

SOUTH KING FIRE & RESCUE

KING COUNTY, WASHINGTON

RESOLUTION NO. 551

**A RESOLUTION of the Board of Fire Commissioners of
South King Fire & Rescue (aka KCFPD #39), King County, Washington,
Declaring that the Remounting of a 2019 Ford-Manufactured Chassis by Braun NW 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 remount of a 2019 Ford-manufactured chassis by Braun NW, using the components set forth in District-drafted specifications provided to Braun NW, 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:

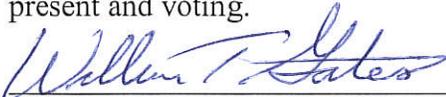
Section 1.

The District has specified by brand name a remounting of a 2019 Ford-manufactured chassis by Braun NW as being required due to the need for compatibility with existing and virtually identical apparatus owned and operated by the District.

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 24th day of April, 2018, with the following Commissioners being present and voting.



CHAIR/COMMISSIONER



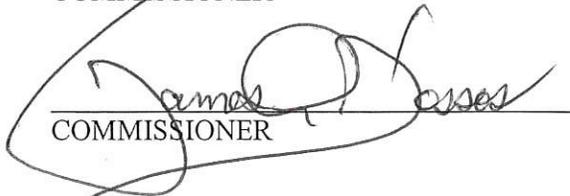
VICE CHAIR/COMMISSIONER



COMMISSIONER



COMMISSIONER



COMMISSIONER

ATTEST:



Secretary

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March 26, 2018

By Electronic Mail

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

Re: Sole Source Purchase; Re-mount of Braun chassis

Dear Chief Mataftin:

The purpose of this letter is to give my recommendation as to whether the District may waive competitive bidding for the remounting of a chassis by Braun Ambulance (hereinafter "Braun"), with various carefully delineated specifications. To answer this question, I will (1) set forth the applicable law; (2) outline the facts as you have relayed them to me; and (3) apply the law to the facts to reach a conclusion. My ultimate opinion is yes: The District may waive competitive bidding in this case.

Applicable Law

As you know, RCW 52.14.110 is the applicable public bidding statute, which requires that insofar as practicable, procurement of equipment valued over \$10,000 shall be accomplished using formal sealed bids. One of the statutory exceptions to this bidding requirement is when the when availability of particular equipment is "clearly and legitimately limited to a single source of supply." See RCW 39.04.280 (1)(a). This is called the "sole source" exception.

The leading case on the sole source exception is still *Smith v. City of Seattle* 192 Wn.64, 72 P.2d 588 (1937). In *Smith*, 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 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."

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Letter to Dave Mataftin Regarding Sole-Source Purchase

In AGO 61-62, No. 24, the Attorney General pointed out that the holding in *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], the AG notes 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. The AG ultimately opined that a public agency may validly declare a sole-source purchase by “listing items by trade name, brand name, or name of manufacturer.”

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 specifying as such “have not drafted these specifications arbitrarily and capriciously, and are acting in good faith.”

Applicable Facts

You have asked whether the following quotation would qualify as a sole-source purchase:

REMOUNT/REFURBISH ONE (1) 2009 NORTH STAR 167-3 MODULE #1193-3 ONTO A 2019 FORD E-450 4X2 GAS CHASSIS PER ENCLOSED SPECIFICATIONS DATED 3/19/18.

The “3/19/18” specifications referred to in the above quote include but are not limited to the following:

- “6.8L EFI Triton V10” engine
- “TorqShift HD 6-speed automatic transmission with two overdrive ratios, tow/haul mode, SelectShift capability, and one reverse gear.”
- “[Exhaust system] complies with Federal Motor Carrier Safety Regulations, Part 393.83.”

You have informed the undersigned that you wish to have Braun perform such a remount on the above 2019 Ford chassis to make the refurbished aid car “just like the 5 [new Braun aid cars] we have.” You further informed me that “Braun built the apparatus that we want to re-mount...IF Braun were to do the re-mount the sixth rig would be essentially exactly the same as the others we own. If another builder did the work, I believe (due to proprietary equipment and construction techniques) the rig would not be remotely the same.”

Application of the Law to the Facts

Because, technically, if only Braun could perform this remount to make this refurbished aid car exactly like the five other rigs, then soliciting the services and necessary equipment from Braun is “clearly and legitimately limited to a single source of supply.” This satisfies *Smith* and RCW

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39.04.280 (1)(a). Furthermore, soliciting the services of Braun to remount a Braun chassis would clearly be in the public interest because installing non-Braun components on a Braun chassis may discourage uniformity in fleet equipment

Because the District has drafted the above specifications in good faith, and Braun is clearly the only vendor that could make the sixth rig "exactly the same" as the five others, then the District may validly claim the purchase of various brand-name components through Braun, as a sole source purchase. Of course, pursuant to RCW 39.04.280 (2)(a), the Board must formally declare sole source by resolution, to fully legitimize this purchase and satisfy the State Auditor. We have attached such a resolution to this letter.

We trust the above responds to the questions you have asked, but please inform us if you have any further questions or concerns.

Very Truly Yours,

Eric T. Quinn