



MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

Rely on us.

TO: Commissioners Brown, Carlson, Barofsky, McRae and Schlossberg
FROM: Frank Lawson, General Manager; Anne Kah, Administrative Services Manager
DATE: April 27, 2022 (May 3, 2022 Board Meeting)
SUBJECT: Amendment to Request for Proposals for EWEB's HQ Riverfront Property
OBJECTIVE: Action

Issue

The Request for Proposals (RFP) and RFP process as currently written may limit the Board's decision making in some situations, therefore a revision has been made to allow the Board greater flexibility in awarding to a Proposer within the Competitive Range.

Background

On April 5, 2022, Commissioners approved the RFP; Section 4.6 Competitive Range, and 4.7.1 Selection, state "If the Board elects to request presentations, the Proposer with the highest total score as a result of written proposal scoring AND presentation scoring will be awarded the contract."

Discussion

As presently written, the overall scoring of proposals equals the cumulative points awarded for written proposals (scored by the Evaluation Team) and the points awarded for presentations (scored by the Board). The RFP does not specifically include a provision for the Board to rank or score written proposals.

Due to the subjective nature of some evaluation criteria, we recognize the collective Board and the Evaluation Team may value some criteria differently.

In some scenarios, the RFP's current language could restrict the Board's decision making. For example, if the Board did not wish to request presentations or best and final offers, there is no stated provision for the Board to rank proposals in another way. Therefore, the proposal scored highest by the Evaluation Team could appear to be the successful proposal. Should the Board wish to make an award to another Proposer in the Competitive Range, there is no mechanism to articulate the basis for their decision which could draw extra scrutiny in the event of an award protest.

The RFP has been amended to allow the collective Board to rank written proposals of the Proposers selected in the Competitive Range. The Board may reach a consensus on the ranking, or the Board may consider individual ratings, or the group average of ratings to reach a final decision on the ranking of proposals. By the nature of the Competitive Range, any proposal on the "short list" has a reasonable chance of being selected. Points awarded by the Evaluation Team will be used to determine the

Competitive Range but will not carry over to the next step of the competitive process. As such, proposals within the Competitive Range will have an equal chance of being selected by the Board.

Recommendation/ Requested Board Action

The proposed revisions are reflected in Sections 3, 4.6, 4.6.1, 4.7, 4.7.1, and 4.9 of the RFP; the relevant excerpts and the amended solicitation process are provided for the Board's consideration. Management recommends approval of the RFP and solicitation process as amended.

Furthermore Management requests the Board's authorization to make any additional non-substantive administrative or process edits that are necessary to finalize the RFP without further Board approval.

Reference Documents:

Amended RFP

Amended EWEB Headquarters Property – Request for Proposals Solicitation Process

EWEB Headquarters Property – Request for Proposals Solicitation Process, Amended May 3, 2022

The process will be managed through the Project Team, Evaluation Team, General Manager, and Board. Tim O’Dell, EWEB’s resident Right-of-Way Agent, will fill the role of EWEB’s real estate broker and will be supported by the counsel of EWEB’s attorneys, Gretchen Barnes of Cable Huston LLC, and Eric DeFreest of Luvaas Cobb.

Questions or requests for changes from Proposers and addressing unforeseen circumstances not covered by the process will be handled via Addenda by the Purchasing Coordinator. Depending on the nature of the situation, the Purchasing Coordinator will use their professional judgment whether to escalate the issue to the Project Team, and/or the Board.

EWEB will dispose of the property in accordance with applicable ordinances, statutes, laws, Board policies (in particular SD14 and Board-Staff Linkage policies), and EWEB Property Management Procedures. A [summary of statutes applicable to the sale of the property](#) was provided to the Board in the backgrounder for the November 2, 2021 board meeting.

Project Team, Evaluation Team and Board Liaison Roles and Responsibilities

Two distinct staff managed teams will work on separate activities that support the eventual sale of the property. Board Liaisons will participate fully as Team members in all facets of their respective Team’s responsibilities, subject to any restriction under the Oregon Government Ethics laws. The Board Liaisons will act as individual Commissioners, with no authority to act on behalf of the Board at large.

The Project Team and Evaluation Team members will take care to avoid communications and sharing of information between Teams that could appear to create a quorum of Commissioners or give appearance of serial communication among a quorum. In the same vein, Board Liaisons will not communicate with each other, or with other Board members, outside the staff project meetings and Board meetings to discuss their thoughts and opinions on this matter as this could be perceived as a meeting of the Board.

The Project Team is tasked with responsibilities related, but not limited to, the development and issuance of the RFP, PSA template, and solicitation processes. Examples include creating drafts and recommendations for the following:

- priorities, goals, and acceptable parameters for disposal of the property,
- selection process and schedule,
- Purchase and Sale Agreement template,
- RFP content,
- evaluation criteria and scoring that will be used by the Evaluation Team to assess proposals,
- non-disclosure agreement,
- public engagement strategies.

The Project Team is comprised of two Board Liaisons and members from EWEB’s Property,

Purchasing, Facilities, Communications & Marketing, Management, and GM Office. The term of the Project Team Board Liaison assignment will expire when the RFP has closed. Assigned staff will remain active members on the Project Team to carry out administrative and managerial duties, provide guidance related to processes, and may perform an advisory role to the Evaluation Team and Board through the duration of the RFP process. During the Evaluation Team and Board's consideration of proposals, the expertise of staff Project Team members may be used to provide an unbiased explanation of complexities of property transactions and potential outcomes of the options presented by proposers.

Separately, the Evaluation Team will be composed of two Board Liaisons and an additional three to seven members appointed by the General Manager. This Team will adhere to rules which are intended to provide fair and equitable evaluation of proposals and avoidance of conflicts of interest.

The Evaluation Team will be tasked with:

- comprehensive evaluation and scoring of proposals,
- recommendation for Competitive Range to the General Manager and the full Board.

The term of the Evaluation Team Board Liaison assignment will expire after a recommendation has been submitted to the full Board, and the Board has had an opportunity to resolve all questions or clarifications with the Evaluation Team.

RFP Development

Acquisition Options (RFP Section 2.3)

The intent of the solicitation is to encourage the broadest range of proposals from both public and private entities. The Board indicated that sale/divestiture of the property is preferred, however, creative options that will facilitate financing should remain open. Offers may include purchase or lease-to-own. Property trades and long-term lease without the intent to purchase are not acceptable forms of offers for the purpose of the RFP.

Evaluation Criteria (RFP Section 3)

"Section 3.0 Triangle Lot Impact to Future Intended Use" is intended to obtain information from Proposers to help the Board with their future decision on the postponed Resolution No. 2207. This section is for informational purposes only and no points will be rewarded.

Proposals will be evaluated according to the following set of criteria and associated points, using a 100-point scoring system.

- 3.1 Future Intended Use/Community Benefit (20 points possible)
- 3.2 Economic Benefit to Community (i.e. property tax, job creation, tourism, etc.) (20 points possible)
- 3.3 Economic Benefit to EWEB's Customer-Owners/Sale Price (40 points possible)
- 3.4 Terms and Conditions/Contingencies (10 points possible)
- 3.5 Qualifications and Experience with Similar Developments/Endeavors (10 possible points)

A Purchase and Sale Agreement (PSA) template will be incorporated in the RFP documents

with the intent to establish general expectations for the associated terms and conditions. Included in the RFP evaluation criteria 3.4 Terms and Conditions/Contingencies, proposers will have the opportunity to provide a list of requested exceptions to the sample PSA. Specific terms and conditions, and other details such as proposal follow-through assurance and potential deed restrictions will be negotiated with the successful Proposer.

When the building is sold, included in the terms and conditions of the sale, EWEB may require a negotiated lease agreement to meet its interim/transitional space requirements for the 4th floor backup Dispatch Center potentially through Q2 2023.

Prior to RFP closing and before any review of proposals, the Project Team will submit the Evaluation Team instructions to the Board for consideration and feedback. The instructions will provide guidance to the Evaluation Team around things to consider when allocating points within each category of criteria.

Confidentiality and Disclosure of Proposal or Contents (RFP Section 1.14 and 1.15)

Proposals are not automatically exempt from public records disclosure but may qualify under certain circumstances described in ORS 192.355(4). Additionally, the Evaluation Team's assessment and competitive range recommendation may be an Internal Advisory Communication protected by ORS 192.355(1).

Proposers may provide certain sensitive information under a uniform Non-Disclosure Agreement (NDA), so that certain proposal information may be considered a Confidential Submission under ORS 192.355(4). For the protection of all proposers during the competitive process, EWEB will not disclose the contents of proposals publicly. While the solicitation is underway, EWEB will only disclose the name of the proposers, a descriptive title of the proposal, and indicate which proposals are within the competitive range (notwithstanding Oregon Public Records Law (ORS 192.344 to 192.478)).

Furthermore, for proposals which qualify for the competitive range, EWEB reserves the right to make known the proposer's identity, a summary of the intended use, and purchase price of proposals, except for any information that is exempt from disclosure according to the terms of the solicitation and applicable Non-Disclosure Agreement. All proposals may be made available for public inspection after Intent to Award is issued, except for any information that is exempt from disclosure according to the terms of the solicitation and applicable Non-Disclosure Agreement.

It is noteworthy that the scope of information considered confidential under ORS 192.355(4) and ORS 192.355(1) is also relevant to what the Board may discuss in executive session.

RFP Issuance/Open for Responses

EWEB plans to issue the RFP in the second quarter of 2022.

A public hearing on the procedure for the sale of EWEB's Riverfront/Headquarters Property was held during the April 5, 2022 Board Meeting. Following the public hearing and Board approval, notification of the property's availability and Request for Proposals will be posted on the State's procurement website OregonBuys.gov and EWEB.org, and advertisements will be placed in the newspaper(s) of record. Entities who have already expressed interest in the property will receive an email directing them to these websites.

While the solicitation is open, a non-mandatory property site inspection will be offered to all Proposers at a scheduled date and time. Additional tours may be scheduled upon request. Interested parties will be encouraged to ask questions, responses related to the substance of the RFP that EWEB believes will be of value to other proposers will be shared equitably. Proposers will be responsible for understanding how and if responses apply to their specific situation.

Concurrent to the RFP open period, the Project Team will finalize instructions to be used by the Evaluation Team, these guidelines will be submitted to the collective Board for consideration and feedback prior to the RFP closing date.

A Closing Date will be established 90 days after the RFP issuance. EWEB reserves the right to extend the RFP Closing Date via Addenda at the discretion of the Purchasing Coordinator.

The RFP will request that Proposers express an "Intent to Propose" within 60 days of RFP issuance (RFP Section 1.3 Letter of Intent to Propose).

Review and Evaluation of Proposals – to commence late Q3 or early Q4 2022

After the Closing Date, the Project Team Liaisons term will end, and the Evaluation Team will commence with comprehensive scoring.

Competitive Range (RFP Section 4.6)

Based on the allocation of points established in the RFP, a range of proposals which are deemed to have a reasonable chance of being selected for award (the "Competitive Range"), will be determined by the Evaluation Team. The range will be dictated by a "natural break" in scoring (as opposed to a predetermined number of proposals). For example, suppose there are seven proposals and four clearly score higher than the others and their scores are not significantly different from one another. In this example the top four proposals would be considered in the Competitive Range.

All submitted proposals, ratings, and a recommendation for the Competitive Range will be forwarded to the General Manager. Following the General Manager's examination and confidence in the process, he will provide all proposals to the Board with a recommendation for the Competitive Range based on the recommendation and scoring of Evaluation Team. The aforementioned information will be contained in a confidential memorandum in accordance with ORS 192.355(1) and Confidential Submissions in accordance with ORS 192.355(4).

The materials will be provided to all Commissioners for independent review in advance of the Board Meeting.

The Board may ask questions and discuss the recommendation with the Evaluation Team in executive session pursuant to ORS 192.355(1) which exempts communications within a public body of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of action. Because some proposals may be eliminated during this critical phase of the process, it is important for the Board to have a clear understanding of the reasoning behind the recommendation, and, if needed, an opportunity to discuss the General Manager's and Evaluation Team's perspectives openly to assure the Board that the appropriate proposals advance to the next step.

Commissioners also have discretion to hold an executive session for a Board discussion of confidential proposal content as designated through the Non-Disclosure agreement within the scope of ORS 192.355(4). Pursuant to ORS 192.660(2)(f) the Board may meet in executive session to discuss "exempt public records".

In public session, the Board will deliberate and take action to either expand the Competitive Range to include the next highest scored proposal(s), eliminate proposal(s) from the Competitive Range, or affirm the "short list" for further evaluation.

Once the Competitive Range is determined by the Board, only that range will be considered for award.

EWEB will notify all Proposers whether they have been selected for the Competitive Range (or "short list").

Optionally, the Board may ask Competitive Range Proposers to deliver a live presentation in a public Board Meeting for the purpose of providing supplemental information and answering clarifying questions about their proposal. It is the Board's discretion whether this step is necessary to assist them in arriving at a decision to ultimately award a contract. Once all presentations (if any) are complete, the Board will make an assessment in executive session. The collective Board will rank written proposals of the Proposers selected in the Competitive Range. The Board may reach a consensus on the ranking, or the Board may consider individual ratings, or the group average of ratings to reach a final decision on the ranking of proposals.

Best and Final Offers (RFP Section 4.6 Competitive Range)

EWEB reserves the right to request Best and Final Offers to provide flexibility to negotiate with multiple parties in the event a single proposal does not distinctly rise above the others. There is no known statutory requirement directing the Board to seek Best and Final Offers in this circumstance, nor is there unilateral right of the proposers to supplement their submitted proposals. Reserving this right does not require the Board to exercise the option, it merely leaves the possibility open for the Board's discretion should the situation call for it.

Any Best and Final Offers may be submitted under a uniform Non-Disclosure Agreement (NDA), so that sensitive information may be considered a Confidential Submission under ORS 192.355 (4).

EWEB reserves the right to make Best and Final Offers publicly available at the conclusion of the award process, except to the extent that Proposer has appropriately marked discrete information as Confidential Information or Trade Secret Information subject to the Non-Disclosure Agreement.

Following Board discussion of proposals (and/or presentations if any) in executive session, Commissioners will enter public session to decide whether to request Best and Final Offers from any Proposers. If the Board exercises its option to request Best and Final Offers, then selected Proposers will be permitted to amend their proposals, if desired, according to a predefined process developed by the Project Team.

Selection and Award – to commence Q4 2022 (RFP Section 4.7-4.9)

An executive session will be held pursuant to ORS 192.660(2)(f) – to discuss exempt public records, and pursuant to ORS 192.660(2)(e) - to deliberate with persons designated by the governing body to negotiate the real property transaction with the selected proposer. During the non-public meeting, the Board will discuss any Best and Final Offers (submitted according to ORS 192.355 (4)) as well as provide the General Manager with negotiation criteria and limits for the property transaction.

Following executive session, the Board will convene in public session to conduct final deliberations and take formal action to announce its Intent to Award. At this time the Board will also direct the General Manager to negotiate and execute a Purchase & Sale Agreement, and all other documents necessary to complete the transaction(s), with the successful Proposer within the guidelines established in executive session.

At the subsequent Board Meeting, a resolution will be presented for the Board's formal action.

Protest Process (RFP Sections 1.5 Solicitation Protest and 4.10 Award Protest)

EWEB has the discretion to allow protests or to reconsider decisions. Although protests are unlikely, the RFP includes instructions for submitting protests and the associated timeframe for doing so. A pre-defined process for Award Protest has been developed to establish guidelines that each side can rely upon in the event of an objection.

Negotiations and Execution of Agreement

Following Award, EWEB's Property representative, and legal counsel will provide counsel and assistance throughout the final negotiations and execution of the Purchase and Sale Agreement.

Communications Plan

A communications framework was provided to the Board as correspondence for the February 1, 2022 meeting. Later that month, EWEB issued a press release announcing the upcoming sale of the Riverfront/Headquarters Property. Three local television stations, the Register-Guard newspaper, and Eugene Chamber of Commerce shared our story, generating significant community discussion. The press release and a one-minute video announcement were published in EWEB's newsroom and shared on EWEB's social media channels. A listing of these media announcements, with clickable links for viewing, are included on the project website eweb.org/riverfront.

The public will be able to access information about EWEB's Riverfront/Headquarters Property, the RFP, and associated process by visiting the project website. Timely updates and additional information will be provided as the RFP process unfolds.

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