



Gig Harbor Fire & Medic One

RESOLUTION NO. 2017-11

A RESOLUTION OF THE GOVERNING BOARD OF PIERCE COUNTY FIRE PROTECTION DISTRICT FIVE DECLARING THAT PROCUREMENT OF BIAS SOFTWARE AND RELATED SERVICES IS A SOLE SOURCE PROCUREMENT AND WAIVING COMPETITIVE BIDDING OR OTHER PROCUREMENT REQUIREMENTS PURSUANT TO RCW 39.04.270.

WHEREAS, the Board of Commissioners has been advised that the Fire Chief has been provided with a formal legal opinion by legal counsel that purchase of BIAS software and services is actually and legitimately limited to a single source of supply, because District Five has specified the purchase by brand name only; and

WHEREAS, therefore competitive bidding and/or competitive negotiation are not required and are impractical in this instance;

NOW THEREFORE BE IT HEREBY RESOLVED AS FOLLOWS:

Section 1.

BIAS is the sole source of the BIAS software and services in the State of Washington. The District has specified BIAS by brand name, as being required due to the uniqueness of the product and related services, which is the only offering that fits the district's needs. Because only BIAS offers the complete package of software and services that the District needs, this company is the sole source and therefore competitive bidding and competitive negotiation are impractical, not required and therefore hereby waived.

Section 2.

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

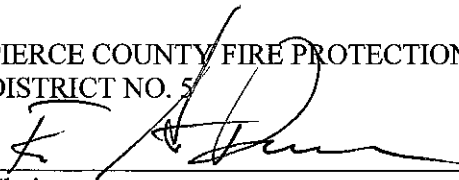
ADOPTED this 8th day of August, 2017.

PIERCE COUNTY FIRE PROTECTION
DISTRICT NO. 5

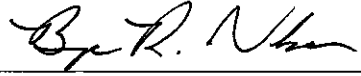
Attest:



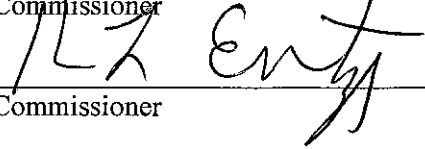
District Secretary



Chairman

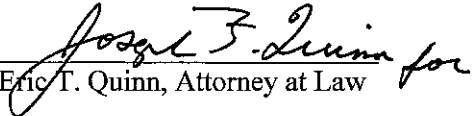


Commissioner




Commissioner

APPROVED AS TO FORM



Eric T. Quinn, Attorney at Law



Commissioner

Commissioner

Commissioner

Joseph F. Quinn, P.S.
PROFESSIONAL SERVICE CORPORATION
ATTORNEY AT LAW
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Of-Counsel:
Eric T. Quinn, P.S.

July 26, 2017
By Electronic Mail

Re: Sole Source Purchase of BIAS Software and Services

Dear Chief

You have requested our legal opinion as to whether the Fire District (hereinafter "District Five") may declare BIAS Software, payroll and related services (hereinafter "BIAS") a sole source purchase, thereby waiving the procurement requirements for purchases of such software and related services pursuant to RCW 39.04.270. Information provided to us by you indicates that what BIAS is offering is uniquely suited to your needs and not other vendor has a comparable product for your payroll and related needs.

RCW 39.04.270 does not require bidding for the purchase of electronic data processing and/or communications equipment, but it does normally require a request for proposals and then a process of "competitive negotiation" to select the best vendor of software and related services.

One of the statutory exceptions to this procurement statute is the situation when availability of the product or service 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 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,

Joseph F. Quinn, P.S.
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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.

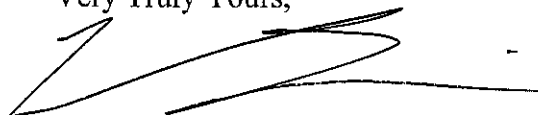
The *Smith* court found that previous satisfactory experience in the actual use of an article is a reasonable basis for the exercise of such discretion. Furthermore, the court made it clear that the rule was not limited to patented items. In AGO 61-62, No. 24, the Attorney General pointed out that the 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 BIAS products and services, specifically, would further the public interest, and therefore District Five may validly declare the BIAS software and related services a sole source.

Based on the above, District Five may validly declare the purchase 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 satisfy the statute.

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,



Joseph F. Quinn

Signed for Joe Quinn
by Eric Quinn, of-counsel

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