



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Simpson, Brown, Helgeson, Manning and Mital
FROM: Cathy Bloom, Finance Manager; Gail Murray, Purchasing/Risk Manager
DATE: April 24, 2013
SUBJECT: Local Preference Procurement Options
OBJECTIVE: Information Only

Issue

During the regular board meeting on April 2, 2013 there was discussion regarding what local preferences are allowable under EWEB's current public contracting laws and rules.

Background

EWEB's procurement processes are governed by laws (ORS 279A, 279B and 279C) and EWEB Rules. These processes aid us in procuring the highest quality, best value products and services that meet the needs of the utility. In some cases, this includes local vendors.

Discussion

While we do not currently have a local (Eugene/Springfield) preference law, there are some options to spend procurement dollars within the state and/or within the local community. These procurements may be based on the criteria outlined below: (Note: the first four options are currently being utilized).

1. Purchases under \$5,000:

These purchases are deemed small procurements in Oregon law and EWEB's rules. They are exempt from the bidding process. Staff is able to directly negotiate purchases that fall into this category to leverage our dollars in the local community. This is an area that we can make a difference in our community and spend our dollars locally, if possible. The cumulative effect of these \$5,000 purchases can add up to considerable support for local businesses. In 2012, we spent \$1.6 million with local businesses.

2. ORS 279A.120 – Oregon Reciprocal Preference Law

Oregon law provides an Oregon preference over an out-of-state bidder when bids are substantially equal. Additionally, because other states offer specific preferences to their in-state bidders, Oregon's reciprocal preference law (ORS 279A.120) requires public contracting agencies, in determining the lowest responsible bidder, to add a percent increase to each out-of-state bidder's bid price which is equal to the percent of preference given to local bidders in the bidder's home state. That is, if the low bidder is from a state that grants a 10 percent preference to its own in-state bidders, we must add 10 percent to that bidder's price when evaluating the bid. (See attachment A)

Because of this practice, Oregon does not give preferences for local companies, because reciprocal preferences would be given to an Oregon local city's bidders (say, the City of Portland). When Eugene bidders (who do not bid on EWEB projects) bid on Portland public solicitations, they would realize an equal penalty as that given in Eugene.

3. Sustainable Procurement Policy – use of TBL in RFP evaluations

Local presence may be used as part of the evaluation criteria in an RFP process. EWEB recently approved a sustainable procurement policy which incorporates methods and abilities to use sustainable practices in our solicitations and TBL analysis in decision making during RFP evaluations. Part of the TBL process includes use of local businesses. (See attachment B)

4. Local Vendor Outreach – Purchasing staff have participated in reverse vendor trade shows (RVTS) sponsored by the UO and others. The RVTS is an event that allows suppliers, consultants, contractors, etc. the opportunity to meet with procurement professionals from numerous public agencies at one time. The public agencies set up information booths or tables and suppliers roam the trade show floor to meet with individuals from each of the entities. This is an opportunity that the vendor community seems to appreciate. It is a time that they can meet with utility staff and engage in discussions about how to do business with a public agency, what projects may be coming up and have a chance to meet face to face with individual buyers. This is an annual event, usually in early spring, which we hope to continue to participate in.

5. ORS 279A.128 - Buy Oregon Goods and Services:

This law was implemented last year. It enables Oregon public agencies to pay up to 10 percent more for goods fabricated or processed or services performed entirely within the state, with the exception of specified public improvements and construction contracts. (See attachment A)

This law also enables the contracting agency to set a higher percentage than 10%. This would take a board action, finding good cause to set the higher percentage and explaining the contracting agency's reasons and evidence for the finding. Due to budget constraints and increased cost, we have not yet implemented this in our procurement processes. However, it is an option to consider.

Recommendation

None

Requested Board Action

None – Information only

ORS 279A.128 Preference for goods fabricated or processed within state or services performed within state. (1) As used in this section, “services” means services as defined in ORS 279A.010 (1)(kk) and personal services designated under ORS 279A.055.

(2)(a) Notwithstanding provisions of law requiring a contracting agency to award a contract to the lowest responsible bidder or best proposer or provider of a quotation, a contracting agency that uses public funds to procure goods or services for a public use under ORS chapter 279B may give preference to procuring goods that are fabricated or processed, or services that are performed, entirely within this state if the goods or services cost not more than 10 percent more than goods that are not fabricated or processed, or services that are not performed, entirely within this state. If more than one bidder or proposer qualifies for the preference described in this subsection, the contracting agency may give a further preference to a qualifying bidder or proposer that resides in or is headquartered in this state.

(b) The contracting agency by order may set a higher percentage than the percentage set forth in paragraph (a) of this subsection if the contracting agency, in a written determination to support the order, finds good cause to set the higher percentage and explains the contracting agency’s reasons and evidence for the finding.

(3) Notwithstanding ORS 279C.320 (1), subsection (2) of this section does not apply to emergency work, minor alterations, ordinary repairs or maintenance work for public improvements or to other construction contracts described in ORS 279C.320 (1). [2009 c.214 §2; 2011 c.237 §1]

279A.120 Preference for Oregon goods and services; nonresident bidders. (1) As used in this section:

(a) “Nonresident bidder” means a bidder who is not a resident bidder.

(b) “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 this paragraph.

(2) For the purposes of awarding a public contract, a contracting agency shall:

(a) Give preference to goods or services that have been manufactured or produced in this state if price, fitness, availability and quality are otherwise equal; and

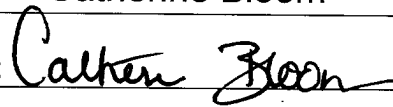
(b) Add a percent increase to the bid of a nonresident bidder equal to the percent, if any, of the preference given to the bidder in the state in which the bidder resides.

(3) When a public contract is awarded to a nonresident bidder and the contract price exceeds \$10,000, the bidder shall promptly report to the Department of Revenue on forms to be provided by the department the total contract price, terms of payment, length of contract and such other information as the department may require before the bidder may receive final payment on the public contract. The contracting agency shall satisfy itself that the requirement of this subsection has been complied with before the contracting agency issues a final payment on a public contract.

(4) The Oregon Department of Administrative Services on or before January 1 of each year shall publish a list of states that give preference to in-state bidders with the percent increase applied in each state. A contracting agency may rely on the names of states and percentages so published in determining the lowest responsible bidder without incurring any liability to any bidder. [2003 c.794 §16]



POLICY & PROCEDURE

	NUMBER SPP 2012.1	SUPERSEDES N/A
	EFFECTIVE November 20, 2012	PAGE NUMBER 1 of 4
	REFERENCE EWEB rule: 2-0160, 2-0170, 4-0210, 4-0220, 5-0200, ORS 279A (105, 120, 125, 145)	
SUBJECT Sustainable Purchasing Policy	APPROVAL SIGNATURE Catherine Bloom	
	Signature: 	

1.0 Introduction

EWEB has a long-standing commitment to stewardship, sustainability, and efficiency both in its internal practices and in community-wide initiatives. EWEB has established a Statement of Legacy, Environmental Policy, Climate Change Policy, Sustainability Policy, and Zero Waste Goal to guide this commitment. To provide more detailed guidelines and tools to continue these practices, EWEB has established a Sustainable Purchasing Policy which seeks to integrate sustainability considerations into the procurement process and decision making by reducing the environmental impacts of its operations and promoting fiscal responsibility and community equity.

Sustainable purchasing practices benefit customers, community members, EWEB employees, and the environment by considering the life-cycle and long term impacts of goods and services. An important benefit is the long-term savings often associated with sustainable purchasing. While at times the original purchase price of a more sustainable product may be higher, the overarching costs associated with its long term use and disposal as well as environmental and health considerations can ultimately mean dollars saved by EWEB.

2.0 Purpose

This Sustainable Procurement Policy is intended to:

- decrease risk and increase efficiency;
- identify the sustainability principles that shall be incorporated into procurement decisions;
- empower employees to be innovative and demonstrate leadership by incorporating sustainability principles into procurement decisions;
- implement EWEB sustainability goals and related policies;
- communicate EWEB's commitment to sustainable procurement; and
- comply with State and Federal regulations.

3.0 Sustainability Principles

The following principles shall serve as general guidance in the procurement of goods and services:

- (a) Avoid goods containing toxic, persistent and bio-accumulative compounds.
- (b) Minimize use of raw materials. Seek goods that are recyclable and/or made with recycled content.
- (c) Seek goods and services that are produced locally because they generally have less environmental impact than goods and services produced elsewhere as a result of the reduced amount of energy required for transport.
- (d) Minimize reliance on goods that have negative impacts on local, regional, and global habitats through pollution, over-harvesting, or overuse.
- (e) Use all resources, including but not limited to energy, water and materials with increasing efficiency over time.
- (f) Minimize life-cycle costs and impacts, wherever it is reasonably feasible to determine life-cycle information.

- (g) Reduce greenhouse gas emissions in general, and in particular, to meet EWEB, local, state, and federal goals and regulations.
- (h) Select goods and services that do not negatively compromise the health of community members.
- (i) Leverage existing efforts where environmental and sustainability related policies have already been completed by using cooperative contracts. Whenever reasonably possible and practicable, all procurements by EWEB should build upon and assist in the implementation of these initiatives.

4.0 Developing Specifications and Evaluation Criteria

4.1 EWEB staff will incorporate the sustainability principles in Section 3.0 and the Triple Bottom Line (TBL) analysis framework when writing specifications or when evaluating proposals. EWEB's TBL analysis framework has been developed to use for all contracts and decisions to be reviewed by the EWEB board. The TBL framework is posted on EWEB's Sustainability Intranet Site at:
<http://intranet.ewebnetwork.net/Sustainability/TBL.htm>

Some TBL factors to consider when developing specification include:

Environmental factors to be considered but not limited to, the lifecycle assessment of:

- Pollutant releases to land, air or water
- Toxicity, especially the use of persistent, bioaccumulative, and toxic (PBT) chemicals
- Waste reduction including reuse and recycling
- Greenhouse gas emissions
- Energy efficiency
- Consumption of natural resources
- Impacts on biodiversity.

Social equity factors to be considered include, but are not limited to:

- Use of State of Oregon certified Minority, Women, and Emerging Small Businesses (MWESB) or Qualified Rehabilitation Facilities
- Human health and safety impacts of manufacture, use and/or disposal
- Veteran owned businesses
- Use of local businesses.

Economic factors to be considered, but not limited to:

- Using an existing item or a contract already in place
- Buying only what you really need
- Long-term product performance and quality
- Life-cycle cost assessment or best value considerations
- Leveraging buying power
- Impact on staff time and labor.

Staff are encouraged to use independent, third-party social, and/or environmental product or service label standards when writing specifications for, or procuring materials, products, or services. Examples include EPEAT, Energy Star, and LEED Certification.

4.2 Evaluation Criteria or Contract Provision Requirements

Each contract shall include provisions (applicable to the purchase) that supplier shall comply with to facilitate meeting the requirements of this policy.

4.3 Evaluation of Suppliers

When evaluating potential supplier's sustainability efforts, supplier's responses may address one or more of the desirable practices. The greater the number of practices and the more detail the vendor can provide, the more likely they have integrated sustainability into their business practices. The scoring for RFP's will reflect suppliers' efforts when scoring sustainability criteria.

Desirable practices of suppliers include, but are not limited to, resource conservation, energy efficiency, renewable energy use, water conservation, waste reduction and recycling, reduced fossil fuel use, sustainable purchasing and packaging efforts, use of Minority, Women, or Emerging Small Businesses, fair trade and labor practices, and community engagement.

Suppliers shall complete a form providing an overview of their sustainability efforts for each contract.

5.0 Responsibility for Sustainable Procurement

The Purchasing staff is responsible for:

- (a) Preparing or revising bid documents and contract language where necessary to implement the sustainable purchasing policy.
- (b) Assisting with researching opportunities for procurement of recycled, less/non-hazardous and other environmentally/socially preferable products and communicating these to appropriate departments for evaluation and purchase;
- (c) Collecting data on purchases in order to track, report, and evaluate EWEB's sustainable procurement activities;
- (d) Posting information on-line for employees on sustainable procurement efforts, including specifications developed to help reduce greenhouse gas emissions from selected products.

EWEB Supervisors and Managers are responsible for:

- (a) Ensuring staff participate in the development of sustainable procurement specification and criteria as applicable to their department;
- (b) Ensuring staff use sustainable procurement specification and criteria, and follow best practices;
- (c) Encouraging pilot testing for environmentally/socially preferable/sustainable products;
- (d) Incorporate the use of sustainable products and services that meet business needs.

6.0 Exemptions

Nothing in this policy shall be construed as requiring a department or contractor to procure products that do not perform adequately for their intended end use or are not available at a reasonable price in a reasonable period of time.

Glossary

"Biodiversity": the total diversity of all organisms and ecosystems at various spatial scales (genes, populations, species, ecosystems, and biomes). Biodiversity is often used as a measure of the health of biological systems.

"Environmentally/socially Preferable": products or services that have a lesser or reduced effect on human health and the environment when compared with competing products or services that serve the same purpose. This comparison may consider raw materials acquisition, production, manufacturing, packaging, distribution, reuse, operation, maintenance, or disposal of the product or service.

"Life Cycle Assessment or Life Cycle Analysis (LCA)": the comprehensive examination of a product's environmental and economic effects throughout its lifetime including new material extraction, transportation, manufacturing, use, and disposal.

"Persistent, Bioaccumulative, and Toxic (PBT) Chemicals": chemicals that are toxic, persist in the environment, and bioaccumulate in food chains.

"Sustainable Procurement": purchasing materials, products, and services in a manner that integrates fiscal responsibility, social equity, and community and environmental stewardship.