

**SOUTH KING FIRE & RESCUE**

**KING COUNTY, WASHINGTON**

**RESOLUTION NO. 552**

**A RESOLUTION of the Board of Fire Commissioners of  
South King Fire & Rescue (aka KCFPD #39), King County, Washington,  
Declaring that the Purchase of an Aerial Ladder from Pierce Manufacturing is a Sole  
Source Procurement 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 Pierce Aerial Ladder is clearly and legitimately limited to a single source of supply; and

WHEREAS, therefore competitive bidding is not required and is impractical;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

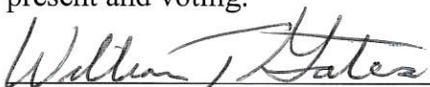
Section 1.

The District has specified by brand name an Aerial Ladder from Pierce Manufacturing because the purchase of any other Aerial Ladder, from any other manufacturer, incompatible with the Pierce Aerial Ladder Truck that was used for comparison or for specification of what equipment the District should purchase, would defeat the need for standardized training.

Section 2.

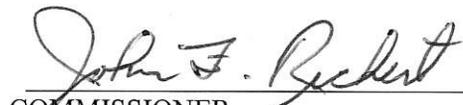
The legal opinion on this sole source procurement shall be maintained on file and attached to this Resolution.

ADOPTED by the Board of Fire Commissioners of South King Fire & Rescue, King County, Washington, at a regular meeting this 26<sup>th</sup> day of June, 2018, with the following Commissioners being present and voting.

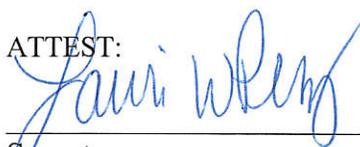
  
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CHAIR/COMMISSIONER

  
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VICE CHAIR/COMMISSIONER

  
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COMMISSIONER

  
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COMMISSIONER

ATTEST:  
  
\_\_\_\_\_  
Secretary

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June 7, 2018

*By Electronic Mail*

South King Fire & Rescue  
Board of Commissioners

Dear Commissioners:

An opinion has been requested of me as to whether the recent purchase of the Pierce aerial ladder would qualify for the sole source exception to the general rule that procurement of equipment by the fire district shall only be done through competitive bidding. We answer that question in the affirmative. My analysis follows.

Based on what Chief Mataftin has told me about the equipment, and alternative products, I have been reviewing RCW 39.04.280 (1)(a) which provides:

"(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

The statutory exception set out in the statute above is usually referred to as the sole source exception; its pedigree in Washington law is actually very old as will be seen in the following discussion. While exceptions to statutes must be narrowly construed so as not to defeat the purpose of the statute, under certain circumstances there may be only one supplier or

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one brand name that will suffice. One example is the circumstance where a patented item is essential and therefore is specified.

My review of the available law on this subject reveals, however, that the “sole source” exception is not limited to patented items. The leading case is still *Seattle v. Smith*, 192 Wash. 64, 72 P.2d 588 (1937). In that case, the specifications called for bids for “true Mazda lamps only,” which were obtainable from only one source. After reviewing two divergent lines of authority, emanating from the highest courts of various states, the *Smith* court adopted the “liberal rule” of interpreting the sole source exception. The restricted rule, the court said, would limit municipal corporations to using the exception only for patented items, but this would make it impossible according to the court to protect the best interests of the municipality. The court said the public bidding statutes are meant to promote honesty and economy in the public interest, but not to deprive the public of procuring the best article available. Given the technological advancements of our time, it would be best, the court said, to let municipalities have the privilege of using modern methods and improvements.

The *Smith* court found that previous satisfactory experience in the actual use of an article is a reasonable basis for the exercise of such discretion. Furthermore, the court made it clear that the rule was not limited to patented items. In AGO 61-62, No. 24, the Attorney General pointed out that the holding in *Seattle v. Smith* is broad enough to support specification of brand name when the public interest is served thereby. In this AG opinion, after noting that the weight of authority is in favor of the Washington view [citing 77 A.L.R. 702] they note that the underlying purpose of the bid laws would be defeated if such limited specifications were forbidden when it would clearly aid the public interest to allow it.

Based on the facts set forth in the materials Chief Mataftin has provided to me, the Pierce brand name alone was specified and therefore there is only one source for the purchased aerial ladder. The reasoning is quite compelling. In essence, the purchase of any other aerial ladder, different from the Pierce aerial ladder truck that was used for comparison or for specification of what equipment the District should purchase, would defeat the need for standardized training. Because the aerial ladder is often used in emergency operations, when there is little time to contemplate the differing systems and how the various systems thereof will operate, we conclude that it would be dangerous to try to train the crews on two entirely different aerial ladders. You want fire crews to apply their training automatically or reflexively, using what Chief Mataftin aptly described as “muscle memory” during those chaotic emergency operations. This issue would become a safety problem under WAC 296-305 (the firefighter vertical workplace safety standards) if you did not specify by brand name (Pierce). You have a duty under that administrative regulation to ensure the safety of all on duty personnel; you could assume considerable liability if there were any serious injury or death of a firefighter in the event that you bought some differing aerial ladder and any human error or negligence caused injury. Even

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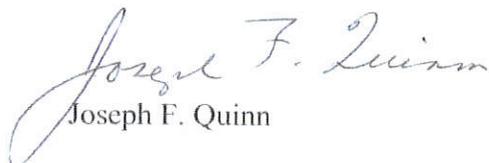
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if the claim were limited to a workers compensation claim, from a management standpoint, such a decision would be poor risk management. Even the best of training on two quite different aerial ladders would not prevent considerable risk, given the chaos of emergency operations. Chief Mataftin also noted the special problems that only ladder trucks present, such as extended ladders coming into contact with live power lines and the problem of tipping the truck over if the ladder is extended wrong. These are 35-ton vehicles and therefore the risks of injury and death are much greater than with the typical Class A pumper or fire engine. For all of these reasons, we think it makes it very wise to own and train upon only one type of aerial ladders (and one which the firefighters are already very familiar with). Therefore, competitive bidding may be waived in this instance.

We agree that Pierce Manufacturing is the sole source provider or vendor, to support Chief Mataftin's plan of buying an aerial ladder virtually identical in every way to your existing ladder truck.

The Board should adopt a resolution declaring that Pierce Manufacturing is the sole source for the specified system, and waiving competitive bidding. If you need assistance with drafting such a resolution, we would be happy to assist. In any case, make sure that this letter is attached to that resolution and made a permanent part of the file so that it can be shown to the State Auditor, if necessary.

Very Truly Yours,

  
Joseph F. Quinn