

 Public Contracting Rules	Adopted: Effective: 3/01/2005 Revised: 1/6/2006 Revised: 2/22/12 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 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.