

**EUGENE WATER & ELECTRIC BOARD  
EXECUTIVE SESSION  
EWEB BOARD ROOM  
500 EAST 4TH AVENUE  
DECEMBER 3, 2019  
5:00 P.M.**

**Commissioners Present:** Sonya Carlson, President; Steve Mital, Vice President; Dick Helgeson, Mindy Schlossberg and John Brown Commissioners.

**Others present:** Frank Lawson, General Manager; Lisa Krentz, Support Services Operations Manager; Jared Rubin, Environmental and Property Supervisor; Sue Fahey, Assistant General Manager/Chief Financial Officer; Matt Barton, Chief Information Officer, Rod Price, Chief Engineering & Operations Officer; Susan Ackerman, Chief Energy Officer; Lena Kostopulos, Chief Human Resources Officer, and Anne Kah, Executive Assistant

**EXECUTIVE SESSION:**

The Executive Session was called to order at 5:00 p.m.

**Pursuant to ORS 192.660(2)(e)**

The EWEB Board of Commissioners met in Executive Session to conduct deliberations with persons designated by the governing body to negotiate real property transactions.

President Carlson adjourned the Executive Session meeting at 5:36 p.m.

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Assistant Secretary

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President

**EUGENE WATER & ELECTRIC BOARD  
REGULAR SESSION  
EWEB BOARD ROOM  
500 E 4<sup>th</sup> AVENUE  
December 3, 2019  
5:45 P.M.**

*Commissioners may pose questions to staff prior to the scheduled board meeting. To view Commissioners' pre-meeting questions and staff responses, visit <http://www.eweb.org/about-us/board-of-commissioners/2019-board-agendas-and-minutes>.*

**Commissioners Present:** Sonya Carlson, President; Steve Mital, Vice President; John Brown, Dick Helgeson, Mindy Schlossberg, Commissioners

**Others Present:** Frank Lawson, General Manager; Susan Ackerman, Chief Energy Officer; Aaron Balmer, General Accounting Supervisor; Sue Fahey, Assistant General Manager/Chief Financial Officer; Deborah Hart, Financial Services Manager; Jason Heuser, Policy & Governance Program Manager; Lisa Krentz, Support Services Operations Manager; Adam Rue, Fiscal Services Supervisor; Nate Schultz, Senior Financial Analyst

President Carlson called the Regular Session to order at 5:45 p.m.

**Agenda Check**

There were no changes or additions to the agenda.

**Items from Commissioners and General Manager**

President Carlson announced she had participated in the annual Run to Stay Warm, and it was a great event. She then recognized Sue Fahey for all of her hard work and dedication to EWEB over the eight plus years she had been with the utility.

Vice President Mital thanked Ms. Fahey for her service to the utility. He offered respect for Ms. Fahey's refinancing efforts which left EWEB in a much stronger financial position without hurting the utility in any way. Vice President Mital offered that—other than the two General Managers he had worked with during his tenure on the EWEB Board—he had learned the most from her.

Commissioner Helgeson recognized Ms. Fahey's service to the utility. He said that in his time as utility staff, and his time as an EWEB Board member, he rarely had the opportunity to work with someone as capable and dependable as her. Commissioner Helgeson also lauded Ms. Fahey's sense of humor.

Commissioner Brown deeply thanked Ms. Fahey for her service to EWEB, and he wished her good fortune in all of her future endeavors.

Commissioner Schlossberg offered that, although she had only been on the Board a short time, she was impressed with not only Ms. Fahey's work, but also her kindness and compassion. She added that Ms. Fahey has the uncanny ability to answer any question posed to her.

Mr. Lawson thanked Ms. Fahey for her hard work and dedication to EWEB; he offered that Ms. Fahey's personal side—the way she connects with people—was extraordinary. He said she made those around her better people.

Commissioner Schlossberg announced she had recently attended the Pacific Northwest Utilities Conference Committee (PNUCC) and the Public Power Council (PPC) meetings. She offered a salient topic of conversation at those meetings was resource adequacy and decarbonization across the region.

Commissioner Brown said one of the local representatives in State Legislature had proposed a bill to mandate conduits for 20% of the parking spaces in new multi-family units for electric vehicles (EVs); he thought the proposed legislation very forward-thinking, as it would reduce the amount of demolition required in the future to install EV infrastructure. Commissioner Brown pointed to a report released by LandWatch Oregon, a local land-use watchdog group, which talks about EWEB's programs on the McKenzie River. He said the report seems to indicate Lane County will be taking a larger, more substantial role in curtailing riparian degradation along the river.

Commissioner Helgeson offered that his most recent term as EWEB Commissioner would be coming to an end in approximately a year; he offered that he would not seek reelection. He said he had yet to see anyone file to run for his Board seat, and he asked those present to keep his position in mind if they knew anyone who might be interested in running for it.

Vice President Mital thanked Rod Price for accompanying him to a recent neighborhood meeting in his Ward. He thanked Mr. Price for dedicating several hours to answering questions and concerns raised by the meeting's attendees. Vice President Mital also thanked Jeanine Parisi et al., for their work on EWEB Education Grants. Finally, he informally nominated Commissioner Schlossberg for the position of EWEB Board Vice President, ahead of next month's meeting at which new Board leadership would be decided and announced.

President Carlson shared that the EWEB Board had received a Christmas card from the Springfield Utility Board (SUB).

### **Public Input**

**Pam Brandt** of Eugene, and representing Bethel School District, thanked EWEB for their longstanding financial commitment to water education in the Bethel School District.

**Tana Shepard** of Eugene, and representing Eugene School District 4J, thanked EWEB for their financial contributions to School District 4J. She said that, moving into the next

grant cycle, she thought it important to shift the focus onto climate and disaster resilience. Finally, she passed out information on a sculpture the community would be receiving through the Parachutes for the Planet project, along with a few thank-yous and quotes offered by 4J kids.

**Zachary Vishanoff** of Eugene, opined that EWEB Board meetings should be smartphone-free zones. He said he recently had a Smart Meter removed from his apartment, and was frustrated to learn that in about five years, he would be charged \$30 a month for not having a Smart Meter. Mr. Vishanoff did not agree with the EWEB Board continually holding Executive Sessions concerning the real estate in which what he continually refers to as the “toxic waste dump” is. Finally, he suggested EWEB hold a Public Hearing at least once a year to address the transference of the riverfront property.

**Kaarin Knudson** of Eugene, and representing Better Housing Together, thanked EWEB for their partnership in the work of housing affordability in the area. She encouraged the utility Board to adopt a reduced System Development Charge (SDC) for Accessory Dwelling Units (ADUs). Finally, she asked EWEB to formalize their decision around waving SDCs for low-income housing.

**John Simpson** of Eugene, thanked the utility for holding its rates in check. He also lauded the quality and reliability of EWEB’s water, and for their progress on the work at Carmen Smith. Mr. Simpson said he had no idea that Ms. Fahey was retiring, and he thanked her deeply for her service to the utility. Finally, he thanked EWEB for its approval of the 0% loan, which allowed him to repair electrical components within his home.

Vice President Mital said he was familiar with proposals in the board packet to waive SDCs for low-income housing, but he did not remember seeing anything about ADUs.

Mr. Lawson said EWEB did in fact have reduced fees for ADUs relative to SDC charges; it is both ADUs and limited income, they are separate but related issues.

## **Approval of Consent Calendar MINUTES**

- 1. a November 5, 2019, Executive Session**
- 1. b November 5, 2019, Regular Session**

## **CONTRACTS**

- 2. Cascade Truck Body & Trailer Sales** - for the purchase, installation, and repair of vehicle related bodies, components and accessories. \$700,000 (5-year estimate).
- 3. CH2M Hill Engineers, Inc. dba Jacobs** - for Task Order U-2 for engineering services for the Carmen-Smith upstream fish passage facilities at Trail Bridge powerhouse. \$1,073,382 (Resulting cumulative total \$1,403,467).

**4. Eugene Sand Construction** - for asphalt concrete patching services for the FEMA funded Hazardous Mitigation Projects at Blanton Road and Saratoga/Donald Streets. \$175,000.

**5. FEI Testing & Inspection** - for on-call construction testing and inspection services. \$225,000.

#### **BUDGET AMENDMENTS**

**6. Resolution No. 1943** - Electric and Water O&M and Capital Budget Amendments.

#### **INTERGOVERNMENTAL AGREEMENTS**

**7. EWEB Education Grant Program for 2020-2025** - for Eugene 4J, Bethel, Springfield and McKenzie School Districts.

#### **RESOLUTIONS**

**8. Resolution No. 1939** - Authorizing General Manager to Execute Memorandum of Understanding related to real property.

***Commissioner Brown moved to approve the Consent Calendar as presented. The motion passed unanimously 5:0***

#### **Items removed from the Consent Calendar**

None

#### **2020 Proposed Budgets and Prices – Information**

Ms. Fahey, Ms. Hart, Mr. Schultz, and Mr. Rue offered the Board an update and a Power Point presentation on 2020 Proposed Budgets and Prices.

Commissioner Brown inquired whether the approval threshold for the Water Manager was per project or in aggregate, e.g. if there were 10 projects at \$45,000 each, could the Water Manager waive \$450,000 in SDC fees without any input.

Ms. Hart replied, in that scenario, when the Water Manager gets to the third \$45,000 application it would be over the \$100,000 threshold and would be presented to the General Manager for consideration. She clarified it was \$100,000 in cumulative waivers.

Commissioner Brown asked if, in the future, EWEB saw a period of economic challenges, would they still be able to afford the aforementioned waivers.

Ms. Hart said that was dependent on the utility having sufficient working cash.

Vice President Mital asked for clarification of the practical effect(s) of the proposed changes surrounding ADUs.

Ms. Hart responded that the new policy language allows EWEB to manually calculate the ADU (defined as a dwelling that is 800 ft<sup>2</sup> or less) rate.

Vice President Mital wanted to know the difference in cost before and after the implementation of the new policy.

Ms. Hart said currently EWEB did not distinguish between an ADU and any single-family home, and also the cost would be contingent upon where they live in the city and elevation, because SDCs were calculated using the elevation of the property.

Mr. Lawson asked for staff to clarify what the SDC charge for a 1" or less meter would be. He posited that ADU SDCs would probably be approximately 50-70% of that figure.

Ms. Hart said a standard 1" meter at the base level was \$2,276, and that charge would increase about \$250 for elevation gains.

Commissioner Schlossberg asked about FEMA reimbursement funds; she wondered how long it usually took to receive those funds, and if they were usually close to what the utility expected to receive.

Ms. Hart answered that staff was confident in their documentation that the reimbursement funds would come close to the \$3.5 million mark. She added they were wrapping up the paperwork for the reimbursement funds currently, but expected that work to continue into 2020.

Commissioner Helgeson clarified he believed the SDC considerations for low-income housing were not truly waivers, but offsets. He asked his fellow Board members if they were comfortable with the change in policy wherein the General Manager would be making the decisions on waivers/offsets, instead of the Board making those decisions.

Commissioner Mital asked if there might be an annual short report on the ADU SDCs and low-income SDCs from the General Manager to the Board, for transparency's sake.

Mr. Lawson replied that SDC waivers would be available in the Quarterly Reports.

### **Break**

President Carlson called for a break at 6:39 p.m. The meeting was resumed at 6:50 p.m.

### **2020 Proposed Budgets and Prices – Public Hearing**

President Carlson opened the Public Hearing at 6:50 p.m.

**Zachary Vishanoff** of Eugene posited EWEB ratepayers would gladly pay more for a cleanup of the "toxic waste site," and ultimately, a cleaner development on that site. He warned against integrating into a "smart riverfront" development, which would include low-income housing and EV charging stations. Mr. Vishanoff said he was sad to see the architects behind this riverfront project describe it as "medium-density", and without any proper remediation. He said if there were no development(s) planned for the riverfront, it

would decrease the chances of a flooding disaster in that region. Finally, Mr. Vishanoff asked EWEB to back off of this development, and put the issue to the public.

President Carlson closed the Public Hearing at 6:55 p.m.

Commissioner Helgeson offered he found an anomaly in the proposed SDC policy revisions. He offered there was a vestige of some earlier action that remained in the new documentation stating that “EWEB is using an average index rather than a city-specific index to provide a smoother trend, avoiding City specific susceptibility to price spikes”. He asked if the aforementioned language could be stricken, and replaced instead with a simple list of charges.

Ms. Hart said that language could be removed.

Mr. Rue agreed.

***Commissioner Helgeson moved to modify the proposal for SDC revisions in Section D, such that in addition to striking the first sentence that is already shown on the red-line document as being removed, that the second sentence that he read aloud, also be struck. The motion passed unanimously 5:0.***

**2020 Proposed Budgets and Prices, including updates for Water System Development Charges, Electric Business Growth and Retention Credit, Partial Requirements Service Pricing, and Distributed Generation Prices - Action**

***Commissioner Mital moved to approve Resolution No. 1929, Water System Development Charges. The motion passed unanimously 5:0.***

***Commissioner Mital moved to approve Resolution No. 1933, 2020 Budgets. The motion passed unanimously 5:0.***

***Commissioner Mital moved to approve Resolution No. 1934, February 2020 Revised Water Prices. The motion passed unanimously 5:0.***

***Commissioner Mital moved to approve Resolution No. 1935, Electric Customer Service Charges & Prices. The motion passed unanimously 5:0.***

### **Bond Financing**

Ms. Fahey, Ms. Hart, and Mr. Balmer offered the Board a report and PowerPoint presentation on bond financing.

President Carlson asked about volatility in the taxable debt. She specifically wondered about the NPV savings.

Ms. Hart clarified the Net Present Value (NPV) savings were \$1.3 million and \$1.2 million for electric and water, respectively. She did say staff had numbers that were

about a month newer than those in the presentation, and the new numbers were closer to \$2 million in NPV savings for each side of the utility.

President Carlson wondered about the actual process of bond issuance between now and when the bonds are sold.

Ms. Fahey offered that the State required EWEB have a 3% NPV savings before they would let EWEB issue the refunding bonds, but the utility could still issue other bonds for new construction.

President Carlson asked if NPV savings numbers were to dip due to the aforementioned volatility, would they have to start this process completely over.

Ms. Fahey answered once they received Board and Eugene City Council approval, it would allow the Treasurer and Assistant Treasurer to issue bonds and get professional consultants, although issuance costs could be accrued during that process.

President Carlson wondered what the impact of going into a recession would be on the rates.

Ms. Fahey said she did not know, but the risk would be the rates would go up.

Commissioner Helgeson asked what staff saw as the downsides to long-term debt burden, and should EWEB be paying attention to how heavily leveraged they are.

Ms. Hart said staff did model these numbers in the long-term financial plan, and debt service coverage did remain above 2.0, even with the additional debt for both sides of the utility. She added there was a substantial borrowing on the water side of the utility to account for the possibility they would be building a second water treatment facility.

Ms. Fahey said, based on what they were hearing, in January, Resolutions would be brought before the Board to authorize staff to go before Eugene City Council to request bond issuance approval.

Mr. Lawson said there was a Work Session scheduled for the Eugene City Council on January 27, 2020, at which representatives from EWEB would fill the Council in on this process.

Commissioner Helgeson wondered if an EWEB Board Officer would attend the aforementioned Work Session of the Eugene City Council.

Mr. Lawson said yes. He suggested the Board President at that time be involved in that conversation.

Vice President Mital asked for the approval schedule of this agenda item.



Mr. Balmer said in January, the Board would receive the aforementioned Resolutions on the Consent Calendar, and in February, if everything goes smoothly with the City Council, staff would return to the Board for final approval.

Commissioner Helgeson asked if he could find a schedule of outstanding debt and debt service in the budget document.

Ms. Fahey said yes, it was in one of the attachments to the budget document.

### **Resolution No. 1938, EWEB's 2020 State Legislative Agenda**

Ms. Ackerman and Mr. Heuser offered the Board a report and PowerPoint presentation on Resolution No. 1938.

Commissioner Brown said that although the presentation talked about EWEB taking a position on EV charging investment, there had been no Board discussion on said position, and he was worried about process in this situation.

Mr. Heuser clarified what was meant by that, was the decision itself needed to be made in the EWEB Board room. He further explained the mandate would take the form of a dedicated surcharge that EWEB would be required to collect, and to use only on the buildout of EV charging infrastructure. Mr. Heuser reiterated the final decision on the issue should and would be left to the Board.

President Carlson wondered if the Oregon Public Utility Commission (OPUC) workshops on utility standards scheduled for 2020 could end up having spillover benefits for EWEB ratepayers.

Ms. Ackerman clarified the OPUC did not have legal authority to approve anything in rates, save hard costs associated with customer service. She posited if investor-owned utilities were finally able to invest in EV charging, it might help the statewide perception of the viability of EVs.

Mr. Heuser further clarified that it was enabling legislation only.

President Carlson asked if the EWEB Board would need to take a position on Commissioner Brown's earlier point about EV infrastructure as it appears in the Bill put forth by Representative Weldy.

Ms. Ackerman offered that it was very difficult to predict where things would develop during a legislative session. She added this resolution was meant to inform Mr. Heuser going forward that the most important thing was to preserve local control.

Commissioner Schlossberg stated she was undecided on the issue of local control, because, in some cases, local control could hinder progress. She offered that if municipalities or other local entities wished to retain local control, it could end up going against the broader, common good.

Mr. Heuser stressed that local control was merely a principle, and not a universal law. He further explained the principal of local control was not the solution to everything, and he said there had been many times in the past where local control had been forfeited for a larger, statewide benefit.

Mr. Heuser suggested a prepared memo for the February EWEB Board meeting, which would give the Board an updated legislative landscape. He said it could be an item of Correspondence only, but if the Board wished to have it on the agenda proper, he would be available in February to come back before the Board.

***Vice President Mital moved to approve Resolution No. 1938, EWEB's 2020 State Legislative Agenda. The motion passed unanimously 5:0***

**Amended Employment Agreement for General Manager**

***Vice President Mital moved to approve the amended employment agreement for the General Manager. The motion passed unanimously 5:0***

### **Correspondence & Board Agendas**

Mr. Lawson offered the Board a report on Correspondence and Board Agendas.

Vice President Mital asked what approach the City of Eugene was using for its reporting on greenhouse gasses (GHG): a location-based approach, or a market-based approach.

A member of the public audience said the City used both for its reporting. Ms. Krentz added that, as of a couple of years ago, EWEB also uses both approaches for its GHG reporting.

Vice President Mital said it was important to him that EWEB be consistent in their GHG reporting methodology.

President Carlson offered that she would like to see the GHG inventory Correspondence item as a regular agenda item, with a full report.

Mr. Lawson said that agenda item could be included in the year-end report, which would come before the Board in either February or March.

Commissioner Helgeson said he did not care for the location-based reporting technique, as it grossly overstates the regional carbon footprint contributions made by EWEB operations.

Mr. Lawson admitted this was a very nuanced conversation. He said the State of Oregon was changing their carbon reporting standards for generation and Operations.

Commissioner Schlossberg asserted that she too would like to see this as a full agenda item.

Ms. Krentz said staff would be thrilled to bring this conversation back before the Board in the form of an agenda item. She lauded EWEB's fleet manager for his work in emissions reduction through changing fuel usage.

Commissioner Brown asked for and received Board consensus to bring the GHG inventory discussion back as a full agenda item.

### **Board Wrap-Up**

Commissioner Brown announced he recently attended a meeting on Other Post Employment Benefits (OPEB), and he reported that OPEB was in good financial health.

Vice President Mital posited that it would behoove EWEB to have a security discussion surrounding backpacks brought in, and sometimes left unattended, by members of the public attending EWEB meetings.

Mr. Lawson said he and staff would look into advanced security protocols for EWEB meetings, and bring it back to the Board soon.

Mr. Lawson reported that Springfield Utility Board (SUB) had expressed interest in purchasing part of an EWEB-owned property in Glenwood near their transmission lines. He sought Board consensus to look into the matter, and potentially bring back to the Board a declaration of surplus property that could facilitate that sale.

Commissioner Helgeson hoped there was some quid pro quo on SUB's part surrounding the possible property sale in question.

Commissioner Helgeson said that he would like to step out of his role on the Northwest Public Power Association (NWPPA) Board, and he asked his colleagues to think about which, if any of them, might be interested in stepping into that role.

President Carlson announced this meeting was her final full EWEB Board meeting as Board President, and she thanked the Board and staff for their work during her tenure as Board President.

### **Adjourn**

President Carlson adjourned the Regular Session at 8:13 p.m.

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Assistant Secretary

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President



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD



TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown  
 FROM: Deborah Hart, Interim Chief Financial Officer; Sarah Gorsegner, Purchasing & Warehouse Supervisor  
 DATE: December 27, 2019  
 SUBJECT: Board Appointed Consultants  
 OBJECTIVE: Board Action-Ratification of Board Appointed Consultants

## Issue

At the first Board meeting of the year, the Board is presented with the opportunity to appoint and ratify professional consultants that are retained by the Board outside the competitive selection process.

## Background

Consultants are exempt from the competitive selection process when the Board appoints or retains the consultant. The Board Appointed Consultants independently advise and provide professional direction and assessments to the Board without regard to Management’s position or interpretation. Consultants are selected based on technical knowledge, areas of expertise, and their historical knowledge and perspective of EWEB and its work.

The following directly appointed contracts are presented for ratification. Contracts may also be presented if they are beyond the routine 5-year contract period following a competitive process. There were no contracts beyond the 5-year contract period this year.

## BOARD CONSULTANTS REQUIRING RATIFICATION

Consultant	Service Provided	Tenure	Last Contracted	2019 Spend	2018 Spend
Luvaas Cobb (Eric Defreest Primary Contact)	General Counsel	2011 with Luvaas Cobb <sup>1</sup>	EWEB has two contracts with Luvaas Cobb, one primarily used by staff, and one that is a Board Appointed Contract. Using an RFP process, the staff contract was awarded in Dec 2017, the Board appointed contract was awarded in May 2018.	\$162,000 (\$9,300 Board Appointed Contract)	\$113,000 (\$5,600 Board Appointed Contract)
Arnold Gallagher P.C.	Real Estate Legal Counsel	Since 2018	Direct Negotiation, 2018	\$290	None

<b>Consultant</b>	<b>Service Provided</b>	<b>Tenure</b>	<b>Last Contracted</b>	<b>2019 Spend</b>	<b>2018 Spend</b>
Watkinson Laird Rubenstein P.C.	Real Estate Legal Counsel	Since 2018	Direct Negotiation, 2018	None	None

Additional contracts have been occasionally used by the Board, but they were awarded using a competitive process and with Board approval and do not require ratification.

**Discussion**

Each fall, the Board reviews the direct appointment contracts to determine which contracts are still required and to provide performance feedback. This year, the feedback suggested that continuing with these contracts is appropriate. During the review, some of the Board requested that a backup contract for general legal counsel be available.

The Board can appoint multiple contracts for general legal counsel. Under direction from the Board, Purchasing staff can negotiate a contract with an alternative provider. Harrang, Long, Gary and Rudnick offers a variety of legal services, including general counsel, and would be a good alternative as they are familiar with public agency obligations. The Board may recommend an alternative service provider or request other Board Appointed Consultants by notifying the General Manager.

**Recommendation and Requested Board Action**

Management requests ratification of consultants Luvaas Cobb, Arnold Gallagher P.C, and Watkinson Laird Rubenstein P.C. as Board Appointed Consultants for 2020. Additionally, Management requests direction to negotiate a contract with Harrang, Long, Gary and Rudnick as an alternative General Counsel provider and Board Appointed Consultant.

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<sup>1</sup> Eric Defreest provided General Counsel to EWEB at Calkins & Calkins prior to 2011 when the contract was assigned to Luvaas Cobb. Calkins & Calkins was retained by EWEB from the 1940’s-2011.

## **EWEB Board Consent Calendar Request**

*For Contract Awards, Renewals, and Increases*

The Board is being asked to approve a personal services agreement with Cable Huston, LLP for special counsel services.

Board Meeting Date: 1/7/2020

Project Name/Contract #: Special Counsel Services, 19-128-PSC

Primary Contact: Susan Ackerman Ext. 7185

### **Contract Amount:**

Original Contract Amount: \$3,200,000 / 5 years

Additional \$ Previously Approved: \$0

Invoices over last approval: \$0

Percentage over last approval: 0%

Amount this Request: \$3,200,000 / 5 years

**Resulting Cumulative Total:** \$3,200,000 / 5 years

### **Contracting Method:**

Method of Solicitation: Formal RFP Process

If applicable, basis for exemption: n/a

Term of Agreement: **Up to five years**

Option to Renew? No

Approval for purchases "as needed" for the life of the Contract Yes  No

Proposals/Bids Received (Range): 1 / Qualifications based with rate sheet submittal

Selection Basis: Highest scored proposal based on established evaluation criteria

### **Narrative:**

#### Operational Requirement and Alignment with Strategic Plan

EWEB requires ongoing and as-needed Special Counsel Services for navigating complex contracts that have substantial risk associated with them, as well as litigation services.

#### Contracted Goods or Services

EWEB has negotiated an Agreement for Special Counsel Services for five "Areas of Practice," as defined within the RFP; including, Environmental/Property Management, Water Rights and Wholesale Water Purchase Agreements, Power Supply/Power Trading, Risk Management, and Hydro Licensing. These legal services will be contractually available on an "as-needed" basis. EWEB will not guarantee any amount of work during the term of the Agreement.

#### Prior Contract Activities

The previous (current) contract for these goods and services with Cable Huston was awarded in 2014. The estimated spend for the previous contract with Cable Huston was \$3,200,000 over five years. The contractor has been responsive to all needs, completed work on time and on budget, and represented EWEB leading to successful outcomes during litigation and dispute resolutions, with no performance concerns.

#### Purchasing Process

In November 2019, staff issued a formal Request for Proposals for the provision of special counsel legal services for five "Areas of Practice", including Environmental/Property Management, Water Rights and Wholesale Water Purchase Agreements, Power Supply/Power Trading, Risk Management, and Hydro Licensing. All Proposers were invited to submit proposals for one or more Areas of Practice.

One proposal was received from EWEB's current provider, Cable Huston of Portland, Oregon. Cable Huston met all

requirements for all Areas of Practice and met the expectations for performance in all evaluation criteria including Administrative Capacity, Contract Review, Breadth of Experience, Quality of Staff, and Fees.

Historical data indicates that the total contract amount will be approximately \$3,200,000 over a five-year period. The actual total dollar amount, however, is unknown and may be more or less than estimated.

If approved, staff will procure special counsel legal services at the established fees over the life of the contract. The contract is for one year, with automatic renewal each year for up to five years, unless terminated earlier.

Competitive Fair Price (If less than 3 responses received)

Cable Huston was the only firm that submitted a proposal. Two other firms indicated interest after viewing the RFP document, but did not submit a response. The rates quoted in Cable Huston range from \$325-\$375/hr and are within the market range of \$325-\$550/hr for firms that provide similar services in the region.

**ACTION REQUESTED:**

Management requests the Board approve a personal services agreement with Cable Huston, LLP for special counsel services on an "as-needed" basis. Funds for these services have been budgeted for 2020 in various departments throughout the agency. Variances will be managed within the budget process and Board policy.

# EWEB Board Consent Calendar Request

For Task Order Amendment Approval

The Board is being asked to approve an Amendment to a TASK ORDER (**Amendment 1 to Task Order U-3**) with **CH2M HILL ENGINEERS, INC. dba JACOBS** for engineering services for the Carmen Smith Fish Passage Facilities at Trail Bridge Powerhouse.

Board Meeting Date: January 07, 2020

Project Name/Contract #: Task Order U-3, Spawning Channel Modifications Design, Carmen Smith Fish Passage Facilities / Master Agreement #080-2018

Primary Contact: Rod Price Ext. 7122

### Contract Amount:

Original Contract Amount: \$ 10,000,000

Task Orders Previously Approved: \$ 1,544,181

Invoices over last approval: \$ 0

Percentage over last approval: 0 %

Amount this Request: \$ 61,778

**Resulting Cumulative Task Order Total:** \$ 1,605,959

### Contracting Method:

Method of Solicitation: Negotiated Task Order

If applicable, basis for exemption: \_\_\_\_\_

Term of Agreement: Twelve (12) Months

Option to Renew? No

Approval for purchases "as needed" for the life of the contract No

Proposals/Bids Received (Range): n/a

Selection Basis: Qualification Based Selection (QBS)

### Narrative:

#### Operational Requirement and Alignment with Strategic Plan

The Board is being asked to approve Amendment 1 to Task Order U-3 of the Master Services Agreement (080-2018) with Jacobs of Corvallis, Oregon. The Task Order completes the final design of the fish passage modifications at the existing Spawning Channel located below Trail Bridge Reservoir. This Amendment No.1 adds services for additional hydraulic modeling and an associated design review package for the Fish Working Group that were not originally contemplated. Completion of Task Order U-3 will result in a bid-ready design package and 100% design submittal to FERC. This Amendment and Task Order and the associated Master Services Agreement implements major parts of the new operating license for the Carmen-Smith Project, and the *Amended and Restated Settlement Agreement* that was executed in November 2016. The new license was received on May 17, 2019.

#### Contracted Goods or Services

Engineering services for final design of structural and hydraulic modifications to the existing spawning channel to allow upstream passage of Chinook salmon and bull trout.

Task Orders are scoped by the Project Manager consistent with license requirements and negotiated with the Consultant. Billing rates match the rates negotiated as part of the Master Agreement and acceptable insurance certificates have been received.



### Prior Contract Activities

The Board approved the Master Services Agreement (080-2018) for the Carmen Smith Fish Passage Facilities with Jacobs of Corvallis, Oregon on April 02, 2019. Subsequent Contract activities include:

- The Board approved Upstream Fish Passage Task Order U-1 (\$51,307) on May 08, 2019
- The Board approved Downstream Fish Passage Task Order D-1 (\$278,778) on May 08, 2019,
- The Board approved Task Order U-2 (\$1,073,382) on December 03, 2019.
- Spawning Channel Modifications Design Task Order U-3 (\$122,265) was under the Board threshold of \$150,000 and awarded by staff on July 10, 2019. However, with this Amendment, the contract value for Task Order U-3 is now above the Board threshold. The total, not to exceed fee estimate for Task Order U-3, after Amendment No. 1 is \$184,043.

### Purchasing Process

In December 2018, in accordance with Oregon public procurement rules, EWEB initiated a Request for Proposals (RFP) using the Qualifications Based Selection (QBS) process for engineering services for upstream and downstream fish passage. The QBS process culminated with selection of Jacobs of Corvallis, OR, as the most qualified consultant, consistent with QBS criteria.

Per the Board's approval of the Master Services Agreement, individually negotiated task orders over \$150,000, or amended task orders that exceed \$150,000 are to be brought back to the Board for approval. Major work tasks (Task Orders) will include:

1. Attraction Water Supply route selection. (completed)
2. Trap and Haul Facility design (in progress)
3. Spawning Channel Improvements design (in progress)
4. Tailrace Barrier Demolition design (in progress)
5. Spillway Gate Modification Alternative Evaluation (in progress)
6. Spillway Gate and Hoist design (Estimated February 04, 2020 Consent Calendar)
7. Spillway surface modification design (Estimated February 04, 2020 Consent Calendar)

### **ACTION REQUESTED:**

Management requests the Board approve Amendment No. 1 to Task Order U-3 of the Carmen Smith Fish Passage Facilities contract with Jacobs, for final design services for the Spawning Channel modifications. The 2020 Energy Division - Department 620 capital budget is \$18.9 million, and approximately \$98,000 was planned to complete this task in the Carmen – Smith License Deployment budget. Variances will be managed within the budget process and Board policy.

## EWEB Board Consent Calendar Request

For Task Order Amendment Approval

The Board is being asked to approve an Amendment to a TASK ORDER (**Amendment 1 to Task Order D-1**) with **CH2M HILL ENGINEERS, INC. dba JACOBS** for engineering services for the Carmen Smith Fish Passage Facilities at Trail Bridge Powerhouse.

Board Meeting Date: January 07, 2020

Project Name/Contract #: Task Order D-1, Spillway Gate Modification Alternative Evaluation, Carmen Smith Fish Passage Facilities / Master Agreement #080-2018

Primary Contact: Rod Price Ext. 7122

### Contract Amount:

Original Contract Amount: \$ 10,000,000

Task Orders Previously Approved: \$ 1,605,959 (Note: This amount includes Amendment 1 to Task Order U-3 also on the 1/7/20 Consent Calendar)

Invoices over last approval: \$ 0

Percentage over last approval: 0 %

Amount this Request: \$ 332,178

**Resulting Cumulative Task Order Total:** \$ 1,938,137

### Contracting Method:

Method of Solicitation: Negotiated Task Order

If applicable, basis for exemption: n/a

Term of Agreement: Twelve (12) Months

Option to Renew? No

Approval for purchases "as needed" for the life of the contract No

Proposals/Bids Received (Range): n/a

Selection Basis: Qualification Based Selection (QBS)

### Narrative:

#### Operational Requirement and Alignment with Strategic Plan

The Board is being asked to approve Amendment 1 to Task Order D-1 of the Master Services Agreement (080-2018) with Jacobs of Corvallis, Oregon. This Task Order performs evaluations and selection of a final alternative for gate and spillway modifications at Trail Bridge Reservoir. This Amendment No.1 adds services for enhanced hydraulic modeling of Probable Maximum Flood (PMF) conditions for two gate alternatives, performs additional conceptual design work for improvements necessary for each alternative to pass the PMF - as required by FERC dam safety requirements, and includes costs to advance one of the designs to approximately the 30% stage. Completion of Task Order D-1 and this Amendment 1 will result in a preliminary design package for a required 5/18/2020 Plan and Schedule submittal to FERC. This Amendment and Task Order and the associated Master Services Agreement implements major parts of the new operating license for the Carmen-Smith Project, and the *Amended and Restated Settlement Agreement* that was executed in November 2016. The new license was received on May 17, 2019.

#### Contracted Goods or Services

Engineering services for enhanced hydraulic modeling for two alternatives, and preliminary design of a preferred alternative for gate and spillway modifications, in support of the plan and schedule submittal for downstream fish passage implementation at Trail Bridge dam.

Task Orders are scoped by the Project Manager consistent with license requirements and negotiated with the Consultant. Billing rates match the rates negotiated as part of the Master Agreement and acceptable insurance certificates have been received. The total value of Task Order D-1 with the amendment is \$610,956.

#### Prior Contract Activities

The Board approved a \$10,000,000 Master Services Agreement (080-2018) for the Carmen Smith Fish Passage Facilities with Jacobs of Corvallis, Oregon on April 02, 2019. Subsequent contract activities are as follows:

- The Board approved Upstream Fish Passage Task Order U-1 (\$51,307) and Downstream Fish Passage Task Order D-1 (\$278,778) on May 08, 2019.
- The Board approved Trail Bridge Trap and Haul Facility Design/Tailrace Barrier Demolition Design Task Order U-2 (\$1,073,382) on December 03, 2019.
- Spawning Channel Modifications Task Order U-3 (\$122,265) was under the Board threshold of \$150,000 and was awarded by staff on July 10, 2019.
- An Amendment No. 1 to Task Order U-3 increasing the Task Order U-3 value to \$184,043 (+ \$61,778) is pending, and is on the Board Consent Calendar for 01/07/2020.

#### Purchasing Process

In December 2018, in accordance with Oregon public procurement rules, EWEB initiated a Request for Proposals (RFP) using the Qualifications Based Selection (QBS) process for engineering services for upstream and downstream fish passage. The QBS process culminated with selection of Jacobs of Corvallis, OR, as the most qualified consultant, consistent with QBS criteria.

Per EWEB policy, Board approval is required for individually negotiated contracts (task orders) over \$150,000, and for associated Amendments. Major work tasks (Task Orders) under the Master Agreement will include:

1. Task Order U-1: Attraction Water Supply route selection. (completed)
2. Task Order U-2: Trap and Haul Facility design (in progress)
3. Task Order U-3: Spawning Channel Improvements design (in progress)
4. Tailrace Barrier Demolition design (in progress) (included in Task Order U-2)
5. Task Order D-1: Spillway Gate Modification Alternative Evaluation (in progress)
6. Task Order D-2: Spillway Gate and Hoist final design (Estimated February 04, 2020 Consent Calendar)
7. Task Order D-3: Spillway surface modification design (Estimated February 04, 2020 Consent Calendar)

#### **ACTION REQUESTED:**

Management requests the Board approve Amendment No. 1 to Task Order D-1 of the Carmen Smith Fish Passage Facilities contract with Jacobs. The 2020 Energy Division - capital budget is \$18.9 million, and approximately \$880,000 was planned to complete this task in the Carmen – Smith License Deployment budget. Variances will be managed within the budget process and Board policy.

## **EWEB Board Consent Calendar Request**

*For Contract Increases*

The Board is being asked to approve additional funds for the Contract with Halvorson Contracting for the Roosevelt Operations Center Consolidation and Interior Remodel Construction Services.

Board Meeting Date: 1/7/2020

Project Name/Contract #: ROC Consolidation Project / Interior Remodel - ITB #045-2018

Primary Contact: Rod Price Ext. 7122

### **Contract Amount:**

Original Contract Amount: \$1,540,000

Additional \$ Previously Approved: \$2,770,000

Invoices over last approval: \$134,432

Percentage over last approval: 4.85%

Amount this Request: \$792,000

**Resulting Cumulative Total:** \$3,562,000

### **Contracting Method:**

Method of Solicitation: Formal ITB

If applicable, basis for exemption: N/A

Term of Agreement: One Time Purchase

Option to Renew? No

Approval for purchases "as needed" for the life of the Contract Yes  No

Proposals/Bids Received (Range): 2 responses (\$1,535,500 to \$1,670,000)

Selection Basis: Lowest responsive and responsible bidder

### **Narrative:**

#### Operational Requirement and Additional Work Needed

In August 2018 the Board approved a contract for remodeling the Roosevelt Operations Center to complete staff consolidation from the Headquarters building which included scope to move 110 employees. The Board approved contract amendments in both February and June of 2019 to cover additional construction costs related to the board direction to vacate the headquarters building as much as operationally feasible. This resulted in the planned move of 70 additional Customer Service employees from Headquarters to the ROC. The requested funds included in these amendments were preliminary estimates based on similar project costs. Final designs by Systems West Engineers revealed requirements for more substantial HVAC equipment to meet code requirements for the increased occupancy, which necessitated structural changes to the ROC building to support the installation. Deficiencies in the original as-built drawings have led to on-going discoveries during construction that have also increased costs above estimates.

#### Contracted Goods or Services

Additional work needed is predominantly related to work in the Call Center including HVAC equipment/installation, structural upgrades, and acoustic improvements (e.g. panels) (\$410k). Also included are change order costs for the GM conference room (\$18k), Communications Shop mezzanine (\$61k), additional low voltage cabling and changes not identified in construction drawings (\$268k). There will also be additional costs for the increased bond to cover the higher contract total. (\$35k). The total requested amount is 29% over the last approved amount.

#### Prior Contract Activities

Halvorson has worked on two other construction projects for EWEB.

Purchasing Process

Staff issued a Formal Invitation to Bid in June, 2018. EWEB received two bids. The lowest responsive and responsible bid was received from Halvorson Contracting of Creswell, Oregon. Halvorson Contracting has 21 years of experience with similar interior remodeling projects. A bid was also received from Ausland Group of Grants Pass, Oregon. (Other qualified bidders declined to bid due to commitments to larger projects at this time.)

**ACTION REQUESTED:**

Management requests the Board approve a Contract Amendment with Halvorson Contracting for the Roosevelt Operations Center Consolidation and Interior Remodel Construction Services. Funds for these services were budgeted for 2019 and 2020. The costs associated with this request will be funded from the 2020 budget. The Total Electric Division budget for 2019 is \$37 Million, and \$48.4 Million for 2020.

## **EWEB Board Consent Calendar Request**

*For Contract Awards, Renewals, and Increases*

The Board is being asked to authorize the use of a cooperative contract for **Microsoft software maintenance and support** from **SHI International Corp.**

Board Meeting Date: January 7, 2020

Project Name/Contract#: Microsoft Software Purchases/ State of Oregon Price Agreement 6454

Primary Contact: Travis Knabe Ext. 7770

Expected Spend: \$2,000,000 over 3 years

### **Narrative:**

The Board is being asked to authorize the use of Oregon State Price Agreement 6454 for purchase of Microsoft software licenses, maintenance, and support services. EWEB intends to purchase the items from **SHI International Corp. (SHI)** of Piscataway, NJ (a Microsoft Value Added Reseller).

EWEB's current Microsoft licensing three year agreement is expiring soon. EWEB has purchased licenses and support services previously through SHI International Corp with good experience. Purchases from SHI International Corp. will be used to legally license our Microsoft products for the next three years.

EWEB requires licensing, maintenance, and support for Microsoft products that are used in EWEB's Windows Server licenses, SQL Server, Microsoft Office Suite, Email, SharePoint, and Office 365 products. The expected spend over the next three years includes additional costs to convert from per server licensing to data center licensing per industry standards and covers all obligations to be in compliance with Microsoft licensing requirements. Expected spend is \$650,000 annually over the next 3 years.

### **ACTION REQUESTED:**

Management requests the Board authorize the use of the contract for Microsoft Software and services from **SHI International Corp.** for three years. Funds for the purchases are in the O&M budget, and will be budgeted annually through the term of the contract. The O&M Budget for Information Services is \$11.1 million.

## **EWEB Board Consent Calendar Request**

*For Contract Awards, Renewals, and Increases*

The Board is being asked to approve a new contract with Riverbend Materials for 3/4 Minus Gravel.

Board Meeting Date: 1/7/2020

Project Name/Contract #: ¾ Minus Gravel/ 19-145-GS

Primary Contact: Rod Price Ext. 7122

### **Contract Amount:**

Original Contract Amount: \$250,000 over 5 years

Additional \$ Previously Approved: \$ n/a

Invoices over last approval: \$ n/a

Percentage over last approval: n/a

Amount this Request: \$250,000 over 5 years

**Resulting Cumulative Total:** \$250,000 over 5 years

### **Contracting Method:**

Method of Solicitation: Invitation to Bid

If applicable, basis for exemption: n/a

Term of Agreement: **Initial term is 1 year**

Option to Renew? Option to renew for up to 5 years

Approval for purchases "as needed" for the life of the Contract Yes  No

Proposals/Bids Received (Range): 3 (\$48,930-\$74,027 based on expected annual usage)

Selection Basis: Lowest Responsive and Responsible Bidder

### **Narrative:**

#### Operational Requirement and Alignment with Strategic Plan

EWEB requires ¾ minus to replace spoils (removed soils) while excavating during water and electric underground infrastructure work. The purpose of the ¾ minus is to ensure that the excavation backfill meets City, County and State compaction specifications. Gravel is also used to maintain various roadways and parking areas.

#### Contracted Goods or Services

Pick up or delivery of ¾ minus gravel, purchased by the ton or cubic yard.

#### Prior Contract Activities

EWEB previously had a contract for sand and gravel with Riverbend Materials that was awarded in Feb 2014. During the prior 5 year contract, the Contractor has been responsive to all needs and no performance concerns were recorded.

#### Purchasing Process

A formal Invitation to Bid was posted to ORPIN in December 2019. This solicitation was posted for 15 days and was viewed by 15 companies. Three responses were received, the responses were reviewed and Riverbend Materials was determined to be the lowest responsive and responsible bidder.

#### Bidder/Proposer Information

Delta Sand and Gravel Co  
Riverbend Materials  
Wildish

#### Bidder/Proposer Location

Eugene, Oregon  
Eugene, Oregon  
Eugene, Oregon

#### Competitive Fair Price (If less than 3 responses received)

3 Bids were received

**ACTION REQUESTED:**

Management requests the Board approve a new Price Agreement with Riverbend Materials for ¾ Minus Gravel. Use of these goods is incorporated as an incidental item in the Water Division's 2020 Capital Improvement budget of \$18 million. Variances will be managed within the budget process and Board policy.



## **EWEB Board Consent Calendar Request**

*For Contract Awards, Renewals, and Increases*

The Board is being asked to approve additional funding for a Memorandum of Understanding to continue working with General Pacific Inc. for the sale of discounted heat pump water heaters to EWEB customers.

Board Meeting Date: 1/7/2020

Project Name/Contract #: Heat Pump Water Heater Promotion through General Pacific, Inc. /19-179-MOU

Primary Contact: Julie McGaughey Ext.7066

### **Contract Amount:**

Original Contract Amount: \$150,000 until December 31, 2020

Additional \$ Previously Approved: \$0

Invoices over last approval: \$0

Percentage over last approval: 0%

Amount this Request: \$250,000

**Resulting Cumulative Total:** \$400,000 through Dec 31, 2020

### **Contracting Method:**

Method of Solicitation: Direct Negotiation

If applicable, basis for exemption: Sole Source

Term of Agreement: **November 19, 2019 – December 31, 2020**

Option to Renew? Yes

Approval for purchases "as needed" for the life of the Contract Yes  No

Proposals/Bids Received (Range): N/A

Selection Basis: N/A

### **Narrative:**

#### Operational Requirement and Alignment with Strategic Plan

Heat pump water heaters (HPWH) can bring up to 50% energy savings in water heating costs. This aligns with EWEB's Strategic Plan to "Foster Customer Confidence" and "Create Consumption Flexibility" by helping our customers reduce their energy burden and provide them with a cost-effective, accessible and efficient option to reduce their energy consumption. HPWH are also a way to reduce peak by needing less power while in heat pump mode. This can help with future capacity issues and the potential need of high-cost and carbon-intensive off-peak sources, which is in alignment with EWEB's Strategic Plan on "Resilient Delivery".

The Board is being asked to approve an amendment to a Memo of Understanding that will allow EWEB to continue working with Northwest distributor, General Pacific Inc. (GP) in partnership with both, a heat pump water heater manufacturer, Rheem and the Northwest Energy Efficiency Alliance (NEEA). This program provides HPWH at a reduced cost to EWEB customers, including a base model for \$225.00 (regular price is \$1,289). If approved, the contract agreement could provide HPWH units to up to 500 customers.

#### Contracted Goods or Services

Through this partnership, qualified EWEB electric customers are able to directly purchase a discounted HPWH through the online GP EWEB store ([www.gpconservation.com/eweb/](http://www.gpconservation.com/eweb/)). GP offers these discounted HPWH units directly to our customers without the need for each participant to submit an EWEB rebate (currently \$800) application. Once a customer purchase is initiated, EWEB verifies qualification and notifies GP of approval or denial of participation. GP invoices EWEB on a monthly basis for the total approved rebates. This effort is a component of our current energy efficiency measures, which are funded through EWEB's existing Energy Conservation budget. HPWH units purchased through this promotion qualify for Bonneville Power Administration energy efficiency reimbursement under the "Retail (Utility Run)" measure. Below are the various HPWH options for customers to purchase through this promotion:

HPWH Model	Delivered Price through 12/31/19	Delivered Price AFTER 12/31/19
Rheem PROPH50 T2 RH350 DCB	\$225.00	\$325.00
Rheem PROPH65 T2 RH350 DCB	\$565.00	\$665.00
Rheem PROPH80 T2 RH350 DCB	\$885.00	\$985.00
Rheem PROH50 T2 RH350BM	\$125.00	\$225.00
Rheem PROH65 T2 RH350BM	\$475.00	\$575.00
Rheem PROH80 T2 RH350BM	\$795.00	\$895.00

Prior Contract Activities

This is the first time GP and EWEB are working on this promotion. GP and EWEB have had conversations in the past on a similar effort, but at that time the reduction in price was much less and it did not clearly offer a benefit to our customers in comparison to buying a HPWH at a local retailer.

The current partnership with GP offering HPWH units to our customers began on November 22, 2019. As of the end of December 2019, over 150 qualified EWEB customers have participated in this promotion. In contrast, EWEB’s HPWH program has an average participation of 55 projects per year. The agreed verification and invoicing process between EWEB and GP has consistently meet all expectations and requirements by both parties.

Purchasing Process

In 2019 Q3, GP in partnership with Rheem and NEEA approached EWEB on an effort to provide Rheem HPWH at a reduced cost to EWEB customers. The partnership with GP is considered sole-source and findings are on file to support an exemption from solicitation. This type of partnership is open to any distributor and/or manufacturer that would like to offer additional savings to our customers for energy efficient products.

Bidder/Proposer Information

General Pacific Inc.

Bidder/Proposer Location

Fairview, Oregon

Competitive Fair Price (If less than 3 responses received)

N/A

**ACTION REQUESTED:**

Management requests the Board approve an amendment to increase spending for a Memorandum of Understanding to continue working with General Pacific Inc. for the sale of discounted heat pump water heaters to EWEB customers. Funds for this project are budgeted in 2020 through EWEB’s energy conservation budget of \$2,655,000. Variances will be managed within the budget process and Board policy.



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg, and Brown

FROM: Deborah Hart, Interim Chief Financial Officer; Aaron Balmer, General Accounting & Treasury Supervisor

DATE: December 27, 2019

SUBJECT: Resolutions No. 2002 and 2003 Requesting City Council Action on Series 2020 Bonds

OBJECTIVE: Approval of Resolutions No. 2002 and 2003

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## **Issue**

Financial market conditions provide EWEB the opportunity to achieve interest savings by refunding currently issued Electric and Water Utility Revenue Bonds. Additionally, both the Water and Electric Utility would benefit from issuing bonds for new construction given the current low interest rate environment. City Council authorization is required to issue bonds.

## **Background**

Current market conditions indicate the Electric and Water Utilities could each realize \$1.9 million in net present value interest expense savings if certain higher interest outstanding bonds are refunded. The current capital plans include projects providing long range benefits to future customers. Funding certain capital improvements with bonds, aligns payment for those projects with those customers benefitting from the assets, and fosters rate payer equity over time. At the December 2019 Board meeting, Commissioners indicated their support for issuing refunding and new construction bonds for both the Electric and Water Utilities.

### *Electric Utility*

Existing bond funds for the Electric Utility will be nearly depleted in 2020 based on projected Carmen-Smith construction costs. Accelerating the planned 2021 issuance to 2020 and borrowing \$46 million allows the Electric Utility to take advantage of favorable market conditions and maintain reserve balances above target. The refunding, combined with the revised debt issuance schedule, results in a slightly favorable rate trajectory in the long term financial plan.

In 2017, the City Council authorized an additional \$46 million of Electric Utility bonding authority in anticipation of future issuances, primarily for Carmen-Smith work. Accordingly, City Council approval is only required for the refunding bonds.

### *Water Utility*

In November 2019, the Water Utility exhausted proceeds from the 2016 construction bond. Issuing

\$21 million of new construction bonds in 2020 impacts the 10 year price trajectory positively. When combined with the refunding, there is an overall decrease of 2 percentage points as the cost of construction is spread over the life of the bonds. The lower price trajectory will help move the Water Utility's rate of return toward target, and timing an issuance now, reduces the planned bond issuance in 2024.

The Water Utility's new construction funding does not have prior authorization from City Council. Council approval and a 60 day period for public notification are required. The notification period allows City of Eugene voters to request that the new construction bonds be included on an upcoming ballot measure if 5% of registered voters' signatures are gathered. Historically, no signatures have been submitted.

For both utilities, the amount of bonds refunded and interest rates in the resolutions are higher than anticipated to allow flexibility if market conditions change. The State of Oregon requires that refunded bonds achieve a net present value savings of 3% or the bonds cannot be refunded. If both the City Council and the Board approve the bond resolutions, both Utilities' long term financial plans are updated several times throughout the process to ensure issuing new construction bonds continues to be financially sound. Since the Water Utility has exhausted prior bond proceeds, its resolution provides for reimbursement of project costs incurred prior to the date of issuance. The City Council is tentatively scheduled to take action at the January 27<sup>th</sup> Council meeting. The Electric bonds are projected to be sold in March and the Water bonds in April.

#### **Recommendation and Requested Board Action**

Management recommends approval of Resolution No. 2002 requesting the City Council authorize the issuance and sale of Electric Utility Revenue Refunding Bonds and Resolution No. 2003 requesting the City Council authorize the issuance and sale of Water Utility Revenue Refunding Bonds, as well as Water Utility Bonds for new construction.

## RESOLUTION NO. 2002

### **A RESOLUTION REQUESTING THE CITY OF EUGENE TO AUTHORIZE THE ISSUANCE AND SALE OF ELECTRIC UTILITY SYSTEM REVENUE REFUNDING BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$36,880,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING ELECTRIC UTILITY SYSTEM BONDS AND PROVIDING FOR RELATED MATTERS**

WHEREAS, Oregon Revised Statutes ("ORS") Section 287A.150 (the "Act"), authorizes the City of Eugene (the "City") to issue revenue bonds payable from identified revenues of the City; and the City, acting by and through the Eugene Water & Electric Board ("EWEB"), owns and operates an electric utility system (the "Electric Utility System") and related facilities and systems;

WHEREAS, on June 16, 1986, EWEB adopted a resolution, which was amended and restated by Resolution No. 1604, authorizing and providing for the issuance, from time to time, of City of Eugene, Oregon Electric Utility System Revenue Bonds to be equally and ratably secured by the pledge of revenues, funds and accounts thereunder (as amended and supplemented, the "Bond Resolution");

WHEREAS, the Bond Resolution provides in part that the principal of, premium, if any, and interest on the bonds issued thereunder shall not be payable from any funds of the City nor constitute a general obligation of the City or create a charge upon the tax revenues or any other property or revenues of the City;

WHEREAS, it is in the best interest of the City, acting by and through EWEB, to provide funds for the purpose of refunding a portion of the Electric Utility System Revenue Bonds, Series 2012, funding necessary reserves and paying the costs of issuance of the bonds;

WHEREAS, EWEB finds it in the best interest of the City to request that the City Council adopt a resolution in part to authorize and set the terms for the issuance and sale of not to exceed \$36,880,000 in aggregate principal amount of Electric Utility System Revenue Refunding Bonds (the "Bonds");

WHEREAS, the Bonds will not be general obligations of the City, nor a charge upon its tax revenues, but will be payable solely from revenues of the Electric Utility System which EWEB pledges to the payment of such Bonds pursuant to the Act and the resolution to be adopted by EWEB pursuant to such resolution of the City Council;

WHEREAS, EWEB shall cause to be prepared a plan showing that EWEB's estimated Electric Utility System revenues are sufficient to pay the estimated debt service on the Bonds authorized by resolution of the City Council;

WHEREAS, EWEB expects to issue the bonds authorized by this resolution simultaneously with bonds to finance capital improvements that were authorized by the City Council pursuant to Resolution No. 5201 adopted on June 26, 2017;

**NOW THEREFORE, BE IT RESOLVED BY THE EUGENE WATER & ELECTRIC BOARD OF THE CITY OF EUGENE, OREGON, as follows:**

**Section 1.** Request for Authorization of Bonds; Purpose of Issue. Based on the above findings, EWEB hereby requests the City Council to authorize EWEB, on behalf of the City, to issue and sell the Bonds designated as the “City of Eugene, Oregon Electric Utility System Revenue Refunding Bonds,” in one or more series, in the aggregate principal amount of not to exceed \$36,880,000, for the purpose of refunding a portion of the Electric Utility System Revenue, Series 2012, and funding any required reserves and costs of issuance. Capitalized terms used but not defined herein shall have the meaning assigned in the Bond Resolution.

**Section 2.** Delegation of Authority for Terms of Bonds; Provisions for Issuance. Pursuant to the Act, EWEB hereby designates that its Treasurer or Assistant Treasurer may determine, with respect to the Bonds, the form of bond and series designation, the manner of disbursement of proceeds of the bonds, the maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations, form and authorized signatory and other terms and conditions of the Bonds because the same cannot be determined by EWEB at this time. Prior to the issuance of any Bonds, EWEB shall: (i) prepare a plan showing that the estimated Electric Utility System revenues are sufficient to pay the estimated debt service on the Bonds; (ii) adopt a bond resolution and provide a copy of such resolution to the City; (iii) provide to the City a resolution determining that any and all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of the Bonds, exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of Oregon, the Charter of the City of Eugene and this Resolution; and (iv) submit the refunding plan to the State Treasurer as required by ORS Section 287A.365-.370. Without the prior approval of the City Council and EWEB, the Bonds shall (i) mature not later than six months after the original final maturity of the 2012 Bonds; (ii) be sold through public competitive sale and awarded to the bidder offering the most favorable terms to EWEB, on behalf of the City, or sold pursuant to negotiation at par or with a net original issue discount or premium that does not exceed 20% of the aggregate principal amount thereof; (iii) have an effective interest rate of not to exceed 6.0% per annum; and (iv) not exceed \$36,880,000 in aggregate principal amount.

**Section 3.** Statement on Form of Bond. All Bonds shall include a statement on their face to the effect:

(a) That they do not in any manner constitute a general obligation of EWEB or of the City, or create a charge upon the tax revenues of the City, or upon any other revenues or property of the City, or property of EWEB, but are charges upon and are payable solely from the revenues of the Electric Utility System operated by EWEB, or any portion thereof, pledged to the payment thereof; and

(b) That the holders thereof may look for repayment only to the revenues of the Electric Utility System which are pledged for the payment thereof, and may not directly or indirectly be paid or compensated through the property of the City, or EWEB, or by or through the taxing power of the City.

**Section 4.** Bonds Payable Solely from Revenues. The Bonds shall not be general obligations of the City, nor a charge upon its tax revenues, but shall be payable solely from the revenues and funds which EWEB pledges to the payment thereof pursuant to the Act, applicable City Council resolutions and in accordance with this Resolution.

**Section 5.** Bonds Reporting. EWEB shall submit to the City by May 1, commencing after the first sale of any Bonds or other evidences of indebtedness hereunder and each year thereafter until the Bonds have been paid and retired, a report on Bond payments describing amounts paid, amounts scheduled to be paid and the source of such payments. If the content of the report required by this section is included in the annual audit report of EWEB, then EWEB may comply with this section by transmitting a copy of its annual audit report to the City.

**Section 6.** Official Statement; Sale Documents. Subject to the prior approval by the City Council, EWEB hereby designates its Treasurer or Assistant Treasurer to direct the preparation and distribution of one or more preliminary and final official statements or other disclosure document(s) for any of the Bonds or in connection with a preliminary official statement or other disclosure document(s) for any other bonds, as determined to be necessary by EWEB, to obtain bond insurance or other credit enhancement or commitments therefor, if required, to obtain a rating on any or all of the Bonds from Moody's Investors Service, Inc., Standard & Poor's and/or Fitch Ratings, if required, to issue and publish such notices of sale of the Bonds as may be necessary or required to accomplish the sale of the Bonds in accordance with this Resolution and to select trustees, registrars, paying agents, financial advisor, bond counsel, disclosure counsel, underwriter or placement agent, and any other professional assistance that may be necessary or convenient to accomplish the issuance and sale of any or all of the Bonds and the refunding plan; and to determine any other terms, conditions or covenants regarding any or all of the Bonds, the Project, which are necessary or desirable to effect the sale of any or all of the Bonds; and all such acts are hereby ratified.

**Section 7.** Effective Date of Resolution. This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 7<sup>th</sup> day of January 2020.

EUGENE WATER & ELECTRIC BOARD

\_\_\_\_\_  
President

I, Anne M. Kah, the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the resolution adopted by EWEB at its January 7, 2020 Board Meeting.

\_\_\_\_\_  
Assistant Secretary



## RESOLUTION NO. 2003

### **A RESOLUTION REQUESTING THE CITY OF EUGENE TO AUTHORIZE THE ISSUANCE AND SALE OF WATER UTILITY SYSTEM REVENUE AND REFUNDING BONDS IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED \$36,860,000 FOR THE PURPOSE OF REFUNDING CERTAIN OUTSTANDING WATER UTILITY SYSTEM BONDS AND FINANCING IMPROVEMENTS TO THE WATER UTILITY SYSTEM AND PROVIDING FOR RELATED MATTERS**

WHEREAS, Oregon Revised Statutes ("ORS") Section 287A.150 (the "Act"), authorizes the City of Eugene (the "City") to issue revenue bonds payable from identified revenues of the City; and the City, acting by and through the Eugene Water & Electric Board ("EWEB"), owns and operates a water utility system (the "Water Utility System") and related facilities and systems;

WHEREAS, on September 2, 1997, EWEB adopted a resolution authorizing and providing for the issuance, from time to time, of City of Eugene, Oregon Water Utility System Revenue Bonds to be equally and ratably secured by the pledge of revenues, funds and accounts thereunder, which was amended by Resolution No. 1614 (as amended and supplemented, the "Bond Resolution");

WHEREAS, the Bond Resolution provides in part that the principal of, premium, if any, and interest on the bonds issued thereunder shall not be payable from any funds of the City nor constitute a general obligation of the City or create a charge upon the tax revenues or any other property or revenues of the City;

WHEREAS, it is in the best interest of the City, acting by and through EWEB, to provide funds for the purpose of financing certain capital improvements described in the Water Capital Improvement Plan (collectively, the "Project"), refunding all of the Water Utility System Revenue Bonds, Series 2011, funding necessary reserves and paying the costs of issuance of the bonds;

WHEREAS, EWEB finds it in the best interest of the City to request that the City Council adopt a resolution in part to authorize and set the terms for the issuance and sale of not to exceed \$36,860,000 in aggregate principal amount of Water Utility System Revenue and Refunding Bonds (the "Bonds");

WHEREAS, the Bonds will not be general obligations of the City, nor a charge upon its tax revenues, but will be payable solely from revenues of the Water Utility System which EWEB pledges to the payment of such Bonds pursuant to the Act and the resolution to be adopted by EWEB pursuant to such resolution of the City Council;

WHEREAS, EWEB shall cause to be prepared a plan showing that EWEB's estimated Water Utility System revenues are sufficient to pay the estimated debt service on the Bonds authorized by resolution of the City Council;

WHEREAS, the City and EWEB anticipate incurring expenditures ("Expenditures") to finance the costs of the projects and improvements described above and wish to declare their official intent to reimburse themselves for the Expenditures made therefor from the proceeds of the Bonds. To the extent that the expenditures and the use of proceeds of the Bonds may qualify under federal tax law and regulations, the City, including EWEB, intends for the interest on such bonds to be excludable from gross income for federal income tax purposes under §103 of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, EWEB finds that it is in the public interest of the City to request that the City Council adopt a resolution in part to authorize the publication of the Notice of Revenue Bond Authorization relating to the portion of the Bonds funding the Project, such notice being in substantially the form attached to this Resolution as Exhibit "A" (the "Notice"). The Notice shall specify the last date on which petitions may be submitted, and the City, acting by and through EWEB, shall cause the Notice to be published in *The Register-Guard*, Eugene, Oregon, a newspaper of general circulation within the boundaries of the City, in the same manner as are other public notices of the City;

**NOW THEREFORE, BE IT RESOLVED BY THE EUGENE WATER & ELECTRIC BOARD OF THE CITY OF EUGENE, OREGON,** as follows:

**Section 1.** Request for Authorization of Bonds and Publication of Notice; Purpose of Issue. Based on the above findings, EWEB hereby requests the City Council to authorize EWEB, on behalf of the City, to issue and sell the Bonds designated as the "City of Eugene, Oregon Water Utility System Revenue and Refunding Bonds," in one or more series, in the aggregate principal amount of not to exceed \$36,860,000, for the purpose of financing the costs of the design, construction, installation, acquisition and equipping of the Project, refunding all of the Water Utility System Revenue Bonds, Series 2011, and funding any required reserves and costs of issuance, and to publish the Notice as aforesaid. If petitions for an election, containing the valid signatures of not less than 5% of the City's qualified electors, are received within the time indicated in the Notice, the question of issuing the portion of the Bonds funding the Project shall be placed on the ballot at the next legally available election date. If such petitions are received no Bonds funding the Project may be sold until the question of whether to issue the Bonds is approved by a majority of electors living within the boundaries of the City who vote on that question. Any such petitions will be subject to the Act and §§2.970-2.989 of The Eugene Code, 1971. Capitalized terms used but not defined herein shall have the meaning assigned in the Bond Resolution.

**Section 2.** Delegation of Authority for Terms of Bonds; Provisions for Issuance. Pursuant to the Act, EWEB hereby designates that its Treasurer or Assistant Treasurer may determine, with respect to the Bonds, the form of bond and series designation, the manner of disbursement of proceeds of the bonds, the maturity dates, principal amounts, redemption provisions, interest rates or the method for determining a variable or adjustable interest rate, denominations, form and authorized signatory and other terms and conditions of the Bonds because the same cannot be determined by EWEB at this time. Prior to the issuance of any Bonds, EWEB shall: (i) prepare a plan showing that the estimated Water Utility System revenues are sufficient to pay the estimated debt service on the Bonds; (ii) adopt a bond resolution and provide a copy of such resolution to the City; (iii) provide to the City a resolution determining that any and all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of the Bonds, exist, have happened and have been performed in due time, form and manner as required by the Constitution and statutes of the State of Oregon, the Charter of the City of Eugene and this Resolution; and (iv) submit the refunding plan to the State Treasurer as required by ORS Section

287A.365-.370. Without the prior approval of the City Council and EWEB, the Bonds shall (i) mature not later than 30 years from the date of issuance thereof, provided that the portion of the Bonds that refund the 2011 Bonds shall mature not later than six months of the original final maturity of the 2011 Bond; (ii) be sold through public competitive sale and awarded to the bidder offering the most favorable terms to EWEB, on behalf of the City, or sold pursuant to negotiation at par or with a net original issue discount or premium that does not exceed 20% of the aggregate principal amount thereof; (iii) have an effective interest rate of not to exceed 6.0% per annum; and (iv) not exceed \$36,860,000 in aggregate principal amount.

**Section 3.** **Declaring Intent to Reimburse.** EWEB reasonably anticipates that the City and EWEB may incur preliminary, cost of issuance and other project expenditures that qualify as "Original Expenditures" under Treasury Regulation §1.150-2 prior to the date of issuance of the Bonds, and hereby declares its official intent to reimburse itself or EWEB with proceeds of the sale of the Bonds to be issued in an amount not to exceed \$36,860,000 in aggregate principal amount.

**Section 4.** **Statement on Form of Bond.** All Bonds shall include a statement on their face to the effect:

(a) That they do not in any manner constitute a general obligation of EWEB or of the City, or create a charge upon the tax revenues of the City, or upon any other revenues or property of the City, or property of EWEB, but are charges upon and are payable solely from the revenues of the Water Utility System operated by EWEB, or any portion thereof, pledged to the payment thereof; and

(b) That the holders thereof may look for repayment only to the revenues of the Water Utility System which are pledged for the payment thereof, and may not directly or indirectly be paid or compensated through the property of the City, or EWEB, or by or through the taxing power of the City.

**Section 5.** **Bonds Payable Solely from Revenues.** The Bonds shall not be general obligations of the City, nor a charge upon its tax revenues, but shall be payable solely from the revenues and funds which EWEB pledges to the payment thereof pursuant to the Act, applicable City Council resolutions and in accordance with this Resolution.

**Section 6.** **Bonds Reporting.** EWEB shall submit to the City by May 1 of each year the following annual reports commencing after the first sale of any Bonds or other evidences of indebtedness hereunder and each year thereafter until the Bonds have been paid and retired:

(a) A report on the funds for each series of Bonds describing the funds established, the amounts in each fund, expenditure from each fund, the manner in which the monies in each fund have been invested, the income from such investments and the application of such income; and

(b) A report on Bond payments describing amounts paid and amounts scheduled to be paid and the source of such payments.

If the contents of the reports required by subsections (a) and (b) above are included in the annual audit report of EWEB, then EWEB may comply with this Section 6 by transmitting a copy of its annual audit report to the City.

**Section 7.** **Official Statement; Sale Documents.** Subject to the prior approval by the City Council, EWEB hereby designates its Treasurer or Assistant Treasurer to direct the preparation and distribution of one or more preliminary and final official statements or other disclosure document(s) for any of the Bonds or in connection with a preliminary official statement or other disclosure document(s) for any other bonds, as determined to be necessary by EWEB, to obtain bond insurance or other credit enhancement or commitments therefor, if required, to obtain a rating on any or all of the Bonds from Moody's Investors Service, Inc., Standard & Poor's and/or Fitch Ratings, if required, to issue and publish such notices of sale of the Bonds as may be necessary or required to accomplish the sale of the Bonds in accordance with this Resolution and to select trustees, registrars, paying agents, financial advisor, bond counsel, disclosure counsel, underwriter or placement agent, and any other professional assistance that may be necessary or convenient to accomplish the issuance and sale of any or all of the Bonds and the refunding plan; and to determine any other terms, conditions or covenants regarding any or all of the Bonds, the Project, which are necessary or desirable to effect the sale of any or all of the Bonds.

**Section 8.** **Effective Date of Resolution.** This Resolution shall become effective immediately upon its adoption.

PASSED AND ADOPTED this 7<sup>th</sup> day of January 2020

EUGENE WATER & ELECTRIC BOARD

\_\_\_\_\_  
President

I, Anne M. Kah, the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the resolution adopted by EWEB at its January 7, 2020 Board Meeting.

\_\_\_\_\_  
Assistant Secretary

## EXHIBIT A

### FORM OF NOTICE OF REVENUE BOND AUTHORIZATION

**NOTICE IS HEREBY GIVEN** that the City Council of the City of Eugene, Oregon (the "City"), acting pursuant to the request of the Eugene Water & Water Board ("EWEB"), adopted Resolution No. \_\_\_\_\_ on January 13, 2020, authorizing the issuance of the City's Water Utility System revenue bonds. The revenue bonds will be issued in one or more series to provide funds for the purpose of refunding certain outstanding Water Utility System bonds and financing certain capital improvement projects described in the Water Capital Improvement Plan (collectively, the "Project"), funding necessary reserves and paying the costs of issuance of the revenue bonds.

The costs of funding the Project, together with the necessary reserves and costs of issuance of the revenue bonds, are estimated not to exceed \$21,000,000. In accordance with these estimates, the City expects that the revenue bonds to fund the Project will be issued in an aggregate principal amount not to exceed \$21,000,000. Such bonds may be issued simultaneously with bonds to refund the Water Utility System Revenue Bonds, Series 2011.

Subject to certain parameters, EWEB may establish all terms, conditions and covenants regarding the revenue bonds and the revenues which are necessary or desirable to affect the sale of the revenue bonds.

The revenue bonds will not be general obligations of the City, nor a charge upon its tax revenues, but will be payable solely from the revenues of the City's Water Utility System.

If written petitions, signed by not less than 5.0% of the City's qualified electors, are filed at the Office of the City Recorder on or before \_\_\_\_\_, 2020 (the 61st day after the date of publication of this notice), the question of issuing not to exceed \$21,000,000 of water revenue bonds shall be placed on the ballot at the next legally available election date. Any such petition shall be subject to ORS 287A.150 and Sections 2.970-2.989 of the Eugene Code, 1971.

The Office of the City Recorder is located at 125th E. 8th Avenue, 2nd Floor, Eugene, Oregon 97401. Information on procedures for filing petitions may also be obtained at such address or by telephone at (541) 682-5010.

The resolution authorizing the revenue bonds is available for inspection at the Office of the City Recorder.

The revenue bonds will be issued and sold pursuant to ORS 287A.150, and this notice is published pursuant to ORS 287A.150(4).



**X. Downtown Network Service Connection Charge**

(Resolution No. 2004)

1. Purpose

The downtown secondary network offers increased redundancy and high reliability to customers. The configuration of the network requires new services to use specialized equipment and installation standards. A downtown network service connection charge has been established to distribute the costs of service connection to the secondary network in a consistent and transparent manner.

2. Applicability

The connection charge will be administered for all customers adding load within the downtown network boundary and that are connected to the network grid.

- a. New Development/Service: The connection charge will be calculated based on the estimated demand (kW) on the secondary network.
- b. Existing Services: The connection charge will be determined based on the difference between the new estimated demand and the highest monthly demand (kW) that occurred within the past five years.
  - i. If a single service is replacing multiple services, the sum of the highest demand (kW) will be used.

3. Pricing

Downtown Network Service Connection Charge.....\$315.00 per kW

This charge includes the installation and materials to extend and/or connect EWEB electric facilities to the customer installed substructure and equipment.

The customer will be responsible for the following cost in addition to the connection charge: Procurement and installation of metering, vaults, boxes, conduits, service lateral conductors and related service lateral connectors.

4. Special Provisions

The downtown network service connection charge will not apply to spot networks. Customers requesting spot network connections will be assessed the full cost of all required labor, equipment, and materials to provide service within the network boundary.

**RESOLUTION NO. 2004  
JANUARY 2020**

**EUGENE WATER & ELECTRIC BOARD  
ADD DOWNTOWN NETWORK SERVICE CONNECTION CHARGE TO  
CUSTOMER SERVICE POLICY**

**WHEREAS**, the Eugene Water & Electric Board (EWEB) operates and maintains a redundant and high reliable secondary grid, serving customers within its downtown secondary network boundary; and

**WHEREAS**, EWEB requires specialized equipment and installation standards at higher costs than installations outside of its boundary, often exceeding customers electric service needs; and

**WHEREAS**, in response, EWEB has developed a Downtown Network Service Connection Charge Policy to establish more predictability in network infrastructure costs, reduce price disparity between similarly-sized projects, enable staff to be more responsive to developer requests for high level cost estimates early in their project scoping; and

**WHEREAS**, EWEB's Downtown Network Service Connection Charge Policy mitigates the current incentive to choose natural gas to solely avoid additional equipment costs, equitably and cost-effectively reducing community and regional carbon emissions; and

**NOW, THEREFORE, BE IT RESOLVED** the Eugene Water & Electric Board hereby authorizes the General Manager to add the Downtown Network Service Connection Charge to the Customer Service Policy to the Appendix B – Electric Service Charges and Prices.

DATED this 7<sup>th</sup> day of January 2020.

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

\_\_\_\_\_  
President

I, ANNE M. KAH the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its January 7, 2020 Board Meeting.

\_\_\_\_\_  
Assistant Secretary



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown  
FROM: Deborah Hart, Interim Chief Financial Officer  
DATE: December 27, 2019  
SUBJECT: Supplemental Retirement Plan Committee  
OBJECTIVE: Approval of Resolution No. 2005

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## **Issue**

EWEB maintains a Supplemental Retirement Plan (SRP) that requires the annual appointment of a committee to make certain decisions.

## **Background**

The EWEB SRP was created in 1968 and closed to new participants in 1988. The objective of the plan is to provide a benefit on retirement which, together with the benefit from PERS, will provide 1.67% of the highest 36-month average salary for each year of service. Independent actuaries determine employer contributions. The plan currently has 25 participants or beneficiaries to whom payments are made. In 2019 EWEB paid \$128,000 in supplemental retirement benefits, down from \$142,000 and \$171,000 in 2018 and 2017, respectively. There have been no recent changes in the design or terms of the plan, and none are anticipated in the future.

## **Discussion**

EWEB funds the plan on a “pay as you go” basis, and the SRP committee monitors and administers the plan. A contracted payroll service prepares monthly checks and tax documentation for plan participants. The terms of the plan include a cost of living adjustment (COLA) based upon the rate used by the Oregon PERS plan. The plan requires committee members to be appointed by the Board of Commissioners.

## **Recommendation**

Management requests that the Board approve the appointment of Deborah Hart, Interim Chief Financial Officer; Jeremy Whittlesey, Payroll Administrator; and Bridget Otto, Human Resources Supervisor, to the Supplemental Retirement Committee.

## **Requested Board Action**

Approval of Resolution No. 2005



**RESOLUTION NO. 2005  
JANUARY 2020**

**EUGENE WATER & ELECTRIC BOARD  
ANNUAL APPOINTMENT OF SUPPLEMENTAL RETIREMENT PLAN COMMITTEE**

**WHEREAS**, the Eugene Water & Electric Board maintains a Supplemental Retirement Plan in effect since January 1, 1968, which was last amended and restated in July 1988, with an objective to provide a benefit on retirement which supplements Oregon PERS benefits;

**WHEREAS**, the Supplemental Retirement Plan is a single-employer plan providing retirement, death and disability benefits to a closed group of EWEB retirees and their beneficiaries;

**WHEREAS**, a Trust was created in accordance with the Pension Trust Agreement effective May 16, 1975, for the benefit of funding the Supplemental Retirement Plan;

**WHEREAS**, funding of the plan since is provided by Board contributions, deposited to the existing trust account as needed to meet obligations to retirees, together with earnings on plan assets;

**WHEREAS**, the Supplemental Retirement Plan provides for annual appointment and reappointment by the Board of a Retirement Committee of three to seven members charged with the general administration of the Plan, subject to the consent and approval of the Board of Commissioners;

**WHEREAS**, Management recommends the Board appoint Deborah Hart (Interim Chief Financial Officer), Bridget Otto (EWEB Human Resources Supervisor), and Jeremy Whittlesey (EWEB Payroll Administrator), as EWEB personnel without rights in or to the Supplemental Retirement Plan funds, be appointed to the Retirement Committee;

**NOW, THEREFORE, BE IT RESOLVED** by the Eugene Water & Electric Board that:

The Board continues the Supplemental Retirement Plan without amendment, and hereby reappoints the Retirement Committee to be comprised of Deborah Hart, Bridget Otto, and Jeremy Whittlesey.

The Retirement Committee shall continue to administer the Supplemental Retirement Plan in accordance with its terms, and remain as trustee fulfilling applicable duties under the 1975 Pension Trust Agreement. The trust account may be maintained at a zero or minimal balance within the discretion of the Retirement Committee. Based upon the closed membership in the Supplemental Retirement Plan and the anticipated budget requirements to cover benefit payments in the future, the Board does not require the Supplemental Retirement Plan to be pre-funded. The Board will continue to fund the Supplemental Retirement Plan contributions as a budgetary item on a prospective basis.

Dated this 7th day of January 2020.

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

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President

I, ANNE M. KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its January 7, 2020 Board Meeting.

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Assistant Secretary



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Carlson, Mital, Helgeson, Schlossberg and Brown  
FROM: Deborah Hart, Interim Chief Financial Officer; and Sarah Gorsegner, Purchasing & Warehouse Supervisor  
DATE: December 23, 2019  
SUBJECT: Update to EWEB's Public Contracting Rules  
OBJECTIVE: Approval of Resolution No. 2006

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## **Issue**

EWEB's Public Contracting Rule 2-0140 provides the Board authority to update and revise EWEB Public Contracting Rules, so long as such revisions do not conflict with law.

## **Background**

Management proposes to update EWEB's Contracting Rules to align with changes to the Oregon Revised Statutes approved in the recent legislative session. The changes are attached for your reference and are the same proposed changes presented for review in the December 3, 2019 Board Correspondence.

## **Recommendation/Requested Board Action**

Management is requesting Board approval of Resolution No. 2006.

## 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; ~~and~~
  - (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.~~410-311~~ to 192.~~505-478~~ 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

## 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



**Public Contracting Rules**

**Construction Consultants**

Adopted: 1/4/2005

Effective: 3/1/2005

Revised: 2/3/2015

Revised: 8/18/2017

Revised: 1/7/2020

**Division 4  
Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and  
Land Surveying Services, or Related Services**

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**RULES**

**4-0100 Application**

- (1) These Division 4 rules apply to the screening and selection of consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services under Contracts, and set forth the following procedures:
  - (a) Procedures through which EWEB will select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
  - (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners and Land Surveyors for certain Public Improvements owned and maintained by EWEB, where a State Agency will serve as lead Contracting Agency and will enter into Contracts with architects, engineers and land surveyors.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065

**4-0110 Definitions**

Definitions applicable to **EWEB Public Contracting Rules** Division 4 are set forth at **EWEB Public Contracting Rules**, Division 1.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065

**4-0120 List of Interested Consultants; Performance Record**

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to EWEB's Purchasing Office. The Purchasing Office will use this information to create a list of prospective Consultants and will periodically update this list.
- (2) EWEB may compile and maintain a record of each Consultant's performance under a Contract, including information obtained from Consultants during an exit interview, if requested by the utility. Compiled information may include, but is not limited to, the satisfactory completion of the work, EWEB's estimated additional costs resulting from the Consultant's failure to meet project requirements, EWEB's judgment of the Consultants ability to perform work for which the Consultants has indicated it is qualified to perform, and any additional benefit to the utility from the use of the Consultant. Upon request and in accordance with the Oregon Public Records Law (ORS 192.440-311 through 192.478505) EWEB may make copies of the records available.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065, ORS 279C.110

**4-0130 Applicable Selection Procedures; Pricing Information**

- (1) When selecting the most qualified Consultant to perform Architectural, Engineering,  
EWEB Public Contracting Rules, Division 4 -Page 2 of 20

Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure), or EWEB Rule 4-0200 (Direct Appointment Procedure).

- (2) EWEB may solicit or use ~~copies of pricing policies and other proposals or other pricing information including the number of hours, proposed for the services required, expenses, hourly rates and overhead, to determine pricing policies, proposals, or other pricing information~~ consultant compensation only after EWEB has selected the most qualified Consultant in accordance with the applicable Direct Appointment (4-0200), Informal (4-0210), or Formal selection (4-0220) procedures. In following the Direct Appointment Procedure under EWEB Rule 4-0200, EWEB may base its initial selection of a Consultant on any information available to EWEB prior to beginning the Direct Appointment Procedure for the Project involved.
- (3) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, EWEB shall comply with these Division 4 rules in procuring those Services.
- (4) When selecting Consultants to perform Related Services EWEB shall follow one of the following selection procedures:
  - (a) When selecting a Consultant on the basis of qualifications alone, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure) or EWEB Rule 4-0220 (Formal Selection Procedure);
  - (b) When selecting a Consultant on the basis of price competition alone, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Bids, or EWEB Rule 4-0200 (Direct Appointment Procedure) if the requirement of EWEB Rule 4-0200 apply; and
  - (c) When selecting a Consultant on the basis of price and qualifications, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Proposals, or EWEB Rule 4-0200 ~~apply~~. EWEB may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.
- (5) EWEB is not required to follow the procedures in Section (1) or Section (4) of this rule, when EWEB has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Relating Services under an individual work order or task order. Provided, however, the criteria and procedures EWEB uses to select a single Consultant, when EWEB has established Price Agreements with more than one Consultant, must meet the requirements of EWEB Rule 4-0280.
- (6) For purposes of these Division 4 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. EWEB's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. EWEB



will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the contract is for Architectural Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, EWEB shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (4) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, EWEB shall comply with the applicable provisions of the EWEB Public Contracting Rules that match the predominant purpose of the Contract.

~~(7) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration, or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, the Contracting Agency shall comply with these Division 4 rules in procuring those Services.~~

(87) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by EWEB for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

- (a) The term “competitive proposal” for purposes of ORS 279C.107 includes proposals under EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure) or EWEB Rule 4-0130 (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under EWEB Rule 4-0280 (Price Agreements).
- (b) For purposes of proposals received under EWEB Rule 4-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while EWEB may make proposals under EWEB Rule 4-0200 (Direct Appointment Procedure) open for public inspection following EWEB’s decision to begin Contract negotiations with the selected Consultant, Rule 4-0200 proposals are not required to be open for public inspection until after EWEB has executed a Contract with the selected Consultant.
- (c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where EWEB is conducting discussions or negotiations with proposers who submit proposals that EWEB has determined to be closely competitive or to have a reasonable chance of being selected for award, EWEB may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107.
- (d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

Stat. Auth.: ORS 279A.070; Or Laws 2011, Chapter 458

Stats. Implemented: ORS 279A.065, ORS 279C.110 (5)

#### **4-0140 Personal Services for Oversight of Public Contract**

(1) Except as provided in subsection (2), when EWEB procures personal services for the

purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to Division 4 or Division 5 of these Rules, it may not:

- (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services; or
  - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.
- (2) Subsection (1) of this Rule does not apply to:
- (a) A procurement that qualifies as a design-build procurement under EWEB Rule 5-0680; or
  - (b) A procurement for construction manager/general contractor services.
- (3) As used in this section, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

Stat. Auth.: ORS 279A.065(3); ORS 279A.070; 2013 Or Laws Ch 522, Sec. 2, 6;

Stat. Implemented: ORS 279A.065(3); ORS 279C.307; 2013 Or Laws Ch 522, Sec. 2, 6;

#### **4-0150 Qualification Based Selection**

- (1) In accordance with the requirements of ORS279.110 and preserving all rights and provisions afforded a local contracting agency therein, EWEB shall select a consultants to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services on the basis of the consultant's qualifications and pricing as allowed for the type of professional service required. See EWEB Rule 4-0130.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

### **SELECTION PROCEDURES**

#### **4-0200 Direct Appointment Procedure**

- (1) EWEB may enter a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these EWEB Rules if:
  - (a) EWEB finds that an Emergency exists; or
  - (b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
  - (c) A Project is being continued, the Estimated Fee will not exceed \$250,000, and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural,

- Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services rendered under the earlier Contract; and EWEB used Rule 4-0220, or formal selection procedure pursuant to statute, at the time EWEB selected the Consultant for the earlier Contract; or
- (d) A project is being continued, the Estimated Fee is expected to exceed \$250,000 and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract meet the following requirements:
- (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned or otherwise previously studied, under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;
  - (B) EWEB used either the formal selection procedure under EWEB Rules Division 4-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier Contract; and
  - (C) EWEB makes written findings that entering into a Contract with the consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:
    - (i) Promote efficient use of public funds and resources and result in substantial cost savings to EWEB; and
    - (ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.
- (2) EWEB may select Consultants for Contracts under this rule from the following sources:
- (a) EWEB's list of Consultants created under EWEB Rule 4-0120 (List of Interested Consultants; Performance Record);
  - (b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 or their own rules (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or
  - (c) All Consultants offering the required Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services that EWEB reasonably can identify under the circumstances.
- (3) EWEB shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:
- (a) Consultant's performance obligations and performance schedule;
  - (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services; and
  - (c) Any other provisions EWEB believes to be in EWEB's or its customers' best interest to negotiate.

#### 4-0210 Informal Selection Procedure

- (1) EWEB may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee to be paid under the Contract does not exceed \$250,000.
- (2) EWEB, when using the informal selection procedure, shall:
  - (a) Create a Request for Proposals that includes at a minimum the following:
    - (A) A description of the Project for which Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that will be required under the resulting Contract;
    - (B) Anticipated Contract performance schedule;
    - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
    - (D) The deadline (date and time), and other directions, for submitting Proposals;
    - (E) Criteria for ~~selection~~evaluation, including relative weight of each factor of the most qualified Consultant. ~~Evaluation~~Selection criteria may include, but are not limited to, the following:
      - (i) Amount and type of resources and number of experienced staff Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services;
      - (ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals;
      - (iii) Specialized experience, capabilities and technical competence which the Consultant may demonstrate by the proposed approach and methodology to meet the project requirements;
      - (iv) Past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control methods and contract administration practices;
      - (v) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;
      - (vi) Proposer's geographic proximity to and familiarity with the physical location of the Project;

- (vii) Volume of work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
  - (viii) Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
  - (ix) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
  - (x) Availability to project locale;
  - (xi) Familiarity with the project locale; ~~and~~
  - (xii) Proposed project management techniques; ~~;~~ and
  - (xiii) Pricing in accordance with ORS 279.110 (5) and EWEB Contracting Rule 4-0210 (3)
- (F) A Statement that Proposers responding to the RFP do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFP; and
  - (G) A statement notifying Proposers of the protest procedures set forth in EWEB Rules, Division 4.
  - (H) A Statement that provides an estimate of the cost of the services.
- (b) Provide a Request for Proposals to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
    - (A) EWEB's list of Consultants created and maintained under Rule 4-0120 (List of Interested Consultants; Performance Record);
    - (B) Another Contracting Agency's list of Consultants created and maintained under OAR 137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
    - (C) All Consultants believed by EWEB to offer the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that EWEB reasonably can identify under the circumstances.
  - (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and determine the highest ranked Proposers.
- (3) Pricing may be requested and evaluated from Proposers
- (a) If EWEB does not cancel the RFP after it reviews and ranks each Proposer, EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants.
- The pricing proposal:
- (A) Must consist of:
    - (i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
    - (ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and

(B) May include additional pricing information that is limited to:

- (i) A description of each task that the prospective consultant understands as comprising the professional services;
- (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
- (iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(b) A prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(c) EWEB will complete the evaluation and select a consultant from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (b) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.

(4) ~~EWEB may begin negotiating a Contract with the highest ranked Proposer.~~ EWEB shall direct negotiations toward obtaining written agreement on:

- (a) Consultant's performance obligations and performance schedule;
- (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract where the payment methodology and maximum amount payable are both fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services; and
- (c) Any other provisions EWEB believes to be in its best interest to negotiate.

(45) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520. ~~EWEB shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if EWEB and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time, such time period shall be determined solely by EWEB. EWEB may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (3) of this rule, until negotiations result in a Contract. If negotiations with any of the top ranked Proposers do not result in a Contract within a reasonable amount of time, EWEB may end the particular informal solicitation and thereafter may proceed with a direct appointment under Rule 4-0200, proceed with a new informal solicitation under this Rule 4-0210, or proceed with a formal solicitation under Rule 4-0220 (Formal Selection Procedure).~~

(6) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most highly ranked prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement

is reached or the contracting agency terminates the selection process.

- (57) If the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000, EWEB shall terminate the informal selection procedure and proceed with the formal selection procedure under EWEB Rule 4-0220.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0220 Formal Selection Procedures**

- (1) Subject to 4-0130 (Applicable Selection Procedures; Pricing Information), EWEB shall use the formal selection procedure described in this rule to select Consultants under the Public Contracting Code if neither EWEB Rule 4-0200 (Direct Appointment Procedure) nor EWEB Rule 4-0210 (Informal Selection Procedure) are applicable to the selection. The formal selection procedure may otherwise be used at the discretion of EWEB.
- (2) EWEB, when using the formal selection procedure, shall obtain Contracts through public advertisement for either a Request for Proposals or a Request for Qualifications followed by a Request for Proposals, as described in this rule.
  - (a) Except as provided in subsection (b) of this section, EWEB shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in any other publications EWEB may select. Other publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.
    - (A) EWEB shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.
    - (B) EWEB shall include a brief description of the following items in the advertisement:
      - (i) The Project;
      - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
      - (iii) How and where Consultants may obtain a copy of the RFP or RFQ; and
      - (iv) The deadline for submitting a Proposal or response to the RFQ.
    - (C) EWEB may send notice of the RFP or RFQ directly to all Consultants on its list of Consultants created and maintained under 4-0120 (List of Interested Consultants; Performance Record).
  - (b) In the alternative, EWEB may use the procedure for electronic advertisement under EWEB Rule 3-0330, which would remove any necessity of posting the solicitation in newspapers or other publications.
- (3) EWEB may use the Request for Qualifications Procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom EWEB may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ.
  - (a) EWEB shall include the following, at a minimum, in each RFQ:
    - (A) A brief description of the Project for which EWEB is seeking Consultants;

- (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks for the Project;
  - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
  - (D) The deadline for submitting a response to the RFQ;
  - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
  - (F) The RFQ evaluation criteria, including weights or points applicable to each criterion, where the criteria could be solely qualifications, solely price, other factors, or any combination of these criteria; and
  - (G) A statement whether or not EWEB will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory.
- (H) A Statement that provides an estimate of the cost of the services.**
- (b) EWEB may include a request for any or all of the following in each RFQ:
    - (A) A statement describing Consultant's general qualifications and related performance information;
    - (B) A description of Consultant's specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ including Consultant's committed resources and recent, current and projected workloads;
    - (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
    - (D) A copy of all records, if any, of Consultant's performance under Contracts with any other Contracting Agency;
    - (E) The number of Consultant's experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;
    - (F) A statement describing the Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;
    - (G) A statement describing the proposer's geographic proximity to and familiarity with the physical location of the Project;
    - (H) A statement describing the ownership status and employment practices of the proposer regarding women, minorities and emerging small businesses or historically underutilized businesses;
    - (I) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
    - (J) A Statement that Proposers responding to the RFQ do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with



- the RFQ; and
  - (K) Any other information EWEB deems reasonably necessary to evaluate Consultant's qualifications.
  - (c) EWEB shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. EWEB may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions, who are not responding to the RFQ. The utility shall designate one member of the evaluation committee as the evaluation committee chairperson.
  - (d) EWEB may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:
    - (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
    - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
    - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole opinion of EWEB, and were announced as required in the RFQ.
  - (e) After the evaluation committee reviews, scores and ranks the responding Consultants, EWEB shall establish a short list of at least three qualified Consultants, if feasible; provided however, that if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet EWEB's minimum requirements, then:
    - (A) EWEB may establish a short list of fewer than three qualified Consultants; or
    - (B) EWEB may cancel the RFQ and issue an RFP.
  - (f) No Consultant will be eligible for placement on the utility's short list established under subsection (3)(d) of this rule if such Consultant or any of Consultant's principals, partners or associates are members of EWEB's RFQ evaluation committee.
  - (g) Except when the RFQ is cancelled, EWEB shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) EWEB shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.
- (a) EWEB, using the formal selection procedure, shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
    - (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought will be performed.
    - (B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If EWEB does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not

limited to, the following:

- (i) Proposer's availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable Projects;
- (iii) The amount and type of resources, and number of experienced staff persons Proposer has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;
- (v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under 4-0120 (List of Interested Consultants; Performance Record);
- (vii) References and recommendations from past clients;
- (viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and project administration;
- (ix) Status and quality of any required license or certification;
- (x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;
- (xi) Results from interviews, if conducted;
- (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
- (xiii) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.
- ~~(xiv) If selecting a Consultant to provide Related Services, pricing~~ Pricing policies and pricing proposals or other pricing information, ~~including the number of hours proposed for the services required, expenses, hourly rates and overhead;~~ may be requested and evaluated from Proposers if EWEB does not cancel the RFP after it reviews and ranks each Proposer. EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from

as many as three of the top-ranked prospective consultants. The pricing proposal:

(A) Must include:

(i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and

(ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and

(B) May include additional pricing information that is limited to:

(i) A description of each task that the prospective consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(B) Allow that a prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(3) Will be evaluated and a consultant selected from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (B) of this subsection, not more than 15 percent of the weight in the evaluation may be allocated to each prospective consultant's price proposal. and

~~(xiv) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.~~

- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
- (D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;
- (E) The date and time Proposals are due, and the delivery location for Proposals;
- (F) Reservation of the right to seek clarifications of each Proposal;
- (G) Reservation of the right to negotiate a final Contract that is in the best interest of the utility;

- (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by EWEB;
  - (I) A Statement that Proposers responding to the RFP do so solely at their expense, and EWEB is not responsible for any Proposer expenses associated with the RFP;
  - (J) A statement directing Proposers to the protest procedures set forth in these rules;
  - (K) Special Contract requirements, including but not limited to disadvantaged business enterprise (“DBE”), minority business enterprise (“MBE”), women business enterprise (“WBE”) and emerging small business enterprise (“ESB”) participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
  - (L) A statement whether or not EWEB will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
  - (M) A request for any information EWEB deems reasonably necessary to permit EWEB to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP; and
  - (N) A sample form of the Contract.
- (b) RFP Evaluation Committee. EWEB shall establish a committee of at least two individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, EWEB may include the same members who served on the RFQ evaluation committee. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting, who are not responding to the RFP. At least one member of the evaluation committee must be an EWEB employee. EWEB may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. EWEB shall designate one of its employees who, is also a member of the evaluation committee, as the evaluation committee chairperson.
- (A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer’s principals, partners or associates are members of EWEB’s RFP evaluation committee for the Contract;
  - (B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and
  - (C) The evaluation committee shall provide to the utility the results of the scoring and ranking for each Proposer.
- (c) If EWEB does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a Contract with the highest ranked Proposer. EWEB shall direct negotiations toward obtaining written agreement on:
- (A) Consultant’s performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract

that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and

(C) Any other provisions EWEB believes to be in the utility's best interest to negotiate.

~~(d5)~~ EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.

~~(a) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most highly ranked prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process. EWEB shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if EWEB and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. EWEB may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by EWEB, EWEB may end the particular formal solicitation. Nothing in this rule precludes EWEB from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.~~

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0230 Ties Among Proposers**

(1) If EWEB is selecting a Consultant on the basis of qualifications alone and determines after the ranking of potential Consultants that two or more of them are equally qualified, EWEB may select a candidate through any process that the utility believes will result in the best value for EWEB taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services. Provided, however, the tie breaking process established by EWEB under this section (1) cannot ~~exceed 15% of the evaluation criteria, be based on the Consultant's pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.~~ The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of EWEB and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, EWEB and the selected Proposer shall proceed with negotiations under 4-0210(3) or 4-0220(4)(c), as applicable.

(2) As part of the procedure for choosing between two or more equally qualified candidates, EWEB Public Contracting Rules, Division 4 -Page 16 of 20

EWEB may follow the procedure set forth in EWEB Rule 3-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0240 Protest Procedures**

- (1) Consultants may submit a written protest of any provision, specification or contract term contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than 5 p.m. on the day which is seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. EWEB will not consider any protest or request for change that is received at any time after the deadline.
- (2) EWEB shall provide to all Proposers a copy of the selection notice that EWEB sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to EWEB no later than 5 p.m. on the day which is seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP. EWEB will not consider any protest that is received after the deadline.
- (3) The EWEB Purchasing Supervisor, or the Supervisor's designee, shall resolve all timely submitted protests within a reasonable time following EWEB's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, EWEB shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

#### **4-0250 RFP or RFQ Cancellation; Costs**

EWEB may cancel a solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability incurred by EWEB at any time after issuing an RFP or RFQ, if EWEB believes it is in EWEB's interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

#### **4-0260 Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement**

## Projects

If EWEB chooses not to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), and EWEB requires a State Agency to serve as the lead Contracting Agency and to enter into Contracts with Consultants for Architectural, Engineering, or Land Surveying Services, or Related Services, for a Public Improvement, the contracting procedures shall be those adopted by the State Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.125

### 4-0270 Limited Use of Estimated Fee

The Estimated Fee referenced in these EWEB Rules shall be used solely to determine the applicable Contract solicitation method, as expressly set forth in these EWEB Rules, Division 4. The Estimated Fee shall not be used to resolve other Public Contracting issues. The Estimated Fee is distinct from the total amount payable under the Contract.

### 4-280 Price Agreements

- (1) EWEB may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when EWEB cannot determine the precise quantities of those Services which EWEB will require over a specified time period.
- (2) When establishing Price Agreements under this rule, EWEB shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with EWEB Rule 4-0130(1) or 4-0130(2), as applicable. EWEB may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.
- (3) In addition to any other applicable solicitation requirements set forth in these ~~Division 48~~ rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:
  - (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;
  - (b) Specify whether EWEB intends to award a Price Agreement to one Consultant or to multiple Consultants. If EWEB will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures EWEB will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at EWEB's sole discretion; provided, however, in circumstances where a direct contract is not permitted under EWEB Rule 4-0200, ~~the selection criteria cannot be based on pricing policies, pricing proposals or other pricing information, including the number of hours proposed for the Services required, expenses hourly rates and overhead. In accordance with EWEB Rule 4-130(2) applicable to Related Services procurements, t~~The selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on

- pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of EWEB Rule 4-0200; and
- (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.
- (4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by EWEB. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:
- (a) The Consultant's performance obligations and performance schedule;
  - (b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to EWEB, as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;
  - (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
  - (d) Any other provisions EWEB believes to be in EWEB's best interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120

#### **4-0300 Effect of Material Alteration or Delay of Project**

- (1) If EWEB delays or delays and then materially alters a Project for which it has entered a Contract, and the Contract has expired or been terminated, EWEB may enter a Contract with the same Consultant to perform either the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services as amended to reflect EWEB's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and EWEB makes written findings that entering a Contract with Consultant:
- (a) Will promote efficient use of public funds and resources and result in substantial cost savings to EWEB;
  - (b) Will not encourage favoritism in the contracting process; and
  - (c) Will not substantially diminish competition for future contracts with Consultants.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

#### **4-0310 Contract Amendments**

- (1) EWEB may amend any contract made by Direct Appointment, in EWEB's sole discretion, so long as such amendment is within the scope of the Direct Appointment. EWEB may amend any Contract made by Informal or Formal Selection if EWEB, in its sole discretion, EWEB Public Contracting Rules, Division 4 -Page 19 of 20



determines that the amendment is within the scope of services contemplated under the RFP and that the amendment would not materially impact the field of competition for the services described in the RFP. In making this determination, EWEB shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the RFP if the utility reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.

- (2) EWEB may amend any Contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, or requirements of federal or state regulatory agencies, that affect or relate to performance of the original Contract.
- (3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and EWEB and must receive all required approvals before the amendments will be binding on EWEB.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

 <b>Public Contracting Rules</b>	Adopted: <u>1/4/2005</u> Effective: <u>3/1/2005</u>
<b>Construction Consultants</b>	Revised: <u>2/3/2015</u> Revised: <u>8/18/2017</u> Revised: <u>1/7/2020</u>

**Division 4  
Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and  
Land Surveying Services, or Related Services**

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**RULES**

**4-0100 Application**

- (1) These Division 4 rules apply to the screening and selection of consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services under Contracts, and set forth the following procedures:
  - (a) Procedures through which EWEB will select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
  - (b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners and Land Surveyors for certain Public Improvements owned and maintained by EWEB, where a State Agency will serve as lead Contracting Agency and will enter into Contracts with architects, engineers and land surveyors.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065

**4-0110 Definitions**

Definitions applicable to **EWEB Public Contracting Rules** Division 4 are set forth at **EWEB Public Contracting Rules**, Division 1.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065

**4-0120 List of Interested Consultants; Performance Record**

- (1) Consultants who are engaged in the lawful practice of their profession and who are interested in providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services or Related Services may annually submit a statement describing their qualifications and related performance information to EWEB's Purchasing Office. The Purchasing Office will use this information to create a list of prospective Consultants and will periodically update this list.
- (2) EWEB may compile and maintain a record of each Consultant's performance under a Contract, including information obtained from Consultants during an exit interview, if requested by the utility. Compiled information may include, but is not limited to, the satisfactory completion of the work, EWEB's estimated additional costs resulting from the Consultant's failure to meet project requirements, EWEB's judgment of the Consultants ability to perform work for which the Consultants has indicated it is qualified to perform, and any additional benefit to the utility from the use of the Consultant. Upon request and in accordance with the Oregon Public Records Law (ORS 192.311 through 192.478) EWEB may make copies of the records available.

Stat. Auth.: ORS 279A.070; 279C.105(1)  
Stats. Implemented: ORS 279A.065, ORS 279C.110

**4-0130 Applicable Selection Procedures; Pricing Information**

- (1) When selecting the most qualified Consultant to perform Architectural, Engineering,  
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Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure), or EWEB Rule 4-0200 (Direct Appointment Procedure).

- (2) EWEB may solicit or use pricing policies, proposals, or other pricing information in accordance with the applicable Direct Appointment (4-0200), Informal (4-0210), or Formal selection (4-0220) procedures. In following the Direct Appointment Procedure under EWEB Rule 4-0200, EWEB may base its initial selection of a Consultant on any information available to EWEB prior to beginning the Direct Appointment Procedure for the Project involved.
- (3) Where a Consultant will be performing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services for EWEB by providing analysis, testing services, testimony or similar services for a Project that is, or is reasonably anticipated to be, the subject of a claim, lawsuit, mediation, arbitration or other form of action or alternative dispute resolution process, whether legal, equitable, administrative or otherwise, EWEB shall comply with these Division 4 rules in procuring those Services.
- (4) When selecting Consultants to perform Related Services EWEB shall follow one of the following selection procedures:
  - (a) When selecting a Consultant on the basis of qualifications alone, EWEB shall follow the applicable selection procedure under either EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure) or EWEB Rule 4-0220 (Formal Selection Procedure);
  - (b) When selecting a Consultant on the basis of price competition alone, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Bids, or EWEB Rule 4-0200 (Direct Appointment Procedure) if the requirement of EWEB Rule 4-0200 apply; and
  - (c) When selecting a Consultant on the basis of price and qualifications, EWEB shall follow either the provisions under EWEB Rules Division 3 for obtaining and evaluating Proposals, or EWEB Rule 4-0200. EWEB may request and consider a Proposer's pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.
- (5) EWEB is not required to follow the procedures in Section (1) or Section (4) of this rule, when EWEB has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures EWEB uses to select a single Consultant, when EWEB has established Price Agreements with more than one Consultant, must meet the requirements of EWEB Rule 4-0280.
- (6) For purposes of these Division 4 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. EWEB's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. EWEB will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the contract is for Architectural Engineering,

Photogrammetric Mapping, Transportation Planning or Land Surveying Services, EWEB shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (4) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, EWEB shall comply with the applicable provisions of the EWEB Public Contracting Rules that match the predominant purpose of the Contract.

- (7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to proposals received by EWEB for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:
- (a) The term “competitive proposal” for purposes of ORS 279C.107 includes proposals under EWEB Rule 4-0200 (Direct Appointment Procedure), EWEB Rule 4-0210 (Informal Selection Procedure), EWEB Rule 4-0220 (Formal Selection Procedure) or EWEB Rule 4-0130 (selection based on price and qualifications) and any proposals submitted in response to a selection process for a work order or task order under EWEB Rule 4-0280 (Price Agreements).
  - (b) For purposes of proposals received under EWEB Rule 4-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while EWEB may make proposals under EWEB Rule 4-0200 (Direct Appointment Procedure) open for public inspection following EWEB’s decision to begin Contract negotiations with the selected Consultant, Rule 4-0200 proposals are not required to be open for public inspection until after EWEB has executed a Contract with the selected Consultant.
  - (c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where EWEB is conducting discussions or negotiations with proposers who submit proposals that EWEB has determined to be closely competitive or to have a reasonable chance of being selected for award, EWEB may open proposals so as to avoid disclosure of proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107.
  - (d) Disclosure of proposals and proposal information is otherwise governed by ORS 279C.107.

Stat. Auth.: ORS 279A.070; Or Laws 2011, Chapter 458

Stats. Implemented: ORS 279A.065, ORS 279C.110 (5)

#### **4-0140 Personal Services for Oversight of Public Contract**

- (1) Except as provided in subsection (2), when EWEB procures personal services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a public contract that is subject to Division 4 or Division 5 of these Rules, it may not:
- (a) Procure the personal services from a contractor or an affiliate of a contractor who is a party to the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services;  
or
  - (b) Procure the personal services through the public contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the personal services.

- (2) Subsection (1) of this Rule does not apply to:
  - (a) A procurement that qualifies as a design-build procurement under EWEB Rule 5-0680; or
  - (b) A procurement for construction manager/general contractor services.
- (3) As used in this section, "affiliate" means a person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

Stat. Auth.: ORS 279A.065(3); ORS 279A.070; 2013 Or Laws Ch 522, Sec. 2, 6;

Stat. Implemented: ORS 279A.065(3); ORS 279C.307; 2013 Or Laws Ch 522, Sec. 2, 6;

#### **4-0150 Qualification Based Selection**

- (1) In accordance with the requirements of ORS279.110 and preserving all rights and provisions afforded a local contracting agency therein, EWEB shall select a consultant to provide Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services on the basis of the consultant's qualifications and pricing as allowed for the type of professional service required. See EWEB Rule 4-0130.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

### **SELECTION PROCEDURES**

#### **4-0200 Direct Appointment Procedure**

- (1) EWEB may enter a Contract directly with a Consultant without following the selection procedures set forth elsewhere in these EWEB Rules if:
  - (a) EWEB finds that an Emergency exists; or
  - (b) The Estimated Fee to be paid under the Contract does not exceed \$100,000; or
  - (c) A Project is being continued, the Estimated Fee will not exceed \$250,000, and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that have been substantially described, planned or otherwise previously studied in an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services rendered under the earlier Contract; and EWEB used Rule 4-0220, or formal selection procedure pursuant to statute, at the time EWEB selected the Consultant for the earlier Contract; or
  - (d) A project is being continued, the Estimated Fee is expected to exceed \$250,000 and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services to be performed under the Contract meet the following requirements:
    - (A) The services consist of or are related to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that have been substantially described, planned

- or otherwise previously studied, under an earlier Contract with the same Consultant and are rendered for the same Project as the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services rendered under the earlier Contract;
- (B) EWEB used either the formal selection procedure under EWEB Rules Division 4-0220 (Formal Selection Procedure) or the formal selection procedure applicable to selection of the consultant at the time of original selection to select the consultant for the earlier Contract; and
  - (C) EWEB makes written findings that entering into a Contract with the consultant, whether in the form of an amendment to an existing Contract or a separate Contract for the additional scope of services, will:
    - (i) Promote efficient use of public funds and resources and result in substantial cost savings to EWEB; and
    - (ii) Protect the integrity of the Public Contracting process and the competitive nature of the Procurement by not encouraging favoritism or substantially diminishing competition in the award of the Contract.
- (2) EWEB may select Consultants for Contracts under this rule from the following sources:
- (a) EWEB's list of Consultants created under EWEB Rule 4-0120 (List of Interested Consultants; Performance Record);
  - (b) Another Contracting Agency's list of Consultants that the Contracting Agency has created under OAR 137-048-0120 or their own rules (List of Interested Consultants; Performance Record), with written consent of that Contracting Agency; or
  - (c) All Consultants offering the required Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services that EWEB reasonably can identify under the circumstances.
- (3) EWEB shall direct negotiations with Consultants selected under this rule toward obtaining written agreement on:
- (a) Consultant's performance obligations and performance schedule;
  - (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, or Land Surveying Services, Photogrammetric Mapping, Transportation Planning, or Related Services; and
  - (c) Any other provisions EWEB believes to be in EWEB's or its customers' best interest to negotiate.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C110, ORS 279C.115

#### **4-0210 Informal Selection Procedure**

- (1) EWEB may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee to be paid under the Contract does not exceed \$250,000.
- (2) EWEB, when using the informal selection procedure, shall:
- (a) Create a Request for Proposals that includes at a minimum the following:
    - (A) A description of the Project for which Consultant's Architectural, Engineering,

Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that will be required under the resulting Contract;

- (B) Anticipated Contract performance schedule;
- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
- (D) The deadline (date and time), and other directions, for submitting Proposals;
- (E) Criteria for evaluation, including relative weight of each factor. Evaluation criteria may include, but are not limited to, the following:
  - (i) Amount and type of resources and number of experienced staff Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services;
  - (ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals;
  - (iii) Specialized experience, capabilities and technical competence which the Consultant may demonstrate by the proposed approach and methodology to meet the project requirements;
  - (iv) Past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control methods and contract administration practices;
  - (v) Approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services described in the Request for Proposals and design philosophy, if applicable;
  - (vi) Proposer's geographic proximity to and familiarity with the physical location of the Project;
  - (vii) Volume of work, if any, previously awarded to Proposer, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;
  - (viii) Ownership status and employment practices regarding minority, women, and emerging small businesses or historically underutilized businesses;
  - (ix) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
  - (x) Availability to project locale;
  - (xi) Familiarity with the project locale;
  - (xii) Proposed project management techniques; and



- (xiii) Pricing in accordance with ORS 279.110 (5) and EWEB Contracting Rule 4-0210 (3)
  - (F) A Statement that Proposers responding to the RFP do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFP; and
  - (G) A statement notifying Proposers of the protest procedures set forth in EWEB Rules, Division 4.
  - (H) A Statement that provides an estimate of the cost of the services.
  - (b) Provide a Request for Proposals to a minimum of three prospective Consultants, to the extent reasonably possible, drawn from:
    - (A) EWEB's list of Consultants created and maintained under Rule 4-0120 (List of Interested Consultants; Performance Record);
    - (B) Another Contracting Agency's list of Consultants created and maintained under OAR 137-048-0120 or their own adopted rules (List of Interested Consultants; Performance Record); or
    - (C) All Consultants believed by EWEB to offer the required Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services that EWEB reasonably can identify under the circumstances.
  - (c) Review and rank all Proposals received according to the criteria set forth in the Request for Proposals, and determine the highest ranked Proposers.
- (3) Pricing may be requested and evaluated from Proposers
- (a) If EWEB does not cancel the RFP after it reviews and ranks each Proposer, EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants.

The pricing proposal:

- (A) Must consist of:
  - (i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and
  - (ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and
- (B) May include additional pricing information that is limited to:
  - (i) A description of each task that the prospective consultant understands as comprising the professional services;
  - (ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and
  - (iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.
- (b) A prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.
- (c) EWEB will complete the evaluation and select a consultant from among the top-ranked

prospective consultants that have not withdrawn as provided under paragraph (b) of this subsection, giving not more than 15 percent of the weight in the evaluation to each prospective consultant's price proposal.

- (4) EWEB shall direct negotiations toward obtaining written agreement on:
  - (a) Consultant's performance obligations and performance schedule;
  - (b) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services required under the Contract where the payment methodology and maximum amount payable are both fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning, or Land Surveying Services, or Related Services; and
  - (c) Any other provisions EWEB believes to be in its best interest to negotiate.
- (5) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
- (6) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most highly ranked prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process.
- (7) If the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed \$250,000, EWEB shall terminate the informal selection procedure and proceed with the formal selection procedure under EWEB Rule 4-0220.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0220 Formal Selection Procedures**

- (1) Subject to 4-0130 (Applicable Selection Procedures; Pricing Information), EWEB shall use the formal selection procedure described in this rule to select Consultants under the Public Contracting Code if neither EWEB Rule 4-0200 (Direct Appointment Procedure) nor EWEB Rule 4-0210 (Informal Selection Procedure) are applicable to the selection. The formal selection procedure may otherwise be used at the discretion of EWEB.
- (2) EWEB, when using the formal selection procedure, shall obtain Contracts through public advertisement for either a Request for Proposals or a Request for Qualifications followed by a Request for Proposals, as described in this rule.
  - (a) Except as provided in subsection (b) of this section, EWEB shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in any other publications EWEB may select. Other

publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

- (A) EWEB shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFP or RFQ.
  - (B) EWEB shall include a brief description of the following items in the advertisement:
    - (i) The Project;
    - (ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
    - (iii) How and where Consultants may obtain a copy of the RFP or RFQ; and
    - (iv) The deadline for submitting a Proposal or response to the RFQ.
  - (C) EWEB may send notice of the RFP or RFQ directly to all Consultants on its list of Consultants created and maintained under 4-0120 (List of Interested Consultants; Performance Record).
- (b) In the alternative, EWEB may use the procedure for electronic advertisement under EWEB Rule 3-0330, which would remove any necessity of posting the solicitation in newspapers or other publications.
- (3) EWEB may use the Request for Qualifications Procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom EWEB may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ.
- (a) EWEB shall include the following, at a minimum, in each RFQ:
    - (A) A brief description of the Project for which EWEB is seeking Consultants;
    - (B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks for the Project;
    - (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
    - (D) The deadline for submitting a response to the RFQ;
    - (E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services EWEB seeks;
    - (F) The RFQ evaluation criteria, including weights or points applicable to each criterion, where the criteria could be solely qualifications, solely price, other factors, or any combination of these criteria; and
    - (G) A statement whether or not EWEB will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory.
    - (H) A Statement that provides an estimate of the cost of the services.
  - (b) EWEB may include a request for any or all of the following in each RFQ:
    - (A) A statement describing Consultant's general qualifications and related performance information;
    - (B) A description of Consultant's specific qualifications to perform the Architectural,

- Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ including Consultant's committed resources and recent, current and projected workloads;
- (C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;
  - (D) A copy of all records, if any, of Consultant's performance under Contracts with any other Contracting Agency;
  - (E) The number of Consultant's experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of their time that such personnel would spend on those services;
  - (F) A statement describing the Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFQ and design philosophy, if applicable;
  - (G) A statement describing the proposer's geographic proximity to and familiarity with the physical location of the Project;
  - (H) A statement describing the ownership status and employment practices of the proposer regarding women, minorities and emerging small businesses or historically underutilized businesses;
  - (I) If selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead;
  - (J) A Statement that Proposers responding to the RFQ do so solely at their expense, and that EWEB is not responsible for any Proposer's expenses associated with the RFQ; and
  - (K) Any other information EWEB deems reasonably necessary to evaluate Consultant's qualifications.
- (c) EWEB shall establish an RFQ evaluation committee of at least two individuals to review, score and rank the responding Consultants according to the evaluation criteria. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. EWEB may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions, who are not responding to the RFQ. The utility shall designate one member of the evaluation committee as the evaluation committee chairperson.
- (d) EWEB may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to:
- (A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;
  - (B) Placing a pre-determined number of the highest scoring Consultants on a short list;
  - (C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition in the sole opinion of EWEB,

and were announced as required in the RFQ.

- (e) After the evaluation committee reviews, scores and ranks the responding Consultants, EWEB shall establish a short list of at least three qualified Consultants, if feasible; provided however, that if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet EWEB's minimum requirements, then:
    - (A) EWEB may establish a short list of fewer than three qualified Consultants; or
    - (B) EWEB may cancel the RFQ and issue an RFP.
  - (f) No Consultant will be eligible for placement on the utility's short list established under subsection (3)(d) of this rule if such Consultant or any of Consultant's principals, partners or associates are members of EWEB's RFQ evaluation committee.
  - (g) Except when the RFQ is cancelled, EWEB shall provide a copy of the subsequent RFP to each Consultant on the short list.
- (4) EWEB shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.
- (a) EWEB, using the formal selection procedure, shall include at least the following in each Request for Proposals, whether or not the RFP is preceded by an RFQ:
    - (A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services sought will be performed.
    - (B) The RFP evaluation process and criteria which will be used to select the most qualified Proposer, including the number of points applicable to each criterion. If EWEB does not indicate the applicable number of points, then each criterion is worth the same number of points. Evaluation criteria may include, but are not limited to, the following:
      - (i) Proposer's availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
      - (ii) Experience of Proposer's key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable Projects;
      - (iii) The amount and type of resources, and number of experienced staff persons Proposer has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
      - (iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;
      - (v) The proportion of time Proposer estimates that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
      - (vi) Proposer's demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under 4-0120 (List of Interested Consultants; Performance

- Record);
- (vii) References and recommendations from past clients;
  - (viii) Proposer's performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and project administration;
  - (ix) Status and quality of any required license or certification;
  - (x) Proposer's knowledge and understanding of the Project and Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP as shown in Proposer's approach to staffing and scheduling needs for the Architectural, Engineering, or Land Surveying Services, or Related Services and proposed solutions to any perceived design and constructability issues;
  - (xi) Results from interviews, if conducted;
  - (xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP;
  - (xiii) Any other criteria that EWEB deems relevant to the Project and Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers.
  - (xiv) Pricing policies and pricing proposals or other pricing information may be requested and evaluated from Proposers if EWEB does not cancel the RFP after it reviews and ranks each Proposer. EWEB will announce the evaluation scores and rank for each prospective consultant and may request a pricing proposal for the scope of work from as many as three of the top-ranked prospective consultants. The pricing proposal:

(A) Must include:

(i) A schedule of hourly rates that the prospective consultant will charge for the work of each individual or each labor classification that will perform the professional services the local contracting agency requires for the procurement, in the form of an offer that is irrevocable for not less than 90 days after the date of the proposal; and

(ii) A reasonable estimate of hours that the prospective consultant will require to perform the professional services the local contracting agency requires for the procurement; and

(B) May include additional pricing information that is limited to:

(i) A description of each task that the prospective consultant understands as comprising the professional services;

(ii) A list of each individual or labor classification that will perform each task, together with the hourly rate that applies to the individual or labor classification; and

(iii) A list of expenses, including travel expenses, that the prospective consultant expects to incur in connection with providing the professional services.

(B) Allow that a prospective consultant may withdraw from consideration for the procurement if the prospective consultant does not wish to provide a price proposal.

(3) Will be evaluated and a consultant selected from among the top-ranked prospective consultants that have not withdrawn as provided under paragraph (B) of this subsection, not more than 15 percent of the weight in the evaluation may be allocated to each prospective consultant's price proposal.

- (C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;
  - (D) Whether interviews are possible and if so, the weight or points applicable to the potential interview;
  - (E) The date and time Proposals are due, and the delivery location for Proposals;
  - (F) Reservation of the right to seek clarifications of each Proposal;
  - (G) Reservation of the right to negotiate a final Contract that is in the best interest of the utility;
  - (H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by EWEB;
  - (I) A Statement that Proposers responding to the RFP do so solely at their expense, and EWEB is not responsible for any Proposer expenses associated with the RFP;
  - (J) A statement directing Proposers to the protest procedures set forth in these rules;
  - (K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;
  - (L) A statement whether or not EWEB will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;
  - (M) A request for any information EWEB deems reasonably necessary to permit EWEB to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP; and
  - (N) A sample form of the Contract.
- (b) RFP Evaluation Committee. EWEB shall establish a committee of at least two individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, EWEB may include the same members who served on the RFQ evaluation committee. EWEB may appoint to the evaluation committee any combination of its employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting, who are not responding to the RFP. At least one member of the evaluation committee must be an EWEB employee. EWEB may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. EWEB shall designate one of its employees who, is also a member of the evaluation committee, as the evaluation committee chairperson.
- (A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of EWEB's

- RFP evaluation committee for the Contract;
- (B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award up to the number of points indicated in the RFP for the anticipated interview; and
  - (C) The evaluation committee shall provide to the utility the results of the scoring and ranking for each Proposer.
- (c) If EWEB does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, it will begin negotiating a Contract with the highest ranked Proposer. EWEB shall direct negotiations toward obtaining written agreement on:
- (A) Consultant's performance obligations and performance schedule;
  - (B) Payment methodology and a maximum amount payable to Contractor for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services required under the Contract that is fair and reasonable to EWEB as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services; and
  - (C) Any other provisions EWEB believes to be in the utility's best interest to negotiate.
- (5) EWEB and the consultant that is selected shall mutually discuss, refine and finalize the scope of, the rates and number of hours applicable to, and the maximum compensation level for the professional services and shall negotiate conditions including, but not limited to, a performance schedule for the project. The contracting agency may not pay a compensation level that exceeds a level that the contracting agency alone determines is fair and reasonable. Authority to negotiate a contract under this section does not supersede any provision of ORS 279A.140 or 279C.520.
- (a) If EWEB and a consultant that EWEB selected are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair, EWEB shall, either orally or in writing, formally terminate negotiations with the selected consultant. EWEB may then negotiate with the next most highly ranked prospective consultant. The contracting agency may continue in this manner through successive prospective consultants until an agreement is reached or the contracting agency terminates the selection process. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, as determined solely by EWEB, EWEB may end the particular formal solicitation. Nothing in this rule precludes EWEB from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0230 Ties Among Proposers**

- (1) If EWEB is selecting a Consultant on the basis of qualifications alone and determines after the ranking of potential Consultants that two or more of them are equally qualified, EWEB may select a candidate through any process that the utility believes will result in the best value for EWEB taking into account the scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying



Services. Provided, however, the tie breaking process established by EWEB under this section (1) cannot exceed 15% of the evaluation criteria.. The process must be designed to instill public confidence through ethical and fair dealing, honesty and good faith on the part of EWEB and Proposers and shall protect the integrity of the Public Contracting process. Once a tie is broken, EWEB and the selected Proposer shall proceed with negotiations under 4-0210(3) or 4-0220(4)(c), as applicable.

- (2) As part of the procedure for choosing between two or more equally qualified candidates, EWEB may follow the procedure set forth in EWEB Rule 3-0300, (Preferences for Oregon Goods and Services; Nonresident Bidders, to select the Consultant), and may choose to give a preference to a local potential Consultant.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279C.110

#### **4-0240 Protest Procedures**

- (1) Consultants may submit a written protest of any provision, specification or contract term contained in an RFP and may request a change to any provision, specification or contract term contained in an RFP, no later than 5 p.m. on the day which is seven (7) calendar days prior to the date Proposals are due unless a different deadline is indicated in the RFP. Each protest and request for change must include the reasons for the protest or request, and any proposed changes to the RFP provisions, specifications or contract terms. EWEB will not consider any protest or request for change that is received at any time after the deadline.
- (2) EWEB shall provide to all Proposers a copy of the selection notice that EWEB sent to the highest ranked Proposer. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to EWEB no later than 5 p.m. on the day which is seven (7) calendar days after the date of the selection notice unless a different deadline is indicated in the RFP. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the RFP. EWEB will not consider any protest that is received after the deadline.
- (3) The EWEB Purchasing Supervisor, or the Supervisor's designee, shall resolve all timely submitted protests within a reasonable time following EWEB's receipt of the protest and once resolved, shall promptly issue a written decision on the protest to the Proposer who submitted the protest. If the protest results in a change to the RFP, EWEB shall revise the RFP accordingly and shall re-advertise the RFP in accordance with these rules.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

#### **4-0250 RFP or RFQ Cancellation; Costs**

EWEB may cancel a solicitation, whether informal or formal, or reject all Proposals or responses to RFQs, or any combination of the foregoing, without liability incurred by EWEB at any time after

issuing an RFP or RFQ, if EWEB believes it is in EWEB's interest to do so. Consultants responding to either RFPs or RFQs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFQs.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

#### **4-0260 Two-Tiered Selection Procedure for Local Contracting Agency Public Improvement Projects**

If EWEB chooses not to contract directly with Architects, Engineers, Photogrammetrists, Transportation Planners, or Land Surveyors pursuant to ORS 279C.125(4), and EWEB requires a State Agency to serve as the lead Contracting Agency and to enter into Contracts with Consultants for Architectural, Engineering, or Land Surveying Services, or Related Services, for a Public Improvement, the contracting procedures shall be those adopted by the State Agency.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.125

#### **4-0270 Limited Use of Estimated Fee**

The Estimated Fee referenced in these EWEB Rules shall be used solely to determine the applicable Contract solicitation method, as expressly set forth in these EWEB Rules, Division 4. The Estimated Fee shall not be used to resolve other Public Contracting issues. The Estimated Fee is distinct from the total amount payable under the Contract.

#### **4-280 Price Agreements**

- (1) EWEB may establish Price Agreements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, when EWEB cannot determine the precise quantities of those Services which EWEB will require over a specified time period.
- (2) When establishing Price Agreements under this rule, EWEB shall select no fewer than three Consultants, when feasible. The selection procedures for establishing Price Agreements shall be in accordance with EWEB Rule 4-0130(1) or 4-0130(2), as applicable. EWEB may select a single Consultant, when a Price Agreement is awarded to obtain services for a specific Project or a closely-related group of Projects.
- (3) In addition to any other applicable solicitation requirements set forth in these rules, solicitation materials and the terms and conditions for a Price Agreement for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services must:
  - (a) Include a scope of services, menu of services, a specification for services or a similar description of the nature, general scope, complexity and purpose of the procurement that will reasonably enable a prospective bidder or proposer to decide whether to submit a bid or proposal;
  - (b) Specify whether EWEB intends to award a Price Agreement to one Consultant or to multiple Consultants. If EWEB will award a Price Agreement to more than one Consultant, the solicitation document and Price Agreement shall describe the criteria and procedures EWEB will use to select a Consultant for each individual work order or task order. Subject to the requirements of ORS 279C.110, the criteria and

procedures to assign work orders or task orders that only involve or predominantly involve Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying services are at EWEB's sole discretion; provided, however, in circumstances where a direct contract is not permitted under EWEB Rule 4-0200. The selection criteria and procedures may be based solely on the qualifications of the Consultants, solely on pricing information, or a combination of both qualifications and pricing information. Pricing information may include the number of hours proposed for the Related Services required, expenses, hourly rates, overhead and other price factors. Work order or task order assignment procedures under Price Agreements may include direct appointments, subject to the requirements of EWEB Rule 4-0200; and

- (c) Specify the maximum term for assigning Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under the Price Agreement.
- (4) All Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services assigned under a Price Agreement require a written work order or task order issued by EWEB. Any work orders or task orders assigned under a Price Agreement must include, at a minimum, the following:
- (a) The Consultant's performance obligations and performance schedule;
  - (b) The payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the work order or task order that is fair and reasonable to EWEB, as determined solely by EWEB, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;
  - (c) Language that incorporates all applicable terms and conditions of the Price Agreement into the work order or task order; and
  - (d) Any other provisions EWEB believes to be in EWEB's best interest.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279A.065, 279C.110, 279C.120

#### **4-0300 Effect of Material Alteration or Delay of Project**

- (1) If EWEB delays or delays and then materially alters a Project for which it has entered a Contract, and the Contract has expired or been terminated, EWEB may enter a Contract with the same Consultant to perform either the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services described in the Contract or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services as amended to reflect EWEB's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and EWEB makes written findings that entering a Contract with Consultant:
- (a) Will promote efficient use of public funds and resources and result in substantial cost savings to EWEB;
  - (b) Will not encourage favoritism in the contracting process; and
  - (c) Will not substantially diminish competition for future contracts with Consultants.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065, ORS 279C.110

#### **4-0310 Contract Amendments**

- (1) EWEB may amend any contract made by Direct Appointment, in EWEB's sole discretion, so long as such amendment is within the scope of the Direct Appointment. EWEB may amend any Contract made by Informal or Formal Selection if EWEB, in its sole discretion, determines that the amendment is within the scope of services contemplated under the RFP and that the amendment would not materially impact the field of competition for the services described in the RFP. In making this determination, EWEB shall consider potential alternative methods of procuring the services contemplated under the proposed amendment. An amendment would not materially impact the field of competition for the services described in the RFP if the utility reasonably believes that the number of Proposers would not significantly increase if the RFP were re-issued to include the additional services.
- (2) EWEB may amend any Contract to incorporate additional services required by reason of existing or new laws, rules, regulations or ordinances of federal, state or local agencies, or requirements of federal or state regulatory agencies, that affect or relate to performance of the original Contract.
- (3) All amendments to Contracts must be in writing, must be signed by an authorized representative of the Consultant and EWEB and must receive all required approvals before the amendments will be binding on EWEB.

Stat. Auth.: ORS 279A.070

Stats. Implemented: ORS 279A.065

## 5-0170 Inclusion of Green Energy Technology in Public Buildings

(1) (a) Except as otherwise provided in this section, a public improvement contract with a total contract price of \$5 million or more for the construction of a public building or for the reconstruction or major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall contain and reserve an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology as part of the construction, reconstruction or major renovation of the public building.

(b) A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology, other than battery storage, at a site that is located away from the site of the public building if:

(A) Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;

(B) The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and

(C) The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:

(i) Employs solar energy and that existed on the date that the original building permit for the public building was issued; or

(ii) Employs geothermal energy and for which construction was completed before January 1, 2013.

(c) In making the determination required under paragraph (b)(A) of this subsection, EWEB shall:

(A) Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and

(B) Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.

(d) Of the amount that EWEB designates for the purpose of green energy technology as required in this subsection EWEB may expend as much as half, or if green energy technology is not appropriate for the public building, the entirety, as follows:

(A) If an analysis under subsection (2) of this section shows that the available total solar resource fraction at the site of the public building is 75 percent or less, EWEB may improve energy use efficiency in the public building by:

(i) Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use in accordance with guidelines the State Department of Energy adopts by rule; or

(ii) Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use in accordance with guidelines the department adopts by rule.

(B) EWEB may include woody biomass energy technology as part of constructing, reconstructing or performing a major renovation on the public building if the woody biomass energy technology creates new energy generation capacity that did not exist on the date on which the original building permit for the public building was issued and the adoption of the technology is allowed under the Department of Environmental Quality's standards and as described in ORS 279C.527.

(2) Before entering into a public improvement contract described in subsection (1) of this section, EWEB shall prepare a written determination of whether including green energy technology as part of the construction, reconstruction or major renovation of the public building is appropriate.

a. EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology as part of the construction, reconstruction or major renovation.; and

b. Will show the results of an analysis of the total solar resource fraction available for use at the site on which the contracting agency intends to install green energy technology that uses solar energy for space or water heating or to generate electricity. EWEB may conclude that the green energy technology described in this subsection is appropriate if the total solar resource fraction exceeds 75%.

~~(2)~~(3)(a) If EWEB determines that green energy technology is not appropriate for the public building, subsection (1) of this section does not apply to the public improvement contract. EWEB's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (1)(b) and (c) of this section is appropriate.

(b) If subsection (1) of this section does not apply to the public improvement contract:

- A. EWEB shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology as part of a future public building project; and
- B. The amount EWEB spends on the future public building project in accordance with subparagraph (A) of this paragraph is in addition to any amount required under subsection (1) of this section for including appropriate green energy technology as part of the future public building project.

~~(3)~~(4) Subsection (3)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used. EWEB may not use an amount described in subsection (3)(b) of this section to comply with the requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.

~~(4)~~(5) As used in this section:

- (a) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:

- (A) Used or occupied by employees of the public body; or
- (B) Used for conducting public business.

Notwithstanding the provisions of ORS 174.108(3), this section applies to intergovernmental entities described in ORS 174.108(3).

(b) (A) "Total contract price" means all of the costs EWEB anticipates incurring in all contracts and subcontracts involved in constructing, reconstructing or performing a major renovation of a public building including design or architecture, engineering, transportation or environmental impact assessment and planning, construction management, labor, materials, land surveying and site preparation, demolition, hazardous material removal, required reinforcements or improvements to existing structures or appurtenant infrastructure, insurance, inspections and certifications and, except as provided in subparagraph (B) of this paragraph, other costs EWEB would not incur but for the construction, reconstruction or major renovation of the public building.

(B) "Total contract price" does not include:

- (i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract;
- (ii) Costs of moving contracting agency employees, equipment and furnishings from and to a public building;
- (iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;
- (iv) Ordinary operating costs for a public building during periods of reconstruction or renovation;
- (v) Costs of storing equipment or furnishings at a site away from a public building;
- (vi) Labor costs for employees of a contracting agency;
- (vii) Direct costs that are solely for the purpose of retrofitting or improving a public building's ability to withstand a seismic event; and
- (viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of a public building.

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

(A<sub>i</sub>)—Solar or geothermal energy directly for space or water heating or to generate electricity; or

—

(B<sub>ii</sub>)—Building design that uses solar energy passively to reduce energy use from other sources by at least 20-10 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.

(iii) Battery storage, if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public building.

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

—(A<sub>i</sub>)—Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or

—(B<sub>ii</sub>)—Incorporates solar energy directly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.

(d) (A) "Woody biomass energy technology" means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from

trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:

- (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and
  - (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities.
- (B) "Woody biomass energy technology" does not include a system that uses for fuel:
- (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate or other chemical preservatives; or
  - (ii) Municipal solid waste.

~~(5)~~(6) Public improvement contracts subject to this section are also subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:

- A. Using particular green energy technologies in public improvements;
- B. Determining the cost-effectiveness of green energy technologies;
- C. Reporting the use of green energy technologies in public improvements or submitting documents to the department for review, as appropriate; and
- D. Determining whether a structure is a public building subject to the requirements of ORS297C.527.

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

#### **5-0840 Interest**

- (1) Prompt payment policy. EWEB shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) Interest on progress payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after EWEB approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent. If the contract price exceeds \$500,000, the contracting agency shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.
- (3) Interest on final payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part



of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after the Contractor submitted a claim for payment to EWEB in writing or otherwise in accordance with the Contract requirements.

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

Stats. Implemented: ORS 279C.570

## **5-0170 Inclusion of Green Energy Technology in Public Buildings**

- (1) (a) Except as otherwise provided in this section, a public improvement contract with a total contract price of \$5 million or more for the construction of a public building or for the reconstruction or major renovation of a public building, if the cost of the reconstruction or major renovation exceeds 50 percent of the value of the public building, shall contain and reserve an amount equal to at least 1.5 percent of the total contract price for the purpose of including appropriate green energy technology as part of the construction, reconstruction or major renovation of the public building.
- (b) A public improvement contract to construct, reconstruct or renovate a public building may provide for constructing green energy technology, other than battery storage, at a site that is located away from the site of the public building if:
- (A) Constructing green energy technology away from the site of the public building and using the energy from the green energy technology at the site of the public building is more cost-effective, taking into account additional costs associated with transmitting generated energy to the site of the public building, than is constructing and using green energy technology at the site of the public building;
- (B) The green energy technology that is located away from the site of the public building is located within this state and in the same county as, or in a county adjacent to, the site of the public building; and
- (C) The public improvement contract provides that all of the moneys for constructing green energy technology away from the site of the public building must fund new energy generating capacity that does not replace or constitute a purchase and use of energy generated from green energy technology that:
- (i) Employs solar energy and that existed on the date that the original building permit for the public building was issued; or
- (ii) Employs geothermal energy and for which construction was completed before January 1, 2013.
- (c) In making the determination required under paragraph (b)(A) of this subsection, EWEB shall:
- (A) Compare the costs of constructing green energy technology that employs solar energy at the site of the public building only with the corresponding costs of green energy technology that employs solar energy at a location away from the site of the public building; and
- (B) Compare the costs of green energy technology that employs geothermal energy at the site of the public building only with the corresponding costs of green energy technology that employs geothermal energy at a location away from the site of the public building.
- (d) Of the amount that EWEB designates for the purpose of green energy technology as required in this subsection EWEB may expend as much as half, or if green energy technology is not appropriate for the public building, the entirety, as follows:
- (A) If an analysis under subsection (2) of this section shows that the available total solar resource fraction at the site of the public building is 75 percent or less, EWEB may improve energy use efficiency in the public building by:
- (i) Designing, engineering and constructing, reconstructing or renovating the public building to reduce or offset energy use in accordance with guidelines the State Department of Energy adopts by rule; or
- (ii) Installing or preparing the public building for an installation of devices, technologies and other measures that reduce or offset energy use in accordance with guidelines the department adopts by rule.

(B) EWEB may include woody biomass energy technology as part of constructing, reconstructing or performing a major renovation on the public building if the woody biomass energy technology creates new energy generation capacity that did not exist on the date on which the original building permit for the public building was issued and the adoption of the technology is allowed under the Department of Environmental Quality's standards and as described in ORS 279C.527.

- (2) Before entering into a public improvement contract described in subsection (1) of this section, EWEB shall prepare a written determination of whether including green energy technology as part of the construction, reconstruction or major renovation of the public building is appropriate.
  - a. EWEB shall list in the determination the total contract price and specify the amount it intends to expend on including green energy technology as part of the construction, reconstruction or major renovation; and
  - b. Will show the results of an analysis of the total solar resource fraction available for use at the site on which the contracting agency intends to install green energy technology that uses solar energy for space or water heating or to generate electricity. EWEB may conclude that the green energy technology described in this subsection is appropriate if the total solar resource fraction exceeds 75%.
- (3)
  - (a) If EWEB determines that green energy technology is not appropriate for the public building, subsection (1) of this section does not apply to the public improvement contract. EWEB's determination under this paragraph must consider whether constructing green energy technology at the site of the public building is appropriate and whether constructing green energy technology away from the site of the public building and in accordance with subsection (1)(b) and (c) of this section is appropriate.
  - (b) If subsection (1) of this section does not apply to the public improvement contract:
    - A. EWEB shall spend an amount equal to at least 1.5 percent of the total contract price to include appropriate green energy technology as part of a future public building project; and
    - B. The amount EWEB spends on the future public building project in accordance with subparagraph (A) of this paragraph is in addition to any amount required under subsection (1) of this section for including appropriate green energy technology as part of the future public building project.
- (4) Subsection (3)(b) of this section does not apply to a public improvement contract for which state funds are not directly or indirectly used. EWEB may not use an amount described in subsection (3)(b) of this section to comply with the requirements set forth in ORS 276.900 to 276.915 or with a state building code standard that the Department of Consumer and Business Services approves under ORS 455.496.
- (5) As used in this section:
  - (a) "Public building" means a building that a public body, as defined in ORS 174.109, owns or controls, and that is:
    - (A) Used or occupied by employees of the public body; or

- (B) Used for conducting public business.  
Notwithstanding the provisions of ORS 174.108(3), this section applies to intergovernmental entities described in ORS 174.108(3).
- (b) (A) “Total contract price” means all of the costs EWEB anticipates incurring in all contracts and subcontracts involved in constructing, reconstructing or performing a major renovation of a public building including design or architecture, engineering, transportation or environmental impact assessment and planning, construction management, labor, materials, land surveying and site preparation, demolition, hazardous material removal, required reinforcements or improvements to existing structures or appurtenant infrastructure, insurance, inspections and certifications and, except as provided in subparagraph (B) of this paragraph, other costs EWEB would not incur but for the construction, reconstruction or major renovation of the public building.
- (B) “Total contract price” does not include:
- (i) Costs of advertising, soliciting, evaluating bids or proposals for or awarding a public contract;
  - (ii) Costs of moving contracting agency employees, equipment and furnishings from and to a public building;
  - (iii) Costs of locating, renting or leasing and preparing to occupy alternative facilities;
  - (iv) Ordinary operating costs for a public building during periods of reconstruction or renovation;
  - (v) Costs of storing equipment or furnishings at a site away from a public building;
  - (vi) Labor costs for employees of a contracting agency;
  - (vii) Direct costs that are solely for the purpose of retrofitting or improving a public building’s ability to withstand a seismic event; and
  - (viii) Costs that bear only a tenuous relationship to the construction, reconstruction or major renovation of a public building.
- (c) (A) “Green energy technology” means a system that employs:
- (i) Solar or geothermal energy directly for space or water heating or to generate electricity; or
  - (ii) Building design that uses solar energy passively to reduce energy use from other sources by at least 10 percent from a level required under ORS 276.900 to 276.915 or achieved in buildings constructed according to state building code standards that the Department of Consumer and Business Services approves under ORS 455.496.
  - (iii) Battery storage, if the battery storage is part of a system that generates electricity from solar or geothermal energy on the site of the public building.
- (B) “Green energy technology” does not include a system that:
- (i) Uses water, groundwater or the ground as a heat source at temperatures less than 140 degrees Fahrenheit; or
  - (ii) Incorporates solar energy directly into other methods for generating energy, such as from the action of waves on water, from hydroelectric facilities or from wind-powered turbines.
- (d) (A) “Woody biomass energy technology” means a system that, for space or water heating or as a combined heat and power system, uses a boiler with a lower heating value combustion efficiency of at least 80 percent and that uses as fuel material from trees and woody plants, such as limbs, tops, needles, leaves and other woody parts, that:

- (i) Grows in a forest, a woodland, a farm, a rangeland or a wildland that borders on an urban area; and
    - (ii) Is a by-product of forest management, agriculture, ecosystem restoration or fire prevention or related activities.
  - (B) "Woody biomass energy technology" does not include a system that uses for fuel:
    - (i) Wood pieces that have been treated with creosote, pentachlorophenol, chromated copper arsenate or other chemical preservatives; or
    - (ii) Municipal solid waste.
- (6) Public improvement contracts subject to this section are also subject to rules the State Department of Energy adopts that include, but are not limited to, requirements and specifications for:
- A. Using particular green energy technologies in public improvements;
  - B. Determining the cost-effectiveness of green energy technologies;
  - C. Reporting the use of green energy technologies in public improvements or submitting documents to the department for review, as appropriate; and
  - D. Determining whether a structure is a public building subject to the requirements of ORS297C.527.

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

#### **5-0840 Interest**

- (1) Prompt payment policy. EWEB shall pay promptly all payments due and owing to the Contractor on Contracts for Public Improvements.
- (2) Interest on progress payments. Late payment interest shall begin to accrue on payments due and owing on the earlier of 30 Days after receipt of invoice or 15 Days after EWEB approval of payment (the "Progress Payment Due Date"). The interest rate shall equal three times the discount rate on 90-day commercial paper in effect on the Progress Payment Due Date at the Federal Reserve Bank in the Federal Reserve district that includes Oregon, up to a maximum rate of 30 percent. If the contract price exceeds \$500,000, the contracting agency shall place amounts deducted as retainage into an interest-bearing escrow account. Interest on the retainage amount accrues from the date the payment request is approved until the date the retainage is paid to the contractor to which it is due.
- (3) Interest on final payment. Final payment on the Contract Price, including retainage, shall be due and owing no later than 30 Days after Contract completion and acceptance of the Work. Late-payment interest on such final payment shall thereafter accrue at the rate of one and one-half percent per month until paid.
- (4) Settlement or judgment interest. In the event of a dispute as to compensation due a Contractor for Work performed, upon settlement or judgment in favor of the Contractor, interest on the amount of the settlement or judgment shall be added to, and not made part of, the settlement or judgment. Such interest, at the discount rate on 90-day commercial paper in effect at the Federal Reserve Bank in the Federal Reserve District that includes Oregon, shall accrue from the later of the Progress Payment Due Date, or thirty Days after

the Contractor submitted a claim for payment to EWEB in writing or otherwise in accordance with the Contract requirements.

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

Stats. Implemented: ORS 279C.570

## **6-0110 Application of Public Contracting Code**

Except as otherwise provided by law and under these EWEB Rules, the Public Contracting Code applies to all public contracting.

- (1) The Public Contracting Code does not apply to:
  - (a) Contracts between EWEB
    - (A) and another contracting agency;
    - (B) The Oregon Health and Science University;
    - (C) The Oregon State Bar;
    - (D) A governmental body of another state;
    - (E) The federal government;
    - (F) An American Indian tribe or an agency of an American Indian tribe;
    - (G) A nation, or a governmental body in a nation, other than the United States; or
    - (H) An intergovernmental entity formed between or among;
      - (i) Governmental bodies of this or another state;
      - (ii) The federal government;
      - (iii) An American Indian tribe or an agency of an American Indian tribe;
      - (iv) A nation other than the United States; or
      - (v) A governmental body in a nation other than the United States.
  - (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
  - (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
  - (d) Grants;
  - (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
  - (f) Acquisitions or disposals of real property or interest in real property;
  - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (see EWEB Rule 3-0275);
  - (h) Contracts for the procurement or distribution of textbooks;
  - (i) Procurements from an Oregon Corrections Enterprises program;
  - (j) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
  - (k) Note: EWEB is required to follow AG Rules as they may relate to Energy Savings performance Contracts
  - (l) Contracts, agreements or other documents entered into, issued or established in connection with:
    - (A) The incurring of debt by EWEB, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
    - (B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
    - (C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

- (m) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
  - (n) Any other public contracting of a public body specifically exempted from the code by another provision of law.
- (2) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. It is the policy of EWEB to identify contractual opportunities and to assist and encourage departments of EWEB to enter contractual relationships with qualified nonprofit agencies for provision of products and services, where feasible.

(a) (A) If a public agency or a qualified nonprofit agency for individuals with disabilities terminates or declines to renew a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated or nonrenewed contract.

(B) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated or nonrenewed contract.

(C) A successor service provider that provides the same services under a new contract as provided under the terminated or nonrenewed contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.

~~In the event of termination of a contract for products or services with a qualified nonprofit agency for individuals with disabilities and EWEB enters into a new contract for services with a second qualified nonprofit agency for individuals with disabilities, a new contractor must, per terms of the contract, offer employment within 90 days to the individuals with disabilities who performed work under the terminated contract at wages and, for individuals with disabilities who work 28 hours or more per week, with health benefits that are as favorable to the individuals with disabilities as, or more favorable to the individuals with disabilities than, the wages and health benefits that the individuals with disabilities had under the terminated contract.~~

~~(b)~~ (b) When more than one qualified nonprofit agency for individuals with disabilities provide the solicited products or services, EWEB may give a preference to the qualified nonprofit agency for individuals with disabilities that best demonstrate that they comply with local ordinances and resolutions governing labor standards and provide the best wages and aggregate benefits per ORS 279.850 (1).



(c) Contracts negotiated with a qualified non-profit agency shall provide compensation in accordance with ORS 653.010 to 653.261. After June 30, 2023, an employer who is authorized to employ individuals with disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in accordance with rules under ORS 653.030 or of the Department of Human Services may not employ or agree to employ individuals with disabilities at a rate lower than the hourly rate required under ORS 653.025.

- (3) EWEB may participate in, sponsor, conduct or administer a cooperative procurement pursuant to ORS 279A.200, et seq. for the procurement of any good, services, or public improvements (See Rule 2-0210).
- (4) Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:
  - (a) EWEB determines that competitive sealed bidding, competitive sealed proposals or other competition is not appropriate; and
  - (b) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.
- (5) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, EWEB may sell, transfer or dispose of personal property in the discretion of the Purchasing Supervisor, without complying with the competitive procurement requirements.

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

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

## 6-0110 Application of Public Contracting Code

Except as otherwise provided by law and under these EWEB Rules, the Public Contracting Code applies to all public contracting.

- (1) The Public Contracting Code does not apply to:
  - (a) Contracts between EWEB
    - (A) and another contracting agency;
    - (B) The Oregon Health and Science University;
    - (C) The Oregon State Bar;
    - (D) A governmental body of another state;
    - (E) The federal government;
    - (F) An American Indian tribe or an agency of an American Indian tribe;
    - (G) A nation, or a governmental body in a nation, other than the United States; or
    - (H) An intergovernmental entity formed between or among;
      - (i) Governmental bodies of this or another state;
      - (ii) The federal government;
      - (iii) An American Indian tribe or an agency of an American Indian tribe;
      - (iv) A nation other than the United States; or
      - (v) A governmental body in a nation other than the United States.
  - (b) Agreements authorized by ORS chapter 190 or by a statute, charter provision, ordinance or other authority for establishing agreements between or among governmental bodies or agencies or tribal governing bodies or agencies;
  - (c) Insurance and service contracts as provided for under ORS 414.115, 414.125, 414.135 and 414.145 for purposes of source selection;
  - (d) Grants;
  - (e) Contracts for professional or expert witnesses or consultants to provide services or testimony relating to existing or potential litigation or legal matters in which a public body is or may become interested;
  - (f) Acquisitions or disposals of real property or interest in real property;
  - (g) Sole-source expenditures when rates are set by law or ordinance for purposes of source selection (see EWEB Rule 3-0275);
  - (h) Contracts for the procurement or distribution of textbooks;
  - (i) Procurements from an Oregon Corrections Enterprises program;
  - (j) Contracts for forest protection or forest related activities, as described in ORS 477.406, by the State Forester or the State Board of Forestry;
  - (k) Note: EWEB is required to follow AG Rules as they may relate to Energy Savings performance Contracts
  - (l) Contracts, agreements or other documents entered into, issued or established in connection with:
    - (A) The incurring of debt by EWEB, including but not limited to the issuance of bonds, certificates of participation and other debt repayment obligations, and any associated contracts, agreements or other documents, regardless of whether the obligations that the contracts, agreements or other documents establish are general, special or limited;
    - (B) The making of program loans and similar extensions or advances of funds, aid or assistance by a public body to a public or private body for the purpose of carrying out, promoting or sustaining activities or programs authorized by law; or
    - (C) The investment of funds by a public body as authorized by law, and other financial transactions of a public body that by their character cannot practically be established under the competitive contractor selection procedures of ORS 279B.050 to 279B.085;

- (m) Contracts for employee benefit plans as provided in ORS 243.105(1), 243.125(4), 243.221, 243.275, 243.291, 243.303 and 243.565; or
  - (n) Any other public contracting of a public body specifically exempted from the code by another provision of law.
- (2) ORS 279A.200 to 279A.225 and 279B.050 to 279B.085 do not apply to contracts made with qualified nonprofit agencies providing employment opportunities for disabled individuals under ORS 279.835 to 279.855. It is the policy of EWEB to identify contractual opportunities and to assist and encourage departments of EWEB to enter contractual relationships with qualified nonprofit agencies for provision of products and services, where feasible.
- (a) (A) If a public agency or a qualified nonprofit agency for individuals with disabilities terminates or declines to renew a contract procured under ORS 279.850 for janitorial services, grounds maintenance services or security services and the public agency enters into a new contract for the same services, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to the individuals with disabilities who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals with disabilities received under the terminated or nonrenewed contract.  
  
(B) If the successor service provider under paragraph (a) of this subsection is not a qualified nonprofit agency for individuals with disabilities, the public agency shall provide in the new contract that the successor service provider, during a period that ends 90 days after the date on which the public agency enters into the new contract, offer employment to all individuals who worked 28 hours or more per week under the terminated or nonrenewed contract at the time the contract ended, except managers and supervisors, at wages and with health benefits as favorable as, or more favorable than, the wages and health benefits the individuals received under the terminated or nonrenewed contract.  
  
(C) A successor service provider that provides the same services under a new contract as provided under the terminated or nonrenewed contract may require an individual whom the successor service provider hires under subsection (1) of this section to undergo the hiring procedures and demonstrate during a probationary period the qualifications that the successor service provider establishes for new hires.
  - (b) When more than one qualified nonprofit agency for individuals with disabilities provide the solicited products or services, EWEB may give a preference to the qualified nonprofit agency for individuals with disabilities that best demonstrate that they comply with local ordinances and resolutions governing labor standards and provide the best wages and aggregate benefits per ORS 279.850 (1).
  - (c) Contracts negotiated with a qualified non-profit agency shall provide compensation in accordance with ORS 653.010 to 653.261. After June 30, 2023, an employer who is authorized to employ individuals with disabilities at subminimum wage pursuant to a special certificate issued under 29 U.S.C. 214(c) or in accordance with rules under ORS 653.030 or of the Department of Human Services may not employ or agree to employ individuals with disabilities at a rate lower than the hourly rate required under ORS 653.025.

- (3) EWEB may participate in, sponsor, conduct or administer a cooperative procurement pursuant to ORS 279A.200, et seq. for the procurement of any good, services, or public improvements (See Rule 2-0210).
- (4) Notwithstanding any other provision of the Public Contracting Code, a procurement may be made without competitive sealed bidding, competitive sealed proposals or other competition required under ORS 279B.050 to 279B.085 provided that:
  - (a) EWEB determines that competitive sealed bidding, competitive sealed proposals or other competition is not appropriate; and
  - (b) The procurement is made under 10 U.S.C. 381, the Electronic Government Act of 2002 (P.L. 107-347) or other federal law that is, as determined by the Director of the Oregon Department of Administrative Services or a local contract review board, similar to 10 U.S.C. 381 or section 211 of the Electronic Government Act of 2002 in effectuating or promoting transfers of property to contracting agencies.
- (5) Notwithstanding the competitive procurement requirements of ORS chapters 279B and 279C, EWEB may sell, transfer or dispose of personal property in the discretion of the Purchasing Supervisor, without complying with the competitive procurement requirements.

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

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

**RESOLUTION NO. 2006  
JANUARY 2020**

**RESOLUTION APPROVING REVISIONS TO  
EWEB PUBLIC CONTRACTING RULES**

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

**WHEREAS**, the Board of Commissioners periodically reviews said policies and determines that modifications or amendments are required to adequately document the work or intention of the Board with regard to governance, Board-staff linkage, strategic direction or executive limitations; and

**WHEREAS**, the Board of Commissioners has reviewed and approved new EWEB Public Contracting Rules that include revisions to:

- Oregon Revised Statute (ORS) references for Public Record rules,
- Reviewing liquidated or delinquent debt owed to the state of Oregon when reviewing contractor qualifications,
- Process changes for selecting architecture and engineering services,
- Obligations for allocating financial resources for the use of Green Energy Technology,
- Paying interest on retainage for construction contracts, and
- Updates employment and payment obligations when contracting for services provided by individuals with disabilities.

The proposed language was detailed in the December 2019 Board Correspondence.

**BE IT RESOLVED** that the EWEB’s Board of Commissioners hereby adopts the proposed revisions to its Public Contracting Rules.

Dated this 7<sup>th</sup> day of January 2020.

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

\_\_\_\_\_  
President

I, ANNE M KAH, the duly appointed, qualified, and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the resolution adopted by the Board at its January 7, 2020 Board meeting.

\_\_\_\_\_  
Assistant Secretary

**RESOLUTION 2007  
JANUARY 2020**

**EUGENE WATER & ELECTRIC BOARD  
RESOLUTION DECLARING SURPLUS  
FOR CERTAIN REAL PROPERTY NO LONGER NEEDED FOR UTILITY  
PURPOSES**

**WHEREAS**, EWEB holds title to a 7.74 acre parcel of land identified on Lane County Assessor's Map #18-03-03-40 Tax Lot 300, Lane County, Oregon, vested in the name of the City of Eugene, Lane County, Oregon, a municipal corporation, for the use and benefit of Eugene Water & Electric Board;

**WHEREAS**, the property is no longer needed for utility purposes;

**WHEREAS**, Eugene Code, Section 2.195 provides Eugene Water & Electric Board – Duties and Powers: "*The board shall have entire control of the water and electric utilities of the city, and all property connected therewith*";

**WHEREAS**, The EWEB Board of Commissioners have endorsed EWEB's Property Management Policies and Procedures for the disposal of surplus property based on current and future utility needs, land use, and environmental considerations. EWEB Water Utility Managers have considered the present and future needs and are recommending that this property be declared surplus.

**NOW, THEREFORE, BE IT RESOLVED** by the Eugene Water & Electric Board that:

- (i) The Board does hereby declare surplus the property described in the attached Exhibit A and illustrated in the attached Exhibit B; and
- (ii) Instructs the General Manager to notify the City Manager of the opportunity to obtain the property for municipal purposes as provided by Eugene Code 2.196; and
- (iii) Any conveyance of said property will be subject to reservation of proper easements for existing or future EWEB facilities.

Adopted at a meeting of the Eugene Water & Electric Board on January 7, 2020.

THE CITY OF EUGENE, OREGON  
Acting by and through the  
EUGENE WATER & ELECTRIC BOARD

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EWEB Board President

I, ANNE M. KAH the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its January 7, 2020, Regular Board Meeting.

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Assistant Secretary

## EXHIBIT A

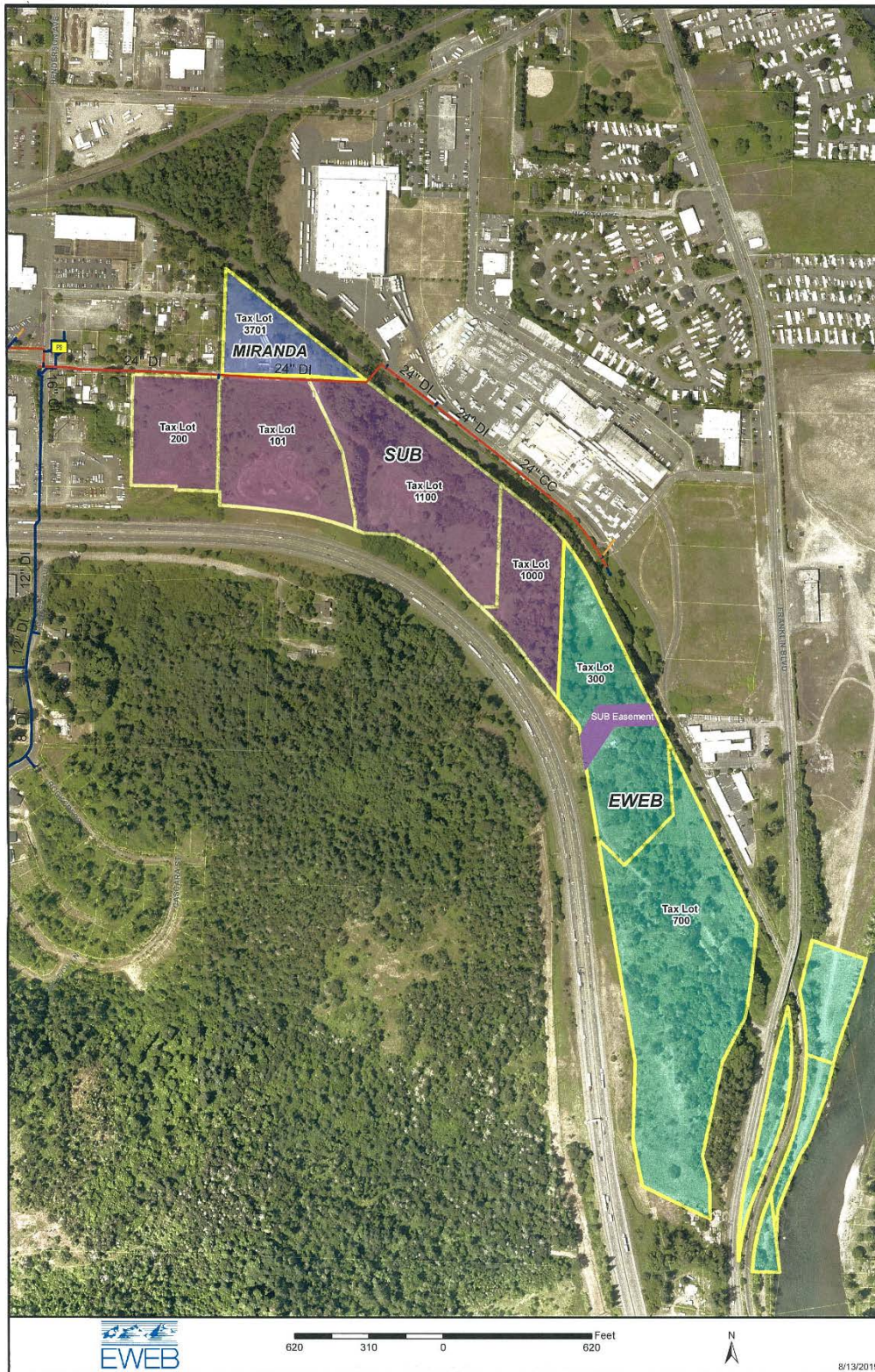
That part of the Daniel McVay Donation Land Claim No. 63, Township 18 South, Range 3 West of the Willamette Meridian, described as: Beginning at a point on the Easterly line of the right of way for Primary State Highway No. 1, said point being North 2471.5 feet and West 824.1 feet from the Southeast corner of Section 3, Township 18, South, Range 3 West of the Willamette Meridian; thence along a curve to the right of 1542.5 feet radius a distance of 274.8 feet (the long chord of which curve bears South 22° 28' East, 274.2 feet); thence on a spiral curve to the right a distance of 197.3 feet (the long chord of which curve bears South 14° 14' East a distance of 196.9 feet); thence South 47° 57' East, 153.9 feet; thence North 42° 03' East, 291.0 feet; thence North 6° 21' West, 313.0 feet to the Westerly line of the Southern Pacific Railroad's right of way; thence following the Westerly line of said railway right of way bearing Northwesterly a distance of 857 feet, more or less to a point North of the point of beginning; thence South 734 feet to the point of beginning, in Lane County, Oregon.

EXCEPT that certain tract conveyed to the State of Oregon by deed recorded July 8, 1955, Reception No. 60622, Lane County Oregon Deed Records, in Lane County, Oregon.

ALSO EXCEPT that certain tract conveyed to the State of Oregon by deed recorded November 23, 1960, Reception No. 16196, Lane County Oregon Deed Records, in Lane County, Oregon.



# EXHIBIT B



**RESOLUTION 2008  
JANUARY 2020**

**EUGENE WATER & ELECTRIC BOARD  
AUTHORIZING GENERAL MANAGER TO NEGOTIATE AND CLOSE  
A TRANSACTION RELATED TO REAL PROPERTY**

**WHEREAS**, the Eugene Water & Electric Board (“EWEB”) holds title to real property in the name of the City of Eugene a municipal corporation, by and through the Eugene Water & Electric Board being comprised of multiple parcels collectively known as the Glenwood Property;

**WHEREAS**, EWEB staff has evaluated a portion of the Glenwood Property being a 7.74 acre parcel identified on Lane County Assessor’s Map #18-03-03-40 as Tax Lot 300, illustrated in the attached Exhibit A, and determined that said parcel is no longer needed for utility purposes;

**WHEREAS**, the provisions of ORS 271.310 authorize EWEB to sell property within its possession or control if the real property is no longer needed for its public use or EWEB determines that the sale is in the public interest;

**WHEREAS**, upon EWEB’s adoption of a Resolution declaring said parcel surplus, Eugene Code 2.196 provides the City of Eugene with the first opportunity to negotiate for purchase of the property for other municipal purposes;

**WHEREAS**, the EWEB Commissioners have had the opportunity to address anticipated terms and conditions with those designated to negotiate the real property transactions during the course of executive session in accordance with ORS 192.660(2)(e).

**NOW, THEREFORE, BE IT RESOLVED** by the Eugene Water & Electric Board that:

The General Manager is hereby authorized to negotiate terms and conditions for the conveyance of said parcel under the guidance provided by the Board during Executive Session. The General Manager is further authorized to execute the property sale transaction consistent with the negotiated terms and conditions.

Adopted at a meeting of the Eugene Water & Electric Board on January 7, 2020.

THE CITY OF EUGENE, OREGON  
Acting by and through the  
EUGENE WATER & ELECTRIC BOARD

\_\_\_\_\_  
EWEB Board President

I, ANNE M. KAH the duly appointed, qualified and acting Assistant Secretary of the Eugene Water & Electric Board, do hereby certify that the above is a true and exact copy of the Resolution adopted by the Board at its January 7, 2020, Regular Board Meeting.

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Assistant Secretary

# EXHIBIT A

