

To: Sourcewell ezIQC Contract Administration
From: Marcus Miller, Sourcewell General Counsel and Dir. of Government Relations
Date: January 2021
RE: Legal Authority for Indefinite Quantity Construction Contracts Using Best Value

Formation and Purpose:

Sourcewell is a local unit of government and public agency created by the Minnesota legislature as a service cooperative. Minn. Stat. § 123A.21 (2020). As such, Sourcewell is a local unit of government pursuant to the Minnesota Constitution. Minn. Const. art. XII, sec. 3. 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. § 123A.21, Subd. 2. These programs included joint and cooperative purchasing services. Id. at Subd. 7(23).

All Sourcewell employees are government employees. Minn. Stat. § 353.01 Subd. 6(b) (2020). 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. § 123A.21 Subd. 4. Member agencies include eligible government, education, and non-profit entities. Id. at Subd. 3.

Joint Powers Authority:

Sourcewell's indefinite quantity and delivery construction contracts (IQCC) are made available to Minnesota members through the joint exercise of powers law Minn. Stat. § 471.59 (2020). Sourcewell, on behalf of itself and participating members, has conducted a joint competitive solicitation process resulting in the award of IQCC construction contracts for use in Minnesota. Members may access contracts upon the execution of the Sourcewell membership agreement by a participating member's governing board.

Procurement Process: Best Value Alternative

Sourcewell follows the Minnesota Uniform Municipal Contract law when soliciting contracts. Minn. Stat. § 471.345 (2020). Under this law, Sourcewell has the option of awarding contracts for the construction, alteration, repair, or maintenance of property over \$175,000 by sealed bids or by using a best value method. Id. at Subd. 3a. Best value permits an awarding entity to utilize a request for proposals (RFP) method when awarding contracts. Minn. Stat. § 16C.28 Subd. 1(a)(2) (2020). Sourcewell has chosen to award its contracts using the best value procurement method since it allows consideration of evaluation criteria beyond simply price. Id. at Subd. 1b. Criteria used to determine which contracts represent the best value are defined in the Sourcewell RFP. Id. at Subd. 1(c).

Sourcewell specifically evaluates additional criteria including responsiveness, technical qualifications, past performance, and price when determining contract awards based on a best value method.

Use of the best value method allows Sourcewell to jointly procure construction contracts to meet the needs of its members in Minnesota. Because of the indefinite nature of the work at the time Sourcewell solicits and awards its construction contracts, an anticipated volume is used to inform potential contractors about the contract opportunity. This allows interested parties to prepare and respond with their most competitive price factors.

Additional best value factors are used to determine which responding contractors, considering both price and other criteria, are needed to fulfill the expected volume of work. This may result in multiple contract awards under a single solicitation.

Sourcewell has contracted with Gordian to provide third party administration and software support for its IQCC contracts. This system is known as “ezIQC.” Contractors awarded following the IQCC best value competitive process utilize the ezIQC system to process work orders from purchasing agencies.