid to workers in each trade or occupation required for the public works employed in the performance of the contract either by the contractor or subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, pursuant to ORS 279C.830(1), and generally 279C.800 to 279C.870;
- (O) If EWEB is required under section (N) to include the state and federal prevailing rates of wage in the contract, EWEB shall also include information showing which rate of wage is higher for workers in each trade or occupation in each locality as determined by the Bureau of Labor and Industries under ORS 279C.830(1) and 279C.815(2)(b);
- (P) For public works contracts, a provision that the workers performing work on the public works contract shall be paid not less than the specified prevailing minimum hourly rate of wage, and that every subcontract must include a provision that workers performing work on the public works subcontract shall be paid not less than the specified prevailing minimum hourly rate of wage, pursuant to ORS 279C.830(1), and Or Laws 2005, ch.360, section 7;
- (Q) A provision requiring that the contractor pay the required fee to Bureau of Labor and Industries (BOLI), and that the fee be paid to the commissioner of BOLI under the commissioner's administrative rule, pursuant to ORS 279C.825(1) and 279C.830(2);
- (R) A provision requiring the contract (a) to have a public works bond filed with the Construction Contractors Board before starting work on the project, and (b) to include in every subcontract a provision requiring the subcontractor to have a public works bond filed with the Construction Contractors Board before starting work on the project, as required by ORS 279C.830(2)(a), unless exempt under ORS 279C.836;

- (S) A provision requiring retainage, pursuant to ORS 279C.550 to 279C.570;
- (T) A clause pursuant to ORS 279C.580(3) requiring the contractor to include in each subcontract for property or services the contractor enters into with a first-tier subcontractor, including a material supplier, for purpose of performing a construction contract:
 - (i) A payment clause that obligates the contractor to pay the first-tier subcontractor for satisfactory performance under the subcontract within 10 days out of amounts EWEB pays to the contractor under the public improvement contract.
 - (ii) A clause that requires the contractor to provide a first-tier subcontractor with a standard form that the first-tier subcontractor may use as an application for payment or as another method by which the subcontractor may claim a payment due from the contractor.
 - (iii) A clause that requires the contractor, except as otherwise provided in this paragraph, to use the same form and regular administrative procedures for processing payments during the entire term of the subcontract. A contractor may change the form or the regular administrative procedures the contractor uses for processing payments if the contractor:
 - (1) Notifies the subcontractor in writing at least 45 days before the date on which the contractor makes the change; and
 - (2) Includes with the written notice a copy of the new or changed form or a description of the new or changed procedure.
 - (iv) An interest penalty clause that obligates the contractor, if the contractor does not pay the first-tier subcontractor within 30 days after receiving payment from EWEB, to pay the first-tier subcontractor an interest penalty on amounts due in each payment the contractor does not make in accordance with the payment clause included in the subcontract under paragraph (a) of this subsection. A contractor or first-tier subcontractor is not obligated to pay an interest penalty if the only reason that the contractor or first-tier subcontractor did not make payment when payment was due is that the contractor or first-tier subcontractor did not receive payment from EWEB or contractor when payment was due. The interest penalty:
 - (1) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
 - (2) Is computed at the rate specified in ORS 279C.515(2).
- (U) A clause pursuant to ORS 279C.580(4) obligating the contractor in each of the contractor's subcontracts, to require the first-tier subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of subsection (R) of this section in each of the first-tier subcontractor's subcontracts and to require each of the first-tier subcontractor's subcontractors to include such clauses in the first-tier subcontractors' subcontracts with each lower-tier subcontractor or supplier.
- (V) A provision requiring notice of claim, pursuant to ORS 279C.605;
- (W) A provision requiring the contractor's certification of compliance with the Oregon tax laws; and
- (X) A provision requiring the contractor's certification that all subcontractors performing Work described in ORS 701.005(2) (i.e., construction Work) will be registered with the Construction Contractors Board or licensed by the State

Landscape Contractors Board in accordance with ORS 701.035 to 701.055 before the subcontractors commence Work under the Contract.

- (Y) A provision requiring the contractor to comply with all state and federal laws and regulations, including the Public Contracting Code, and requiring the contractor to comply with the EWEB Public Contracting Rules, including, but not limited to, requiring that the contractor comply with (i) the payment of claims requirements of ORS 279C.515, (ii) the hours of labor requirements of 279C.520, (iv) federal, state and local statutes, ordinances, rules and regulations pertaining to environmental pollution and natural resources preservation, and the environmental pollution and natural resources preservation requirements of ORS 279C.525, (v) the maximum hours, holidays and overtime laws and regulations of ORS 279C.540, (vi) the time limitation claim requirements of ORS 279C.545, (vii) the prevailing wage rate requirements of ORS 279C.800 to 279C.870, (viii) the prompt payment policy, progress payments and rate of interest requirements of ORS 279C.570, (ix) the requirements of ORS 279C.580 pertaining to the contractor's relations with subcontractors, and (x) the payment bond requirements of ORS 279C.600 to 279C.610

- (2) Assignment or Transfer. Unless otherwise provided in the Contract, the Contractor shall not assign, sell, dispose of, or transfer rights, nor delegate duties under the Contract, either in whole or in part, without EWEB's prior Written consent. Unless otherwise agreed by EWEB in Writing, such consent shall not relieve the Contractor of any obligations under the Contract. Any assignee or transferee shall be considered the agent of the Contractor and be bound to abide by all provisions of the Contract. If EWEB consents in Writing to an assignment, sale, disposal or transfer of the Contractor's rights or delegation of Contractor's duties, the Contractor and its surety, if any, shall remain liable to EWEB for complete performance of the Contract as if no such assignment, sale, disposal, transfer or delegation had occurred unless EWEB otherwise agrees in Writing.

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

Stats. Implemented: ORS 279A.110(4), ORS 279A.120, ORS 279C.365, ORS 279C.370, ORS 279C.390, ORS 279C.505 to 580, ORS 279C.605, ORS 279C.800 to 870, ORS 305.385, ORS 468A.720, ORS 701.005, ORS 701.055

5-0210 Notice and Advertising Requirements; Posting

- (1) Notice; Distribution Fee. EWEB shall furnish "**Notice**" as set forth below in subsections (a) through (c). The Notice shall indicate where, when, how and for how long the Solicitation Document may be obtained and generally describe the Public Improvement project or Work. The Notice may contain any other appropriate information. EWEB may charge a fee or require a deposit for the Solicitation Document. EWEB may furnish Notice using any method it has, in its sole judgment, determined to foster and promote competition, including, but not limited to:
- (a) Mailing, faxing, emailing or mailing a postcard Notice of the availability of Solicitation Documents to Persons that have expressed an interest in EWEB's Procurements. However, EWEB shall not be liable for any human, mechanical, or electronic failure or error that may cause the Notice to fail to reach the intended recipient;
 - (b) Posting Notice on the EWEB's Electronic Procurement System; or
 - (c) Posting Notice on the EWEB's Internet Web site.

EWEB's notice responsibility extends only to the posting, and it is the responsibility of interested persons to check the electronic site periodically for posted solicitation and other related information.

- (2) Advertising. Pursuant to ORS 279C.360 and this Rule 5-0210, EWEB shall advertise every Solicitation for competitive Bids or competitive Proposals for a Public Improvement Contract, unless EWEB has exempted the Solicitation from the advertisement requirement as part of a competitive Bidding exemption under ORS 279C.335, or unless another exemption, such as intermediate procurement, is applicable.
 - (a) Unless EWEB publishes by Electronic Advertisement as permitted under subsection 2(b), EWEB shall publish the advertisement for Offers at least once in at least one newspaper of general circulation in the area where the Contract is to be performed and in any additional issues and publications selected by EWEB.
 - (b) EWEB may publish by Electronic Advertisement if:
 - (A) The Electronic Advertisement is published on a website that is accessible to the public and the location of the advertisement is either the purchasing page on the EWEB website or the information to access the solicitation is available on the purchasing page on the EWEB website; and
 - (B) EWEB determines Electronic Advertisement is likely to be cost effective.
 - (c) In addition to the EWEB's publication required under subsection 2(a) or 2(b), EWEB shall also publish an advertisement for Offers in at least one trade newspaper of general statewide circulation if the Contract is for a Public Improvement with an estimated cost in excess of \$125,000.
 - (d) All advertisements for Offers shall set forth:
 - (A) The Public Improvement project, which may include a general description of the project;
 - (B) The office where Contract terms, conditions and Specifications may be reviewed;
 - (C) If prequalification is a requirement, the date that Persons must file applications for prequalification under ORS 279C.430, and the class or classes of Work for which Persons must be prequalified;
 - (D) The scheduled Closing, which shall not be less than five Days after the date of the last required newspaper publication, if the advertisement is published as required in 2(a) or 2(c) of this section, and which shall not be less than five Days after the date of the first posting to the EWEB electronic or internet Web site, if the advertisement is published as required in 2(b) of this section;
 - (E) The name, title and address of EWEB Person authorized to receive Offers;
 - (F) The date, time and place of the scheduled Opening; and
 - (G) If applicable, that the Contract is for Public Works subject to ORS 279C.800 to 279C.870 and/or the Davis-Bacon Act (40 U.S.C. 3141, et seq.).
- (3) Posting Advertisement for Offers. EWEB may post a copy of each advertisement for Offers at EWEB's Purchasing office. An Offeror may obtain a copy of the advertisement for Offers upon request, for which EWEB may charge a reasonable fee.

Stat. Auth.: ORS 279A.065; 279A.070; 279C.360
Stats. Implemented: ORS 279C.360

Exhibit G

 Public Contracting Rules	Adopted: 1/4/2005 Effective: 3/1/2005 Revised: 2/20/2012 Revised: 8/18/2017 <u>Revised: 12/5/17</u> Approved: _____
PARTICULAR CONTRACT AND CLASS SPECIAL PROCUREMENT EXCLUSIONS AND EXEMPTIONS	

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

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RULES

6-0100 Purpose and Statutory Authority

These EWEB Rules identify categories of public contracts and public contracting which are not subject to the Public Contracting Code, and therefore do not require competitive bidding. These Rules also establish public contract designations, special procurement designations and exemptions that may be used by Purchasing Department without the General Manager or EWEB's Contract Review Board making and approving additional findings, except where an exemption expressly requires such additional findings. Regarding special procurements or exempt contract classes, it is the general policy of EWEB to encourage use of alternative competitive processes, including informal quotes, when in the judgment of EWEB it is feasible and appears advantageous to EWEB in obtaining the best price and quality of goods, services or construction.

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

Stat. Implemented: ORS chapter 279A; 279A.025; 279A.055; 279A.065; 279B.085; 279C.335

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) (a) Contracts between EWEB and ~~a~~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) 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) 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).
- (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.

6-0120 Public Information Services

EWEB may purchase public or customer information services and materials, without competitive bidding or proposals. Where feasible, EWEB will obtain alternative quotes.

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

Stat. Implemented: ORS 279A.065, 279B.085

6-0130 Board Appointed Consultants and Retained Professionals

EWEB designates the following classes of contracts as personal services contracts which are not subject to competitive bidding and proposal requirements.

- (1) Board Appointed Consultants, including Attorneys, Auditors, Board appointed Engineering, Architectural, Photogrammetric Mapping, Transportation Planning or Land Surveying or Related Services subject to Division 4 of these EWEB Rules, and other Consultants who may be appointed through a direct appointment by the Board.
- (2) Non-Board Appointed Consultants providing Engineering, Architectural, Photogrammetric Mapping, Transportation Planning or Land Surveying or Related Services, to the extent provided for in Division 4 of these EWEB rules.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085, 279C.100-.125

6-0140 Event Planning

EWEB may purchase event facilities, food, lodging, and any and all associated event contracts without competitive bidding or proposals.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085

Stat. Implemented: ORS 279A.065, 279B.085

6-0150 Equipment Repair and Overhaul

EWEB may enter into a public contract for the repair or overhaul of equipment without competitive bidding, or proposals under one or more of the following conditions:

- (a) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing;
- (b) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source;
- (c) Delay of repairs would cause financial damage to EWEB due too loss of its ability to generate power; or
- (d) Delay of repairs would jeopardize the utility's ability to provide services to its customers;

EWEB Purchasing Supervisor may directly enter into such contract(s) after documenting in its procurement file the reasons why competitive bids were deemed to be impractical under the above criteria.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085, 279C.335

Stat. Implemented: ORS 279A.065, 279B.085, 279C.335

6-0160 Contracts for Price Regulated Items

EWEB may, without competitive bidding or proposals, contract for the direct purchase of goods, services, or work where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

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

Stat. Implemented: ORS 279A.025, 279A.030, 279A.065, 279B.085, 279C.335

6-0170 Copyrighted Materials & Subscriptions

EWEB may, without competitive bidding or proposals, purchase copyrighted materials if there is only one known supplier available for such goods, as documented by the Purchasing Supervisor. The maintenance, support, upgrades, and licensing fees for software products are included in this exemption when the software was initially purchased under this rule 6-0170, 3-0275 Sole Source rules, or when previously competitively solicited.

Examples of copyrighted materials covered by this exemption may include, but are not limited to, books, training materials, reference materials, audio and visual media, periodicals, publications, and non-mass-marketed software. Non-mass-marketed software includes any and all software products that, because of their unique approach, features, functionality, user friendly capabilities and operation, interface with other programs, connection capabilities, databases, available modules, and/or cost, makes them best fit the utility's need.

Stat. Auth: ORS 279A.070

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0180 Membership Dues & Fees

EWEB may, without competitive bidding and regardless of dollar amount, purchase and renew professional, trade, utility association, and related memberships.

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

Stat. Implemented: ORS 279A.065, 279B.085

6-0190 Procuring Goods or Services from Governmental Sources

Procurements from public agencies outside the boundaries of the state of Oregon, if of an amount normally requiring competitive bidding, shall be made only in circumstances where the same or similar product or service cannot be readily obtained at competitive prices from private businesses. In no case shall any such procurement or solicitation be made without the prior approval of EWEB's Purchasing department.

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

Stat. Implemented: ORS 279A.065

6-0200 Purchase of Used Personal Property

Subject to the provisions of this rule, EWEB may purchase used property or equipment without competitive bidding or proposals if the Purchasing Supervisor determines that the purchase will result in cost savings to EWEB and will not diminish competition or encourage favoritism.

"Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of EWEB's purchase.

Used personal property or equipment generally does not include property or equipment if EWEB was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

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

Stat. Implemented: ORS 279A.065, 279B.085, 279C.335

6-0210 Removal, Cleanup, and/or Disposal of Hazardous and/or Toxic Waste Materials

EWEB may enter into public contracts for the Removal, Cleanup, and/or Disposal of Hazardous and/or Toxic Waste Material without competitive bidding. EWEB designates such contracts as personal service contracts.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085

6-0220 Insurance

EWEB may purchase any and all insurance coverage without competitive bidding or proposals. EWEB will use alternative contracting procedures unlikely to encourage favoritism or diminish competition through retaining an insurance broker to research and recommend selection of required insurance coverage from specific providers whose offers best meet the needs of the utility. Insurance brokerage services are designated as personal services. Selection of insurance providers by the insurance broker will not be subject to public bidding or proposal processes and requirements.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0230 Water Filtration Chemicals and Media

EWEB may purchase, without competitive bidding or proposals Water Treatment Chemicals and Media for use in its Water Filtration Plant. EWEB will use alternative contracting processes that take into account market realities, innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition and avoiding favoritism.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085

Stat. Implemented: ORS 279A.065, 279B.085

6-0240 Purchases, Sales of Wholesale Power

In accordance with Board direction and established procedures and guidelines, EWEB may enter into contracts for the purchase or sale of wholesale power and related financial transactions without competitive bidding or proposals. Alternative procedures for informal competitive quotes will be used when feasible.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0250 Purchases of Natural Gas

EWEB may purchase or otherwise enter into contracts for the purchase of natural gas and related financial transactions without competitive bidding. EWEB will use alternative procurement procedures, including, where feasible, obtaining competitive quotes which will be documented.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0260 Contracts for Temporary Services (other than personal services)

EWEB designates contracts for Temporary Services described in Section 6-0270 as personal services contracts not subject to competitive bids or proposals. For other temporary services EWEB will use alternative contracting procedures that are unlikely to encourage favoritism or substantially diminish competition.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085

6-0270 Class Exemption of all Personal Services under \$150,000

All Personal Services contracts (as designated by EWEB) under \$150,000 shall not be subject to competitive bidding or proposal requirements. Pursuant to ORS 279A.055, the Board designates as personal services: all services that provide specialized skills, knowledge and resources in the application of technical, trade, or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, services of accountants, physicians, lawyers, dentists, information technology consultants, broadcasters, artists or other consultants.

This exemption does not apply to architectural, engineering, photogrammetric mapping, transportation planning and land surveying or related services provided under EWEB Division 4 Rules. Personal Services contracts \$150,000 or greater will be governed by ORS279B.

Stat. Auth: ORS 279A.065, 279A.070
Stat. Implemented: ORS 279A.055, 279A.065

6-0280 EWEB Owned Out-of-State Facilities Procurements and Construction

EWEB owned out-of-state facilities procurements, consultants, and construction shall not be subject to Oregon competitive bidding or proposals. EWEB shall comply with the law of the jurisdiction of the location of the facilities. The Purchasing Supervisor shall use alternative procurement procedures designed to preserve competition for all procurements over \$150,000, that would provide EWEB with substantial cost savings and avoid favoritism.

ORS Auth: ORS 279A.065; 279A.070
Stat. Implemented: ORS 279B.085; 279C.335

6-0290 Class Exemption of All Construction Contracts Under \$40,000

Procurement of construction work, including through contracts for public improvements, estimated by EWEB to have a cost under \$40,000, or with an actual cost under \$40,000, is exempted from competitive bidding and does not require competitive bids or proposals.

Stat. Auth: ORS 279A.065, 279A.070
Stat. Implemented: ORS 279C.335

Exhibit H

 Public Contracting Rules	Adopted: 1/4/2005 Effective: 3/1/2005 Revised: 2/20/2012 Revised: 8/18/2017 Revised: 12/5/17 Approved: _____
PARTICULAR CONTRACT AND CLASS SPECIAL PROCUREMENT EXCLUSIONS AND EXEMPTIONS	

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

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RULES

6-0100 Purpose and Statutory Authority

These EWEB Rules identify categories of public contracts and public contracting which are not subject to the Public Contracting Code, and therefore do not require competitive bidding. These Rules also establish public contract designations, special procurement designations and exemptions that may be used by Purchasing Department without the General Manager or EWEB's Contract Review Board making and approving additional findings, except where an exemption expressly requires such additional findings. Regarding special procurements or exempt contract classes, it is the general policy of EWEB to encourage use of alternative competitive processes, including informal quotes, when in the judgment of EWEB it is feasible and appears advantageous to EWEB in obtaining the best price and quality of goods, services or construction.

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

Stat. Implemented: ORS chapter 279A; 279A.025; 279A.055; 279A.065; 279B.085; 279C.335

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) (a) Contracts between EWEB 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) 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) 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).
- (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.

6-0120 Public Information Services

EWEB may purchase public or customer information services and materials, without competitive bidding or proposals. Where feasible, EWEB will obtain alternative quotes.

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

Stat. Implemented: ORS 279A.065, 279B.085

6-0130 Board Appointed Consultants and Retained Professionals

EWEB designates the following classes of contracts as personal services contracts which are not subject to competitive bidding and proposal requirements.

- (1) Board Appointed Consultants, including Attorneys, Auditors, Board appointed Engineering, Architectural, Photogrammetric Mapping, Transportation Planning or Land Surveying or Related Services subject to Division 4 of these EWEB Rules, and other Consultants who may be appointed through a direct appointment by the Board.
- (2) Non-Board Appointed Consultants providing Engineering, Architectural, Photogrammetric Mapping, Transportation Planning or Land Surveying or Related Services, to the extent provided for in Division 4 of these EWEB rules.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085, 279C.100-.125

6-0140 Event Planning

EWEB may purchase event facilities, food, lodging, and any and all associated event contracts without competitive bidding or proposals.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085

Stat. Implemented: ORS 279A.065, 279B.085

6-0150 Equipment Repair and Overhaul

EWEB may enter into a public contract for the repair or overhaul of equipment without competitive bidding, or proposals under one or more of the following conditions:

- (a) Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing;
- (b) Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source;
- (c) Delay of repairs would cause financial damage to EWEB due too loss of its ability to generate power; or
- (d) Delay of repairs would jeopardize the utility's ability to provide services to its customers;

EWEB Purchasing Supervisor may directly enter into such contract(s) after documenting in its procurement file the reasons why competitive bids were deemed to be impractical under the above criteria.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085, 279C.335

Stat. Implemented: ORS 279A.065, 279B.085, 279C.335

6-0160 Contracts for Price Regulated Items

EWEB may, without competitive bidding or proposals, contract for the direct purchase of goods, services, or work where the rate or price for the goods or services being purchased is established by federal, state, or local regulatory authority.

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

Stat. Implemented: ORS 279A.025, 279A.030, 279A.065, 279B.085, 279C.335

6-0170 Copyrighted Materials & Subscriptions

EWEB may, without competitive bidding or proposals, purchase copyrighted materials if there is only one known supplier available for such goods, as documented by the Purchasing Supervisor. The maintenance, support, upgrades, and licensing fees for software products are included in this exemption when the software was initially purchased under this rule 6-0170, 3-0275 Sole Source rules, or when previously competitively solicited. Examples of copyrighted materials covered by this exemption may include, but are not limited to, books, training materials, reference materials, audio and visual media, periodicals, publications, and non-mass-marketed software. Non-mass-marketed software includes any and all software products that, because of their unique approach, features, functionality, user friendly capabilities and operation, interface with other programs, connection capabilities, databases, available modules, and/or cost, makes them best fit the utility's need.

Stat. Auth: ORS 279A.070

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0180 Membership Dues & Fees

EWEB may, without competitive bidding and regardless of dollar amount, purchase and renew professional, trade, utility association, and related memberships.

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

Stat. Implemented: ORS 279A.065, 279B.085

6-0190 Procuring Goods or Services from Governmental Sources

Procurements from public agencies outside the boundaries of the state of Oregon, if of an amount normally requiring competitive bidding, shall be made only in circumstances where the same or similar product or service cannot be readily obtained at competitive prices from private businesses. In no case shall any such procurement or solicitation be made without the prior approval of EWEB's Purchasing department.

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

Stat. Implemented: ORS 279A.065

6-0200 Purchase of Used Personal Property

Subject to the provisions of this rule, EWEB may purchase used property or equipment without competitive bidding or proposals if the Purchasing Supervisor determines that the purchase will result in cost savings to EWEB and will not diminish competition or encourage favoritism.

"Used personal property or equipment" is property or equipment which has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as "used," at the time of EWEB's purchase.

Used personal property or equipment generally does not include property or equipment if EWEB was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

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

Stat. Implemented: ORS 279A.065, 279B.085, 279C.335

6-0210 Removal, Cleanup, and/or Disposal of Hazardous and/or Toxic Waste Materials

EWEB may enter into public contracts for the Removal, Cleanup, and/or Disposal of Hazardous and/or Toxic Waste Material without competitive bidding. EWEB designates such contracts as personal service contracts.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085

6-0220 Insurance

EWEB may purchase any and all insurance coverage without competitive bidding or proposals. EWEB will use alternative contracting procedures unlikely to encourage favoritism or diminish competition through retaining an insurance broker to research and recommend selection of required insurance coverage from specific providers whose offers best meet the needs of the utility. Insurance brokerage services are designated as personal services. Selection of insurance providers by the insurance broker will not be subject to public bidding or proposal processes and requirements.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0230 Water Filtration Chemicals and Media

EWEB may purchase, without competitive bidding or proposals Water Treatment Chemicals and Media for use in its Water Filtration Plant. EWEB will use alternative contracting processes that take into account market realities, innovative contracting and purchasing methods, which are also consistent with the public policy of encouraging competition and avoiding favoritism.

Stat. Auth: ORS 279A.065, 279A.070, 279B.085

Stat. Implemented: ORS 279A.065, 279B.085

6-0240 Purchases, Sales of Wholesale Power

In accordance with Board direction and established procedures and guidelines, EWEB may enter into contracts for the purchase or sale of wholesale power and related financial transactions without competitive bidding or proposals. Alternative procedures for informal competitive quotes will be used when feasible.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0250 Purchases of Natural Gas

EWEB may purchase or otherwise enter into contracts for the purchase of natural gas and related financial transactions without competitive bidding. EWEB will use alternative procurement procedures, including, where feasible, obtaining competitive quotes which will be documented.

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

Stat. Implemented: ORS 279A.025, 279A.065, 279B.085

6-0260 Contracts for Temporary Services (other than personal services)

EWEB designates contracts for Temporary Services described in Section 6-0270 as personal services contracts not subject to competitive bids or proposals. For other temporary services EWEB will use alternative contracting procedures that are unlikely to encourage favoritism or substantially diminish competition.

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

Stat. Implemented: ORS 279A.055, 279A.065, 279B.085

6-0270 Class Exemption of all Personal Services under \$150,000

All Personal Services contracts (as designated by EWEB) under \$150,000 shall not be subject to competitive bidding or proposal requirements. Pursuant to ORS 279A.055, the Board designates as personal services: all services that provide specialized skills, knowledge and resources in the application of technical, trade, or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, services of accountants, physicians, lawyers, dentists, information technology consultants, broadcasters, artists or other consultants.

This exemption does not apply to architectural, engineering, photogrammetric mapping, transportation planning and land surveying or related services provided under EWEB Division 4 Rules. Personal Services contracts \$150,000 or greater will be governed by ORS279B.

Stat. Auth: ORS 279A.065, 279A.070
Stat. Implemented: ORS 279A.055, 279A.065

6-0280 EWEB Owned Out-of-State Facilities Procurements and Construction

EWEB owned out-of-state facilities procurements, consultants, and construction shall not be subject to Oregon competitive bidding or proposals. EWEB shall comply with the law of the jurisdiction of the location of the facilities. The Purchasing Supervisor shall use alternative procurement procedures designed to preserve competition for all procurements over \$150,000, that would provide EWEB with substantial cost savings and avoid favoritism.

ORS Auth: ORS 279A.065; 279A.070
Stat. Implemented: ORS 279B.085; 279C.335

6-0290 Class Exemption of All Construction Contracts Under \$40,000

Procurement of construction work, including through contracts for public improvements, estimated by EWEB to have a cost under \$40,000, or with an actual cost under \$40,000, is exempted from competitive bidding and does not require competitive bids or proposals.

Stat. Auth: ORS 279A.065, 279A.070
Stat. Implemented: ORS 279C.335

Exhibit I

**RESOLUTION NO. 1732
DECEMBER 2017**

**RESOLUTION APPROVING REVISIONS TO
EWEB PUBLIC CONTRACTING RULES AS REQUIRED UNDER
BOARD POLICY SD7 – PURCHASING POLICIES**

WHEREAS, the Eugene Water & Electric Board (EWEB) is a state of Oregon local government; and maintains a Board Policy Manual that contains governing policies for the Board of Commissioners; and

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

WHEREAS, Board Policy SD 7: Purchasing Policies requires the Board of Commissioners to periodically review Purchasing policies and determine that modifications or amendments are required to adequately document the work or intention of the Board with regard to governance, Board-staff linkage, strategic direction or executive limitations; and

WHEREAS, the Board of Commissioners has reviewed the provisions of the proposed revised EWEB Public Contracting Rules, Divisions 1, 2, 5, and 6 at the December 5, 2017 Board meeting; and

BE IT RESOLVED that the EWEB's Board of Commissioners hereby adopts the proposed revisions to the EWEB Public Contracting Rules, Divisions 1, 2, 5, and 6.

DATED, this 5th day of December 2017.

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

President

I, ANNE M KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the resolution adopted by the Board at its December 5, 2017 Regular Board Meeting.

Assistant Secretary



TO: Commissioners Helgeson, Brown, Mital, Simpson and Carlson
FROM: Frank Lawson, General Manager
DATE: November 19, 2017
SUBJECT: Board Governing Style, Board Policy GP1
OBJECTIVE: Action

Issue

According to Board Policy GP1, the Board will monitor and discuss the Board’s process and performance during the last quarter of the year. Self-monitoring will include comparison of Board activity and discipline to policies in the Governance Process and Board-GM Linkage categories.

Discussion

At the November Board Meeting, Commissioners directed staff to develop a questionnaire to facilitate the Board’s self-assessment of its performance. The survey is intended to acknowledge the Board’s most significant accomplishments of the past year; evaluate the Board’s effectiveness; assess Commissioner’s working relationships with each other and with Management and identify priorities to be addressed in the coming year.

Commissioners will receive a report of the survey responses and time will be scheduled for the Board to discuss their perspectives. To afford greater flexibility in planning board assessment discussions, Commissioners may wish to consider an amendment to Board Policy GP1 which provides for an annual assessment at a non-specific time of year (rather than stipulating the last quarter of the year).

Recommended Board Action

Management suggests Board action to approve Resolution No. 1737 amending board policy GP1 as stated in the following attachment.

Policy Number: GP1
Policy Type: Governance Process
Policy Title: Governing Style
Effective Date: Proposed December 5, 2017 ~~December 15, 2009~~

The Board will govern with an emphasis on (1) outward vision, (2) encouragement of diversity in viewpoints, (3) strategic leadership, (4) clear distinction of Board and General Manager Roles, (5) collective decisions, (6) future, and (7) proactively measures.

Specifically,

1. The Board will cultivate a sense of group responsibility. The Board will be responsible for excellence in governing. The Board will be an initiator of policy. The Board will use the expertise of individual members to enhance the ability of the Board as a body. The Board will allow no officer, Commissioner, or committee of the Board to hinder or be an excuse for not fulfilling Board commitments.
2. The Board will direct, evaluate and inspire the organization through the careful establishment of written policies reflecting the Board's values and perspectives about desired results. The Board's major policy focus will be on the intended long-term effects inside and outside the organization.
3. The Board will establish and adhere to the standards needed to govern with excellence. Standards will apply to matters such as attendance, preparation, policy-making principles, respect of roles, and ensuring continuance of governance capacity. Continual Board development will include orientation of new Commissioners in the Board's governance process and periodic Board discussion of process improvement.
4. The Board will monitor and discuss the Board's process and performance annually ~~during the last quarter of the year~~. Self-monitoring will include comparison of Board activity and discipline to policies in the Governance Process and Board-GM Linkage categories.

Source: Patrick Lanning, Board, Approved 05/16/2006. Revised 12/15/2009 (Resolution 0930).

**RESOLUTION NO. 1737
DECEMBER 2017**

**EUGENE WATER & ELECTRIC BOARD
RESOLUTION APPROVING REVISIONS TO BOARD POLICY GP1**

WHEREAS, the Eugene Water & Electric Board (EWEB) maintains a Board Policy Manual that contains governing policies for the Board of Commissioners; and

WHEREAS, the Board of Commissioners periodically reviews said policies and identifies required modifications or amendments to those policies; and

WHEREAS, the Board of Commissioners periodically determines that new policy is required to adequately document the work or intention of the Board with regard to governance, Board-staff linkage, strategic direction or executive limitations; and

WHEREAS, the Board of Commissioners has reviewed a modification to Board Policy GP1 - Governing Style, and has determined that the modification is appropriate and necessary.

NOW, THEREFORE, BE IT RESOLVED the Eugene Water & Electric Board hereby approves the revision to Board Policy GP1 – Governing Style.

DATED this 5th day of December 2017.

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

President

I, ANNE M. KAH the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its December 5, 2017 Regular Board Meeting.

Assistant Secretary