



Public Contracting Rules

PARTICULAR CONTRACT AND CLASS SPECIAL PROCUREMENT EXCLUSIONS AND EXEMPTIONS

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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) Contracts between EWEB
 - (A) and another contracting agency;
 - (B) The Oregon Health and Science University;
 - (C) The Oregon State Bar;
 - (D) A governmental body of another state;
 - (E) The federal government;
 - (F) An American Indian tribe or an agency of an American Indian tribe;
 - (G) A nation, or a governmental body in a nation, other than the United States; or
 - (H) An intergovernmental entity formed between or among;
 - (i) Governmental bodies of this or another state;
 - (ii) The federal government;
 - (iii) An American Indian tribe or an agency of an American Indian tribe;
 - (iv) A nation other than the United States; or
 - (v) A governmental body in a nation other than the United States.
 - (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
 - (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
 - (d) Grants;
 - (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
 - (f) Acquisitions or disposals of real property or interest in real property;
 - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (see EWEB Rule 3-0275);
 - (h) Contracts for the procurement or distribution of textbooks;

- (i) Procurements from an Oregon Corrections Enterprises program;
 - (j) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
 - (k) Note: EWEB is required to follow AG Rules as they may relate to Energy Savings performance Contracts
 - (l) Contracts, agreements or other documents entered into, issued or established in connection with:
 - (A) The incurring of debt by EWEB, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
 - (B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
 - (C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;
 - (m) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
 - (n) Any other public contracting of a public body specifically exempted from the code by another provision of law.
- (2) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. It is the policy of EWEB to identify contractual opportunities and to assist and encourage departments of EWEB to enter contractual relationships with qualified nonprofit agencies for provision of products and services, where feasible.
- (a) (A) If a public agency or a qualified nonprofit agency for individuals with disabilities terminates or declines to renew a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated or nonrenewed contract.
 - (B) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated or nonrenewed contract.

- (C) A successor service provider that provides the same services under a new contract as provided under the terminated or nonrenewed contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.
- (b) When more than one qualified nonprofit agency for individuals with disabilities provide the solicited products or services, EWEB may give a preference to the qualified nonprofit agency for individuals with disabilities that best demonstrate that they comply with local ordinances and resolutions governing labor standards and provide the best wages and aggregate benefits per ORS 279.850 (1).
 - (c) Contracts negotiated with a qualified non-profit agency shall provide compensation in accordance with ORS 653.010 to 653.261. After June 30, 2023, an employer who is authorized to employ individuals with disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in accordance with rules under ORS 653.030 or of the Department of Human Services may not employ or agree to employ individuals with disabilities at a rate lower than the hourly rate required under ORS 653.025.
- (3) EWEB may participate in, sponsor, conduct or administer a cooperative procurement pursuant to ORS 279A.200, et seq. for the procurement of any good, services, or public improvements (See Rule 2-0210).
- (4) Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:
- (a) EWEB determines that competitive sealed bidding, competitive sealed proposals or other competition is not appropriate; and
 - (b) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.
- (5) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, EWEB may sell, transfer or dispose of personal property in the discretion of the Purchasing Supervisor, without complying with the competitive procurement requirements.

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

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

6-0120 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