SOUTH KING FIRE AND RESCUE
REGULAR MEETING
BOARD OF FIRE COMMISSIONERS
December 29, 2020
Virtual Meeting Via Conference Call Only
5:00 PM
AGENDA

1. Call to Order

2. Pledge of Allegiance

3. Approval of Minutes from the Regular Meeting on November 24, 2020.

4. Commissioners Comments

5. Public Comments – *To Reduce the Risk of Exposure Due to COVID-19* we will not be accepting in-person, verbal comments during this meeting. Alternatively, during the regular order of business, those wishing to provide comment will need to send an email to (lauri.perry@southkingfire.org) or provide it in written format. The deadline for comments is 3:00 pm on December 29, 2020, the comments will be forwarded to the Board of Commissioners and will be attached to the minutes.

6. Commissioner Committee Reports

7. Resolution 587 – Adopt 2021 Regular Meeting Dates

8. Resolution 588 - Authorizing District Acceptance of Washington State Department of Commerce Grant for the Purchase of a Fire Boat

9. Resolution 589 – Authorizing the Procurement of a Marine Vessel

10. Resolution 590 – Authorizing the Procurement of Fire Engine Apparatus and Equipment from Spartan Motors

11. Resolution 591 – Authorizing the Procurement of two (2) additional Fire Engine Apparatus and Equipment form Spartan Motors

12. Administrative Team Report

13. December Budget

14. Approval of Vouchers

15. Adjournment

We will respect each other and their opinion, and we will hold each member accountable to confront inappropriate behavior, or behavior that does not add value.

The Board of Fire Commissioners may add items and take action on items not listed on the agenda.

SOUTH KING FIRE & RESCUE
November 24, 2020
Virtual Meeting per Governor Inslee's Proclamation
Station 68

Commissioner Gates called the regular meeting to order at 1700 hours with Commissioners Rickert, Fuller, Berger and Thompson in attendance via the virtual meeting. Board Secretary Lauri Perry recording.

The Pledge of Allegiance was led by Commissioner Thompson.

APPROVAL OF MINUTES
Commissioner Gates asked for the approval of the Regular Meeting Minutes on October 27, 2020. Commissioner Berger made a Motion to approve the minutes. Motion was seconded by Commissioner Thompson. Motion passed unanimously.

COMMISSIONER COMMENTS
Commissioner Thompson wished everyone a Happy Thanksgiving and reminded everyone to stay safe during the holidays, you are doing a great job we will get through this thing. Commissioner Thompson also thanked everyone for what they are doing.

Commissioner Rickert thanked everyone for the work they have done throughout the year. He also wished everyone a Happy Thanksgiving and reminded everyone, don't forget to wear your masks.

Commissioner Fuller wished everyone a Happy Thanksgiving.

Commissioner Berger echoed what the other Commissioners have said.

Commissioner Gates echoed what the other Commissioners have said and he wished everyone a Merry Christmas since our next board meeting is after Christmas.

PUBLIC COMMENTS
Commissioner Gates noted that due to COVID-19 and the virtual meeting all public comments were to be submitted in writing prior to 3:00 pm today, we have not received any written public comments at this time.

COMMISSIONER COMMITTEE REPORTS
Commissioner Gates wasn't aware of any committee meetings.

RESOLUTION 585 – FLEET MISC. SURPLUS ITEMS
Chief Pennington read Resolution 585 into record. Commissioner Thompson made a Motion to approve Resolution 585. Motion was seconded by Commissioner Rickert. Motion passed unanimously.

RESOLUTION 586 – REAPPOINT LAURI PERRY BOARD SECRETARY

Chief Pennington read Resolution 586 into record. Commissioner Thompson made a Motion to approve Resolution 586. Motion was seconded by Commissioner Berger. Commissioner Gates added Lauri has been our board secretary for 12 years she has done an excellent job. In talking to Commissioner Thompson about the reappointment, his comment was if it isn't broke don't fix it. Motion passed unanimously.

ADMINISTRATIVE TEAM REPORT

OPERATIONS – AC Crossen

AC Crossen noted it has been a busy month. We had a great event at Station 63 for Halloween with the candy shoot that DE Hoag put together, it was a very popular event we even had some people who saw it on social media drove from Seattle to witness it. Lots of people attended this and they were grateful with all of the COIVD restrictions in place that we still did an event like this. We had a 2nd alarm fire earlier this week, everything went well. We have 1 FF at Academy – she will be completing FF1, 2 and hazmat testing, we will see her February 1st. AC Crossen thanked HR for all of the help. We will be hiring 5 people, they will start in mid-January and proceed on to the Academy on February 1st. Our Operations personnel are on the verge of their vacation picks for 2021. Commissioner Rickert asked if there would be a graduation ceremony, AC Crossen noted that there will be a graduation ceremony however with the COVID restrictions in place, the immediate family members may be the only ones invited to the ceremony and so it would be a virtual graduation like the last one. AC Crossen will let everyone know if it changes.

SPECIAL OPERATIONS – BOND – EMERGENCY MANAGEMENT – AC Mataftin

AC Mataftin reported that Station 60, bldg. 1 is slightly ahead of schedule, things are going quite well. Commissioner Berger had a question, he has been reading about the COVID vaccine and the order that the vaccine will be administered. AC Goodsell replied that he has also read similar reports he has heard that nursing homes, healthcare workers followed by first responders followed by those over 80 and police officers, however we do not know exactly how that's going to work out. The earliest that the vaccines could be available is December 14th.

FMO – CAO – AC Goodsell

AC Goodsell noted that the COVID numbers are increasing in King County, since we last met we have had several of our members in quarantine with only 1 testing positive. He reminded everyone to use caution, wear face coverings and wash your hands.

FMO - Chris Boone joined FMO earlier this year, since we weren't able to officially recognize him at a Commissioner's meeting we were able to officially recognize his promotion to Deputy Fire Marshal in the truck bay at 62. He has been a welcome addition to the team, they are really pleased to have him on board he is doing great.

CARES – Captain Smith will be forwarding information on the CARES program to the Commissioners.

COVID Testing – Lt. Greg Willett is doing a fantastic job supervising the process. They are operating at capacity, they have had lots of people lined up for testing they have completed as many as 1,100 tests a day at this location.

Capt. Chaney noted that we were able to post a story about the COVID testing at the Aquatic Center everyone is doing a great job handling lots of people for their COVID tests. We had another great opportunity for Veterans Day to get a story out there about FF Timothy Gurule one of our newest members talking with some of our other members about their time serving in the Military in the same company and being deployed together. We had a great event at the Federal Way Celebration Park for Halloween, it was a drive through event, "Trunk or Treat" we passed out lots of candy. We were also able to put DE Hoag in touch with King 5 News for the candy shoot that she put together to pass out Halloween candy at Station 63 while social distancing. Commissioner Gates asked how long it is taking to get the COVID results back from the testing site at the Aquatic Center. AC Goodsell responded that the results should be available in 24 hours, however due to the number of people that are being tested before Thanksgiving it has taken up to 2 days to get results.

FLEET & FACILITIES

AC Chaney reported that Fleet has moved into Station 60, they are trying to get everything put away, they still have a mess on the floor, but they are working on it and they are also working on our rigs and operating full time out of Station 60. Facilities is waiting for the remodel at Station 60 to be completed, then they will move from Station 68. Commissioner Fuller mentioned during the COVID calls some other agencies are talking about PPE shortages, how were are doing on PPE supplies. AC Chaney noted that we are doing very good we have we have 29,480 N95 masks and 78,000 gowns. AC Chaney added that we are in very good shape.

HUMAN RESOURCES

HR Manager Mary Stevens didn't have anything to report. Commissioner Thompson inquired if the recent promotion lists were published. Mary noted that yes they have she will forward him a copy of the Lieutenant, Captain and Battalion Chief lists.

Chief Pennington

Chief Pennington noted that as you can see across the organization people are doing some phenomenal things, he is very proud of all of our members and the great things they are doing.

Chief Pennington has an interlocal agreement between South King Fire & Rescue and the City of Des Moines, he is asking for the Boards permission to sign the agreement. It has to do with the creation of the Emergency Operations Center (EOC) that was created at Station 67. We are still involved with the Emergency Operations with the City of Federal Way, however we provide services to two (2) cities. We can walk in, turn on the lights and the EOC is ready to go, we don't have to pull things out of boxes and set everything up. Commissioner Berger inquired as why there would not be a joint budget to operate the EOC for ongoing maintenance and supplies. Chief Pennington replied that we budget dollars for the things that we need as does the City to support the EOC we do have a line item for Emergency Management to support this. The King County Medic One EOC is just down the hall and the City of Des Moines Public Works Division is just across the street. Commissioner Berger made a Motion to approve the agreement as proposed by Chief Pennington. Motion was seconded by Commissioner Thompson. Motion passed unanimously.

Chief Pennington noted that our boat is reaching the end of life. We hired Anthony Hemstad as a legislative advocate to work on securing some regional funds to replace the aging boat. The boat is a regional asset it covers the areas between Seattle and Tacoma, it is staffed 24/7. In July we received

confirmation that we would receive $750,000 in regional dollars for a boat, through a grant via the Department of Commerce. Chief Pennington is asking for the Boards permission to sign the grant to receive $727,750, by expensing this money it allows us to move forward with the grant and to reach out to boat venders. Commissioner Gates asked if legal counsel has reviewed the contract. Chief Pennington noted that the contract is not open for discussion and/or debate, he added that we have until June 2021, to expense the funds and get reimbursed. AC Mataftin added that he has been looking at 2 boat builders, one is an 18 months build cycle and the other one is a 6 month build cycle. Commissioner Gates asked a few questions about information in the contract. AC Mataftin noted that there needs to be some clean-up on the contract, with approval tonight we would go back to for one final revision on the contract, we have no control over the contract. They drafted the entire contract, we have had no input, it's a broiler contract and a number of the things in the contract don't apply to us. The contract has been reviewed by the Attorney General's Office. Commissioner Gates added that he doesn't want to hold things up but we need to have our legal counsel review the contract, before we agree to it. Commissioner Berger added that if he is being asked to approve this, he would like to see the contract. The question was asked about going out to bid, AC Mataftin added that we are looking at purchasing the boat via GSA so we would not have to go out to bid.

This was tabled for legal counsel review and to be reviewed by each of the Commissioners.

NOVEMBER BUDGET

Finance specialist Kelsey Barrett read into record the list of expenditures for the month of November.

Mid-Month Utility Warrants (114714-114738) totaling	$284,523.37
Accounts Payable Warrants (114739-114806) totaling	$889,027.44
Payroll Direct Deposit Document for 181 indiv. DD022012--022102 totaling	$1,299,439.86
Payroll Warrant for 0 individual #	$0
Payroll Electronic Federal Tax Payment totaling	$300,042.67
Medical Claims as of November 18, 2020	$92,244.10
TOTAL approval	$2,865,277.44

Kelsey added that we are at 2.28% under budget.

APPROVAL OF VOUCHERS

Commissioner Gates noted that since this is a virtual meeting and the Board will not be signing the vouchers tonight, he requested a Motion and a second to approve the vouchers. Commissioner Thompson made a Motion to approve the vouchers as presented. Motion was seconded by Commissioner Fuller. Motion passed unanimously.

Meeting adjourned at 1811 hours.

COMMISSIONER (CHAIR)

COMMISSIONER (VICE CHAIR)

COMMISSIONER

COMMISSIONER

COMMISSIONER

BOARD SECRETARY

SOUTH KING FIRE & RESCUE IS AN EQUAL OPPORTUNITY EMPLOYER

SOUTH KING FIRE AND RESCUE
KING COUNTY, WASHINGTON

RESOLUTION NO. 587

A RESOLUTION of the Board of Commissioners of South King Fire and Rescue (aka KCFPD #39), King County, Washington, Adopting the Regular Meeting Schedule for 2021

WHEREAS, the Board of Commissioners have agreed that Regular meetings shall normally be held on the fourth Tuesday of every month beginning at 5:00 pm (1700 hours), with exceptions allowed due to scheduling conflicts; and

WHEREAS, the Board of Commissioners now desires to formally establish the Regular meeting schedule for 2021.

NOW, BE IT RESOLVED, by the Board of Commissioners of South King Fire and Rescue that the following dates shall be adopted for the Regular Meetings of the Board in 2021:

Tuesday, January 26, 2021, beginning at 5:00 pm at Station 68
Tuesday, February 23, 2021, beginning at 5:00 pm at Station 68
Tuesday, March 23, 2021, beginning at 5:00 pm at Station 68
Tuesday, April 27, 2021, beginning at 5:00 pm at Station 68
Tuesday, May 25, 2021, beginning at 5:00 pm at Station 68
Tuesday, June 22, 2021, beginning at 5:00 pm at Station 68
Tuesday, July 27, 2021, beginning at 5:00 pm at Station 68
Tuesday, August 24, 2021, beginning at 5:00 pm at Station 68
Thursday, September 23, 2021, beginning at 5:00 pm at Station 68
Tuesday, October 26, 2021, beginning at 5:00 pm at Station 68
Tuesday, November 23, 2021, beginning at 5:00 pm at Station 68
Tuesday, December 28, 2021 beginning at 5:00 pm at Station 68

NOW, BE IT FURTHER RESOLVED that all Regular Meetings shall normally be held at Station 68, (1405 SW 312th Street, Federal Way, WA) until further notice.

ADOPTED at a Regular Meeting of the Board of Commissioners of South King Fire and Rescue this 29th day of December, 2020, the following Commissioners being present and voting.

_____ CHAIRMAN/COMMISSIONER

_____ VICE CHAIR/COMMISSIONER

_____ COMMISSIONER

_____ COMMISSIONER

_____ COMMISSIONER

ATTEST:

_____ Secretary

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 588

A RESOLUTION of the Board of Fire Commissioners of South King Fire & Rescue (aka KCFPD #39), King County, Washington. Authorizing Acceptance of the Washington State Department of Commerce Grant for the Purchase of a Fire Boat

WHEREAS, the Department of Commerce of the State of Washington has approved a grant from the State of Washington to South King Fire & Rescue to fund partially the purchase of a fireboat, which is considered a regional resource; and

WHEREAS, the District has sufficient funds available in the budget for 2021 to complete the purchase;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1.

The District has received, and the Board has reviewed the offer from the Department of Commerce of a state grant in the amount of $727,750.00 to partially fund the purchase of a much-needed fireboat, to replace the current district fireboat, which is obsolete and is now too expensive to continue repairing.

Section 2.

The Board hereby approves acceptance of the aforesaid grant and authorizes the Fire Chief to execute any and all necessary documents to effectuate the acceptance of the grant and purchase of the fireboat.

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

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:

_____

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 agency[1]—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).

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 subvision"—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 website[3];
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;

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[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

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

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VICE CHAIR/COMMISSIONER

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COMMISSIONER

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COMMISSIONER

_____
COMMISSIONER

ATTEST:

_____

Secretary

Resolution No. 590

Quinn & Quinn, P.S.
PROFESSIONAL SERVICE CORPORATION
ATTORNEYS AT LAW
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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.

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 matters[4];

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

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[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 adminsistrative 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. Markeplace 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 expense drive train (for an approximately $30,000 increase in the base-line price) and a different suspension sytem (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

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 591

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) Additional 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 Districts Capital Improvement Plan identifies the purchase and replacement of two (2) fire engines, one (1) in 2022 and one (1) in 2023.

Section 3.

Limited-time manufacturer incentives on fire engine orders greater than quantity two (2), offer significant discounts and savings to the District over the anticipated and budgeted amounts. To capture these savings, the District will purchase two (2) fire engines using Capital Reserve Funds, for a total cost estimated to be $1.35M.

Section 4.

Utilizing funds from the voter-approved Maintenance & Operations (M&O) Levy, the District will replenish the actual cost of one (1) fire engine in 2022 and one (1) in 2023 respectively, to the Capital Reserve Fund.

Section 5.

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. 591

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

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.

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 matters[4];

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

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[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.

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