

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 636

A RESOLUTION of the Board of Fire Commissioners of King County Fire Protection District No. 39 (aka South King Fire & Rescue), King County, Washington,

Authorizing Procurement Through a Cooperative Purchasing Arrangement for the Purchase of Two (2) Fire Engine Apparatus and Equipment from Spartan Emergency Response, Inc., and Waiving Competitive Bidding.

WHEREAS, the Board of Commissioners has been advised that the Interim Fire Chief has been provided with a formal legal opinion by the Districts legal counsel that the District may enter into a cooperative purchasing arrangement with Sourcewell, and therefore competitive bidding is not required under RCW 52.14.110;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1.

The District has identified one or more fire engines manufactured by Spartan Emergency Response, Inc., with associated equipment, to be purchased through Sourcewell, a Minnesota purchasing cooperative, and the Districts legal counsel has issued a formal opinion that such procurement meets and satisfies applicable Washington State statutes and the latest guidance from the office of the State Auditor, and therefore competitive bidding is not required under RCW 52.14.110, as the applicable notice and bidding laws of the applicable state have been followed by the lead agency and/or Sourcewell.

Section 2.

The District's Capital Improvement Plan identifies the purchase and replacement of two (2) fire engines by 2025. Due to current manufacturing timelines, orders placed today are not expected to arrive until mid-2025.

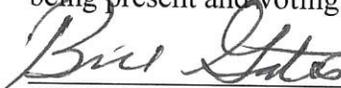
To prevent further possible delays to the replacement schedule, the District will submit a purchase for two (2) fire engines, for a total cost estimated to be \$2,000,000 dollars. A \$500,000 down-payment shall be withdrawn from the District's Capital Reserve Fund by October 25th, 2023.

To capture the quoted costs, interest rates, and delivery timelines, the District is authorized to submit an order no later than September 28th, 2023.

Section 3.

The Districts legal opinion on this procurement shall be maintained on file and attached to this Resolution.

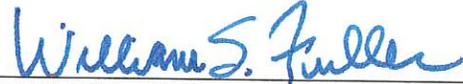
ADOPTED by the Board of Fire Commissioners of South King Fire & Rescue, King County, Washington, at a regular meeting this 26th day of September 2023, with the following Commissioners being present and voting.



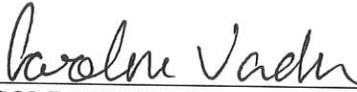
CHAIR/COMMISSIONER



VICE CHAIR/COMMISSIONER



COMMISSIONER

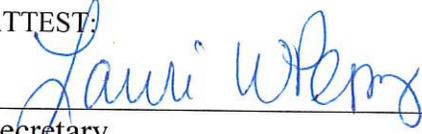


COMMISSIONER



COMMISSIONER

ATTEST:



Secretary

Resolution No. 636

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*Joseph F. Quinn,
Of Counsel*

September 25, 2023
By Electronic Mail Only

South King Fire and Rescue
Attn: Joe Ganem, Executive Director
Email: Joe.Ganem@southkingfire.org

Re: Cooperative Purchasing Arrangement Between the District and (formerly) the National Joint Purchasing Alliance, i.e. Sourcewell; executing contract directly with True North Emergency Equipment (“True North”) for the purchase of two Spartan fire engines

Dear Director Ganem:

The purpose of this letter is to give you my recommendation as to whether the District may execute a contract directly with True North for the lease-purchase¹ of two pumpers designed and built by REV Group, ie Spartan Emergency Vehicles (“Spartan”), via cooperative purchasing rather than competitive bidding. To fully answer this question we shall (1) state the applicable law, (2) enumerate the relevant facts, and (3) apply the law to the relevant facts and give a recommendation. In short, the District may contract directly with True North, by cooperative purchasing, for purchase of two Spartan fire engines (the “Apparatus”), rather than by competitive bidding, in this particular case.

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 “piggybacking” or cooperative purchasing (“Cooperative”). In a Cooperative, one public agency (the “Participating Agency”) enters into a contract with another

¹ Leases are generally not subject to the bidding requirements of RCW 52.14.110, but this lease, with an option to purchase, includes a \$500,000 down payment on the apparatus, and therefore the undersigned is treating this lease-purchase as being subject to RCW 52.14.110.

Eric T. Quinn, P.S.
September 25, 2023
Letter to Joe Ganem

public agency (the “Lead Agency”) that complied with *its own bid law*² requirements when making a particular purchase. See RCW 39.34.030(5)(b).

Under Washington law, “[A]ny power or powers, privileges or District 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).

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 over \$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*³ 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).⁴

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 matters⁵;

² In this particular case, the Lead Agency is governed by *Minnesota* bid law.

³ Cities are “municipal corporations,” i.e. “municipalities,” under RCW 52.26.020 (6). Service cooperatives are “units of local government” and “public agencies” under Minn.Stat. § 123A.21.

⁴ 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.

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
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 the Apparatus valued over \$40,000 from True North without going out to competitive bid. This purchase is being brokered through Leasing 2, Inc., as a lease-to-purchase transaction. The District wishes to purchase the Apparatus 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. The District has entered into an ILA with Sourcewell. The ILA enumerates cooperative purchasing, at the District's own risk, as the purpose of the ILA.

The remaining pertinent facts are as such:

1. On or about October 12, 2021, Sourcewell published Request for Proposals No. #113021 (the "RFP") for "Firefighting Apparatus and Fire Service Vehicles"⁶;

⁵ 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.

⁶ The RFP is located here:

<https://files.sourcewell.org/public/Shared%20Documents/Solicitations/113021-10462/Solicitation%20Documents/RFP%20and%20Addendums-Fire%20Apparatus%20113021.pdf>

2. The RFP was published in numerous newspapers across the country,⁷ and Sourcewell 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 48 days and established a concrete deadline (November 30, 2021) 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 33 different bidders, and the bids were publicly opened and read at Sourcewell’s office in Staples, Minnesota;
7. Sourcewell awarded the Contract⁸ to REV Group and its defined subsidiaries—including Spartan—using a scoring method based on a variety of evaluation factors,⁹ with a proposer potentially earning up to 1000 points. Said evaluation factors were as such:
 - 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 Contract, which explicitly states that it will be open for cooperative purchasing, is open for purchases through February 10, 2026. Most importantly, the Contract states that “[A]ll

⁷ The proof of publication is here:

<https://files.sourcewell.org/public/Shared%20Documents/Solicitations/113021-10462/Solicitation%20Documents/Proof%20of%20Publication-Fire%20Apparatus%20113021.pdf>

⁸ The Contract is located here:

<https://files.sourcewell.org/public/Shared%20Documents/Solicitations/113021-10462/113021-RVG-4/Contract%20Documents/Rev%20Group%20Contract%20113021.pdf>

⁹ The proposal evaluation is located here:

<https://files.sourcewell.org/public/Shared%20Documents/Solicitations/113021-10462/Solicitation%20Documents/Prop.%20Eval.%20-Fire%20Apparatus%20113021.pdf>

Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier's Proposal.”

True North has submitted a proposal to the District proposing the lease-purchase of the following Apparatus which was included in the original bid Spartan submitted to Sourcewell:

Two (2) 2023 Spartan Star Series Pumpers¹⁰

The Apparatus is costed at \$1,894,416¹¹ after discounts, meaning that each pumper is costed at approximately \$947,208 each.

Application of the Law to the Facts and Recommendation

Because the District has entered into a cooperative purchasing ILA with Sourcewell, the District may contract directly with True North for the lease-purchase of the above Apparatus, for the price proposed by True North, through the publicly solicited 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;
2. The ILA 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 Contract is currently being posted on the Sourcewell website;
4. Sourcewell complied with Minnesota law when soliciting proposals for the 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;

¹⁰ The Contract states that “[A]ll Equipment and Products provided under this Contract must be new and the current model” meaning that the model of the chassis, if upgraded to the current model, does *not* constitute a major change to the originally bid contract. The proposers were made aware that they had to provide the newest model.

¹¹ This amount does not reflect the *performance bond* that the undersigned counsels the District to receive, to ensure proper performance of the contract as per RCW 39.08.010.

- c. Sourcewell received bids from approximately 33 different vendors and picked the best bidders utilizing a variety of “best value” criteria—see #7 on page 3 of the RFP. 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; and
- d. Spartan was made aware under the RFP, and the Contract, that members of Sourcewell could purchase off of the Apparatus Contract.

Finally, the Contract is (1) presently open and will remain open until February 10, 2026 and (2) the Apparatus was included in the original Contract that was executed on February 24, 2022, with the Apparatus with all options being discounted at 5% off MSRP for participating agencies¹²; and again, the Contract establishes that “[A]ll Equipment, Products, or Services under this Contract will be priced at or below the price stated in Supplier’s Proposal.” Therefore, nothing more than a “minor change”¹³— has occurred as to this particular proposal. And again, minor changes to the original bid price are permitted by the SAO when purchasing from a cooperative.

Based on the above, this particular arrangement will comport with the SAO’s requirements for purchasing-cooperative arrangements. Consequently, the District may contract directly with Spartan for the purchase of the Apparatus referenced above, without competitive bidding.

Please inform me if you have any questions or concerns.

Very Truly Yours,



Eric T. Quinn

¹²<https://files.sourcewell.org/public/Shared%20Documents/Solicitations/113021-10462/113021-RVG-4/Additional%20Documents/RevGroup-Spartan%20113021-RVG%20Price%20File.pdf>

¹³ Our general rule of thumb is that if the quoted price exceeds the original/amended contract price by 15%, then the bid is “stale” and therefore cooperative purchase/piggybacking may not be utilized. But there are no facts presented to me that the price of the Apparatus at the time of the execution of the Contract has been exceeded by 15%.