

**SOUTH KING FIRE AND RESCUE  
KING COUNTY, WASHINGTON**

**RESOLUTION NO. 604**

**A RESOLUTION of the Board of Commissioners of South King Fire and Rescue  
(aka KCFPD #39), King County, Washington, Authorizing Procurement Through a  
Cooperative Purchasing Arrangement, for the Purchase of a Heavy Rescue  
Apparatus and Related Equipment from Spartan Motors, Inc. and Waiving  
Competitive Bidding**

**WHEREAS**, the Board of Commissioners has been advised that the Fire Chief has been provided with a formal legal opinion by legal counsel that the District may enter into a cooperative purchasing arrangement through Sourcewell, a Minnesota cooperative purchasing agency to purchase directly from Spartan Motors, Inc. and

**WHEREAS**, the purpose of the competitive bid law of Washington has been satisfied through the cooperative competitive process of Sourcewell,

**NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:**

Section 1. The Fire Chief is hereby authorized to purchase, and to execute all necessary documents to purchase, one (1) Spartan Star Series Heavy Rescue Apparatus featuring a new 2023 Spartan Gladiator 10" RR LFD Cab & Chassis, through the Sourcewell Contract based on the provided specifications and drawings.

Section 2. Since the purpose of the Washington bid law—RCW 52.14.110—has been accomplished by Sourcewell's compliance with the comparable laws and statutes of the State of Minnesota, competitive bidding under the Washington statute is hereby waived.

Section 3. The legal opinion on this cooperative purchase shall be maintained on file and attached to this resolution.

ADOPTED by the Board of Commissioners of South King Fire & Rescue, King County, Washington, at a regular or special meeting of the board, this 28<sup>th</sup> day of December, 2021, with the following Commissioners being present and voting.

  
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CHAIR/COMMISSIONER

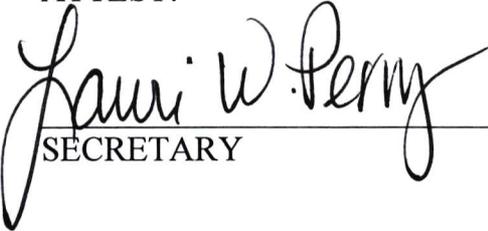
  
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COMMISSIONER

  
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COMMISSIONER

ATTEST:

  
SECRETARY

Resolution No. 604

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December 9, 2021  
*By Electronic Mail*

South King Fire and Rescue  
Attn: Assistant Chief Dave Mataftin

**Re: Cooperative Purchasing Arrangement Between South King Fire and Rescue (“District”) and Sourcewell; executing contract directly with True North, as representative of Spartan Motors, Inc. (“Spartan”), for the purchase of Spartan apparatus and equipment, through Sourcewell**

Dear Chief Mataftin:

The purpose of this letter is to give you my legal opinion as to whether the District may execute a contract directly with True North for Spartan apparatus via cooperative purchasing rather than competitive bidding. In my opinion, the District may contract directly with True North for the purchase of Spartan apparatus via cooperative purchasing, rather than by competitive bidding, in this particular case, for the reasons stated in detail in this letter.

***Applicable Law***

Under Washington law, a fire protection district must engage in competitive bidding for purchases of equipment valued over \$40,000 unless an exception applies. See RCW 52.14.110. One such exception is the use of cooperative purchasing (“Cooperative”). In a Cooperative, one public agency (the “Participating Agency”) enters into a contract with another public agency (the “Lead Agency”) that complied with *its own bid law*<sup>1</sup> requirements when providing for a public procurement. See RCW 39.34.030(5)(b).

Under Washington law, “[A]ny power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly...with any public agency of *any other state*.” RCW 39.34.030 (1). (emphasis added).

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<sup>1</sup> In this particular case, the Lead Agency (Sourcewell) is governed by *Minnesota* bid law.

Under Minnesota law, public agencies may exercise joint powers, which includes cooperative purchasing—i.e. public agencies of any state may become members of a service cooperative and enjoy the powers that a Minnesota public agency may exercise under the purchasing laws of Minnesota. Minn.Stat. § 471.59. Under Minnesota law, for contracts valued at more than \$175,000, “sealed bids shall be solicited by public notice in the manner and subject to the requirements of the law governing contracts by the particular municipality or class thereof.” Minn.Stat. § 471.345 (3). Under Minnesota law, “a *municipality*<sup>2</sup> may contract for the purchase of supplies, materials, or equipment without regard to the competitive bidding requirements of [the Minnesota Uniform Municipal Contracting Law] *if the purchase is through a national municipal association's purchasing alliance or cooperative created by a joint powers agreement that purchases items from more than one source on the basis of competitive bids or competitive quotations.*” Minn.Stat. § 471.345 (15)(b). (emphasis added).<sup>3</sup>

The Washington State Auditor (“SAO”) recognizes Cooperatives, although it does not publish a list of approved Cooperatives. Instead, the SAO requires the following to establish that a Participating Agency may contract directly with a vendor through a Cooperative:

1. The Participating Agency must enter into a “membership agreement,” i.e. an interlocal agreement meeting all of the requirements of RCW 39.34.020-030, establishing that the Lead Agency and Participating Agency are both “public agencies” and setting forth other necessary and proper matters<sup>4</sup>;
2. the Lead Agency must have properly advertised the original bid on the Lead Agency’s website;
3. the Lead Agency must have used a bid process that met the Lead Agency’s legal requirements, as documented in a legal opinion to your agency;
4. the vendor must have agreed to open the bid to other purchasers; and

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<sup>2</sup> Fire districts are “municipal corporations,” i.e. “municipalities,” under RCW 52.12. Service cooperatives are “units of local government” and “public agencies” under Minn.Stat. § 123A.21.

<sup>3</sup> Put another way, a Minnesota municipality—and Washington municipality, via ILA with a purchasing cooperative—may execute a contract with a vendor who was awarded a contract by a purchasing cooperative utilizing “best value criteria,” which is a recognized basis for entering into contracts for equipment under Washington law.

<sup>4</sup> Under RCW 39.34.030 (3), an interlocal agreement must establish (1) its duration, (2) any separate legal or administrative entity created by the agreement, (3) its purpose, (4) the precise method of terminating the agreement, (5) the manner of financing the joint or cooperative undertaking and (6) any other necessary and proper matters. If the agreement does not create a new entity, the agreement must also include provision for (1) an administrator of the agreement and (2) the manner of acquiring or holding property utilized in the agreement.

5. the Bid must be current and still open for purchases, with minor changes to the original bid—as is common—being permitted.

***Relevant Facts***

The District wishes to purchase Spartan Heavy Rescue apparatus valued over \$40,000 from True North without going out to competitive bid. Instead, the District wishes to purchase directly from True North by utilizing Sourcewell, a Minnesota Corporation. Sourcewell is a service cooperative created by the Minnesota legislature as a local unit of government, as per the Minnesota Constitution art. XII, sec. 3. Sourcewell has forwarded to the District a Membership Agreement (hereinafter “ILA”) for signature and Chief Mataftin has signed this agreement. The ILA enumerates cooperative purchasing as the purpose of the ILA.

The remaining pertinent facts are as such:

1. In January 2018, Sourcewell published a Request for Proposals (the “RFP”) for FIREFIGHTING APPARATUS, WITH RELATED EQUIPMENT, ACCESSORIES AND SUPPLIES;
2. The RFP was published in numerous newspapers across the country, including but not limited to publications in Utah, Oregon, Minnesota, and South Carolina and Sourcewell or its predecessor agency the National Joint Powers Alliance, published the RFP on its website; numerous publications of the RFP proffered a “national contract solution,” implying that awarded contracts would be available to all Sourcewell members;
3. The RFP stated that bids would be publicly read, and informed proposers that it was “the intent of Sourcewell to award a Contract to the *best* and most responsible and responsive Proposer(s) offering the best overall quality and selection of equipment/products and services” (emphasis added);
4. The RFP was left open for a period of approximately 60 days and established a concrete deadline (March 1, 2018) and location (Staples office) for submitting bids;
5. The RFP informed proposers that third-party member agencies of Sourcewell could enter into contracts directly with the proposers after a contract was awarded through Sourcewell;
6. Sealed bids were submitted from approximately 18 different bidders, and the bids were publicly opened and read at Sourcewell’s office in Staples, Minnesota;
7. Sourcewell awarded contracts (hereinafter “Apparatus Contract”) using a scoring method based on a variety of evaluation factors, with a proposer potentially earning up to 1000 points; said evaluation factors were as follows:
  - a. Pricing;
  - b. Ability to sell products nationally;
  - c. Selection and variety of products;
  - d. Proposer’s marketing plan;
  - e. Warranty coverages;
  - f. Value-added attributes;

g. Marketplace successes (reputation).

8. The Apparatus Contract is open for purchases through April 16, 2022, as per the Contract Acceptance and Award letter from Sourcewell to Spartan.

True North has submitted a proposal to the District for the following apparatus:

**One (1) Spartan Star Series Heavy Rescue Apparatus featuring a new 2023 Spartan Gladiator 10" RR LFD Cab & Chassis**

The "Star Series" apparatus ("Star Series") was encompassed in the original Apparatus Contract.

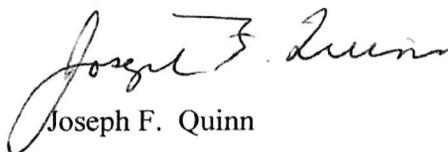
The District has previously entered into the membership agreement or interlocal agreement with Sourcewell, so the District may contract directly with True North for the purchase of the Star Series Heavy Rescue Apparatus through the publicly solicited Apparatus Contract. The District may do so for the following reasons (based on the requirements set forth by the SAO):

1. Sourcewell is a valid purchasing cooperative and unit of local government operating under Minn.Stat. § 471.59, and therefore the ILA would be entered into by two "public agencies" as required by RCW 39.34.020 (Sourcewell and South King Fire & Rescue);
2. The interlocal agreement complies with RCW 39.34.030 because it (1) establishes that it is perpetual; (2) establishes its purpose: cooperative purchasing; (3) does not create a new legal entity and therefore does not need to set forth the precise composition of any new entity; (4) creates an administrator: Sourcewell; and (5) does not set forth that property will be exchanged under the ILA and therefore does not need to set forth how such property would be disposed of;
3. The Apparatus Contract is currently posted on the Sourcewell website;
4. Sourcewell complied with Minnesota law when administering the Apparatus Contract, for the following reasons:
  - a. The RFP was posted for a reasonable time in newspapers across the country, including a newspaper in Staples, MN; and the RFP was posted on Sourcewell's website;
  - b. The sealed bids in response to the RFP were opened publicly;
  - c. Sourcewell received bids from approximately 18 different vendors and picked the best bidders utilizing a variety of "best value" criteria. Consequently, the facts demonstrate that Sourcewell fairly and equitably distributed opportunities to bid, and established a competitive process amongst bidders, in compliance with Minn.Stat. § 471.345, Minnesota's Uniform Municipal Contracting Law;
  - d. Spartan was made aware under the RFP that members of Sourcewell could purchase off of the Apparatus Contract; and
  - e. Finally, the Apparatus Contract is (1) presently open and will remain open until April 16, 2022 and (2) the Star Series apparatus being proposed for purchase from True North was included in the original Apparatus Contract; and more importantly, there have been

no substantial deviations in price from the original specified apparatus. With respect to this Heavy Rescue unit, there were numerous options available in addition to the base price for the basic unit. Given those extra options the price is still within the amounts contemplated in the awarded contract to Spartan. The vendor has offered a prepayment discount of more than \$25,000 if the full purchase price is paid upon execution of a contract. The purchase price includes the cost of a performance bond to secure full performance by Spartan. The parties have identified a lender willing to extend credit to South King Fire & Rescue so that only a down payment of \$400,000 is required with the balance of the purchase price being due and payable over 10 years, commencing in 2023. The interest rate is approximately 2.68% on this lease/purchase arrangement. In our opinion, these changes do not nullify the competitive bid nature of the RFP in the first instance. All interested bidders were given equal opportunity to bid on the base price and the options.

Based on the above, this particular arrangement will comport with the SAO's requirements for purchasing-cooperative arrangements because Minnesota's competitive bid laws were complied with by Sourcewell. Consequently, the District may contract directly with True North for the Star Series Heavy Rescue apparatus referenced above, without further competitive bidding. Please inform me if you have any questions or concerns.

Very Truly Yours,



Joseph F. Quinn