

by Jack Stout

Showdown in Fort Wayne

"Interface" is a monthly column dedicated to improving the quality of private sector participation in the ALS industry. Each month columnist Jack Stout will present problems and solutions encountered by private ambulance companies and municipal agencies in the complex and rapidly changing process of finding fair, safe and practical means of private sector participation in the provision of advanced life support.

Mr. Stout, a frequent contributor to jems, has been at the forefront of innovation in the design and implementation of EMS systems for the past dozen years, and with his company, The Fourth Party, has been involved in the establishment of sophisticated ambulance systems in Little Rock, Arkansas; Tulsa, Oklahoma; Kansas City, Missouri; and most recently, Fort Wayne, Indiana.

Topics covered in "Interface" include questions of law, labor relations, purchasing practices, public safeguards, bidding procedures, regulation, and business relationships. On occasion, Mr. Stout will include material from guest columnists, real-world case histories, news of upcoming procurements, and answers to readers' questions. If you have a question, a problem, or a solution related to the public/private interface in ALS, address your letter to: "Interface," jems, P.O. Box 1026, Solana Beach, CA 92075.

When Mayor Winfield Moses, Jr., of Fort Wayne, Ind., insisted upon head-to-head competition between Fort Wayne's EMS department and the best private ambulance companies in the industry, no one predicted the procurement gymnastics that would be required to accomplish the goal. It seemed simple enough. The Fort Wayne/Allen County Three Rivers Ambulance Authority was using the public utility model with its proven bid process technology. Why couldn't the city EMS department simply put in its bid, just like any private competitor?

The hidden problems associated with having a public agency bid

against private companies were further camouflaged by the fact that a bid process under the public utility model nails down performance requirements so tightly that bidders' qualifications and prices furnish the total criteria for selecting the winning bid. Bidders are specifically instructed *not* to present their own ideas concerning

"The ambulance authority will not assume anything about the city's ability to estimate its cost of operations, or to operate within budget estimates."

the service to be rendered. Rather, service requirements are spelled out in detail by the buyer, and sellers are simply asked to quote a price, along with furnishing evidence of ability to do the work. With such a clear-cut basis for competition, why couldn't the government agency simply submit its price quotation to the ambulance authority, just like everyone else, and let the chips fall?

The situation might have been more complicated if the city EMS department had never done this kind of work before, or if a standard "request for proposal" procurement was being employed. If the city EMS department had no successful track record in high performance ALS service delivery, its bid might be disqualified on grounds of credential deficiencies, no matter what its price. And if the "request for proposal" method was being used, the city would likely "propose" one level of clinical and response time performance, while private competitors would likely offer different levels of service, making a truly competitive award impossible.

In Fort Wayne's case, neither of these problems existed. The city's EMS department had recently been upgraded and was operating as an interim contractor until the bidding could take place, furnishing all ALS emergency and nonemergency service under the same response time requirements as would be required under the bid. The city department was clearly qualified to do the work, and the ambulance authority's bid process, due to its performance specificity, would allow head-on competition with the private sector, fair and square.

Unfair Pricing by the Governmental Bidder

The first problem involved the possibility of the governmental bidder offering a price well below its own actual production costs. How could the ambulance authority convince private companies that they should invest their own time and money participating in the bid process when a government agency might, in effect, simply "buy the contract" using taxpayer-supported cost overruns or by hiding numerous costs, accidentally or on purpose, in the maze of governmental budgeting and accounting?

Pricing the government's bid below actual cost need not be intentional to cause damage. The bid process would still be subverted; private companies would waste their time and money participating, and the local taxpayers, knowingly or otherwise, would simply make up the difference. No private company in its right mind could be persuaded to participate unless the government pricing and cost overrun problem could be controlled.

Making sure the city's bid would be priced fairly was more difficult than one might first imagine. For example, a private company, even a very large private company owned by a

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parent corporation must include all overhead costs somewhere in its price structure. If the private company fails to do that, it will eventually go broke. But how is a city EMS department's share of overhead expenses established? What percentages of the mayor's salary should be allocated to the EMS department? What about services furnished by the city's personnel department, payroll services and insurance? Quite frankly, government agencies don't account for costs the way private companies must, and even if the city intended to include a fair overhead factor in its bid, how could it convince anyone that it knows how to figure such overhead costs?

Even direct costs aren't all that easy for a city to document, the city's dispatching costs are mixed up in another department's budget. The EMS department's legal services, comparable to attorney fees that a private bidder

might have to pay to assist in reviewing the contract, would be furnished by the city attorney. What looked at first like an easy price comparison was beginning to look like an accounting nightmare.

Who Eats the Cost Overruns?

Even if the city could somehow figure out how to price its offer, and could somehow convince private competitors that its pricing would be fair, how could anyone be certain that the city's price to the ambulance authority would not be overly optimistic? When a private company bids on a public utility model procurement, that company has several hundred thousand dollars of its own money at risk. If the private bidder gets the contract and is unable to furnish the required performance at a cost within the offered price, it will have to do the job anyway — even if the loss comes from the owners' pockets — or face loss of a large performance security and

possibly a substantial start-up investment.

But if the government bureaucrats make the same mistake in pricing their bid, who loses? If the cost overruns show up at all, the taxpayers must pay for the loss — not the folks who wrote the bid. And there must be a thousand ways for a city administration to shift costs legally to other departments, thereby possibly keeping the cost overruns hidden indefinitely. The private bidder has no such scapegoat to pay off its mistakes — and hidden or not, a loss is a loss in the private sector.

At one point someone in Fort Wayne suggested that a whole new procedure for governmental accounting be invented that would show true production costs, reliably, and eliminate the possibility of creative financial shuffling. Nice idea, and for a couple of million dollars and four or five years to work out the bugs, some big accounting firm might take on

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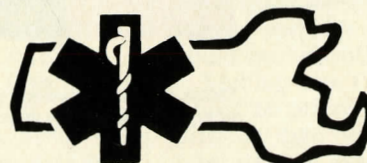
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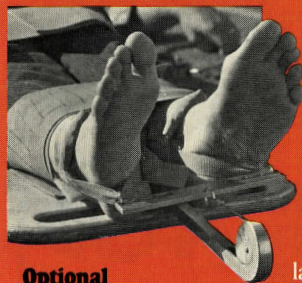
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the project. But realistically the ambulance authority somehow would have to find a way to ensure fairness to the private bidder without inventing a whole new approach to government accounting.

Who Wants to Bid against the Mayor's Ambulance Company?

Even if financial fairness could be put aside, it seemed likely that some private companies might think it was not very smart to take on the mayor's own ambulance company. Fort Wayne is a "strong mayor" form of government, meaning that the mayor is the chief executive, and the director of the EMS department works for the mayor. In a very real sense, the EMS department's bid is the mayor's bid and who wants to compete with the mayor?

The ambulance authority can, by its very structure, answer part of that question. The winning bidder will be selected by the ambulance authority's nine-member board, only one of whom serves at the pleasure of the mayor, and that individual shall be barred from participating in or voting on matters relating to the procurement. Half of the ambulance authority board was appointed by the Republican county commissioners — Mayor Moses is a Democrat. Another member of the board is a physician selected by a private non-profit physician's organization. Clearly, the mayor cannot control the outcome of the ambulance authority's bid process.

But even if the mayor can be beat, is it such a good idea? What private businessperson would want to provide a politically sensitive service like ALS in a city where the mayor, especially a strong mayor, may be a disgruntled losing competitor?

What about the Local Labor Force?

Another problem had to do with how the city's EMS employees should conduct themselves during the bid process. The public utility model contracts usually prevent an incumbent contractor from punishing employees who wish to sign

contingent employment contracts with competing bidders. But that cooperation stops with contingent employment agreements, and doesn't include actual collaboration with competitors who may need help in writing their own bids.

The ambulance authority knew that many private bidders wouldn't consider placing a bid without first checking out the local labor force, and some would even prefer to execute contingent employment agreements across the board so they would know their labor costs with some certainty before submitting a price. Somehow the ambulance authority would have to make it possible for competing bidders to discuss employment with the current labor force without allowing these employees to give any bidder unfair advantage over the others, or to "tip the city's hand" regarding its own bid.

In addition, what would happen if a really aggressive bidder simply hired the EMS department's small management staff before the city's bid was even prepared? Who would write the city's bid, and what would happen to the city's organizational credentials if all of its key personnel were hired by a competitor?

"Privatize" First, Bid Later?

The vast majority and perhaps all large-scale private bidding of governmental services takes place *after* — not before — the decision has already been made to "go private." And not just in EMS. Things are a whole lot easier that way.

There have been some attempts by political conservatives to take bids from the private sector just to find out what the alternatives were, but not where the government provider would be an active bidder, and not with service specifications nailed down tightly, leaving price as the principal variable.

Instead, most political decisions about "going private" are based upon theory and philosophy. Some people think private is better, period. Of course reality just isn't that simple.

Well-run government and non-

profit organizations do outperform poorly managed private firms. Bad management is bad management wherever it occurs, and there is nothing more noble about bad management in the private sector.

One "concerned citizen" recently addressed a city commission with a brave impassioned plea for laissez-faire ambulance service. That citizen was so caught up with the passion of his philosophy that he said he would "rather take [his] chances with cheap private BLS service, than continue to use [his] tax dollars to pay for the city's ALS operation." It's bad enough that the poor man totally confused the question of how to pay for ALS with the question of who should provide it, but could he maintain that same devil-may-care opposition to socialized ALS while being personally confronted with a bonafide need for endotracheal intubation? Political and economic philosophy is admirable but, where human lives are concerned, it must be backed up with an implementation technology capable of delivering the goods.

It would be far better if a way could be found to replace the decision to "privatize" with a public policy decision-making process that allows the *best-managed* organization, public or private, to do the job. Then, if those of us who lean toward the private sector are really right, the competition will prove it. But if sometimes we are wrong — and sometimes we all *are* wrong — a better-managed government or nonprofit organization would be allowed to survive and prosper, and our love for our philosophy would not be the accidental instrument of some patient's unnecessary death.

If we could find a way to allow fair competition all around, public and private, we could replace our philosophical bickering with acid-test competition — if we could find a way.

Showdown in Fort Wayne — Will it Work?

The Fort Wayne/Allen County Three Rivers Ambulance Authority has been struggling with these problems for several months. How, given all the problems discussed above, could the ambulance authority persuade the best private ALS providers in America

to invest their own time and money by participating in a bid against the city's own EMS department? As of this writing, it looks like they might have found a way; and if it works, it promises to change more than EMS. The details are provided in the ambulance authority's extremely detailed bid package, but the general idea goes like this:

Fairness in Pricing City Overhead. An independent accounting firm will be asked to calculate its own estimate of the

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fair allocation of general governmental overhead to the city's EMS department. That figure will be made known to all bidders *prior* to submission of bids. If any bidder doesn't think that overhead estimate is fair, that company can simply decline to participate. In any case, the overhead amount will be added automatically to the city's direct cost estimates, so it is included in comparisons with private bidders' prices.

Fairness in Estimating the City's Direct Costs of EMS Operations. The ambulance authority will not assume anything about the city's ability to estimate its costs of operations, or to operate the system within budget estimates as bid. Neither will the authority assume that the city's own accounting systems can or will accurately report cost overruns. Instead, the city's direct cost bid, plus stipulated overhead, will be used to award the contract initially. If the city gets the initial bid, the same independent accounting firm will be retained to make its own periodic, independent assessment of the city's *actual* cost of operations. If the city's operating costs, plus stipulated overhead, exceed the second "lowest and best" bidder's price offer, then the first runner up bidder will automatically have the power, at its option, to take over the contract at its own bid price structure. Therefore, if the city does underestimate its costs, acciden-

tally or otherwise, the contract will still go to the "lowest and best" of the private bidders — provided the city's production costs, as analyzed by the independent accounting firm, exceed the price offered by the first runner-up private bidder.

Fairness in Labor Relations. The city's current EMS operations are to be discussed in detail at the pre-bid conference. After that, any bidder is free to communicate directly or in writing to any member of the city's current management and labor force. Prospective bidders are even allowed to execute contingent employment contracts with employees, or even with the entire labor force. All that is prohibited is any attempt by a competing bidder to obtain assistance from current city employees in preparing the bidder's own bid proposal. Such activity might give one bidder an unfair advantage over others, and would constitute grounds for disqualification of the bid.

Will it work? As of this writing, the ambulance authority's bid package has not been finalized, and some of the provisions discussed above may even be altered. The pre-bid conference is scheduled for June 28, 1983, so by the time this article is in print, any revisions to the bid package should be ready. If qualified private providers refuse to participate in the ambulance authority's procurement, then it's back to the drawing board, and America will still be without a way of basing the "privatization" decision upon something more than theory and philosophy.

But if the ambulance authority succeeds in obtaining good competition from qualified private firms, then regardless of the outcome of the Fort Wayne bid, the entire nation will have access to a procurement technology that can allow every governmental EMS system to stand the test of clear-cut competition, *before* elected officials decide the question of "privatization."

If it is proven that such procurement technology can be effective, what excuse is left for allowing socialized service systems to continue untested by competition, or to "privatize" a system without giving the government provider a fair chance to compete? □