



Gig Harbor Fire & Medic One

RESOLUTION NO. 2017-05

A RESOLUTION OF THE GOVERNING BOARD PIERCE COUNTY FIRE PROTECTION DISTRICT No. 5 DECLARING THAT PROCUREMENT OF FERNO AMBULANCE COTS 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 Ferno Ambulance Cots are actually and legitimately limited to a single source of supply, because District Five has specified a patented item; and

WHEREAS, therefore competitive bidding is not required and is impractical;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1.

Ferno EMS is the sole source of the Ferno Ambulance Cot in the State of Washington. The District has specified the Ferno Ambulance Cot as being required due to the need for compatibility with existing systems in the fire stations owned or operated by the District. Because the Ferno Ambulance Cot is a patented product or item and because Ferno EMS is the only Ferno Ambulance Cot dealer in the state, this company is the sole source and therefore competitive bidding is impractical, is not required and is therefore hereby waived.

Section 2.

The legal opinion on this sole source procurement shall be maintained on file and attached to this Resolution.

ADOPTED this 25th day of April, 2017.

Attest:

District Secretary

PIERCE COUNTY FIRE PROTECTION
DISTRICT NO. 5

Chairman
Commissioner
Commissioner
Commissioner
Commissioner
Commissioner

APPROVED AS TO FORM

Eric T. Quinn, Attorney at Law

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Of-Counsel:
Eric T. Quinn, P.S.

April 18, 2017
By Electronic Mail

Pierce County Fire Protection District Five
Attn: Assistant Chief Eric Watson

Re: Sole Source Purchase of Ambulance Cots

Dear Chief Watson:

You have requested our legal opinion as to whether Pierce County Fire Protection District Five (hereinafter "District Five") may declare Ferno Ambulance Cots (hereinafter "Ferno Cot") a sole source purchase, thereby waiving the competitive bidding requirements for purchases of equipment exceeding \$10,000. As you have informed us, the Ferno Cot is unique in that it will "self-load" without any mechanical assistance from the ambulance. All power and loading features are built into the cot mechanism and controlled by the operator. It also will lift up to 700 pounds which would streamline District Five's bariatric operations across the fleet and not require the extra cost and time of outfitting and deploying a specially built "bariatric unit."

Most importantly, the Ferno Cot has in-force patents for (1) "automated systems for powered cots"; (2) "powered roll-in cot"; and (3) "powered ambulance cot within an automated control system," all of which are pertinent to the "self-loading" and remote operation of the Ferno Cot.

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 only to patented items. The leading case is still *Seattle v. Smith*, 192 Wn. 64, 72

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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 found that previous satisfactory experience in the actual use of an article is a reasonable basis for the exercise of such discretion. Furthermore, the 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 [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.

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. For the following reasons, purchasing the Ferno Cot, specifically, would further the public interest, and therefore District Five may validly declare the Ferno Cot a sole source:

First, a public agency has an obligation to provide a safe workplace, and the unique, **patented** Ferno Cot would make transfer of bariatric patients less dangerous, therefore subjecting District personnel to less potential for injury. *See* RCW 49.17.060. Second, purchase of the Ferno Cot may save taxpayer dollars because District Five would not be required to expend money and resources (such as personnel time) to retro-fit various ambulances, or even build a specific “bariatric unit.”

Finally, we would note that purchase of the Ferno Cot would not be detrimental to the purpose of promoting competition, which is inherent in the bid laws. That is because the Ferno Cot has **patented** components, and therefore knowledge by other vendors that these patented components motivated a sole source purchase would promote innovation, and therefore competition. Again, even under the “restricted rule” for sole-source purchases—Washington follows the less-

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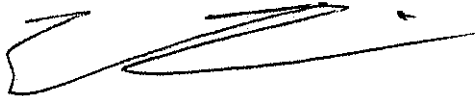
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stringent "liberal rule"—equipment may be declared as sole source by specifying that an item is **patented**.

Based on the above, District Five may validly claim the purchase of the Ferno Cot as a sole source purchase. Of course, pursuant to RCW 39.04.280 (2)(a), the District Five Commissioners must declare sole source, by resolution, to fully legitimize this purchase and satisfy state audit laws.

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,

A handwritten signature in black ink, appearing to read "Eric T. Quinn", written over a horizontal line.

Eric T. Quinn