

Forms of Competition

by Jack Stout

In a contest of losers, even the winner is a loser. There are plenty of ways for an ambulance service procurement to go sour. A bad business proposition, a faulty system design, an unrealistic timetable, an undesirable market... these and a dozen other problems will wreck an ambulance service procurement, mainly by discouraging bidding by our industry's most qualified firms.

The effectiveness of any procurement is strictly limited by the quality of the companies who choose to participate. Especially in this industry, unqualified firms are easily attracted, but top providers are becoming increasingly selective. *In today's ambulance service market, government buyers need qualified bidders far more than qualified bidders need government buyers.* And after the design of the system itself, the form of competition chosen by the buyer will determine, more than any other single factor, the quality of firms willing to compete.

Procurement designers have available to them eight major ways of structuring the contractor selection process—the form of competition. Some are guaranteed to attract the least qualified firms, while others have the opposite effect.

Understanding the Qualified Bidder. The marginally-qualified company may bid on just about anything. Such a firm has limited expansion opportunities and may even be in danger of losing its existing market.

Jack Stout, chairman of The Fourth Party, has been at the forefront of innovation in the design and implementation of EMS systems for the past dozen years.

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Expansion may, therefore, be a matter of survival for a company with limited organizational credentials.

A highly-qualified company with a hard-earned national reputation is, in contrast, more interested in preserving that reputation than in using it to expand. Such a firm is reluctant to divert managers' attention (and working capital) away from present operations to pursue a questionable expansion opportunity.

Unlike less-qualified firms, top provider organizations often have expansion opportunities available to them which do not involve the risk and expense of a formal bid process. Only the most carefully thought-out procurement process will attract such a firm.

Nationally, demand for stable, experienced, and reputable private providers of primary paramedic services is increasing faster than the supply of such companies can possibly expand. Shrinking local budgets and rising community expectations have combined to place a premium upon the demonstrated ability to efficiently deliver superb

paramedic services. And while "ambulance companies" are plentiful, only a precious few can demonstrate successful experience as the *primary* provider of paramedic services for an area of substantial population.

What this means is that, from the perspective of the most qualified private paramedic providers in the U.S., this is a sellers' market. Failure to accept this economic fact of life in the design and conduct of ambulance service procurements will force a choice between a poorly qualified *winner* and an embarrassing admission of procurement failure. (Several cities have awarded contracts to the best of the poorly qualified bidders, firms which must then be propped up behind the scenes and defended for the duration of the contract—a fate far worse than admitting the procurement failed in the first place.)

Understanding the eight major forms of competition and their proper application is the first step toward improving the quality of participating bidders.

1) *The free-for-all RFP.* This all too common way of structuring a procurement is really not a form of competition at all. Competition requires more than the simultaneous consideration of different alternatives. Even though several different companies submit proposals, and government officials pick one from the pile, it is not necessarily true that competition has occurred.

A free-for-all request for proposal (RFP) allows unscreened bidders to submit their own unique proposals, with only vague performance specifications supplied by the buyer.



Bidders may propose entirely different levels of service, financed in completely different ways. The *winner* is the bidder who made the best guess as to what the buyer really wanted.

This form is no more competitive than comparing athletes, each running a different length race, and then selecting a winner on grounds that the judges are more impressed by sprints than by longer events. The language often used to justify the selection is "lowest and best bid." In fact, unless all participants are bidding to provide the same level of service, there is no way of knowing which bidder would have offered the lowest price to perform the contracted work.

Competition assumes that the competitors are running the same race. For example, the work can be specified by the buyer so that bidders compete on price. Or the price can be stipulated by the buyer so that the winner is the firm offering the highest level of service. Or both price and level of service can be specified by the buyer, with the award going to the most

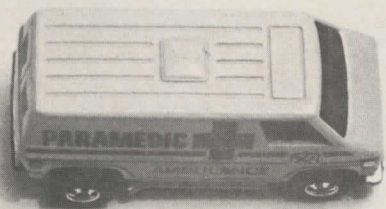
qualified firm willing to take the contract. Unfortunately, the free-for-all RFP merely invites bidders to guess at what the buyer wants and to put a price on it. When an award is made, it is likely that other bidders would be willing to perform the same work at a lower price or provide a higher level of service at the same price. The contract does not go to the most efficient or the most qualified bidder but instead to the firm with the best guess.

The free-for-all RFP is most often used by government officials who are insecure in their knowledge and simply don't know how to develop performance specifications and bidder qualifications. From the buyer's perspective, this is the fastest and easiest procurement method. It is also a favorite method of officials trying to avoid the controversy of decision making regarding system design, level of service, bidder qualifications, and method of finance—i.e., the key public policy decisions in any prehospital care system.

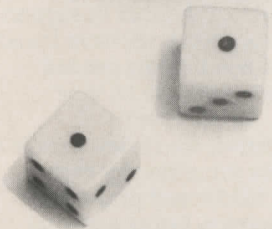
Qualified firms are usually reluctant to risk time and money

participating in free-for-all RFP procurements. There are just too many ways for the deal to go sour. First, the community hasn't decided what it really wants, and there is a good chance that no award will be made at all. Second, the buyer's representatives are so obviously uninformed that they are probably incapable of distinguishing a really good offer from a bad one. Third, without any pre-screening of bidders there is a good chance that a poorly qualified and desperate bidder will present an unrealistic offer that the buyer is unable to recognize as a financial fantasy. In short, the free-for-all RFP is almost always a waste of time and money for more qualified bidders, and most top companies avoid them. (On occasion, qualified firms may toss a hastily prepared and overpriced proposal into the hopper, as a recognized longshot, inadvertently lending credibility to the procurement.)

2) *Free-for-All Price Competition.* With this form, bidders are not pre-screened but the buyer has carefully specified the required level of



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care—either by a level-of-effort description or by a detailed performance specification. In practice, most ambulance service procurements fall somewhere in between the free-for-all RFP and free-for-all price competition.

While qualified bidders are more likely to respond to free-for-all price competition than to a free-for-all RFP, there is still a fair chance that a desperate and unqualified bidder

will make an offer the buyer can't refuse, at least not without going to court to disqualify the bidder. There is also a good chance that, while the buyer may know what he wants, he may be surprised at the cost and flatly reject all bids. Thus, many top firms will respond to free-for-all price competition only if they have some indication that the buyer has already received realistic cost estimates and is prepared to throw out offers from marginally qualified firms.

3) *Screened Price Competition.* This form is like free-for-all price

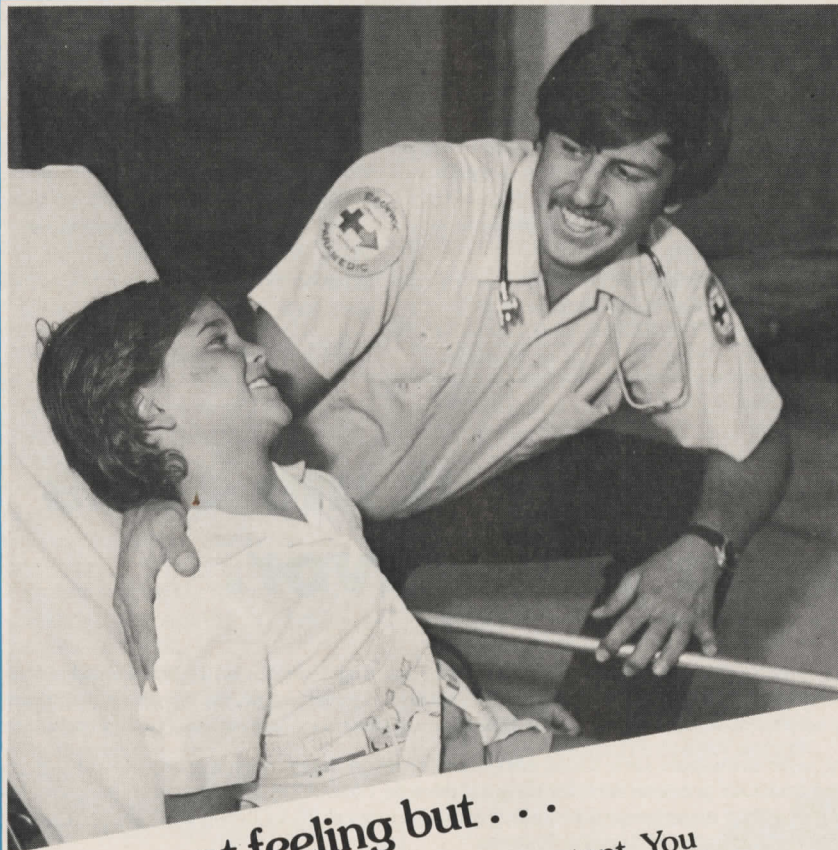
competition except that bidders' qualifications are evaluated *before* price offerings are accepted. In ambulance service procurements there is simply no advantage to the free-for-all approach. Firms whose credentials have been given prior approval prepare their prices with the knowledge that they will not be competing against unqualified companies and that a low enough bid will, without question, win the bid. This knowledge increases the likelihood that top firms will bid and that they will take the time to whittle their prices.

If this type of bid takes place in two stages—one for submission of bidder credentials and a later stage for submission of prices and operational information—the effect will be further enhanced. That is, a busy top firm may take the time to submit readily available credential information even if they might not have taken the time to submit a full proposal. Then, after being pre-qualified, and if convinced that the persons conducting the procurement know what they're doing, they will more likely invest their time and money preparing a price quotation.

There is yet another advantage to pre-qualification of bidders. If bidders are not pre-qualified, there is a chance that the low bid will be submitted by an unqualified firm willing to sue if not chosen. By qualifying bidders *before* prices are considered, disqualified firms may dispute the decision before the award is made and the low bidder is known. Any claim of damage at this stage would be difficult to support.

In our own work we have found the use of non-binding pre-bid credential reviews to be very effective. As our client's representative, we review detailed credentials submitted by each potential bidder and prepare a written opinion listing apparent credential deficiencies. This document is made available to the submitting firm, along with our non-binding opinion regarding whether the firm appears to be qualified under the guidelines approved by our client. Apparently unqualified firms are not prohibited from submitting offers, but they are advised that such an effort would probably be a waste of their time and money.

At this stage no unqualified firm would bother to file suit because our review is non-binding and the decision to submit an offer remains theirs. At the same time, should they



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submit an offer anyway with the idea of suing for damages if disqualified, they know they must submit low bid just to gain status to protest. In other words, in order to get into a position to file suit the poorly qualified firm must invest the time and money to prepare a formal offer, and their offer must turn out

to be low bid. And since our non-binding opinion is quite detailed as to credential deficiencies and our client's minimum credential specifications are well defined and reasonable, a disqualified bidder's chances of prevailing are remote.

The purposes of pre-screening bidders are: to attract more qualified bidders by offering assurance that unqualified firms will not be participating; to attract smaller but highly qualified firms who may be

unsure of their status; to avoid wasting the time and money of unqualified firms who might otherwise submit offers; and to reduce the chances of litigation and delay resulting from after-the-fact disqualification. The non-binding credential review process has, in this regard, been 100 percent successful.

A formal offer from an unqualified firm is worse than worthless. If a firm is unqualified, it can be advised of that fact *before* investing time and expense preparing an offer. The quality of bidders will be improved, and risk of litigation will be reduced.

4) Screened Proposal Competition.

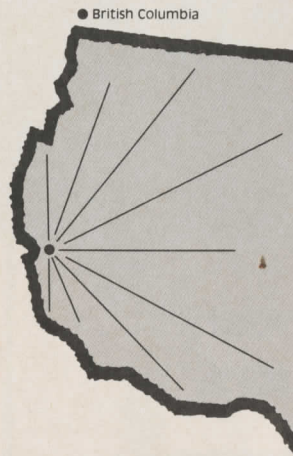
This form is like the free-for-all RFP, except that potential bidders are pre-qualified. While the free-for-all RFP has little to recommend it, this variation has several advantages. If the initial pre-qualification process is kept simple and well handled, qualified firms may be attracted, at least during the first stage. Then, if a limited number of well-qualified firms are approved, they may be persuaded to invest their time and money preparing proposals, even though the whole affair remains more of a guessing game than a real competition.

For the community that can't decide what it wants, or the administration that desires to minimize its involvement in controversy (and policy-making), this variation on the free-for-all RFP does reduce risk of embarrassment but is much inferior to more competitive alternatives.

5) *Credential Competition for Negotiation Rights.* With this form the buyer competitively selects a single firm for sole source negotiations. For the buyer with limited knowledge of the prehospital care industry, this method has limited advantages. The competitive stage involves a straightforward credential competition requiring only diligent research and followup on the part of the buyer. What you are looking for is a company that is so expert, so financially stable, and so reputable that you can trust them to teach you how to buy ambulance services from them without taking advantage of the situation.

The main problem with this approach is that the buyer is asking for a considerable investment of time and money by the *winner* before any contract is signed. Furthermore, the buyer who finds this approach most attractive is probably also the buyer who is least qualified to determine whether the

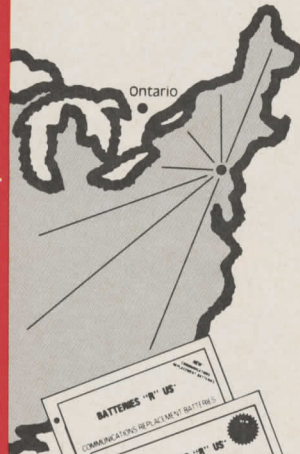
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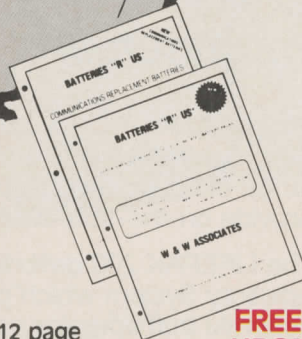
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negotiated deal is really fair. The advantage is that you can probably avoid the risk of being "stuck" with an unqualified contractor, but there is also the chance that negotiations will fail due to the buyer's own insecurity and lack of knowledge.

In practice, the free-for-all RFP often turns into this form of competition. A *winner* is named, but the buyer insists upon so many changes to the proposal that the resulting contract is more the product of negotiation than bidding. The cost of participating in these extended negotiations can easily eat up projected profits from the contract before it is even signed.

6) *Stipulated Price/Service With Credential Competition*. If what you want is good service at a known cost supplied by the most qualified firm willing to take the contract, this is the form of competition that will do the job. A qualified consultant can predict quite accurately the price outcome of any well-designed ambulance service procurement. (Our own pro-forma projections have been consistently within three to six percent of actual winning bids.)

Thus, if you know the level of service you are after and you can estimate within a few percentage points the cost of that service from a reasonably efficient firm, you may wish to simply stipulate both service and price, allowing contractor selection to be based entirely on credentials.

If the service specification and price stipulations are well defined, practical, and afford a reasonable profit opportunity, the quality and quantity of bidders will be extremely high and the results will be predictable and stable. Of course, the proposed business arrangement is critical, and this form assumes intimate knowledge of the prehospital care industry on the part of the buyer.

7) *Screened Bidders/Stipulated Price With Service Competition*. Most buyers know what they're willing to accept in the way of subsidies and retail prices for ambulance services, and a logical argument can be made that patients deserve the best quality of care that can be obtained with the money (i.e., allowed rates plus any available subsidies) the community is willing to spend. By stipulating the subsidy/price structure in advance, and screening bidders in advance, you will encourage qualified firms to use their talent and creativity competing to offer the

highest level of service possible for the dollars available.

Personally, I believe this form of competition is the most appropriate to our industry. From the patient's perspective—that which matters most—it is better to focus our best management talent on squeezing more performance from the dollars available than to focus that talent upon squeezing a few percentage points out of the budget.

This form of competition, if properly conducted, guarantees bids from qualified firms within the available budget and challenges competitors in the most positive way possible.

***"You can't pick
a winner in
a contest of losers."***

8) *Sole Source Negotiations*. This form of contractor selection does have its proper place but it requires a great deal of specialized expertise on the part of the buyer's representatives. Sole source negotiations should be considered under the following circumstances:

- the buyer doesn't have the expertise to design and conduct effective bid competition;
- the local political (or economic) environment is such that qualified firms would be reluctant to bid;
- the existing provider's service is already excellent (not just okay) and the existing rate/subsidy level is reasonable, based upon expert comparable cost analyses (see "Comparing Ambulance Rates," July 1985 *jems*);
- the existing contractor has earned the right to sole source negotiation of a contract extension (as per current contract provisions);
- current service is so bad or unstable that bidding is seen as a solution to an immediate crisis;
- a new system design is being implemented and a local firm is obviously qualified for an initial sole source contract;
- a new system design is being implemented and the community desires to give a local firm an opportunity to develop its credentials prior to facing major

competition (e.g., where the previous system design was so bad that local firms had no fair opportunity to develop their operational credentials);

- the incumbent contractor is so competent, so efficient, and so well thought of in the community that most qualified firms would be reluctant to invest the time and money bidding against a firm in such a strong competitive position.

Tip of the Iceberg. Of course there is much more to designing an effective ambulance service procurement than selecting the form of competition. There is the prehospital system design within which the contractor will operate, the business relationship, forms of consideration, performance security arrangements, type of commitment being sought, and at least a hundred other issues to decide, many of which affect each other.

Even so, you can't pick a *winner* in a contest of losers, and aside from the system design itself, nothing affects the quality of participating bidders more than the form of competition you select. □

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