

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 559

**A RESOLUTION of the Board of Fire Commissioners of
South King Fire & Rescue (aka KCFPD #39), King County, Washington,
Authorizing the use of a Sole Source Vendor/Contractor**

WHEREAS, it has been determined that it is in the best interest of South King Fire & Rescue to use a sole source contractor for the upgrade to existing Nederman exhaust extraction equipment in Department owned facilities.

- Benz Air Engineering Company and their related Sub-Contractors, as the Seattle/King County factory approved installation contractor(s) for Nederman Equipment

NOW, THEREFORE, BE IT RESOLVED that the Board of Fire Commissioners hereby authorizes the South King Fire & Rescue Fire Chief, and/or his designee, to use the above contractor(s) for installation, maintenance and upgrades to the Nederman Systems.

ADOPTED by the Board of Fire Commissioners of South King Fire & Rescue, King County, Washington, at a regular meeting this 24th day of October, 2018 with the following Commissioners being present and voting.



CHAIR/COMMISSIONER

VICE CHAIR/COMMISSIONER



COMMISSIONER

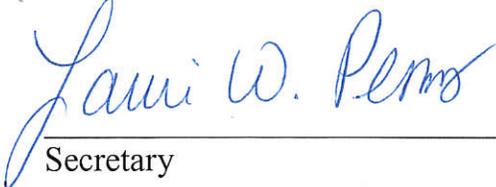


COMMISSIONER



COMMISSIONER

ATTEST:



Secretary

Resolution No. 559

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October 3, 2018

By Electronic Mail

South King Fire and Rescue ("District")
Attn: Chief Dave Mataftin

Re: Nederman Vehicle Exhaust System; Sole Source Procurement

Dear Chief Mataftin:

You have requested our legal opinion as to whether Benz Air Engineering could be considered as the sole source supplier of the equipment and parts upgrades that you require at various fire stations, with respect to your Nederman Vehicle Exhaust Systems installed many years ago. According to the information provided by you to me, you are specifying Nederman parts and equipment by brand name, which according to the opinions of the Attorney General is an acceptable way to procure as a sole source.

The following legal authorities strongly support your board's resolution to declare this procurement as a sole source and designate Benz Air Engineering as the provider. That company is the exclusive sales representative for this particular product in this region.

As you know, RCW 52.14.110 is the applicable public bidding statute, which requires that insofar as practicable, your procuring of equipment should be done pursuant to formal sealed bids. One of the statutory exceptions to this bidding requirement is the situation when availability is clearly and legitimately limited to a "single source of supply." *See* RCW 39.04.280 (1)(a). 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 one brand name that will suffice. One example is the circumstance where a **patented item** is essential.

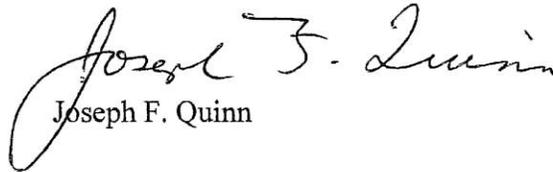
Our review of the available law on this subject reveals, however, that the "sole source" exception is not limited to patented items. The leading case is still *Seattle v. Smith*, 192 Wn. 64, 72 P.2d 588 (1937). In that case, the specifications called for bids for "true Mazda lamps only," which were obtainable 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. 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 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, the AG noted that the underlying purpose of the bid laws would be defeated if such limited specs were forbidden when it would clearly aid the public interest to allow it.

In a later AG letter opinion, AGLO 1971, No. 128, the Attorney General referred to both the *Smith* case and the above AGO with approval, stating that specifying by brand name was acceptable “only if the officials submitting the call for bids have not drafted these specifications arbitrarily and capriciously, and are acting in good faith.” Consequently, not only may a municipality declare sole source based on a patent, but may also do so by brand name, especially when it would be in the public interest to do so. In this instance, it is clear that you have not specified by brand name arbitrarily or capriciously, you are acting in good faith, and the public interest would be served by you saving money in not replacing the exhaust systems completely. Therefore it is my opinion that a board resolution declaring Benz Air Engineering to be a sole source provider would be appropriate in this instance. I have seen your draft resolution and it looks fine.

Very Truly Yours,



Joseph F. Quinn