INTERFACE

by Jack Stout

The Public/Private Interface

"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.

Few working men and women get the chance to experience the birth of an industry. Those who do may have difficulty finding the advantages in such an experience, at least at the time. I remember a wine and cheese party at a friend's house in Little Rock, Arkansas where a fellow named Fred Smith was talking about his ideas for an overnight package delivery system. As I recall, he was given a C-minus on a college paper that turned out to be the conceptual framework for Federal Express.

Fred Smith and a handful of people practically invented the overnight package delivery industry as we are coming to know it today. To pull it off, they had to go for broke. To succeed, they had to move Congress, convince bankers, educate the public, and create a huge delivery system before there was any demand for it. They had an idea — a pickup and distribution system so simple in concept that it had to be either elegant or stupid, and only time would tell which.

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When almost no one thought it would work, this handful of folks put it all on the line, often worked without wages, and took an emotional roller coaster ride that few ever experience. They did hit the bottom, more than once, and when they finally reached the top, so that everyone could see how it's done, the competition knew where to aim their rifles, and even the U.S. Postal Service went after a piece of the Federal Express pie.

Win or lose, such men and women go to their graves knowing they had a go at it. Not everyone does. But if you are in the ALS industry today, public or private, you are witnessing and, like it or not, participating in the birth of an industry. Win or lose, you should have no shortage of memories in your old age.

Federal Express recently celebrated its tenth anniversary. And for another 10 years or so, the overnight package industry will continue its shakedown process. After that, change will be slower, stability will set in, and for the people who made it happen, things will never be the same. In contrast, the ALS industry is still about where Federal Express was when I attended that party well over a decade ago. Oh, it's true that some huge corporations have recently bought up a few of America's most reputable private ambulance firms. And a handful of private companies, large and small, seem to be miles ahead of everyone else. But it's still wide open. No one is clearly in the lead. Most cities don't know whether to buy, what to buy, or how to go about buying it. These are fast moving, frustrating, and risky times, and it won't last forever. But when it's over, and we're all sitting in our rockers or watching TV in nursing homes, we'll have stories to tell (and probably exaggerate), extraordinary memories, and the satisfaction of knowing we had a chance to make a difference.

What Went Wrong In the First Place?

It has often been said that if the private EMS industry had done its job, we wouldn't have socialized ambulance services sprouting up all over America. The private sector, partially correct, will say it never had a chance, and the public sector, also partially correct, will say the private sector had 50 years or more to prove its worth.

How did it happen that Jacksonville, Houston, Dallas, Los Angeles, Seattle, Fort Wayne, Oklahoma City, New York City, and a hundred other cities and counties decided to, partially or entirely, use public or quasi-public non-profit organizations as primary ambulance providers? In each case there is a different story, but similarities do exist.

First of all, there is the nature of the private ambulance industry itself. Basic micro economic theory assumes that the classic "consumer" will eventually learn to select higher quality at lower

prices, and that the collective purchasing practice of thousands of consumers will create an "invisible hand of economics" which, over time, is suppose to see to it that "capital" flows into the hands of better managed companies and out of the hands of more poorly managed companies. The ultimate effect of thousands and thousands of intelligent consumer decisions is suppose to gradually eliminate higher cost/lower quality producers, so that competition gets stiffer and stiffer, the standard of efficiency grows higher and higher, until eventually the industry stabilizes and the rate of change slows down as each well-managed company finds its economic niche in the marketplace.

The "invisible hand," theoretically, not only determines which companies get to survive, but what they sell as well. If the intelligent consumer prefers fuel-efficient little cars over more powerful cars, then companies must respond accordingly or face dwindling revenues. So goes the theory, and in many industries, it works just fine.

In the EMS industry, however, and especially in the much more sophisticated ALS industry, standard micro economic theory has trouble getting a foothold for several reasons. With third-party payers entering the scene, some consumers frankly don't care what service costs, and with federal, state, and local governments routinely subsidizing prices well below cost, and not equally among all providers, the consumer is often totally unaware of the real cost to the public. Being pinned behind your steering wheel with a crushed rib cage makes it hard to call around to check prices and quality, and nursing home transfer patients often have no say at all in selecting the transport provider. 911 completely removes the "consumer" from the vendor selection process. Thus, the very heart of the "invisible hand" theory — i.e. the informed decision of a consumer concerned about quality and price — is very often missing in the true "free enterprise" multi-provider ambulance system.

Remember, too, that the "invisible hand" is suppose to also decide which products are to be produced. And it works for cars, dresses, shoes, and fishing tackle, but I find it hard to trust the invisible hand to decide whether the ambulance company capable of furnishing nitrous oxide should get more business than one that relies entirely upon morphine. The history of multiple provider systems in many cities has proven that better and more sophisticated service does not necessarily produce a pat-on-the-back from the "invisible hand."

During and after the Vietnam war, the medical and political communities in some cities began to realize that people can benefit from more sophisticated ambu-

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lance services. Lots of small ambulance companies tried to furnish such service only to have their throats cut by more profit-oriented competition. In some cases (Jacksonville, Florida was a good example) local government thought it could simply demand better service by ordinance. But such ordinances failed to replace the invisible hand with a more effective form of competition, and so for the most part, little progress was made.

Some cities attempting to force improvement through regulation found the private sector willing, *for a price.* Almost comical subsidy arrangements backed by two- or three-page contracts sometimes developed, causing government to question where the money was going and what it was getting in return. In multiple provider communities, it was hard to subsidize one company without subsidizing all the others too. And many cities found their attempts to audit the books of private ambulance companies to be nothing more than a lesson in creative accounting.

In a few cities the "invisible hand" (helped out by smarter-than-average company owners) decided that all the business would go to one company, or in some cases to two or more companies owned by the same individuals. Where there was real competition on the streets, it often didn't last long as one company emerged the victor, while in other cities competitors stopped the competing, divided up the market one way or another, settling for a smaller share of the pie. And more than a few cities were led to believe that competition was real, simply because several ambulance companies advertised in the yellow pages. Few understood that those phones all ring in the same room.

Because of this widespread failure of the invisible hand in the prehospital care industry, cities desiring more sophisticated clinical performance and more reliable response time performance often became frustrated and disgusted with the private ambulance industry and decided to socialize some or all of prehospital service in the community. Some cities took over dispatching, some took over ALS work only, some took over all emergency work, some took over rescue work but not transportation, and a few took over everything. There was a growing consensus in the public sector of the ambulance industry that the private sector had, for one reason or another, failed, and that EMS is simply not the place for private enterprise to operate. What was widely perceived as a failure on the part of free enterprise was, I believe, really a failure of *one form* of competition. And since the technology did not exist to allow a restructuring of competition, cities increasingly gave up on the private sector, sort of throwing out the baby with the bath water.

In a few cities, some initial crude attempts to restructure competition were tried. Not exactly knowing what they wanted to buy, some cities tried "requests for proposals." Since the resulting proposals described apples and oranges, "competition" wasn't really present. This was often a sort of municipal "show and tell" with every proposal offering different services at different prices. Fair and *competitive* comparison was impossible.

A few cities happened to enjoy pretty good service from monopoly private providers, mostly by accident. Some of the cities seemed to appreciate what they had, but others seemed more concerned about the fact that it was a monopoly. In at least one case, rate regulation destroyed the provider. In another case, the monopoly provider, in effect, blackmailed the city into increasing subsidies. In another city, the State Attorney General threatened to breakup the monopoly of one of the highest quality, lowest cost operators in the country. Anti-trust actions, complex and very expensive, began to seem like a fad, especially after the Supreme Court decided cities weren't immune from such actions. Hoping for a cut of "treble damages" some attorneys advised their clients to retain them to sue on a contigency fee basis.

With this sort of track record behind us, it shouldn't surprise anyone that many cities decided to forget the private sector and go into business themselves. This decision was often strengthened by the fact that very few private providers could demonstrate strong credentials in the reliable delivery of ALS service to an urban population. It's hard to buy something if there is no one there qualified to sell it.

What's At Stake?

Several years ago I estimated annual gross revenues of the entire American ambulance service industry at somewhere between one and two billion dollars. Recently, I discussed this question with Walter Shaeffer, builder of one of the largest private ambulance operations in the world, and past president of the American Ambulance Association. Walter has been in EMS longer than any of us and he disagreed with my estimate. According to Mr. Shaeffer's estimates, America's EMS industry runs more in the neighborhood of five to seven billion dollars annually.

The whole health care industry is in the hundreds of billions of dollars annually, dwarfing the ambulance service segment. America's fire protection service industry is much larger, and our local police service costs us still more. On the other hand, five to seven billion dollars per year is still a lot of money — enough to attract the best and the worst of us. Financially, there is quite a lot at stake, and as long as there is one reputable high performance private ALS provider around, it cannot be argued that there is no proper role for the private sector in the EMS industry.

"Privatization" Requires Better Government

To understand the "privatization" of the ambulance industry, one really ought to know something about the concept of "privatization" in general. Some people think that anything government can do, the private sector can do better. There is little evidence to support so broad a statement. Comparative studies in other industries such as garbage collections, show mixed results.

Contracting for private provision of fire protection services seems to have shown some initial positive results in those few communities where it has been tried, but an examination of the procurement methods and contracting techniques makes it clear that the management technology has a long way to go before you would want to try contracting out fire services in a major city.

In the early 1960s, a lot of people got the idea that what was wrong with America's public schools could be solved by private contracting with for-profit educational companies. Texarkana, Arkansas and Gary, Indiana pioneered the contracting effort, again with mixed results.

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Frankly, we don't know very much about purchasing services in general, and we know even less about how to go about contracting for human services traditionally provided by government.

Even the idea of making the decision between public versus private provision of service is new. Try to find the minutes of your own City Council meeting wherein they decided to *be* a fire department instead of *hire* a fire department. Chances are that decision was never voted upon.

Consider the following kinds of questions: When is it best to contract with a large for-profit company? When is it best to contract with a small privately held business? When is it best to contract with a not-for-profit private organization? When is it best to use a fixed price contract? A level of effort contract? A "term agreement for requirements?" A request for quotation versus a request for proposal? When is it best to prequalify prospective bidders? Is it always best to use price as the principal bid variable? Should you ever stipulate the price up front, based upon what you can afford, and use quality or quantity of service as the bid variable?

There are no textbooks you can read that will help answer these questions. Those of us who regularly deal with such procurement issues eventually develop our own opinions about such matters, but these opinions take the form of judgment rather than a simple set of rules.

If you want to understand how difficult and complex it is for government to develop a sound procurement technology, take a look at the cable television industry. It's a good parallel. Only a few years ago, no city had ever contracted for or regulated cable television service. The first cities to try often wound up in court, mostly because the law related to such procurements was largely undefined. Someone had to test the waters.

Some cities tried to stay out of the mess by doing nothing, and ended up with a bigger mess trying to undo the results of unregulated development. The first cable television contracts, like the first EMS contracts, now look pretty comical. Someone had to start somewhere, and based on earlier successes and, more often, earlier failures, we are gradually learning how to purchase and regulate cable service. We still have a lot to learn.

The evolution of the procurement and regulatory technology involving cable television services has been extremely rapid. That is because the "consumer" can easily tell the difference between the local cable service and that enjoyed by his brother in another city. If we could all tell the difference between good and bad ambulance services as well as we can distinguish cable television services, chances are EMS would be a lot further along today.

The thing to keep in mind is that the purchase and regulation of cable television service presents far fewer complexities than does the purchase and regulation of ambulance services. And if we could add up the costs of all the lawyers, lawsuits, and bid processes that it took to develop cable television procurement and regulation to its present (and still evolving) state, the figure would be larger than all of the money spent on ambulance services by all government agencies last year.

To deal effectively with the private sector in the purchase of

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complicated human services, a government agency must, in some ways, know more about the industry than the providers themselves. More specifically, the government must know how to define, measure, and objectively evaluate the service it wants. It must be able to structure a "deal" that minimizes or eliminates any risk to the contractor from factors beyond the contractor's reasonable control. The government must know enough to predict and prevent all the possible ways that a profit oriented contractor might cut corners to the detriment of the service. At the same time, the government must know enough to allow the contractor to cut corners that improve efficiency without harming the quality or reliability of service. The "deal" must be structured so that doing the job extremely well *makes* the contractor more money, instead of *costing* the contractor more money. Efficiency and performance must somehow be financially rewarded — not punished. And somehow the citizens must be protected from contractor greed, incompetence, or financial collapse, and the contractor must be protected from unfair criticism, meddling, and politically motivated intervention.

Besides knowing what to buy and how to tell if you are getting it, the government must also learn what types of procurement processes will work best for which kinds of services, what types of contracts work best under which conditions, what forms of compensation will produce the most desirable results, and how to avoid creating business relationships which result in constant conflict because the contract accidentally rewards the wrong kind of performance, and the city finds itself in the position of constantly trying to make the contractor do something that, under the contract arrangement, is actually not in the contractor's financial interest.

We have a long way to go in developing sound administrative technology and expertise in the "privatization" of traditionally governmental human services. In some ways, we have come further in the ambulance industry than in some industries, possibly because our industry's colorful history has included a considerable amount of highly intelligent and creative entrepreneurial talent. But even today's most sophisticated public/private relationships in the ambulance industry are just the beginning of a long and difficult, but surely exciting, evolution.

This column will be dedicated to improving the quality of private sector participation in the ambulance industry. More importantly, it will be devoted to improving quality of competitive opportunity

in our industry. In that regard, this column will not necessarily favor the private sector in every situation. Rather, we shall promote competitive opportunity of a nature that will encourage the growth and development of the *best managed* organizations, public or private.

Not long ago, a city councilman asked me if I thought the profit motive was as powerful a force in the private sector as is the incentive to serve in a well-managed public agency. I said that I thought that the profit motive per se has very little to do with the success of the best managed private ambulance companies. To prove my point, I identified the owners of several of the most successful high performance private ALS companies, and I indicated that nearly every one of those owners plows most of the profits back into the company in the form of better equipment, better service, and many of those owners live modestly in their private lives and put in very long hours running their businesses. *These most successful people appear to be in it for the fun of it more than anything else, and the "profit" is just a way of allowing that fun to go on.*

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Of course I know that there are greedy people in the ambulance industry just like there are in any other industry, but my own experience tells me that it is not the greedy people who are the most successful, but rather it is those who gain personal satisfaction from building and operating a fine service organization, who enjoy providing a pleasant and productive work place for employees, who think it's fun to do something better and cheaper than anyone else, and who just seem to like building and tuning a business organization in the same way some people enjoy a hobby. Managers with these characteristics exist in both the public and private sectors, although it may be more difficult to accomplish one's goals in government or other nonprofit environment.

If my observations are even partially true, then it is not the profit motive that drives the best private companies to higher performance and greater efficiency. Rather, it is the opportunity for competition itself that allows "capital" (i.e., a manager's building blocks) to more often flow into the grasp of better managed organizations than into less efficient, lower performance, or less well motivated organizations. Street level competition in the EMS industry has failed miserably to direct the flow of capital into the best managed and best motivated organizations. Socialization of the EMS industry directs the capital into the hands of a designated government agency with equal disregard for effective competitive opportunity.

The *philosophy* of this column shall be that the opportunity to serve should be given to those organizations public and private, that are best qualified to serve. The *focus* of this column shall be to identify the means whereby such business opportunities can be and are made available. Each month we shall feature and analyze a specific issue related to the public/private *Interface* in EMS. Occasionally, we will introduce the work of a guest columnist — an individual who has personally contributed to the development of public/private interface technology. We shall focus upon real problems, solutions, and developments in the EMS industry — not just upon abstract theories and philosophies.

Next month, we shall discuss an exciting new development in the EMS industry — an upcoming opportunity for both the public and private sectors to compete fairly for a substantial service contract, using a radically new and innovative procurement method that has never been used before, one that will allow the private sector to maintain a continuous standing offer to replace a government provider should cost overruns develop in the government's operations. □