

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 590

A RESOLUTION of the Board of Fire Commissioners of South King Fire & Rescue (aka KCFPD #39), 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 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.

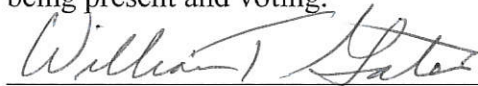
Section 2.

The District will purchase two (2) fire engines using capital funds identified in the 2021 Budget, adopted by the Board of Commissioners on October 27th, 2020.

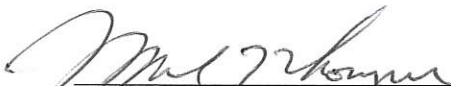
Section 3.

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 29th day of December, 2020, with the following Commissioners being present and voting.



CHAIR/COMMISSIONER



VICE CHAIR/COMMISSIONER



COMMISSIONER

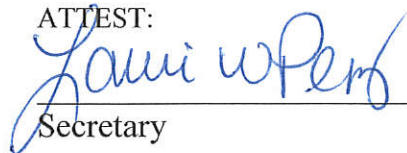


COMMISSIONER



COMMISSIONER

ATTEST:


Secretary

Resolution No. 590

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December 4, 2020

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 (formerly) the National Joint Purchasing Alliance, i.e. Sourcewell; executing contract directly with True North, a single source vendor 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 recommendation as to whether (1) the District may enter into a cooperative purchasing arrangement with Sourcewell, and (2) after entering the ILA, the District may execute a contract directly with True North for Spartan apparatus via cooperative purchasing rather than competitive bidding. To fully answer these two questions, 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 for the purchase of Spartan apparatus via cooperative purchasing, 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 public agency (the “Lead Agency”) that complied with *its own bid law*¹ requirements when making a particular purchase. See RCW 39.34.030(5)(b).

¹ In this particular case, the Lead Agency is governed by *Minnesota* bid law.

Quinn and Quinn, P.S.
December 4, 2020
Letter to Dave Mataftin Re Sourcewell Purchasing Cooperative

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*² 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).³

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 matters⁴;
2. the Lead Agency must have properly advertised the original bid on the Lead Agency’s website;

² 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.

³ 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.

⁴ 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.

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 Spartan 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—Chief Mataftin has signed this agreement. 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. 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, 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 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 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 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:

Two (2) New Spartan "Star Series" Pumper Apparatus & Equipment featuring a new 2020 Spartan Gladiator Cab/Chassis; \$619,971.00 Each or \$ 1,239,942.00 for both units.

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

Application of the Law to the Facts and Recommendation

If the District enters into the attached ILA with Sourcewell, the District may contract directly with True North for the purchase of the Star Series 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;
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 Apparatus Contract is currently being 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—see #7 on page 3. 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, some minor alterations being that the District has opted to utilize a larger and more expensive drive train (for an approximately \$30,000 increase in the base-line price) and a different suspension system (for an approximately \$20,000 increase in the base-line price) from the originally specified apparatus.

Based on the above, this particular arrangement will comport with the SAO's requirements for purchasing-cooperative arrangements. Consequently, if the District enters into the ILA with Sourcewell, the District may contract directly with True North for the Star Series referenced above, without competitive bidding. Please inform me if you have any questions or concerns.

Very Truly Yours,



Eric T. Quinn