

To: Sourcewell Membership Development Administrators
From: Dan Listug, Sourcewell Government Relations Associate
Date: September 2018
RE: Washington cities use of Sourcewell cooperative purchasing contracts

Formation and Purpose:

Sourcewell, formerly National Joint Powers Alliance, is a service cooperative created by the Minnesota legislature.ⁱ Sourcewell was established with the statutory purpose to assist members in meeting specific needs which are more efficiently delivered cooperatively than by an entity individually,ⁱⁱ including cooperative purchasing services.ⁱⁱⁱ

Sourcewell is a local unit of government and public agency pursuant to the Minnesota Constitution.^{iv} All Sourcewell employees are government employees.^v

Sourcewell is governed by an eight-member board made up of local elected officials including county commissioners, city council members, mayors, and school board members.^{vi} Member agencies include eligible government, education, and non-profit entities.^{vii}

Sourcewell Member Access:

Sourcewell cooperative purchasing contracts are made available to its members through the Minnesota joint exercise of powers law.^{viii} Sourcewell members outside of Minnesota may use its cooperative purchasing contracts if they are permitted by joint powers, intergovernmental cooperation, or cooperative purchasing laws in their respective jurisdictions.

In Washington, joint powers agreements are governed by the Interlocal Cooperation Act at Washington Revised Code, Chapter 39.34, which permits public agencies to cooperate with other localities to provide services and facilities to address the needs and development of local communities.

Sourcewell meets the definition of “public agency” under Washington law because it is a local unit of government and political subdivision of the State of Minnesota.^{ix} In addition, Sourcewell’s compliance with Minnesota competitive solicitation and contract laws with regards to notice and advertisement satisfies similar requirements in Washington law, which expressly contemplates the use of joint powers to facilitate cooperative purchasing agreements.^x Therefore, Sourcewell members in Washington may enter joint powers or inter-local agreement with Sourcewell and use its cooperative purchasing services provided the agreement includes the required elements, and it is ratified by Sourcewell’s board of directors and the governing body of the participating public agency.^{xi}

Sourcewell's Procurement Process:

Sourcewell follows Minnesota's competitive solicitation and contract laws to solicit, evaluate and award cooperative purchasing contracts for goods and services.^{xiii} Features of the request for proposal process include:

Award Standard

Sourcewell follows an open, transparent, and fair procurement process utilizing competitive sealed proposals. Sourcewell solicitations are not based on detailed specifications. Rather, each request for proposal (RFP) is solutions-based to encourage vendors to offer the best overall quality and selection of products and services to meet the needs of Sourcewell's members.

Evaluation Criteria

All proposals received are reviewed to ensure two (2) levels of responsiveness:

- Level one includes a determination of whether the proposal was submitted in a timely manner, substantially conforms to submittal instructions, and contains all necessary forms, including pricing.
- Level two includes a scored, objective review of specific criteria, which may include an evaluation of pricing, depth of offerings, payment, delivery and warranty terms, responses to industry-specific questions, and company performance, financials, and government marketplace presence.

Sourcewell's evaluation committee assesses each proposal based on a 1,000-point scoring system. Evaluation criteria and relative weight designations are included on Form G of the published RFP.

Pricing will include at least a plurality of points for every RFP, which in part may be awarded based on pricing clarity and ease of use. In addition, the committee may assess factors affecting costs, including life-cycle costs, total cost of ownership, quality, and the suitability to member needs.

Multiple Awards

Based on the scope of any published RFP category and the quality of responses received, Sourcewell may award an exclusive contract or award contracts to multiple vendors. Because cooperative purchasing contracts are indefinite in quantity, Sourcewell reserves the right to make multiple awards to best meet the needs of its members.

Award Procedure

After completing evaluation and scoring, Sourcewell's proposal evaluation committee recommends contract award(s) to the Chief Procurement Officer (CPO). Acting under delegated authority from the Sourcewell Board of Directors, the CPO will then offer contract awards to vendors determined to be the most responsive and most able to serve the needs of current and potential Sourcewell members.

Application in Washington:

Cities of the first class and code cities^{xiii} with a population greater than 20,000 are not statutorily required to bid supplies, materials, equipment or services not related to public works projects^{xiv}. Therefore cities in these classes following internal ordinances and procedures may participate in cooperative purchasing agreements.

Towns and cities of the second class with populations less than 20,000 are statutorily required to bid supplies, materials, equipment over \$7500 and award to the lowest responsible bidder.^{xv} Authority for these entities to participate in cooperative purchasing is derived from the same broad joint powers authority applicable to public agencies under Chapter 39.34. The Washington Legislature has approved the use of cooperative purchasing,^{xvi} specifically acknowledging the validity of the process as it relates to notice and advertisement,^{xvii} and generally acknowledging the same through the broad grant of joint powers authority to participate in cooperative purchasing through Chapter 39.

The lowest responsible bidder standard applicable to second class cities with population under 20,000 should not be read to prohibit the use of cooperative contracts awarded via alternative competitive award standards. Given the indefinite quantity associated with cooperative purchasing contracts, the competitive process used by the awarding entity is necessary to provide flexibility to meet members' diverse needs. To hold the narrow band of cities within this class to a different standard would be inconsistent with the Legislature's intent and result in an unnecessary and harmful restriction to their purchasing options. Such a reading is also inconsistent with purpose of public bidding to "prevent fraud, collusion, favoritism, and improvidence in the administration of public business, as well as to insure the municipality receives the best...supplies a the most reasonable prices practicable."^{xviii}

ⁱ Minn. Stat. § 123A.21 (2018).

ⁱⁱ *Id.* at subd. 2.

ⁱⁱⁱ *Id.* at subd.7(a)(23).

^{iv} Minn. Stat. §§ 123A.21.

^v Minn. Stat. § 353.01, subd. 6(b) (2018).

^{vi} *Id.* at subd.

^{vii} *Id.* at subd. 3.

^{viii} Minn. Stat. § 471.59 (2018).

^{ix} Wash. Rev. Code § 39.34.020(1) (2018).

^x *Id.* at § 39.34.030(5)(b).

^{xi} *Id.* at (2), (3). Note, also, Washington's joint powers law should not be construed to limit the powers and authority of any public agency. Wash. Rev. Code § 39.34.100 (2018).

^{xii} Minn. Stat. § 471.345 (2018).

^{xiii} <http://mrsc.org/Home/Research-Tools/Washington-City-and-Town-Profiles.aspx?orderby=cityclass&dir=down>

^{xiv} Wash. Rev. Code § 35.22.620 (2018).

^{xv} Wash. Rev. Code § 35.23.352 (2018).

^{xvi} *See* Wash. Rev. Code §§ 35.77.020, § 39.26.050, § 39.32.070, § 39.34.080.

^{xvii} Wash. Rev. Code § 39.34.030 (5)(b) (2018).

^{xviii} *Edwards v. City of Renton*, 67 Wn2d 598 at 602 (1965) (citing 10 McQuillin, *Municipal Corporations* § 29.29 (3d. ed. 1950)).