

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 589

A RESOLUTION of the Board of Fire Commissioners of South King Fire & Rescue (aka KCFPD #39), King County, Washington, Authorizing Procurement of a Marine Fire and Rescue Vessel (aka Fire Boat) through the General Services Administration (GSA), an agency of the United States; Scheduling a Contract with Gravois Aluminum Boats LLC of Jeanerette, LA. (dba Metal Shark Boats), 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 Districts legal counsel that the District may enter into a purchase arrangement with Metal Shark Boats, Inc., through the auspices of the United States General Services Administration (GSA) and therefore competitive bidding is not required under RCW 52.14.110; and

WHEREAS, GSA has in writing authorized the District to purchase the Fire Boat through the GSA; and

WHEREAS, the District has obtained a grant approval from the State of Washington to fund a substantial portion of the Fire Boat, because the Vessel shall be used as a regional fire, rescue and emergency resource;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

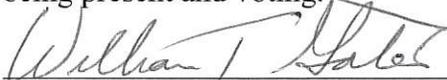
Section 1.

The District has specified by brand name and by model, "Metal Shark 38 Defiant" a CBRN-equipped Marine Fire, Rescue and Emergency Vessel to be built by Metal Shark Boats, Jeanerette, LA. Competitive bidding under RCW 52.14.110 is not required or is hereby waived.

Section 2.

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:

Lauri W. Perry

Secretary

Resolution No. 589

Quinn & Quinn, P.S.
PROFESSIONAL SERVICE CORPORATION
ATTORNEY AT LAW
20 Forest Glen Lane SW
Lakewood, WA 98498
253-590-6628
Email: joequinn@firehouselawyer.com
ericquinn@firehouselawyer2.com

December 2, 2020

By Electronic Mail

South King Fire and Rescue
Attn: Kelsey Barrett, purchasing agent
Kelsey.Barrett@SOUTHKINGFIRE.ORG

Re: General Services Administration; Schedule contract with Gravois Aluminum Boats, DBA-Metal Shark Marine, for CBRN-equipped fire boat valued at approximately \$1,300,000.00

Dear Ms. Barrett:

The purpose of this letter is to discuss whether South King Fire and Rescue (hereinafter “District”) may enter into a contract Gravois Aluminum Boats (hereinafter “Gravois”) for the purchase of a CBRN-equipped fire boat valued at approximately \$1,300,000 without going out to bid. Gravois is an authorized vendor with the General Services Administration (hereinafter “GSA”). The answer to your question is yes. To fully discuss this answer, we shall (1) state the applicable law, (2) enumerate the relevant facts, and (3) apply the law to the facts and make a recommendation.

Applicable Law

Under Washington law, a fire district may enter into “any and all *necessary contracts*.” RCW 52.12.021 (emphasis added). However, a fire district generally **must** publish a traditional call for bids on a purchase of equipment valued above \$40,000. See RCW 52.14.110. There is an exception to this requirement under the Washington State Interlocal Cooperation Act, RCW 39.34. This exception permits one local agency to “piggyback” off of the bid of another public agency¹—the “lead agency.” See RCW 39.34.030 (5)(b). This “piggybacking” may be accomplished through a purchasing cooperative, as stated in the attached guidance from the Washington State Auditor (hereinafter “SAO”). The piggybacking agency may engage in cooperative agreements with any agency of the United States if the laws applicable to that agency permit cooperative purchasing. RCW 39.34.030 (1). In the attached guidance, the SAO indicates that the following constitutes a

¹ The United States of America or any agency thereof is a “public agency” under RCW 39.34.020 (1).

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valid purchasing-cooperative arrangement by which a public agency may purchase directly from a vendor without competitive bidding:

1. The Participating Agency must enter into a “membership agreement,” i.e. a written 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;
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.

Despite the above, there is what one might call “an exception to the exception”: **Under Washington law, any “political subdivision”—which the District is, as per RCW 52.02.020—is “hereby authorized to enter into *any contract* with the United States of America, *or with any agency thereof*, for the purchase of any equipment, supplies, materials, or other property, without regard to the provisions of any law requiring the advertising, giving of notices, (or) inviting or receiving bids.” RCW 39.32.070 (emphasis added).**

Under Washington and the common law, a series of conduct or writings may constitute a contract, without the parties explicitly agreeing that they are entering into a formal contract.

Applicable Federal Laws

The federal Public Law 110-248, the Local Preparedness Acquisition Act, authorizes the Administrator of the GSA to provide for the use by state or local governments of Federal Supply Schedules of the GSA—said schedule contracts having been *competitively bid* or solicited under the applicable laws—for firefighter and rescue equipment.

Under 41. U.S.C. § 3701 (1), “[A]n executive agency (the GSA) shall evaluate sealed bids and competitive proposals, and award a contract, based solely on the factors specified in the solicitation... [and] shall award a contract with reasonable promptness to the responsible source

whose bid conforms to the solicitation and is most advantageous to the Federal Government, considering only price and the other price-related factors included in the solicitation.”

Relevant Facts

In this case, the District does not have a written membership agreement in place with the GSA. Furthermore, nothing within the Schedule contract states that the GSA complied with its own bid law requirements prior to entering into the Schedule contract with Gravois. The Schedule only states that “state and local governments” may make purchases through the Schedule. However, the GSA did communicate the following to the undersigned in an email dated November 30, 2020:

No cooperative agreement is required or available as the access to Schedules for non-federal buyers is authorized under law, Public Law 107-347 and Public Law 110-248. The Cooperative Purchasing Program allows state, local, and tribal governments to purchase IT, security, and law enforcement products and services through specific Schedule contracts.

The GSA has provide a link to applicable solicitation documents as follows:

<https://beta.sam.gov/opp/229b60cf2e9249e1a1ff9a097b7f51d2/view>

The solicitation documents underlying Contract No. GS-07F0362T, (the contract which Gravois is offering to other purchasers) indicate as follows:

1. The GSA posted Notice ID 47QSMD20R0001 on its website and this notice remains posted; the undersigned will call this notice the “RFP”;
2. The RFP was substantially broad, and included a request for proposals regarding law enforcement and rescue equipment;
3. The RFP includes directions as to how proposers must submit bids which include a “price proposal” that sets forth the products being offered for purchase and the prices thereof;
4. Gravois responded to the RFP and is listed as a supplier under this particular contract,² and Gravois lists the open RFP/contract (GS-07F0362T) on its website³;
5. The RFP remains open;
6. The RFP informed proposers that third-party government agencies may purchase off of this particular Schedule Contract;
7. Proposals were submitted from approximately 40 different bidders;

²

<https://www.gsaelibrary.gsa.gov/ElibMain/home.dohttp://www.gsaelibrary.%20gsa.gov/ElibMain/contractorInfo.do?contractNumber=47QSWA18D0015&contractorName=GRAVOIS+MARINE+SOLUTIONS%2C+LLC&executeQuery=YES>

³ <https://www.metalsharkboats.com/metal-shark-awarded-470-boat-uscg-rb-s-replacement-contract/>

8. The GSA awarded contracts to a variety of agencies, and appears to have done so based on the proposals that were most advantageous to the GSA, using the factors set forth in the solicitation (price and past performance, specifically); and
9. The contract is presently open for purchases.

Applicable Law

Because RCW 39.32.070 obviates the need for an *interlocal agreement*, the first prong of the SAO requirements for a valid cooperative purchasing arrangement does not truly apply. Additionally, the argument could be made that the GSA is *not even a cooperative* but instead is a stand-alone agency through which the the District is purchasing via the authority conferred under RCW 39.32.070. Furthermore, the argument could be made that because the District is making a purchase through the GSA, a federal agency, that prongs 2-5 of the SAO requirements—which resulted from an interpretation of *RCW 39.34.030*—do not even apply. Although this argument could be made, the undersigned opines that prongs 2-5 have been satisfied, for the following reasons:

1. the GSA advertised, and continues to advertise, the RFP on the GSA website;
2. the GSA conformed to its own requirements by only accepting proposals in response to the solicitation, listing price as a factor in considering proposals;
3. Gravois has obviously agreed to open the contract to other agencies; and
4. the contract appears to be open for purchase and the undersigned is aware that the District seeks to purchase a fire boat that conforms to the specifications of the original proposal.

Finally, the series of emails (attached) from the GSA stating that the District may purchase through the GSA without an interlocal agreement constitutes the necessary “contract” required under RCW 39.32.070 and Washington law. For the reasons above, the District may purchase the fire boat directly from Gravois without engaging in competitive bidding.

Very Truly Yours,



Eric T. Quinn