



# Oregon

**State Board of Examiners for  
Engineering & Land Surveying**

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## RULES & REGULATIONS COMMITTEE

Minutes of Meeting

December 13, 2013

### Members present:

Ken Hoffine, Chair

William Boyd (via telephone)

Carl Tappert

### Staff present:

Mari Lopez, Executive Secretary

Jenn Gilbert, Executive Assistant

Joy Pariente

### Others present:

Katharine Lozano, Assistant Attorney General

The meeting of the Rules and Regulations Committee was called to order at 8:03 a.m. in the OSBEELS Conference Room at 670 Hawthorne Avenue SE, Suite 220, Salem, OR 97301.

### New Business

#### OAR 820-010-0417 – Nature of Examination for Structural Engineer

The specific examination required for structural engineers was changed from the “buildings portion” to the “16-hour.” Ms. Gilbert explained that this is due to the change in examination. In the previous examination, the Washington Structural III, examinees had the option of taking a portion on buildings or one on bridges. OSBEELS required completion of the bridges portion. In the current NCEES examination, there is no such differentiation. The Committee determined to send OAR 820-010-0417 to the full Board to begin the rulemaking process.

### CBT Examinations

A set of new rules, which become effective January 2014, reference specific application windows for entrance to the new year-round NCEES CBT examinations. However, NCEES contacted Ms. Lopez with concerns regarding these windows. Jerry Carter, chief executive officer at NCEES, explained that there is no way to ensure that candidates are taking the examinations in the corresponding application window, as required by OAR 820-010-0217 and 820-010-0219. Mr. Carter explained that once a candidate is approved by OSBEELS, they may take the examination at any time within 12 months of approval. Ms. Gilbert explained these windows were to assist OSBEELS in keeping track of applicants for the CBT examinations. AAG Lozano suggested removing the window references from the rules. These amendments would be temporary rules, effective immediately, to avoid any conflict for applicants. The Committee determined to send the amended versions of OAR 820-010-0217 and 820-010-0219,

as temporary rules, to the Special Board Meeting later in the day.

#### OAR 820-001-0025 – Purchasing and Contracting

AAG Lozano explained that the current purchasing and contracting rule in place for OSBEELS is not the most effective procedure for a small, semi-independent organization. She said when Model Contract Rules are adopted, the organization also adopts the Department of Justice (DOJ) and Department of Administrative Services (DAS) policies attached to those rules. Many of these additional policies add layers of requirements to purchasing and contracting procedures that are unnecessary when dealing with the types of purchases made by OSBEELS.

Additionally, unlike other professions, testimony and professional review are considered the practice of engineering, land surveying and photogrammetry, which may create issues when OSBEELS contracts with professionals for assistance in law enforcement cases. Board members wanted to ensure OSBEELS operated in the same manner as other state agencies and utilized qualifications-based selections for professional engineering, land surveying and photogrammetric service contracts. Once aware that these concepts could be implemented without adopting the Model Contract Rules, the opposition to adopting Board-specific rules diminished.

AAG Lozano showed the Committee a draft contracting rule specifically for OSBEELS, allowing for purchasing and contracting to return to the procedures used prior to the adoption of the Model Contract Rules. She added that contracting requirements can be added as necessary. Mr. Tappert said he's a supporter of minimalism, but he was unsure about reducing an entire book of contracting rules to three sentences. He asked if there was a way to incorporate a tiered system for purchasing where purchases or contracts over a certain amount needed bids, but smaller purchases could be made independently. AAG Lozano said she could draft a sample tier system for review at the February Committee meeting.

Mr. Tappert also asked about incorporating procedures for resolving disputes stemming from companies or individuals not being selected. AAG Lozano said the dispute process is part of the Model Contract Rules, but she can also draft a dispute process specifically for OSBEELS. She said the dispute process can be tied to a specific type of job and/or the amount of money involved. Ms. Lopez pointed out that OSBEELS is contracted with NCEES for examinations, but that's not an area where OSBEELS should have to deal with disputes. Mr. Hoffine suggested a \$10,000 minimum contract limit to trigger the dispute process. AAG Lozano said the draft can specifically include the types of contracts that have the highest likelihood of being disputed, such as information technology and certified public accountants for financial reviews and financial audits. Ms. Lopez also asked about disputes regarding the Board's selection of expert reviewers. AAG Lozano recommended not implementing a dispute process for expert reviewer contracts because these contracts are based on expertise and the use of these individuals, specifically for law enforcement cases, is very time-sensitive.

Mr. Tappert said he liked the Model Contract Rules because it allowed for coverage in unexpected areas. AAG Lozano said the Board can use the Model Contract Rule language without adopting the rules wholesale to keep OSBEELS from getting tied into unnecessary and burdensome requirements. Ms. Lopez agreed and said the Model Contract Rules removed a great deal of required agility from Staff in purchasing and contracting. Mr. Hoffine asked if the changes regarding tier systems and dispute processes would be implemented at the afternoon's Special Board Meeting. AAG Lozano said these changes would follow the standard rulemaking process including Board discussion and public input opportunities. Ms. Lopez asked if it was necessary to add Certified Water Right Examiners (CWRE) to this rule. AAG Lozano said that

isn't necessary. Mr. Tappert agreed and said a Professional Engineer (PE) or Professional Land Surveyor (PLS) who also holds a CWRE certification can be used for professional services. The Committee determined to review a sample tier system and dispute process for OAR 820-001-0025 during the February 2014 Committee meeting. The Committee also determined to send the temporary OAR 820-001-0025, reverting to the procedures prior to the adoption of the Model Contract Rules, to the Special Board meeting for adoption.

#### OAR 820-010-0010 - Definitions

The Committee discussed the addition of a definition to the list provided in OAR 820-010-0010. Subsection (21) would read:

*“‘Professional service’ and ‘professional services’ as used in ORS 672.005 means labor that requires a high level of training and proficiency, whether or not a tangible commodity is produced.”*

**The Committee exited its public meeting pursuant to ORS 192.660(2)(f) to review records exempt from public inspection. All members of the audience were asked to leave the room for these deliberations and were invited to return upon resumption of the public meeting. Upon returning to public meeting, it was noted that no decisions were made and no votes were taken.**

After discussion, the Committee determined to send the amended version of OAR 820-010-0010 to the special Board meeting to begin the rulemaking process.

The meeting adjourned at 8:44 a.m.