



Public Contracting Rules

PUBLIC CONTRACTING & PROCUREMENT OF GOODS AND SERVICES

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Division 3 Public Contracting & Procurement of Goods and Services

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RULES

3-0100 Policies

- (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 divisions 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) And that public contracting activity should:
- (a) Provide effective outcomes that represent optimal value to EWEB and, to the greatest extent feasible, be consistent with market practices;
 - (b) Seek consistency in procurement practices between contracting agencies covered under the Public Contracting Code while preserving each contracting agency's ability to adopt divisions to maximize EWEB's effectiveness; and
 - (c) Apply innovative practices while maintaining quality and integrity;
- (3) And that EWEB's development of specifications will encourage reasonable competition consistent with the above policies that will seek to promote optimal value and suitability for the purposes intended and to reasonably encourage competition in satisfying EWEB's needs;
- (4) And that EWEB's policy will encourage the development of clear, precise and accurate specifications in solicitations for public contracts. To that end, in developing specifications, EWEB may consult, under contract or otherwise, with technical experts, suppliers, prospective contractors and representatives of the industries with which EWEB contracts. However, EWEB shall take reasonable measures to ensure that no person who prepares or assists in the preparation of solicitation documents, specifications, plans or scopes of work, and no business with which the person is associated, realizes a material competitive advantage in a procurement that arises from EWEB's use of the solicitation documents, specifications, plans or scopes of work. The policy against the realization of a material competitive advantage from the character of the specifications developed in conjunction with persons outside EWEB does not proscribe advantages that result incidentally from EWEB's specification of the characteristics of a product or work to meet EWEB's needs.

Stats. Implemented: ORS 279A.015, 279B.010, 279B.205 and 279B.210

3-0110 Application

This EWEB Rule, Division 3, implements ORS chapter 279B, Public Contracting and Public Procurements and applies to the procurement of Goods or Services, except for architectural, engineering, photogrammetric mapping, transportation planning, and land surveying, or related services designated in Division 4 and for personal services designated in Division 6. For contracting and procurement between other public agencies and EWEB for cooperative procurement designated in Division 2, these rules shall only apply between the agencies and EWEB as the purchaser and the contractor as the provider.

Stat. Auth.: ORS 279A.065, 279A.070
Stats. Implemented: ORS 279B.015

SOURCE SELECTION

3-0200 Methods of Source Selection

EWEB shall award a public contract for procurement of goods or services by competitive sealed bidding or competitive sealed proposals, including without limitation competitive range, multiple-tiered and multi-step proposals, except for:

- (1) Qualified Products List, Rule 3-0240;
- (2) Specifications and Brand Names, Rule 3-0241;
- (3) Price Agreements, Rule 3-0242;
- (4) Small procurements (not exceeding \$10,000), Rule 3-0265;
- (5) Intermediate procurements (\$10,000 to \$150,000), Rule 3-0270;
- (6) Sole-source procurements, Rule 3-0275;
- (7) Emergency procurements, Rule 3-0280;
- (8) Special procurements, Rule 3-0285;
- (9) Joint Agreements between intergovernmental agencies, Division 2; and
- (10) To obtain information useful in the preparation of an invitation to bid or a request for proposal, EWEB may issue a request for:
 - (a) Information;
 - (b) Interest;
 - (c) Qualifications; or
 - (d) Other preliminary documents to obtain information.

Stats. Implemented: ORS 279B.050

3-0210 Competitive Sealed Bidding

EWEB may procure goods or services by competitive sealed bidding. If competitive sealed bidding is selected, EWEB will issue an Invitation to Bid (ITB), which must include the following information:

- (1) A time and date by which the bids must be received and a place at which the bids must be submitted, and may, in the sole discretion of EWEB, direct or permit the submission and receipt of bids by electronic means pursuant to Rule 3-0330 or by facsimile transmission pursuant to Rule 3-0320;
- (2) The name and title of the person designated to receive bids and the person designated by EWEB as the contact person for the procurement, if different;
- (3) A procurement description which identifies the scope of work included within the

procurement, outlines the contractor's anticipated duties and sets expectations for the contractor's performance, including but not limited to the character of the goods or services, a description of the acquisition, specifications, delivery or performance schedule, and inspection and acceptance requirements. Unless EWEB for good cause specifies otherwise, the scope of work requires the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services;

- (4) A time, date and place for prequalification applications, if any, to be filed and the classes of work, if any, for which bidders must be prequalified in accordance with Rule 3-0550;
- (5) A statement that EWEB may cancel the procurement or reject any or all bids pursuant to Rules 3-0640;
- (6) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required by ORS 468A.710;
- (7) All contractual terms and conditions applicable to the procurement, including:
 - (a) a provision indicating whether the contractor can assign the contract, delegate its duties, or subcontract the delivery of the goods or services without prior written approval from EWEB;
 - (b) provisions specifying clear consequences for contractor's failure to perform the scope of work identified in the invitation to bid or the contractor's failure to meet established performance standards. The consequences may include, but are not limited to:
 - (A) Reducing or withholding payment;
 - (B) Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
 - (C) Declaring a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.
- (8) Notice of any pre-offer conferences as provided in Rule 3-0420 as follows:
 - (a) The time, date and location of any pre-offer conference; and
 - (b) Whether attendance at the conference will be mandatory or voluntary;
- (9) The form and instructions for submission of Bids and any other special information;
- (10) The time, date and place of opening;
- (11) The office where the Solicitation Document may be reviewed;
- (12) A statement that each bidder must identify whether the bidder is a "Resident Bidder";
- (13) Contractor's certification of nondiscrimination in obtaining required subcontractors (emerging small businesses) in accordance with Rule 2-0170(3);
- (14) A statement as to how EWEB will notify bidders of addenda and how EWEB will make addenda available as provided in Rules 3-0300 and 3-0430;
- (15) A statement that EWEB may require bid security.

- (16) Notice of the bidding and evaluation process:
 - (a) The anticipated solicitation schedule, deadlines, protest process pursuant to Rule 3-0700, and evaluation criteria and process pursuant to Rule 3-0600;
 - (b) If EWEB intends to award contracts to more than one bidder, it shall identify in the Solicitation Document the manner in which it will determine the number of contracts it will award;

(17) Applicable preferences allowed by Division 2;

Stats. Implemented: ORS 279B.055, 279A.110(4)

3-0211 Multi-Step Sealed Bids

- (1) If EWEB determines that preparing a procurement description to support an award based on price is impractical, EWEB may use a multi-step competitive sealed bid process to procure goods or services.
- (2) Multi-step bidding is a phased process that seeks necessary information or unpriced technical bids in the initial phase of regular competitive sealed bidding, inviting bidders who submitted technically acceptable bids in the initial phase to submit competitive sealed price bids on the technical bids in the final phase. The contract shall be awarded to the lowest responsible bidder. If time is a factor, EWEB may require bidders to submit a separate sealed price bid during the initial phase to be opened after the technical evaluation.
- (3) Whenever multi-step sealed bids are used, public notice for the first phase will be given in accordance with Rule 3-0300. Public notice is not required for the subsequent phases. However, EWEB will give notice of subsequent phases to all bidders and inform any bidders excluded from the subsequent phases of their right, if any, to protest exclusion pursuant to this Rule and Rule 3-0700.
- (4) Procedure for phase one of multi-step sealed bids:
 - (a) Multi-step sealed bidding will be initiated by the issuance of an Invitation to Bid in the form and manner required for competitive sealed bids. In addition to the requirements set forth in Rule 3-0210, the multistep Invitation to Bid shall state:
 - (A) That the solicitation is a Multi-Step Sealed Bid Procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical bids are found acceptable in the first phase;
 - (B) Whether price bids are to be submitted at the same time as unpriced technical bids; if they are, that such price bids shall be submitted in a separate sealed envelope;
 - (C) That unpriced technical bids are requested;
 - (D) The criteria to be used in the evaluation of unpriced technical bids;
 - (E) That EWEB may conduct oral or written discussions for the purposes of clarification of the unpriced technical bids;
 - (F) That the goods or services being procured shall be furnished generally in accordance with the bidder's technical bid as found to be finally acceptable and shall meet the requirements of the Invitation to Bid;
 - (G) Whether bidders excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed by addenda.
 - (b) After the closing date and time of the solicitation, addenda to the Invitation to Bid shall

- be distributed only to bidders who submitted unpriced technical bids.
- (c) Unpriced technical bids need not be opened publicly.
 - (d) Unpriced technical bids shall be evaluated solely in accordance with the criteria set forth in the Invitation to Bid. Unpriced technical bids shall be categorized as:
 - (A) Eligible;
 - (B) Potentially eligible; i.e., in EWEB's sole opinion is reasonably susceptible of being made eligible; or
 - (C) Ineligible, in which case EWEB will record in writing the basis for determining a bid ineligible and make it part of the procurement file.
 - (e) EWEB may initiate phase two of the procedure if, in EWEB's opinion, there are sufficient eligible or potentially eligible unpriced technical bids to assure effective price competition in the second phase without technical discussions.
 - (f) If EWEB finds that there are not sufficient eligible or potentially eligible unpriced technical proposals to assure effective price competition, it shall issue an addendum to the Invitation to Bid or engage in technical discussions as set forth in this rule:
 - (A) Clarification of bidder's technical bid may be conducted with any bidder who submits a qualified, or potentially qualified technical bid.
 - (B) During the course of such discussions, EWEB shall not disclose any information derived from one unpriced technical bid to any other bidder.
 - (C) Once discussions are begun any bidder, who has not been notified that its bid has been finally found ineligible, may submit supplemental information amending its technical bid at any time until the closing of the final step established by EWEB. Such submission may be made at the request of EWEB or upon the bidder's own initiative.
 - (g) When EWEB determines a bidder's unpriced technical bid to be ineligible, such bidder will not be afforded an additional opportunity to supplement its technical bids.
 - (h) Mistakes may be corrected or bids may be withdrawn during phase one:
 - (A) Before unpriced technical bids are considered;
 - (B) After any discussions have commenced under Rule 3-0211(4)(e);
 - (C) When responding to any addenda of the Invitation to Bid;
 - (D) Otherwise mistakes may be corrected or withdrawal permitted in accordance with Rule 3-0470.
- (5) Procedure for Subsequent Phases.
- (a) Upon the completion of phase one, EWEB shall either:
 - (A) Open price bids submitted in phase one (if price bids were required to be submitted) from bidders whose unpriced technical bids were found to be eligible; or
 - (B) If price bids have not been submitted, technical discussions have been held, or addenda to the Invitation to Bid have been issued, invite each eligible bidder to submit a price bid.
 - (b) Phase two shall be conducted as any other competitive sealed bid procurement except:
 - (A) As specifically set forth in this Division;
 - (B) No public notice need be given of this invitation to submit price bids because such notice was previously given.

Stats. Implemented: ORS 279B.055

3-0230 Competitive Sealed Proposals

EWEB may procure goods or services by competitive sealed proposals, including without limitation competitive range, multiple-tiered and multi-step proposals. A Request for Proposal (RFP) is used to initiate a competitive sealed proposal solicitation, which must contain the following information:

- (1) A time and date by which the proposals must be received and a place at which the proposals must be submitted, and may, in the sole discretion of EWEB, direct or permit the submission and receipt of proposals by electronic means pursuant to Rule 3-0330 or by facsimile transmission pursuant to Rule 3-0320 ;
- (2) The name and title of the person designated to receive proposals and the person designated by EWEB as the contact person for the procurement, if different;
- (3) A procurement description which identifies the scope of work included within the procurement, outlines the contractor's anticipated duties and sets expectations for the contractor's performance, including the character of the goods or services EWEB is purchasing or a description of the acquisition, specifications, delivery or performance schedule, inspection and acceptance requirements. Unless the contractor is providing architectural, engineering and land surveying services or related services, or unless EWEB for good cause specifies otherwise, the scope of work requires the contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the appropriate goods or services;
- (4) A time, date and place that prequalification applications, if any, must be filed and the classes of work, if any, for which proposers must be prequalified in accordance with Rule 3-0550;
- (5) A statement that EWEB may cancel the procurement or reject any or all proposals pursuant to Rules 3-0640;
- (6) A statement that requires the contractor or subcontractor to possess an asbestos abatement license, if required by ORS 468A.710;
- (7) All contractual terms and conditions applicable to the procurement.
 - (a) The contract terms and conditions shall specify clear consequences for a contractor's failure to perform the scope of work identified in the request for proposals or the contractor's failure to meet established performance standards. The consequences may include but are not limited to:
 - (A) Reducing or withholding payment;
 - (B) Requiring the contractor to perform, at the contractor's expense, additional work necessary to perform the identified scope of work or meet the established performance standards; or
 - (C) Declaring a default, terminating the public contract and seeking damages and other relief available under the terms of the public contract or other applicable law.
 - (b) The request for proposals also may:
 - (A) Identify those contractual terms or conditions EWEB reserves for negotiation with proposers;
 - (B) Request that proposers propose contractual terms and conditions that relate to subject matter reasonably identified in the request for proposals;
 - (C) Contain or incorporate the form and content of the contract that EWEB will accept, or suggested contract terms and conditions that nevertheless may be the subject of negotiations with proposers, including a provision indicating whether the

contractor can assign the contract, delegate its duties, or subcontract the goods or services without prior written approval by EWEB;

- (8) Notice of any pre-offer conference as provided in Rule 3-0420 as follows:
 - (a) The time, date and location of any pre-offer conference; and
 - (b) Whether attendance at the conference will be mandatory or voluntary;
- (9) The form and instructions for submission of proposals and any other special information;
- (10) The time, date and place of opening;
- (11) The office where the Solicitation Document may be reviewed;
- (12) Contractor's certification of nondiscrimination in obtaining required subcontractors (emerging small businesses) in accordance with Rule 2-0210(3);
- (13) How EWEB will notify proposers of addenda and how it will make addenda available as provided in Rules 3-0300 and 3-0430;
- (14) A statement of the proposal and evaluation process:
 - (a) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;
 - (b) The selection criteria;
 - (c) If EWEB intends to award contracts to more than one proposer, it must identify in the Solicitation Document the manner in which it will determine the number of contracts it will award;
 - (d) That EWEB may employ methods of contractor selection that include without limitation:
 - (A) An award or awards based solely on the ranking of proposals;
 - (B) Discussions leading to best and final offers, in which EWEB may not disclose private discussions leading to best and final offers;
 - (C) Discussions leading to best and final offers, in which EWEB may not disclose information derived from proposals submitted by competing proposers;
 - (D) Serial negotiations, beginning with the highest ranked proposer;
 - (E) Competitive simultaneous negotiations;
 - (F) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers;
 - (G) A multi-step request for proposals that require additional information designated in Rule 3-0232; or
 - (H) Any combination of methods described in this section (d);
- (15) A statement that if a contract is awarded, EWEB shall award the contract to the responsible proposer whose proposal EWEB determines in writing to be the most advantageous to EWEB based on:
 - (a) The evaluation process and evaluation factors described in this request for proposal;
 - (b) Any applicable preferences allowed by Division 2; and when applicable,
 - (c) The outcome of any negotiations authorized by this request for proposal;
- (16) A statement that if the request for proposal specifies or authorizes the award of multiple public contracts, EWEB shall award public contracts to the responsible proposers who

qualify for the award of a contract under the terms of this request for proposal.

- (17) Applicable preferences allowed by Division 2.
- (18) A statement that if a proposer is eliminated from further competition based on a competitive range evaluation then there is no protest allowed for the proposer's elimination. For all other proposers eliminated from further competition, a statement describing the manner in which those proposers may protest EWEB's decision pursuant to Rule 3-0700.

Stats. Implemented: ORS 279B.060, 279A.110(4)

3-0231 Competitive Range, Multiple-tiered, Discussions and Negotiations

EWEB may use the competitive range process at any stage in the procurement process as follows:

- (1) Determining Competitive Range:
 - (a) EWEB shall establish a competitive range after evaluating all responsive proposals using the evaluation criteria set forth in the Request for Proposals and shall rank the proposers in the competitive range.
 - (b) EWEB may increase the number of proposers in the competitive range if its evaluation of proposals establishes a natural break in the scores of proposers indicating a number of proposers greater than the initial competitive range are closely competitive, or have a reasonable chance of being determined the most advantageous proposer. EWEB may decrease the number of proposers in the initial competitive range only if the excluded proposers have no reasonable chance to be the most advantageous proposer.
- (2) EWEB shall provide written notice to all proposers either:
 - (a) Identifying proposers within the competitive range or
 - (b) Excluding proposers from the competitive range. Excluded proposers may not protest EWEB's evaluation and determination of the competitive range.
- (3) EWEB shall provide written notice to all proposers, collectively "eligible proposers", in the competitive range of its intent to award the contract to the highest-ranked proposer in the competitive range and shall commence discussions with the eligible proposers.
 - (a) EWEB may conduct discussions for the following purposes:
 - (A) Informing eligible proposers of deficiencies in their initial proposals;
 - (B) Notifying eligible proposers of parts of their proposals for which EWEB wants additional information; or
 - (C) Otherwise allowing eligible proposers to develop revised proposals that will allow EWEB to obtain the best proposal based on the requirements and evaluation criteria set forth in the Request for Proposals.
 - (b) In conducting discussions, EWEB:
 - (A) Shall give all eligible proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals;
 - (B) Shall not disclose private discussions with other eligible proposers;
 - (C) Shall not disclose information derived from proposals submitted by competing proposers;
 - (c) EWEB may adjust the evaluation of a proposal as a result of a discussion under this section. The conditions, terms, or price of the proposal may be altered or otherwise

- changed during the course of the discussions provided the changes are within the scope of the Request for Proposals.
- (d) At any time during the time allowed for discussions, EWEB may:
 - (A) Continue discussions with a particular eligible proposer;
 - (B) Terminate discussions with a particular eligible proposer and continue discussions with other eligible proposers; or
 - (C) Conclude discussions with all remaining eligible proposers and provide notice to the eligible proposers requesting best and final offers.
 - (4) EWEB may commence serial negotiations with the highest-ranked eligible proposers or commence simultaneous negotiations with all eligible proposers as follows:
 - (a) After initial determination of which proposals are responsive; or
 - (b) After initial determination of the competitive range; or
 - (c) After conclusion of discussions with all eligible proposers and evaluation of revised proposals submitted by eligible proposers.
 - (5) EWEB may negotiate:
 - (a) The statement of work;
 - (b) The contract price as it is affected by negotiating the statement of work; and
 - (c) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the Request for Proposal or addenda thereto or terms and conditions that may have been affected because of changes in the statement of work. Unless otherwise acceptable to EWEB, proposers shall not submit for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the Request for Proposal or addenda thereto.
 - (6) At any time during discussions or negotiations EWEB may terminate discussions or negotiations with the highest-ranked proposer, or the proposer with whom it is currently discussing or negotiating, if it reasonably believes that:
 - (a) The proposer is not discussing or negotiating in good faith; or
 - (b) Further discussions or negotiations with the proposer will not result in the parties agreeing to the terms and conditions of a final contract in a timely manner.
 - (7) If EWEB is conducting serial negotiations and it terminates negotiations with a proposer, EWEB may then commence negotiations with the next highest scoring proposer in the competitive range, and continue the process until EWEB has either:
 - (a) Determined to award the contract to the proposer with whom it is currently discussing or negotiating; or
 - (b) Completed one round of discussions or negotiations with all eligible proposers in the competitive range unless EWEB provided for more than one round of discussions or negotiations in the Request for Proposal, in which case EWEB has completed all rounds of discussions or negotiations.
 - (8) If EWEB chooses to conduct competitive negotiations, it may negotiate simultaneously with competing eligible proposers. EWEB:
 - (a) Shall give all eligible proposers fair and equal treatment with respect to any opportunity for discussion and revision of proposals;
 - (b) Shall not disclose private discussions with other eligible proposers;
 - (c) Shall not disclose information derived from proposals submitted by competing proposers;
 - (d) Shall not disclose other proposer's proposals or the substance of negotiations with

other proposers until after EWEB has issued an Intent to Award.

- (9) Any oral modification of a proposal resulting from negotiations under this section shall be submitted in writing by the proposer and shall be subject to review and acceptance by EWEB.
- (10) If best and final offers are required, EWEB shall:
 - (a) Set the date and time by which proposers must submit best and final offers and give proposers written notice of the date and time and of any additional changes to the evaluation criteria;
 - (b) Best and final offers shall be submitted only once;
 - (c) EWEB may make a written determination that it is in EWEB's best interest to conduct additional discussions, negotiations or change EWEB's requirements and require another submission of best and final offers. Otherwise, no discussion of or changes in the best and final offers shall be allowed prior to award.
 - (d) EWEB shall inform proposers that if they do not submit notice of withdrawal or another best and final offer, then their immediately previous offer will be construed as their best and final offer.
 - (e) EWEB shall evaluate proposer's best and final offer by the criteria in the Request for Proposal or as modified by addenda written before the date and time set for submission of the last best and final offer.

Stats. Implemented: ORS 279B.060

3-0232 Multi-step Sealed Proposals

- (1) Multi-step sealed proposals is a phased procurement process that seeks necessary information or unpriced technical proposals in the initial phase and invites proposers who submitted technically qualified proposals in the initial phase to submit competitive sealed price proposals on the technical proposals in the final phase. The contract shall be awarded to the responsible proposer submitting the most advantageous proposal in accordance with the terms of the Solicitation Document applicable to the final phase. If time is a factor, EWEB may require proposers to submit a separate sealed price proposal during the initial phase to be opened after the technical evaluation.
- (2) Whenever multi-step sealed proposals are used, public notice for the first phase shall be given pursuant to Rule 3-0300. Public notice shall not be required for the subsequent phases. However, EWEB shall give notice of the subsequent phases to all proposers and inform any proposers excluded from the subsequent phases of the right, if any, to protest exclusion pursuant to Rule 3-0700.
- (3) Procedure for phase one of multi-step sealed proposals:
 - (a) Multi-step sealed proposals shall be initiated by a Request for Proposal (RFP) in the form and manner required for competitive sealed proposals designated in Rule 3-0230. In addition, the multi-step Request for Proposal shall state:
 - (A) That unpriced technical proposals are requested;
 - (B) Whether price proposals are to be submitted at the same time as unpriced technical proposals; that if they are, such price proposals shall be submitted in a separate sealed envelope;
 - (C) That it is a multi-step sealed proposal procurement, and that priced proposals will be considered only in the subsequent phases from those proposers whose

- unpriced technical proposals are found qualified in the first phase;
 - (D) The criteria to be used in the evaluation of unpriced technical proposals;
 - (E) That EWEB may conduct oral or written discussions of the unpriced technical offers;
 - (F) That the goods or services being procured shall be furnished generally in accordance with the proposer's technical proposal as found to be finally qualified and shall meet the requirements of the Request for Proposal;
 - (G) Whether proposers excluded from subsequent phases have a right to protest the exclusion. Such information can be given or changed through addenda.
- (b) After the closing date and time of the solicitation, addenda to the Request for Proposal shall be distributed only to proposers who submitted unpriced technical offers.
 - (c) Unpriced technical proposals need not be opened publicly.
 - (d) Unpriced technical proposals shall be evaluated solely in accordance with the criteria set forth in the Request for Proposal. Unpriced technical proposals shall be categorized as:
 - (A) Qualified;
 - (B) Potentially qualified; i.e. in EWEB's sole opinion is reasonably susceptible of being made qualified; or
 - (C) Unqualified, in which case EWEB will record in writing the basis for determining a proposal unqualified and make it part of the procurement file.
 - (e) EWEB may initiate phase two of the procedure if, in EWEB's opinion, there are sufficient qualified or potentially qualified unpriced technical proposals to assure effective price competition in the second phase without technical discussions.
 - (f) If EWEB finds that there are not sufficient qualified or potentially qualified unpriced technical proposals to assure effective price competition, it shall issue an addendum to the Request for Proposal or engage in technical discussions as set forth in this rule:
 - (A) Clarification of proposer's technical proposal may be conducted with any proposer who submits a qualified, or potentially qualified technical proposal.
 - (B) During the course of such discussions, EWEB shall not disclose any information derived from one unpriced technical proposal to any other proposer.
 - (C) Once discussions are begun any proposer, who has not been notified that its proposal has been finally found unqualified, may submit supplemental information amending its technical proposal at any time until the closing date established by EWEB. Such submission may be made either at the request of EWEB or upon the proposer's own initiative.
 - (g) When EWEB determines a proposer's unpriced technical proposal to be unqualified, such proposer shall not be afforded an additional opportunity to supplement technical proposals.
 - (h) Mistakes may be corrected or proposals may be withdrawn during phase one:
 - (A) Before unpriced technical proposals are considered;
 - (B) After any discussions have commenced under this section;
 - (C) When responding to any addenda to the Request for Proposal;
 - (D) Otherwise mistakes may be corrected or withdrawal permitted pursuant to Rule 3-0470.
- (4) Upon the completion of phase one, EWEB shall either:
 - (a) Open price proposals submitted in phase one (if price proposals were required to be submitted) from proposers whose unpriced technical proposals were found to be qualified; or
 - (b) If price proposals have not been submitted and technical discussions have been held or addenda to the Request for Proposal have been issued, invite each qualified

- proposer to submit price proposals.
- (c) Otherwise, phase two shall be conducted as any other competitive sealed proposal solicitation except no public notice need be given of the request to submit price proposals because such notice was previously given.

Stats. Implemented: ORS 279B.060

3-0240 Qualified Products Lists

- (1) EWEB may develop and maintain a qualified products list in instances in which the testing or examination of goods before initiating a procurement is necessary or desirable in order to best satisfy the requirements of EWEB. For purposes of this section, "goods" includes products that have associated or incidental service components, such as supplier warranty obligations or maintenance service programs.
- (2) In the initial development of any qualified products list, EWEB shall give public notice in accordance with Rule 3-0300 of the opportunity for potential contractors, sellers or suppliers to submit goods for testing and examination to determine their acceptability for inclusion on the list and may solicit in writing representative groups of potential contractors, sellers or suppliers to submit goods for the testing and examination. Any potential contractor, seller or supplier, even though not solicited, may offer its goods for consideration.
- (3) EWEB's inclusion of goods on a qualified products list shall be based on the results of tests or examinations. Notwithstanding any provision of ORS 192.311 to 192.478 (trade secrets), EWEB may make the test or examination results public in a manner that protects the identity of the potential contractor, seller or supplier that offered the goods for testing or examination, including by using only numerical designations. Notwithstanding any provision of ORS 192.311 to 192.478 (trade secrets), EWEB may keep confidential trade secrets, test data and similar information provided by a potential contractor, seller or supplier if so requested in writing by the potential contractor, seller or supplier.
- (4) The inclusion of goods on a qualified products list does not constitute and may not be construed as a prequalification of a bidder or proposer under Rule 3-0550 of any prospective contractor, seller or supplier of goods on the qualified products list.
- (5) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.115

3-0241 Specifications and Brand Names

- (1) EWEB shall determine all specifications used in this Division.
- (2) A brand name or equal specification may be used when the use of a brand name or equal specification is advantageous to EWEB because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by EWEB.
- (3) EWEB is entitled to determine what constitutes a product that is equal or superior to the product specified, and any such determination is final.
- (4) Nothing in this section may be construed as prohibiting EWEB from specifying one or more

comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by EWEB.

- (5) A brand name specification may be prepared and used only if EWEB determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of EWEB based on one or more of the following written determinations:
 - (a) That use of a brand name specification is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts;
 - (b) That use of a brand name specification would result in substantial cost savings to EWEB;
 - (c) That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or
 - (d) That efficient utilization of existing goods requires the acquisition of compatible goods or services.
- (6) All protests shall be made pursuant to Rule 3-0710.

Stats. Implemented: ORS 279B.215, 279B.405

3-0242 Price Agreements

- (1) A price agreement constitutes a firm offer by the contractor regardless of whether any order or purchase has been made or any performance has been tendered under the price agreement. Unless the price agreement otherwise provides, a price agreement is enforceable for the period stated in the price agreement, and notwithstanding ORS 72.2050, obligations thereunder are not revocable by the contractor.
- (2) Under a price agreement, no quantity unreasonably disproportionate to any stated estimate or, in the absence of a stated estimate, to any normal or otherwise comparable prior requirements may be demanded unless otherwise expressly provided in the price agreement. However, EWEB may amend or terminate a price agreement or an order under a price agreement under any of the following circumstances:
 - (a) Any failure of EWEB to receive funding, appropriations, limitations, allotments or other expenditure authority, including the continuation of program operating authority sufficient, as determined in the discretion of EWEB, to sustain purchases at the levels contemplated at the time of contracting; or
 - (b) Any change in law or program termination that makes purchases under the price agreement no longer authorized or appropriate for EWEB's use.
- (3) A price agreement does not constitute an exclusive dealing commitment on the part of EWEB or the contractor unless the price agreement expressly so provides.
- (4) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.140

3-0265 Small Procurements

EWEB may make awards for procurements of goods and services not exceeding \$10,000 in any manner deemed practical or convenient, including by direct selection or award.

- (1) EWEB may amend public contracts awarded prior to January 1, 2014, for small procurements but the cumulative amendments may not increase the total contract price to

greater than \$6,000. EWEB may amend small procurement contracts awarded on or after January 1, 2014, but the cumulative amendments may not increase the total contract price to greater than \$12,500. Increases beyond the limitations of this Rule must be in compliance with Division 6 (Exemptions).

- (2) The ability to amend small procurement contracts is established as a means to resolve unforeseen cost overages, and shall not be used to circumvent the intermediate procurement process. Unless otherwise waived by the Purchasing Supervisor, the contract administrator shall provide a written explanation for all overages that cause a small procurement to exceed the applicable monetary limits of subsection (1). The related Executive Team Manager shall acknowledge the written explanation with his/her signature and the document shall be filed in the Purchasing Office with the original purchase requisition.
- (3) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.065; HB 2212, Sec.1 (2013).

3-0270 Intermediate Procurements

EWEB may make awards in accordance with intermediate procurement procedures for procurement of goods and services that exceeds \$10,000 but does not exceed \$150,000.

- (1) A procurement may not be artificially divided or fragmented so as to constitute an intermediate procurement under this section.
- (2) When conducting an intermediate procurement, EWEB shall seek at least three informally solicited competitive price quotes or competitive proposals from prospective contractors. EWEB Purchasing shall keep a written record of the sources of the quotes or proposals received. If three quotes or proposals are not reasonably available, fewer will suffice, but the person obtaining offers shall make a written record of the effort made by EWEB to obtain the quotes or proposals.
- (3) If a contract is awarded, EWEB shall award the contract to the offeror whose quote or proposal will best serve the interests of EWEB, taking into account price as well as considerations including without limitation experience, expertise, product functionality, suitability for a particular purpose, delivery, best value, and contractor responsibility under these Rules.
- (4) EWEB shall prefer written quotations, bids, or proposals for intermediate procurements. Verbal quotations may only be used when the procurement can be clearly defined and communicated, which may include without limitation to product numbers, a specific task, or other considerations that will provide EWEB with the most advantageous, expeditious results.
- (5) EWEB may negotiate with an offeror to clarify its quote, bid, proposal, or to effect modifications that will make the quote, bid, or proposal acceptable or make the quote, bid, or proposal more advantageous to EWEB.
- (6) Intermediate procurements 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 by the affected Executive Team Manager and the Purchasing

- Supervisor, or solely by the General Manager, that a price increase is warranted for additional related work;
- (b) Up to an aggregate contract price increase of 50% over the original contract amount, when the General Manager, or when applicable, EWEB's Contract Review Board, determines that a price increase is warranted for additional related work;
 - (c) EWEB's Contract Review 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.
- (7) All protests shall be made pursuant to Rule 3-0700.

Stats. Implemented: ORS 279B.070; HB 2212, Sec.2 (2013).

3-0275 Sole-source Procurements

EWEB may award a contract for goods or services without competition when the General Manager or Executive Manager designee, after reviewing findings of fact, determines that the goods or services or class of goods or services, are available from only one source.

- (1) The determination of a sole-source must be based on written findings that may include:
 - (a) That the efficient utilization of existing goods requires the acquisition of compatible goods or services;
 - (b) That the goods or services required for the exchange of software or data with other public or private agencies are available from only one source;
 - (c) That the goods or services are for use in a pilot or an experimental project; or
 - (d) Other findings that support the conclusion that the goods or services are available from only one source.
- (2) In addition to the findings provided above, EWEB-specific findings may include the following:
 - (a) That EWEB's ability to provide vital services to its customers may be jeopardized should another good or service fail to match exactly the features, characteristics, performance, compatibility, reliability, and functionality of the sole-source good or service.
 - (b) EWEB lacks the time or expertise to responsibly investigate, analyze, or test an unfamiliar product(s) to assure that the product's capability, interface, features, components, durability, functionality, performance, safety, economy, and reliability are compatible with EWEB's infrastructure and will provide EWEB and its customers the most advantageous performance.
 - (c) Subparagraph (b) above shall not be used to avoid the bidding or proposal requirements provided in this Division.
- (3) To the extent reasonably practical, EWEB shall negotiate with the sole-source to obtain contract terms that are advantageous to EWEB.
- (4) If there are multiple sellers for the sole-source manufacturer's good(s) or service(s), EWEB shall follow the appropriate solicitation process to encourage competition between the potential providers.
- (5) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.
- (6) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.075, 279B.145

3-0280 Emergency Procurements

- (1) With the General Manager and/or the affected Executive Team Manager's concurrence, EWEB's Purchasing Supervisor may approve award of a public contract for goods or services as an emergency procurement. EWEB shall document the:
 - (a) Nature of the emergency; and
 - (b) Describe the method used for the selection of the particular contractor.
- (2) EWEB may amend an emergency contract if the emergency justification for entering in the contract still exists and the amendment is necessary to address the continuing emergency.
- (3) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.
- (4) All protests shall be made pursuant to Rule 3-0720.

Stats. Implemented: ORS 279B.080, 279B.145

3-0285 Special Procurements

EWEB may submit a written request to the Board that describes the proposed contracting procedure, the goods or services or the class of goods or services to be acquired through the special procurement and the circumstances that justify the use of a special procurement or an alternative procedure prescribed by the Board under the following standards:

- (1) Be unlikely to encourage favoritism in the awarding of public contracts or to substantially diminish competition for public contracts and
- (2) Either:
 - (a) Reasonably expected to result in substantial cost savings to EWEB or to the public, or
 - (b) Otherwise substantially promotes the public interest in a manner that could not practicably be realized by complying with requirements that are applicable under competitive sealed bids, competitive sealed proposals, small procurements, intermediate procurements or under any rules adopted thereunder.
- (3) If EWEB intends to award a contract through a special procurement that calls for competition among prospective contractors, EWEB shall award the contract to the offeror EWEB determines to be the most advantageous to EWEB.
- (4) When the Board approves a class special procurement under this section, EWEB may award contracts to acquire goods or services within the class of goods or services in accordance with the terms of the Board's approval without making a subsequent request for a special procurement.
- (5) EWEB shall give public notice of the approval process pursuant to Rule 3-0300 and the notice shall describe the goods or services or class of goods or services to be acquired through the special procurement.
- (6) The determinations made by EWEB under this Rule are final and conclusive unless they are

clearly erroneous, arbitrary, capricious or contrary to law.

(7) All protests shall be made pursuant to Rule 3-0710.

Stats. Implemented: ORS 279B.085, 279B.145; Or Laws 2007, Ch. 764, Sec. 7.

3-0290 Procurement for Services

- (1) Except as provided in subsection (3), before conducting a procurement for services with an estimated contract price that exceeds \$250,000, EWEB shall:
 - (a) Demonstrate, by means of a written cost analysis, that EWEB would incur less cost in conducting the procurement than in performing the services with EWEB's own personnel and resources; or
 - (b) Demonstrate that performing the services with EWEB's own personnel and resources is not feasible.
- (2) In the cost analysis, EWEB shall:
 - (a) Estimate EWEB's cost of performing the services, including:
 - (A) Salary or wage and benefit costs for EWEB employees who are directly involved in performing the services, including employees who inspect, supervise or monitor the performance of the services.
 - (B) Materials costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies.
 - (C) Costs incurred in planning for, training for, starting up, implementing, transporting and delivering the services and costs related to stopping and dismantling a project or operation because EWEB intends to procure a limited quantity of services or procure the services within a defined or limited period of time.
 - (D) Miscellaneous costs related to performing the services. EWEB may not include, in the cost analysis, EWEB's indirect overhead costs for existing salaries or wages and benefits for administrators or for rent, equipment, utilities and materials except to the extent that the costs are attributable solely to performing the services and would not exist unless EWEB performs the services.
 - (b) Estimate the cost a potential contractor would incur in performing the services, including:
 - (A) Average or actual salary or wage and benefit costs for contractors and employees who:
 - (i) Work in the industry or business most closely involved in performing the services that EWEB intends to procure; and
 - (ii) Would be necessary and directly involved in performing the services or who would inspect, supervise or monitor the performance of the services;
 - (B) Material costs, including costs for space, energy, transportation, storage, raw and finished materials, equipment and supplies; and
 - (C) Miscellaneous costs related to performing the services, including but not limited to reasonably foreseeable fluctuations in the costs for the items identified in this subsection over the expected duration of the procurement.
 - (c) After comparing the difference between the costs estimated as provided in subsections (2)(a) and (2)(b), except as provided in subsection (2)(d), EWEB may proceed with the procurement only if EWEB would incur more cost in performing the services with EWEB's own personnel and resources than EWEB would incur

- in procuring the services from a contractor. EWEB may not proceed with the procurement if the sole reason is because the costs estimated in subsection (2)(b)(A) are lower than the costs estimated in subsection (2)(a)(A).
- (d) EWEB may proceed with a procurement even if it determines that EWEB would incur less cost in providing the services with EWEB's own personnel and resources if at the time EWEB intends to conduct a procurement, EWEB lacks personnel and resources that are necessary to perform the services with in the time in which the services are required. If EWEB conducts a procurement under the conditions described in this subsection, EWEB shall:
 - (A) Keep a record of the cost analysis and findings that EWEB makes for each procurement conducted under this subsection, along with the basis for EWEB's decision to proceed with the procurement; and
 - (B) Collect and provide copies of the records described in subparagraph (2)(d)(A) each calendar quarter to the local contract review board.
- (3) Notwithstanding the provisions of subsection (2)(c), EWEB may proceed with a procurement if it reasonably determines in writing that using EWEB's own personnel or resources to perform the services that EWEB intends to procure is not feasible. EWEB may make this determination without conducting a cost analysis under subsection (2) if EWEB finds that:
- (a) EWEB lacks the specialized capabilities, experience or technical or other expertise necessary to perform the services. In making its finding, EWEB shall compare EWEB's capability, experience or expertise in the field most closely involved in performing the services with a potential contractor's capability, experience or expertise in the same or a similar field.
 - (b) Special circumstances require EWEB to procure the services by contract. Special circumstances may include, but are not limited to, circumstances in which:
 - (A) The terms under which EWEB receives a grant or other funds for use in a procurement requires EWEB to obtain services through an independent contractor;
 - (B) Other state or federal law requires EWEB to procure services through an independent contractor;
 - (C) The procurement is for services that are incidental to a contract for purchasing or leasing real or personal property, including service and maintenance agreements for equipment that is leased or rented;
 - (D) EWEB cannot accomplish policy, administrative or legal goals, including but not limited to avoiding conflicts of interest or ensuring independent or unbiased findings in cases when using EWEB's existing personnel or persons EWEB could hire through a regular or ordinary process would not be suitable;
 - (E) The procurement is for services to which the provisions of EWEB Rule 3-0280 apply;
 - (F) The procurement is for services, the need for which is so urgent, temporary or occasional that attempting to perform the services with EWEB's own personnel or resources would cause a delay that would frustrate the purpose for obtaining the services; or
 - (G) The services that EWEB intends to procure will be completed within six months after the date on which the contract for services is executed.
- (4) A cost analysis, record, documentation or determination made under subsection (2) and a finding or a determination and supporting documentation under subsection (3) are public records.

Stat. Auth.: 2009 Or Laws Ch 880, Sec.2-4.
Stat. Implemented: 2009 Or Laws Ch 880, Sec.2-4.

PROCUREMENT PROCESS

3-0300 Public Notice of Solicitations

- (1) EWEB shall give public notice of an invitation to bid or for proposal, which notice is intended to foster competition among prospective bidders or proposers. Public Notice shall be given by:
 - (a) Newspaper publication in the area where the contract is to be performed:
 - (A) At least once in
 - (B) At least one newspaper of general circulation and
 - (C) At least seven days before the solicitation closing date; or
 - (b) Electronic publication: if EWEB determines that electronically providing public notice of bids or proposals is likely to be cost-effective;
 - (c) In addition to (a) and (b), EWEB may use any other medium reasonably calculated to reach prospective bidders or proposers, including but not limited to trade magazines and journals, the State of Oregon's Procurement Information Network (ORPIN), and specific trade association web sites.
- (2) Once a means of notification is selected for a specific project, EWEB shall continue to use that method to post all required and informational documents or directions on how to secure documents for that project.
- (3) If the selected method of notification is unavailable because of mechanical difficulties, lack of access, or for other undetermined reasons, EWEB may mail, e-mail, or fax to all known prospective bidders or proposers in the form of an addendum the information regarding the process change. However, EWEB will not be liable for failures to contact potential bidders or proposers, failure to provide documents or any other information in a timely manner, and/or for any breakdowns in communications caused by mechanical or electronic failures, human error, force majeure, or any other interruption that prevented a potential bidder or proposer from receiving information. It is the bidder's or proposer's responsibility to monitor the solicitation process, to monitor EWEB Purchasing's web site, to ask questions, make inquiries, and to stay actively abreast of the solicitation status.
- (4) When the cost of printed Public Notice, in EWEB's opinion and sole judgment, is prohibitive, EWEB may limit printed Public Notice to information directing potential bidders or proposers to EWEB's web site, EWEB's Purchasing Office, or other less costly means of providing information. EWEB may fax or email Public Notice information if it chooses to do so.
- (5) The Public Notice shall set forth:
 - (a) Where, when, how, and for how long the Solicitation Document may be obtained;
 - (b) A general description of the Goods or Services to be acquired;
 - (c) The interval between the first date of notice of the Solicitation Document given in accordance with (1) above and Closing will not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless EWEB determines that a shorter interval is in EWEB's interest and that a shorter interval will not substantially affect competition. EWEB will document the specific reasons for the shorter public notice period in the Procurement file;
 - (d) The date that bidders or proposers must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which

- Persons must be prequalified;
 - (e) The office where Contract terms, conditions and Specifications may be reviewed;
 - (f) The name, title and address of the individual at EWEB authorized to receive Offers;
 - (g) The scheduled Opening; and
 - (h) Any other information EWEB deems appropriate.
- (6) A proposer may obtain a copy of the Public Notice of solicitations upon request.
- (7) EWEB shall make available to potential bidders or proposers notice of any Addenda to a Solicitation Document in accordance with 3-0430.

Stats. Implemented: ORS 279B.055(4), ORS 279B.060(4)

3-0310 Bids or Proposals are Offers

- (1) Offer and Acceptance: The bid or proposal is the bidder's or proposer's offer to enter into a contract. The offer is a "Firm Offer," i.e., the offer shall be held open by the offeror for EWEB's acceptance for the period specified in Rule 3-0480 (Time for Agency Acceptance). EWEB's award of the contract constitutes acceptance of the offer and binds the offeror to the contract.
- (2) Contingent Offers: Except to the extent the bidder or proposer is authorized to propose certain terms and conditions pursuant to Rule 3-0231 (Competitive Range, Discussions and Negotiations), a proposer shall not make its offer contingent upon EWEB's acceptance of any terms or conditions (including specifications) other than those specifically allowed in the Solicitation Document.
- (3) Offeror's Acknowledgment: By signing and returning the offer, the offeror acknowledges it has read and understands the terms and conditions contained in the Solicitation Document and that it accepts and agrees to be bound by the terms and conditions of the Solicitation Document. If the request for proposal permits proposal of alternative terms under Rule 3-0231 (CompetitiveRange, Discussions and Negotiations), the offeror's offer includes the nonnegotiable terms and conditions and any proposed terms and conditions offered for negotiation upon and to the extent accepted by EWEB in writing.

Stats. Implemented: ORS 279B.055, ORS 279B.060

3-0320 Facsimile Transmission of Bids and Proposals

- (1) EWEB may authorize offerors to submit offer by facsimile transmission. If EWEB determines that bid or proposal security is or will be required, it will not authorize facsimile offers unless a method for receipt of such security is agreed to in writing prior to the facsimile transmission of the offer. Prior to authorizing the submission of facsimile offers, EWEB shall determine that its equipment and personnel are capable of receiving the size and volume of anticipated offers within a short period of time. In addition, EWEB will establish administrative procedures and controls to:
- (a) Receive, identify, record, and safeguard facsimile offers;
 - (b) Ensure timely delivery of offers to the location of opening; and
 - (c) Preserve the offers as sealed.
- (2) In addition to all other requirements, if EWEB authorizes a facsimile offer, it will include in

the solicitation document the following statements:

- (a) "A 'facsimile offer' as used in this Solicitation Document means an offer, modification of an offer, or withdrawal of an offer that is transmitted to and received by EWEB via a facsimile machine";
- (b) "Offerors may submit facsimile offers in response to this Solicitation Document. The entire response must arrive at the place and by the time specified in this Solicitation Document";
- (c) A statement that requires offerors to sign their facsimile offers;
- (d) "EWEB reserves the right to award the contract solely on the basis of a facsimile offer. However, upon EWEB's request the apparent successful offeror shall promptly submit its complete original signed offer";
- (e) The data and compatibility characteristics of EWEB's receiving facsimile machine as follows:
 - (A) Telephone number; and
 - (B) If applicable, the compatibility characteristics, e.g. make and model number, receiving speed, communications protocol; and
- (f) A provision that EWEB is not responsible for any failure attributable to the transmission or receipt of the facsimile offer including, but not limited to the following:
 - (A) Receipt of garbled or incomplete documents;
 - (B) Availability or condition of the receiving facsimile machine;
 - (C) Incompatibility between the sending and receiving facsimile machines;
 - (D) Delay in transmission or receipt of documents;
 - (E) Failure of the offeror to properly identify the offer documents;
 - (F) Illegibility of offer documents; and
 - (G) Safeguarding security and confidentiality of data.

Stats. Implemented: ORS 279A.065, 279A.070

3-0330 Electronic Procurement

- (1) EWEB may conduct all phases of a procurement, including without limitation the posting of electronic solicitations and the receipt of electronic offers, by electronic methods if and to the extent EWEB specifies in a Solicitation Document, a request for quotes, or any other written instructions on how to participate in the procurement
 - (2) EWEB shall open an electronic offer in accordance with its electronic security measures in effect at the time of its receipt of the electronic offer. The bidder or proposer submitting the electronic offer assumes the risk of premature disclosure due to submission in unsealed form.
 - (3) EWEB's use of electronic signatures shall be consistent with applicable statutes and Divisions. EWEB may limit the use of electronic methods of conducting a procurement to those that are most advantageous to EWEB or those that are most advantageous for the specific project.
 - (4) If EWEB determines that bid or proposal security is or will be required, EWEB will not authorize electronic offers unless a method for receipt of such security is agreed to in writing prior to the transmission of the electronic offer.
 - (5) EWEB shall conduct all portions of an electronic procurement in accordance with this Division 3.
 - (6) As a condition of participation in an electronic procurement, EWEB may require potential
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bidders or proposers to:

- (a) Register with EWEB before the date and time first set to accept offers,
 - (b) Agree to the terms, conditions, or other requirements of a Solicitation Document, or
 - (c) Agree to terms and conditions governing the procurement, such as procedures that EWEB may use to attribute, authenticate or verify the accuracy of an electronic offer or the actions that constitute an electronic signature.
- (7) EWEB may specify that bidders or proposers must submit an electronic offer by a particular date and time, or that they may submit multiple electronic offers during a period of time established in the electronic solicitation.
- (a) When EWEB specifies that bidders or proposers may submit multiple electronic offers during a specified period of time, EWEB will designate a time and date on which they may begin to submit their electronic offers, and a time and date after which they may no longer submit electronic offers.
 - (b) The date and time after which bidders or proposers may no longer submit electronic offers need not be specified by a particular date and time but may instead be specified by a description of the conditions that, when they occur, will establish the date and time after which electronic offers may no longer be submitted.
 - (c) If EWEB will accept electronic offers until a designated date and time, it will receive the first responses and then begin to accept real time electronic offers. EWEB will continue to accept electronic offers in until the date and time specified, after which the utility will no longer accept electronic offers.
 - (d) If there are a limited number of offers or if conditions exist whereby delaying the closing is technical and not reasonable under the conditions, EWEB may shorten the closing date by posting an addendum. The shortened closing date and time may not be less than 72 hours from the date and time the addendum was posted.
- (8) Following receipt of the first electronic offer (after the day and time first set to receive electronic offers) EWEB will post on its Electronic Procurement System, and updated on a real time basis, the lowest electronic offer price or the highest ranking electronic offer.
- (a) At any time before the date and time an electronic offer is closed, a bidder or proposer may revise its electronic offer, except that a bidder or proposer may not lower its price unless that price is below the then lowest electronic offer.
 - (b) A bidder or proposer may not increase the price set forth in its electronic offer after the day and time that EWEB first accepts electronic offers.
 - (c) A bidder or proposer may withdraw an electronic offer only in compliance with this division 3. If a bidder or proposer withdraws an electronic offer, it may not later submit an electronic offer at a price higher than that set forth in the withdrawn electronic offer.
- (9) In the event of a failure of EWEB's Electronic Procurement System that interferes with the ability of bidders or proposers to submit electronic offers, protest or to otherwise participate in the procurement, EWEB may cancel the procurement in accordance with Rule 3-0660, or may extend the date and time for receipt of electronic offers by providing notice of the extension immediately after the Electronic Procurement System becomes available.

Stats. Implemented: ORS279B.055(5), 279B.060(2)

BID AND PROPOSAL PREPARATION

3-0400 Offer Preparation

- (1) An offeror shall submit and sign its offer in accordance with the instructions set forth in the EWEB Public Contracting Rules, Division 3 - Page 25 of 47

Solicitation Document. An offeror shall initial and submit any correction or erasure to its offer prior to opening in accordance with the requirements for submitting an offer set forth in the Solicitation Document.

- (2) An offeror shall submit its offer on the form(s) provided in the Solicitation Document, unless an offeror is otherwise instructed in the Solicitation Document.
- (3) An offeror shall provide EWEB with all documents and descriptive literature required by the Solicitation Document.
- (4) An offeror shall clearly mark and/or designate trade secrets and information protected from disclosure by the Oregon Public Records Laws, Chapter 192.
- (5) If the Solicitation Document permits electronic offers pursuant to Rule 3-0330, an offeror may submit its offer electronically. EWEB shall not consider electronic offers unless authorized by the Solicitation Document.

Stats. Implemented: ORS 279A.065, 279A.070

3-0405 Bid Security

- (1) If EWEB determines that bid security is reasonably necessary or prudent to protect the interests of EWEB in an invitation to bid or a request for proposal, EWEB shall:
 - (a) Return the bid security to all bidders or proposers upon the execution of the contract; and
 - (b) Retain the bid security if a bidder or proposer who is awarded a contract fails to promptly and properly execute the contract. For purposes of these rules, prompt and proper execution of the contract includes all action by a bidder or proposer that is necessary to form a contract in accordance with the invitation to bid or request for proposal, including posting performance security, submitting proof of insurance when the invitation to bid or request for proposal requires the submission and agreeing to perform the scope of work and meet the performance standards set forth in the invitation to bid or request for proposal.
- (2) The determinations by EWEB are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

Stats. Implemented: ORS 279B.055(3) and (11), 279B.060(4), 279B.145

3-0410 Offer Submission

- (1) Product Samples and Descriptive Literature. EWEB may require product samples or descriptive literature if it determines either is necessary or desirable to evaluate the quality, features or characteristics of an offer. EWEB will dispose of product samples, or make them available for the offeror to retrieve in accordance with the Solicitation Document.
- (2) Identification of Offers
 - (a) To ensure proper identification and handling, offers shall be submitted in a sealed envelope appropriately marked or in the envelope provided by EWEB, whichever is applicable. If EWEB permits electronic offers or facsimile offers in the Solicitation Document, the offeror may submit and identify facsimile offers or electronic offers in accordance with Rules 3-0320 and 3-0330, and the instructions set forth in the

Solicitation Document.

- (b) EWEB is not responsible for offers submitted in any manner, format or to any delivery point other than as required in the Solicitation Document.
- (3) Receipt of Offers. The offeror is responsible for ensuring that EWEB receives its offer at the required delivery point prior to the closing, regardless of the method used to submit or transmit the offer.

Stats. Implemented: ORS 279A.065, 279A.070

3-0420 Pre-Offer Conferences

- (1) EWEB may hold pre-offer conferences with prospective offerors prior to closing, to explain the procurement requirements, obtain information, or to conduct site inspections.
- (2) EWEB may require attendance at the pre-offer conference as a condition for making an offer.
- (3) If EWEB holds a pre-offer conference, the conference shall be held within a reasonable time after the Solicitation Document has been issued, but sufficiently before the closing to allow offerors to consider information provided at that conference.
- (4) Statements made by EWEB representatives, agents, or contractors at the pre-offer conference do not change the Solicitation Document unless EWEB confirms such statements with a written addendum to the Solicitation Document.
- (5) EWEB shall include notice of any pre-offer conference in the Solicitation Document.

Stats. Implemented: ORS 279A.065, 279A.070

3-0430 Addenda to Solicitation Document

- (1) EWEB may change a Solicitation Document only by written addenda. An offeror shall provide written acknowledgment of receipt of all issued addenda with its offer, unless otherwise specified in the addenda.
 - (a) EWEB shall make addenda available to all prospective offerors in a manner intended to foster competition and consistent with the bidding document instructions and EWEB's usual practices. The Solicitation Document shall specify how EWEB will provide notice of addenda and how EWEB will make the addenda available before closing.
 - (b) The following is an example of the language to be used: "EWEB will not mail notice of addenda, but will publish notice of any addenda on its web site. Addenda may be downloaded off the web site. Offerors should frequently check the web site until closing, i.e., at least once weekly until the week of closing and at least once daily the week of the closing. Any and all questions with regard to project addenda shall be communicated to the appropriate EWEB Buyer."
- (2) Generally EWEB shall issue addenda within a reasonable time to allow prospective offerors to consider the addenda in preparing their offers. EWEB may extend the closing if it determines prospective offerors need additional time to review and respond to addenda. Unless unusual circumstances exist, EWEB will not issue addenda less than 72 hours

before the closing and then the addenda will also extend the closing.

- (3) Addenda that modify the evaluation criteria, selection process or procedure for any tier of competition under a multiple-tiered or multi-step sealed proposal will be issued no fewer than five (5) days before the beginning of that tier or step of competition, unless EWEB determines that a shorter period is sufficient to allow the offerors to prepare for that tier or step of competition. EWEB shall document the reasons for shortening the period.
- (4) An offeror may submit a written protest to the addendum as provided in Rule 3-0700 by the later of:
 - (a) The close of EWEB's next business day after the addendum is issued or
 - (b) The date and time set forth in the addendum or
 - (c) The date and time designated in Rule 3-0700.
- (5) If the deadline established in section (4) is after the deadline for receiving protests to the Solicitation Document pursuant to Rule 3-0700, then EWEB may consider an offeror's protest to the Addendum only, and shall not consider a protest to matters not added or modified by the Addendum.
- (6) EWEB is not required to provide a protest period for addenda issued during a multiple-tier or multi-step procurement process provided for in these Rules.

Stats. Implemented: ORS 279B.060

3-0440 Pre-Closing Modification or Withdrawal of Offers

- (1) An offeror may modify its offer in writing prior to the closing date and time by preparing and submitting its modification to its offer in accordance with Rules 3-0400 and 3-0410 unless otherwise specified in the Solicitation Document. Any modification must include:
 - (a) The offeror's statement that the modification amends and supersedes the prior offer;
 - (b) The bid or proposal modification; and
 - (c) The Solicitation Document number or other identification as specified in the Solicitation Document.
- (2) An offeror may withdraw its offer by written notice submitted on the offeror's letterhead, signed by an authorized representative of the offeror, delivered to the individual and location specified in the Solicitation Document or the place of closing if no location is specified, and received by EWEB prior to the closing. The offeror or authorized representative of the offeror may also withdraw its offer in person prior to the closing upon presentation of appropriate identification and evidence of authority satisfactory to EWEB.
- (3) EWEB may release an unopened offer withdrawn by the offeror to the offeror or its authorized representative after voiding any date and time stamp mark. The offeror shall mark the written request to withdraw an offer as follows:
 - (a) Bid or proposal withdrawal; and
 - (b) The Solicitation Document number or other identification as specified in the Solicitation Document.
- (4) EWEB shall include all documents relating to the modification or withdrawal of offers in the appropriate procurement file.

Stats. Implemented: ORS 279B.055, 279B.060
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3-0450 Receipt, Opening, and Recording of Offers; Confidentiality of Offers

- (1) EWEB shall electronically or mechanically time-stamp or hand-mark each offer and any modification upon its receipt. EWEB shall not open the offer or modification upon receipt but shall maintain it as confidential and secure until opening. If EWEB inadvertently opens an offer or a modification prior to the opening, it shall return the offer or modification to its secure and confidential state until opening. EWEB shall document the resealing for the procurement file by affixing a statement explaining the time, circumstances and/or reasons it inadvertently opened the offer or modification.
- (2) After review and evaluation of the information submitted in the offers regarding exemptions and information clearly marked and identified by the bidder or proposer and submitted to EWEB in confidence, and which are protected by the Public Records Laws ORS Chapter 192, EWEB shall publicly open offers including any modifications made to the offer.
- (3) EWEB shall record the amount of the bid, the name of the bidder and other relevant information not designated by the bidder as exempt or confidential under Oregon law, and shall make such record available to public inspection.
- (4) Notwithstanding ORS 192.311 to 192.478 (trade secrets), proposals may be opened in a manner to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation, but EWEB shall record and make available the identity of all proposers as part of EWEB's public records after the proposals are opened. Notwithstanding ORS 192.311 to 192.478 (trade secrets), proposals are not required to be open for public inspection until after the notice of intent to award a contract is issued. The fact that proposals are opened at a meeting, as defined in ORS 192.610, does not make the contents of the proposals subject to disclosure, regardless of whether EWEB fails to give notice of or provide for an executive session for the purpose of opening proposals.

Stats. Implemented: ORS 279B.055(5), 279B.060(6)

3-0460 Late Offers, Late Withdrawals and Late Modifications

Any offer received after closing is late. An offeror's request for withdrawal or modification of an offer received after closing is late. EWEB shall not consider late offers, withdrawals or modifications except as permitted in Rules 3-0470 or 3-0231.

Stats. Implemented: ORS 279B.055

3-0470 Mistakes

- (1) To protect the integrity of the competitive procurement process and to assure fair treatment of offerors, EWEB will consider whether to permit waiver, correction or withdrawal of offers for certain mistakes.
- (2) EWEB shall not allow an offeror to correct or withdraw an offer for an error in judgment.
- (3) If EWEB discovers certain mistakes in an offer after opening but before award of the contract, it may take the following action:
 - (a) EWEB may waive or permit an offeror to correct a minor informality. A minor informality is a matter of form rather than substance that is evident on the face of the

offer, or an insignificant mistake that can be waived or corrected without prejudice to other offerors. Examples of minor informalities include an offeror's failure to:

- (A) Return the correct number of signed offers or the correct number of other documents required by the Solicitation Document;
 - (B) Sign the offer in the designated block, provided a signature appears elsewhere in the offer evidencing an intent to be bound; and
 - (C) Acknowledge receipt of an addendum to the Solicitation Document, provided that it is clear on the face of the offer that the offeror received the addendum and intended to be bound by its terms or the addendum involved did not affect price, quality or delivery.
- (b) EWEB may correct a clerical error if the error is evident on the face of the offer or other documents submitted with the offer, and the offeror confirms EWEB's correction in writing. A clerical error is an offeror's error in transcribing its offer. Examples include typographical mistakes, errors in extending unit prices, transposition errors, arithmetical errors, instances in which the intended correct unit or amount is evident by simple arithmetic calculations (for example a missing unit price may be established by dividing the total price for the units by the quantity of units for that item or a missing, or incorrect total price for an item may be established by multiplying the unit price by the quantity when those figures are available in the offer). In the event of a discrepancy, unit prices shall prevail over extended prices.
- (c) EWEB may permit an offeror to withdraw an offer based on one or more clerical errors in the offer only if the offeror shows with objective proof and by clear and convincing evidence:
- (A) The nature of the error;
 - (B) That the error is not a minor informality under this subsection or an error in judgment;
 - (C) That the error cannot be corrected or waived under subsection (b) of this section;
 - (D) That the offeror acted in good faith in submitting an offer that contained the claimed error and in claiming that the alleged error in the offer exists;
 - (E) That the offeror acted without gross negligence in submitting an offer that contained a claimed error;
 - (F) That the offeror will suffer substantial detriment if EWEB does not grant the offeror permission to withdraw the offer;
 - (G) That EWEB's or the public's status has not changed so significantly that relief from the forfeiture will work a substantial hardship on EWEB or the public it represents; and
 - (H) That the offeror promptly gave EWEB notice of the claimed error.
- (d) The criteria in subsection (3)(c) of this Rule shall determine whether EWEB will permit an offeror to withdraw its offer after closing. These criteria also shall apply to the question of whether EWEB will permit an offeror to withdraw its offer without forfeiture of its bid bond or other bid security or without liability to EWEB based on the difference between the amount of the offeror's offer and the amount of the contract actually awarded by EWEB, whether by award to the next lowest responsive and responsible bidder or the most advantageous responsive and responsible proposer, or by resorting to a new solicitation.
- (3) EWEB shall reject any offer in which a mistake is evident on the face of the offer and the intended correct offer is not evident or cannot be substantiated from documents submitted with the offer.

- (4) The procedures and criteria set forth above are offeror's only opportunity to correct mistakes or withdraw offers because of a mistake. Following award, an offeror is bound by its offer, and may withdraw its offer or rescind a contract entered into pursuant to this Division 3 only to the extent permitted by applicable law.
- (5) Any decision by EWEB to permit the correction or withdrawal of bids based on bid mistakes shall be supported by a written determination by EWEB that states the reasons for the action taken. The determinations by EWEB are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

Stats. Implemented: ORS 279B.055, 279B.145

3-0480 Time for Agency Acceptance

An offeror's offer is a firm offer and is irrevocable, valid and binding on the offeror for not less than 30 days from closing unless otherwise specified in the Solicitation Document.

Stats. Implemented: ORS 279A.065, 279A.070

3-0490 Extension of Time for Acceptance of Offer

EWEB may request orally or in writing that offerors extend in writing the time within which EWEB may consider their offer(s). If an offeror agrees to such extension, the offer shall continue as a firm offer and remain irrevocable, valid and binding on the offeror for the agreed upon extension period.

Stats. Implemented: ORS 279A.065, 279A.070

QUALIFICATIONS AND DUTIES

3-0500 Responsibility of Bidders and Proposers

- (1) EWEB shall prepare a written determination of nonresponsibility of a bidder or proposer if EWEB determines that the bidder or proposer does not meet the standards of responsibility.
- (2) In determining whether a bidder or proposer has met the standards of responsibility, EWEB shall consider 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) Completed previous contracts of a similar nature with a satisfactory record of performance. For purposes of this paragraph, a satisfactory record of performance means that to the extent that the costs associated with and time available to perform a previous contract remained within the bidder's or proposer's control, the bidder or proposer stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. EWEB shall document the record of performance of a bidder or proposer if EWEB finds under this paragraph that the bidder or proposer is not responsible;
 - (c) A satisfactory record of integrity. In evaluating the bidder's or proposer's record of integrity, EWEB may consider, among other things, whether the bidder or proposer has previous criminal convictions for offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the bidder's or proposer's

- performance of a contract or subcontract. EWEB shall document the record of integrity of a bidder or proposer if EWEB finds under this paragraph that the bidder or proposer is not responsible;
- (d) Qualified legally to contract with EWEB;
 - (e) Supplied all necessary information in connection with the inquiry concerning responsibility. If a bidder or proposer fails to promptly supply information concerning responsibility that EWEB requests, EWEB shall determine the bidder's or proposer's responsibility based on available information or may find that the bidder or proposer is not responsible;
 - (f) Not been debarred by EWEB under Rule 3-0575; and
 - (g) Liquidated or delinquent debt owed to the state of Oregon.
- (3) EWEB may refuse to disclose outside of EWEB confidential information furnished by a bidder or proposer under this section when the bidder or proposer has clearly identified in writing the information the bidder or proposer seeks to have treated as confidential and EWEB has authority under ORS 192.311 to 192.478 to withhold the identified information from disclosure.
- (4) The determinations made by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

Stats. Implemented: ORS 279B.110, 279B.145

3-0550 Prequalification of Prospective Offerors

- (1) EWEB may prequalify prospective bidders or proposers to submit bids or proposals for public contracts to provide particular types of goods or services. The method of submitting prequalification applications, the information required in order to be prequalified and the forms to be used for submitting prequalification information shall be determined by EWEB unless otherwise prescribed by rule adopted by the Board in its capacity as the local contract review board.
- (2) EWEB shall, in response to the receipt of a prequalification application submitted under subsection (1) of this section, notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified based on the standards of responsibility listed in Rule 3-0500(2), the type and nature of contracts that the prospective bidder or proposer is qualified to compete for and the time period for which the prequalification is valid. If EWEB does not prequalify a prospective bidder or proposer as to any contracts covered by the prequalification process, the notice must specify which of the standards of responsibility listed in Rule 3-0500(2) the prospective bidder or proposer failed to meet. Unless the reasons are specified, the prospective bidder or proposer shall be deemed to have been prequalified in accordance with the application.
- (3) If EWEB subsequently discovers that a prospective bidder or proposer that prequalified under subsections (1) and (2) of this section is no longer qualified, EWEB may revoke the prequalification upon reasonable notice to the prospective bidder or proposer, except that a revocation is invalid as to any contract for which an advertisement for bids or proposals has already been issued.

Stats. Implemented: ORS 279B.120

3-0560 Application for Prequalification

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- (1) When EWEB permits or requires prequalification of bidders or proposers, a prospective bidder or proposer who wishes to prequalify shall submit a prequalification application to EWEB on a form prescribed under Rule 3-0550(1).
- (2) Upon receipt of a prequalification application, EWEB shall investigate the prospective bidder or proposer as necessary to determine whether the prospective bidder or proposer is qualified.
 - (a) The determination shall be made in less than 30 days, if practicable, if the prospective bidder or proposer requests an early decision to allow the prospective bidder or proposer as much time as possible to prepare a bid or proposal for a contract that has been advertised.
 - (b) In making its determination, EWEB shall consider only the applicable standards of responsibility listed in Rule 3-0500(2).
 - (c) EWEB shall promptly notify the prospective bidder or proposer whether the prospective bidder or proposer is qualified.
- (3) If EWEB finds that a prospective bidder or proposer is qualified, the notice must state the type and nature of contracts that the prospective bidder or proposer is qualified to compete for and the period of time for which the prequalification is valid.
- (4) If EWEB finds that the prospective bidder or proposer is not qualified as to any contracts covered by the rule, resolution, ordinance or other regulation, the notice must specify:
 - (a) The reasons given under Rule 3-0550 for not prequalifying the prospective bidder or proposer;
 - (b) Inform the prospective bidder or proposer of the right to a hearing under Rule 3-0760; and
 - (c) Inform the prospective bidder or proposer to file with EWEB a written demand for hearing within three business days after receipt of the notice pursuant to Rule 3-0760.
- (5) If EWEB has reasonable cause to believe that there has been a substantial change in the conditions of a prequalified prospective bidder or proposer and that the prospective bidder or proposer is no longer qualified or is less qualified, EWEB may revoke or may revise and reissue the prequalification after reasonable notice to the prequalified prospective bidder or proposer. The notice must specify:
 - (a) The reasons given under this Rule for revocation or revision of the prequalification of the prospective bidder or proposer;
 - (b) Inform the prospective bidder or proposer of the right to a hearing under Rule 3-0760; and
 - (c) Inform the prospective bidder or proposer to file with EWEB a written demand for hearing within three business days after receipt of the notice pursuant to Rule 3-0760.
- (6) A revocation or revision does not apply to any contract for which an advertisement for bids or proposals was issued before the date the notice of revocation or revision was received by the prequalified prospective bidder or proposer.

Stats. Implemented: ORS 279B.125

3-0575 Debarment of Prospective Offerors

- (1) EWEB:
 - (a) May debar a prospective bidder or proposer from consideration for award of EWEB's
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- contracts for the reasons listed in subsection (2) of this section after providing the prospective bidder or proposer with notice and a reasonable opportunity to be heard.
- (b) May not debar a prospective bidder or proposer under this section for more than three years.
- (2) A prospective bidder or proposer may be debarred from consideration for award of EWEB's contracts if:
- (a) The prospective bidder or proposer has been convicted of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract or in the performance of a public or private contract or subcontract.
 - (b) The prospective bidder or proposer has been convicted under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the prospective bidder's or proposer's responsibility as a contractor.
 - (c) The prospective bidder or proposer has been convicted under state or federal antitrust statutes.
 - (d) The prospective bidder or proposer has committed a violation of a contract provision that is regarded by EWEB or the Construction Contractors Board to be so serious as to justify disqualification. A violation may include but is not limited to a failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a failure to perform or an unsatisfactory performance caused by acts beyond the control of the contractor may not be considered to be a basis for debarment.
 - (e) The prospective bidder or proposer does not carry workers' compensation or unemployment insurance as required by statute.
- (3) EWEB shall issue a written decision to debar a prospective bidder or proposer under this section. The decision must:
- (a) State the reasons for the action taken; and
 - (b) Inform the debarred prospective bidder or proposer of the appeal rights of the prospective bidder or proposer under Rule 3-0760.
- (4) A copy of the decision issued under subsection (3) of this section must be mailed or otherwise furnished immediately to the debarred prospective bidder or proposer.
- (5) A prospective bidder or proposer that wishes to appeal debarment shall, within three business days after receipt of notice of debarment, notify EWEB in writing that the prospective bidder or proposer appeals the debarment as provided in Rule 3-0760.

Stats. Implemented: ORS 279B.130; Or. Laws 2007, Ch. 764, Sec. 8.

OFFER EVALUATION AND AWARD

3-0600 Evaluation of Invitation to Bid

- (1) EWEB shall evaluate all bids that are received before the time and date indicated for bid opening in the invitation to bid.
- (2) EWEB shall evaluate the bids based on the requirements set forth in the invitation to bid and which shall include:
 - (a) Any criteria to determine minimum acceptability, such as inspection, testing, quality and suitability for intended use or purpose.

- (b) Any criteria that will affect the bid price and will be considered in evaluation for award including, but not limited to, discounts, transportation costs and total costs of ownership or operation of a product over the life of the product must be objectively measurable.
 - (c) No criteria may be used in a bid evaluation that is not set forth in the invitation to bid or in a qualified products list maintained under 3-0240.
 - (d) EWEB shall, for the purpose of evaluating bids, apply any applicable preference allowed in Division 2.
- (3) EWEB may not consider for award bids received after the time and date indicated for bid opening in the invitation to bid.
- (4) EWEB may retain bids or copies of bids received after the bid time and date indicated in the invitation to bid.
- (5) After bid opening, EWEB may conduct discussions with apparent responsive bidders for the purpose of clarification to assure full understanding of the bid. All bids, in EWEB's sole discretion, needing clarification shall be accorded such an opportunity. EWEB shall document clarification of any bidder's bid in the procurement file.

Stats. Implemented: ORS 279B.055(6)

3-0605 Award of Contract to Invitation to Bid

- (1) If a contract is awarded, EWEB shall award the contract:
- (a) To the lowest responsible bidder whose bid substantially complies with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; or
 - (b) When the invitation to bid specifies or authorizes the award of multiple contracts, to the responsible bidders:
 - (A) Whose bids substantially comply with the requirements and criteria set forth in the invitation to bid and with all prescribed public procurement procedures and requirements; and
 - (B) Who qualify for the award of a public contract under the terms of the invitation to bid.
 - (c) A multiple award may be made if award to two or more bidders of similar goods or services is necessary for adequate availability, delivery, service or product compatibility.
 - (d) Multiple awards may not be made for the purpose of dividing the procurement into multiple solicitations, or to allow for user preference unrelated to utility or economy.
 - (e) A notice to prospective bidders that multiple contracts may be awarded for any invitation to bid shall not preclude EWEB from awarding a single contract in response to the invitation to bid.
- (2) If, after evaluation of bids, EWEB determines that an acceptable bid has been received for only parts of the requirements of the Solicitation Document:
- (a) EWEB may award a contract for the parts of the Solicitation Document for which acceptable bids have been received; or
 - (b) EWEB may reject all bids pursuant to 3-0640, and may issue a new Solicitation Document on the same or revised terms, conditions and specifications.

- (3) If EWEB initially determines that two or more bids are identical in all respects, EWEB shall re-evaluate the identical bids to verify the initial findings are correct and valid. If the re-evaluation verifies identical bids, EWEB shall award the contract as follows:
 - (a) Preference shall be given to the bidder whose supplies and services have been manufactured or produced in Oregon;
 - (b) EWEB may use any reasonable criteria to make this determination, including without limitation requesting information from the bidders or other sources and applying such criteria equally to each bidder;
 - (c) If two or more remain identical after any preferences are allowed, then the contract shall be awarded by drawing lots as follows:
 - (A) EWEB shall give notice of the drawing to the identical bidders;
 - (B) The identical bidders shall be given the opportunity to be present when the lots are drawn;
 - (C) The drawing of lots shall be a drawing where each bidder has 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 bidder over another bidder.
- (4) After award, EWEB shall make a record showing the basis for determining the successful bidder and shall include:
 - (a) The bid or bids if multiple awards are made; and
 - (b) The final ranking score of each evaluated Bid.

Stats. Implemented: ORS 279B.055(10)

3-0610 Evaluation of Request for Proposals

- (1) Evaluation criteria:
 - (a) Need not be precise predictors of actual future costs and performance, but to the extent possible, such factors shall be reasonable estimates of actual future costs based on information available to EWEB; and
 - (b) The relative importance of price and any other evaluation factors used to rate the proposals in the first tier of competition, and if more than one tier of competitive evaluation may be used, a description of the process under which the proposals will be evaluated in the subsequent tiers; and
- (2) For purposes of evaluation and as provided in the request for proposal, EWEB may employ methods of contractor selection that include without limitation to:
 - (a) An award or awards based solely on the ranking of proposals;
 - (b) Discussions leading to best and final offers, in which EWEB may not disclose private discussions leading to best and final offers;
 - (c) Discussions leading to best and final offers, in which EWEB may not disclose information derived from proposals submitted by competing proposers;
 - (d) Serial negotiations, beginning with the highest ranked proposer;
 - (e) Competitive simultaneous negotiations;
 - (f) Multiple-tiered competition designed to identify, at each level, a class of proposers that fall within a competitive range or to otherwise eliminate from consideration a class of lower ranked proposers;
 - (g) A multi-step request for proposals requesting the submission of unpriced technical submittals, and then later issuing a request for proposals limited to the proposers whose technical submittals EWEB had determined to be qualified under the criteria

- set forth in the initial request for proposals; or
- (h) Any combination of methods described in this paragraph, as authorized or prescribed by rules adopted herein.
- (3) In the request for proposal, EWEB shall describe the methods by which EWEB will make the results of each tier of competitive evaluation available to the proposers who competed in the tier and how any proposers who are eliminated from further competition may protest or otherwise object to EWEB's decision.
- (4) After award, EWEB shall make a record showing the basis for determining the successful bidder and shall include:
- (a) The bid or bids if multiple awards are made;
 - (b) Completed bid tabulation sheet; and
 - (c) Written justification for any rejection of lower bids.

Stats. Implemented: ORS 279B.060

3-0615 Award of Contract to Request for Proposals

- (1) If a contract is awarded, EWEB shall award the contract to the responsible proposer whose proposal EWEB determines in writing to be the most advantageous to EWEB based on:
- (a) The evaluation process and evaluation factors described in the request for proposals;
 - (b) Any applicable preferences allowed in Division 2; and,
 - (c) When applicable, the outcome of any negotiations authorized by the request for proposals.
 - (d) Other factors may not be used in the evaluation.
- (2) When the request for proposals specifies or authorizes the award of multiple public contracts, EWEB shall award public contracts to the responsible proposers who qualify for the award of a contract under the terms of the request for proposals.
- (3) After award, EWEB shall make a record showing the basis for determining the successful proposer and shall include:
- (a) The proposal or proposals if multiple awards are made;
 - (b) The final ranking score of each evaluated Proposal;
 - (c) Written justification for any rejection of higher scoring proposals; and
 - (d) If EWEB engaged in any of the methods of contractor selection described in Rule 3-0231 (Competitive Range, Multiple-tiered) or 3-0232 (Multi-step Sealed Proposals), written documentation of the content of any discussions, negotiations, best and final offers, or any other procedures EWEB used to select a proposer to which EWEB awarded a contract.
- (4) The determinations by EWEB under this Rule are final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law.

Stats. Implemented: ORS 279B.060(10), 279B.145

3-0620 Notice of Intent to Award Contract

- (1) At least seven days before the award of a public contract, EWEB shall issue, or post electronically or otherwise, to each bidder or proposer, including any proposer who was

evaluated in a final competitive tier, notice of EWEB's intent to award a contract.

- (2) This section does not apply to a contract awarded as a small procurement 3-0265, an intermediate procurement 3-0270, a sole-source procurement 3-0275, an emergency procurement 3-0280, or a special procurement under 3-0285.

Stats. Implemented: ORS 279B.055(9), 279B.060(9), 279B.135

3-0630 Availability of Award Decisions

- (1) To the extent required by the Solicitation Document, EWEB shall deliver to the successful offeror a signed purchase order, price agreement, or other contract documents as applicable.
- (2) A person may obtain tabulations of awarded bids or evaluation summaries of proposals for a minimal charge, in person or by submitting to EWEB a written request accompanied by payment. The requesting person shall provide the Solicitation Document number and enclose a self-addressed, stamped envelope. In addition, EWEB may make bid and proposal tabulations available by posting them on EWEB's web site, or if EWEB establishes an Electronic Procurement System, it may make bid and proposal tabulations available through its Electronic Procurement System.
- (3) After notice of Intent to Award a contract, EWEB shall make procurement files available in accordance with these Rules and Oregon law.

Stats. Implemented: ORS 279B.055 & ORS 279B.060

3-0640 Cancellation, Rejection, Delay of ITB or RFP

- (1) EWEB may cancel, reject in whole or in any part any bids or proposals if EWEB determines it is in the best interest of EWEB. The reasons for cancellation or rejection must be made part of the solicitation file, and may include without limitation:
 - (a) An offer is contingent upon EWEB's acceptance of terms and conditions (including specifications) that differ from the Solicitation Document;
 - (b) An offer that takes exception to terms and conditions (including specifications) set forth in the Solicitation Document;
 - (c) An offer attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;
 - (d) An offer proposes goods or services that fail to meet the specifications of the Solicitation Document;
 - (e) An offer that is late;
 - (f) An offer that is not in substantial compliance with the Solicitation Document;
 - (g) An offer is not in substantial compliance with all prescribed public procurement procedures;
 - (h) An offeror has not been prequalified under Rule 3-0550 and EWEB required mandatory prequalification;
 - (i) An offeror has been debarred under Rule 3-0575;
 - (j) An offeror has not met the requirements of subcontracting to an emerging small business as provided in ORS 279A.105, if required by the Solicitation Document;
 - (k) An offeror has not submitted properly executed bid or proposal security as required by the Solicitation Document;
 - (l) An offeror has failed to provide the certification of non-discrimination required under Rule 3-0210 and 3-0230;

- (m) An offeror has failed to demonstrate its ability to perform satisfactorily under a contract and EWEB finds that it is not a responsible bidder or proposer under Rule 3-0500;
 - (n) An offeror is not qualified legally to contract with EWEB;
 - (o) An offeror has not supplied all necessary information in connection with any inquiry concerning responsibility. If the offeror fails to promptly supply information requested by EWEB concerning responsibility, EWEB shall base the determination of responsibility upon any available information, or may find the offeror non-responsible;
 - (p) The content of or an error in the Solicitation Document, or the procurement process unnecessarily restricted competition for the contract;
 - (q) The price, quality or performance presented by the offerors are too costly or of insufficient quality to justify acceptance of any offer;
 - (r) An offer that is based on a bid mistake that cannot be corrected under Rule 3-0470, which determination by EWEB is final and conclusive unless clearly erroneous, arbitrary, capricious or contrary to law;
 - (s) Causes other than legitimate market forces that threaten the integrity of the competitive process. These causes may include, without limitation, those that tend to limit competition, such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct, and inadvertent or intentional errors in the Solicitation Document;
- (2) For purposes of this Division, EWEB may investigate any person submitting an offer. The investigation may include that person's officers, directors, owners, affiliates, or any other person acquiring ownership of the person to determine application of this Division or to apply the debarment provisions of Rule 3-0575.
 - (3) EWEB is not liable to any bidder or proposer for any loss or expense caused by or resulting from the delay or suspension of a solicitation, bid, proposal or award.

Stats. Implemented: ORS279A.060, 279B.100, 279B.110, 279B.145

3-0660 Notice of Cancellation of Procurement or Solicitation

- (1) If EWEB cancels a procurement or solicitation prior to opening, it shall provide written notice of cancellation in the same manner that EWEB initially provided notice of the solicitation. The notice shall:
 - (a) Identify the Solicitation Document;
 - (b) Briefly explain the reason for cancellation; and
 - (c) If appropriate, explain that an opportunity will be given to compete on any resolicitation.
- (2) If EWEB cancels a procurement or solicitation after opening, EWEB shall provide written notice of cancellation to all offerors who submitted offers.

Stats. Implemented: ORS 279B.100

3-0670 Disposition of Offers if Procurement or Solicitation Canceled

- (1) Prior to opening: If EWEB cancels a procurement or solicitation prior to opening, it shall return all offers it received to offerors unopened, provided the offeror submitted its offer in a hard copy format with a clearly visible return address. If there is no return address on the envelope, EWEB shall open the offer to determine the source and then return it to the offeror. For electronic offers, EWEB shall delete the offers from its Electronic Procurement System or information technology system.

- (2) After Opening. If EWEB cancels a procurement or solicitation after opening, EWEB:
 - (a) May return proposals but if returned then shall keep a list of returned proposals in the procurement file; and
 - (b) Shall keep bids in the procurement file.
- (3) Rejection of all offers. If EWEB rejects all offers, it shall keep all proposals and bids in the procurement file.

Stats. Implemented: ORS279B.060(5)(c)

LEGAL REMEDIES

3-0700 Protests and Judicial Review of Competitive Bidding and Proposals

- (1) A prospective bidder, proposer or offeror for a public contract solicited under Rules 3-0210 (Competitive Sealed Bidding), 3-0211 (Multi-Step Sealed Bids), 3-0230 (Competitive Sealed Proposals), 3-0231 (Competitive Range, Multiple-tiered, Discussions and Negotiations), 3-0232 (Multi-step Sealed Proposals) may file a protest with EWEB if the prospective bidder, proposer or offeror believes that:
 - (a) The procurement process is contrary to law, or
 - (b) A solicitation document is unnecessarily restrictive in that specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the procurement needs of EWEB, or
 - (c) A solicitation document is legally flawed in that a solicitation document contains terms or conditions that are contrary to law, or
 - (d) A solicitation document improperly specifies a brand name as defined in ORS 279B.200.
- (2) EWEB shall notify prospective protesters of the time and manner in which a protest under this section may be filed and considered, and which shall be no less than five business days before bids, proposals or offers are due.
- (3) EWEB shall consider the protest if the protest is timely filed and contains the following:
 - (a) Sufficient information to identify the solicitation that is the subject of the protest;
 - (b) The grounds that demonstrate how the procurement process is contrary to law or how the solicitation document is unnecessarily restrictive, is legally flawed or improperly specifies a brand name;
 - (c) Evidence or supporting documentation that supports the grounds on which the protest is based; and
 - (d) The relief sought.
- (4) If the protest meets the requirements of subsection (3) of this section, EWEB shall consider the protest and issue a decision in writing. Otherwise, EWEB shall promptly notify the protester that the protest is untimely or that the protest failed to meet the requirements of subsection (3) of this section and give the reasons for the failure.
- (5) EWEB shall issue a decision on the protest no fewer than three business days before bids, proposals or offers are due, unless a written determination is made by EWEB that circumstances exist that justify a shorter time limit.

- (6) The protester must file a protest with EWEB and exhaust all administrative remedies before seeking judicial review.
- (7) The decision of the Board on a protest is subject to judicial review only if the action or writ of review is filed before the opening of bids, proposals or offers.
- (8) If a prospective protester fails to timely file its protest, the prospective protester may not challenge the contract on grounds in subsection (1) in any future legal or administrative proceeding.

Stats. Implemented: ORS 279B.405; Or. Laws 2007, Ch. 764, Sec. 11.

3-0710 Protests and Judicial Review of Special Procurements

- (1) An affected person may protest the approval of a special procurement:
 - (a) By filing a written protest with EWEB that contains the following:
 - (A) A detailed statement of the legal and factual grounds for the protest;
 - (B) A description of the resulting harm to the person; and
 - (C) The relief requested.
 - (b) Prior to the date set for hearing by the Board in the public notice requesting the approval of a proposed special procurement given pursuant to Rule 3-0285(5).
- (2) The Board may uphold the protest, in whole or in part, or it may in its sole discretion implement the sustained protest in the approval of the special procurement.
- (3) Before seeking judicial review of the approval of a special procurement, an affected person must exhaust all available nonjudicial remedies.
- (4) The decision of the Board on a protest is subject to judicial review only if the suit or writ of review is filed before the opening of bids, proposals or offers.

Stats. Implemented: ORS 279B.400, 279B.405(7)

3-0720 Protests and Judicial Review of Other Violations

- (1) If EWEB allegedly violates the EWEB Rules for which no judicial remedy is otherwise provided, except for Rule 3-0800 (Required Contract Provisions), the alleged violation is subject to judicial review only as provided in this Rule.
- (2) A prospective protester must give EWEB written notice:
 - (a) No later than 10 days after the date on which the alleged violation occurred and in no event more than 10 days after the date of execution of the contract;
 - (b) Identifying the public contract about to be awarded or has been awarded;
 - (c) Describing the alleged violation that occurred in the procurement process and that the violation resulted in or will result in the unlawful award of a contract or the unlawful failure to award the contract;
 - (d) A statement whether the protester was deprived of the award of the contract or deprived of the opportunity to compete for the award of the contract;
 - (e) A statement that the protester would have been qualified to receive the award of the contract under Rule 3-0500 (Responsibility of Bidders and Proposers).

- (3) If the protest meets the requirements of subsection (2) of this section, EWEB shall consider the protest and issue a decision in writing. Otherwise, EWEB shall promptly notify the protester that the protest is untimely or that the protest failed to meet the requirements of subsection (2) of this section and give the reasons for the failure.
- (4) EWEB shall issue a decision on the protest no less than three business days after receipt of the protest.
- (5) The protester must file a protest with EWEB and exhaust all administrative remedies before seeking judicial review. Any judicial review of an alleged violation by EWEB shall be conducted by means of writ of review under ORS Chapter 34 filed in the Lane County Circuit Court.
- (6) If a person gives the notice required under subsection (2) and timely seeks judicial review under this section, EWEB shall not execute the contract unless it determines that a compelling governmental interest exists in proceeding or that the goods and services are urgently needed. If such a determination is made, EWEB shall set forth in writing the reasons for the determination and immediately provide the reasons to the person filing the challenge.

Stats. Implemented: ORS 279B.420

3-0740 Protests and Judicial Review of Contract Award

- (1) A bidder or proposer may protest the award of a public contract or a notice of intent to award a public contract, whichever occurs first, if:
 - (a) The bidder or proposer is adversely affected because the bidder or proposer would be eligible to be awarded the public contract in the event that the protest were successful; and
 - (b) The reason for the protest is that:
 - (A) All lower bids or higher ranked proposals are nonresponsive;
 - (B) EWEB has failed to conduct the evaluation of proposals in accordance with the criteria or processes described in the solicitation materials;
 - (C) EWEB has abused its discretion in rejecting the protestor's bid or proposal as nonresponsive; or
 - (D) EWEB's evaluation of bids or proposals or EWEB's subsequent determination of award is otherwise in violation of EWEB Rules.
 - (c) The protest is submitted within seven days.
- (2) The bidder or proposer shall submit the protest to EWEB in writing and shall specify the grounds for the protest to be considered by EWEB.
- (3) EWEB may not consider late protests.
- (4) EWEB shall consider and respond in writing to a protest no less than three business days after receipt of the protest.
- (5) The protester must exhaust all administrative remedies before seeking judicial review. EWEB's decision on a protest of a contract award is reviewable by the Lane County Circuit Court. To obtain review, a complainant must commence an action in accordance with ORS 279B.415(3) before the contract that is the subject of the protest is executed by EWEB.

Stats. Implemented: ORS 279B.410, 279B.415; Or. Laws 2007, Ch. 764, Sec. 12.

3-0760 Review of Prequalification and Debarment Decisions

- (1) Upon receipt of a notice from EWEB of a prequalification decision under Rule 3-0550 or of a decision to debar under Rule 3-0575, a prospective bidder or proposer that wishes to appeal the decision shall, within three business days after receipt of the notice, notify EWEB that the prospective bidder or proposer appeals the decision as provided in this section.
- (2) Immediately upon receipt of the prospective bidder's or proposer's notice of appeal, EWEB shall notify the Board.
- (3) Upon the receipt of notice from EWEB under subsection (2) of this section, the Board shall promptly notify the person appealing and EWEB of the time and place of the hearing. The Board shall conduct the hearing and decide the appeal within 30 days after receiving the notice from EWEB. The Board shall set forth in writing the reasons for the hearing decision.
- (4) At the hearing the Board shall consider de novo:
 - (a) The notice of denial, revocation or revision of a prequalification or the notice of debarment;
 - (b) The standards of responsibility listed in Rule 3-0500(2) on which EWEB based the denial, revocation or revision of the prequalification or the reasons listed in Rule 3-0575(2) on which EWEB based the debarment;
 - (c) Any evidence provided by the parties;
 - (d) Whether there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing or property referred to in the decision, and the miscalculation or mistake operated to the substantial prejudice of the petitioner.
 - (e) In all other respects, a hearing before the Board shall be conducted under rules of procedure adopted by the Board.
- (5) The Board may allocate the Board's costs for the hearing between the person appealing and EWEB. The allocation shall be based upon facts found by the Board and stated in the final order that, in the Board's opinion, warrant such allocation of costs. If the final order does not allocate the costs for the hearing, the costs shall be paid as follows:
 - (a) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the decision to debar a person is upheld, the costs shall be paid by the person appealing the decision.
 - (b) If the decision to deny, revoke or revise a prequalification of a person as a bidder or the decision to debar a person is reversed, the costs shall be paid by EWEB.
- (6) A decision of the Board may be reviewed only upon a petition, filed within 15 days after the date of the decision, in the circuit court of the county in which the Board has its principal office.

Stats. Implemented: ORS 279B.425

CONTRACTS

3-0800 Required Contract Provisions

Every public contract shall contain the following provisions:

- (1) Conditions concerning payment, contributions, liens, withholding: Every public contract shall contain a condition that the contractor shall:
 - (a) 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.
 - (b) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract.
 - (c) Not permit any lien or claim to be filed or prosecuted against EWEB, on account of any labor or material furnished.
 - (d) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167.

- (2) Condition concerning salvaging, recycling, composting or mulching yard waste material: Every public contract for lawn and landscape maintenance shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective.

- (3) Condition concerning payment for medical care and providing workers' compensation:
 - (a) Every public contract shall contain a condition 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.
 - (b) Every public contract shall contain a clause or condition that all subject employers working under the contract are either employers that will comply with ORS 656.017 or employers that are exempt under ORS 656.126.

- (4) Conditions concerning Hours of Labor (1) when labor is employed by a contracting agency through a contractor, a person may not be required or permitted to labor more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity or emergency or when the public policy absolutely requires it, in which event, the person so employed for excessive hours shall receive at least time and a half pay:
 - (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
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
 - (b) For all work performed on Saturday and on the following legal holidays:
 - (A) Each Sunday.
 - (B) New Year's Day on January 1.
 - (C) Memorial Day on the last Monday in May.
 - (D) Independence Day on July 4.
 - (E) Labor Day on the first Monday in September.
 - (F) Thanksgiving Day on the fourth Thursday in November.
 - (G) Christmas Day on December 25.

- (5) An employer shall give notice in writing to employees who perform work under subsection 4 of this section, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that employees may be required to work.

- (6) For the purpose of this section, each time a legal holiday, other than Sunday, listed in subsection (4) of this section falls on Sunday, the succeeding Monday shall be recognized as a legal holiday. Each time a legal holiday listed in subsection (4) of this section falls on Saturday, the preceding Friday shall be recognized as a legal holiday.
- (7) When specifically agreed to under a written labor-management negotiated labor agreement, an employee may be paid at least time and a half pay for work performed on any legal holiday specified in ORS 187.010 and 187.020 that is not listed in subsection (4) of this section.
- (8) This section does not apply to contracts for personal services designated under ORS 279A.055, provided that persons employed under such contracts shall receive at least time and a half pay for work performed on the legal holidays specified in subsection (4)(b)(B) to (G) of this section and 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.
- (9) Subsections (4) and (5) of this section do not apply to contracts for services at a county fair or for other events authorized by a county fair board if persons employed under the contract receive at least time and a half for work in excess of 10 hours in any one day or 40 hours in any one week.
- (10) Subsections (4) to (6) of this section do not apply to a contract for services if the contractor is a party to a collective bargaining agreement in effect with any labor organization.
- (11)
 - (a) Subsections (4) and (5) of this section do not apply to contracts for services. However, persons employed under such 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 subsection (14)(b)(B) to (G) of this section 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.
 - (b) An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- (12) Any contractor or subcontractor or contractor's or subcontractor's surety that violates the provisions of this section is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to the unpaid overtime wages as liquidated damages. If the violation resulted from willful falsification of payroll records, the contractor or subcontractor or contractor's or subcontractor's surety is liable to the affected employees in the amount of their unpaid overtime wages and in an additional amount equal to twice the unpaid overtime wages as liquidated damages.
- (13) An action to enforce liability to employees under subsection 9 of this section may be brought as an action on the contractor's payment bond as provided for in ORS 279C.610.
- (14) This section **DOES NOT** apply to:
 - (a) Financial institutions as defined in ORS 706.008.
 - (b) Labor performed in the prevention or suppression of fire under contracts and agreements made pursuant to the authority of the State Forester or the State Board of Forestry under ORS 477.406.
 - (c) Public contracts for goods or personal property.

- (15) In accordance with ORS chapter 183, the Commissioner of the Bureau of Labor and Industries may adopt rules to carry out the provisions of this section.

Stats. Implemented: ORS279B.020, 279B.220, 279B.225, 279B.230, 279B.235, 279B.405

3-0850 Contract Amendments

- (1) EWEB may amend a contract without additional competition to add additional goods or services within the scope of the Solicitation Document (if used), the contract or the approval of special procurement, subject to the following conditions:
- (a) The original contract was awarded pursuant to Rules 3-0210 (competitive sealed bidding), 3-0211 (multi-step sealed bids), 3-0230 (competitive sealed proposals), 3-0231 (competitive range, multiple-tiered, discussions and negotiations), 3-0232 (multi-step sealed proposals), 3-0275 (sole-source procurements), 3-0285 (special procurements), or cooperative procurements in Division 2; and
 - (b) One of the following two conditions are satisfied:
 - (A) The additional goods or services are required by reason of existing or new laws, divisions, regulations or ordinances of federal, state or local agencies, that affect performance of the original contract; or
 - (B) The prices for the goods or services are modified only as follows:
 - (i) When prices for the goods or services are based on unit prices, unit prices that establish the cost basis for the additional goods or services were provided in the offer or original contract and those prices do not increase except as permitted by an escalation clause in the contract; or,
 - (ii) When prices for the goods or services are not based on unit prices, options that establish the cost basis for the additional goods or services were provided in the Solicitation Document, offer, or original contract.
 - (c) If the amendment is not anticipated in the Solicitation Document, the contract or the approval of special procurement, the contract shall not be amended for more than twenty-five percent of the total not-to-exceed amount of the original contract without approval by the Purchasing Supervisor or the related Executive Team Manager.
- (2) EWEB may renegotiate the terms and conditions, including the contract price, of a contract without additional competition and amend a contract if it is advantageous to EWEB, subject to the following conditions:
- (a) EWEB must determine that, with all things considered, the renegotiated contract is at least as favorable to EWEB as the original contract; and
 - (b) The renegotiated contract will not have a total term greater than allowed in the original Solicitation Document, contract or approval of a special procurement after combining the initial and extended terms. For example, a one-year contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if contracts with a single contractor are restated as a single contract, the term of the single contract may not have a total term greater than any one of the prior contracts.
 - (c) If a contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original solicitation, the amended contract may be structured with this changed term as an optional, but not as a mandatory, contract term.
 - (d) If the contract is the result of a cooperative procurement, the amended contract must be within the scope of the original contract and may not materially change the terms, conditions, and prices of the original contract.

Stats. Implemented: ORS 279A.065