



Competitive Process for Creating Exclusive Operating Areas

**Emergency Medical Services Authority
California Health and Human Services Agency**

EMSA #141



COMPETITIVE PROCESS FOR CREATING EXCLUSIVE OPERATING AREAS

Section 1797.224 of Division 2.5 of the Health and Safety Code requires that the EMS Authority delineate a competitive process for awarding exclusive operating areas for emergency response.

If the local EMS agency decides to create exclusive EMS operating areas, a Request for Proposal (RFP) must be developed. An RFP is the awarding agency's description in document form, of specific services to be provided in addition to other contractual requirements. The competitive process for awarding the area must, at a minimum, address the following:

1. Formal advertising of the opportunity to compete for areas.
2. A request for proposal which sufficiently states the requirements of the county and requires adequate documentation of the respondents/ EMS capability and fiscal status.
3. A responders' conference to provide a forum for answering questions.
4. Policies for:
 - a. The submission of responses;
 - b. receiving responses;
 - c. response evaluation;
 - d. response rejection;
 - e. award notification;
 - f. protests and appeals; and
 - g. contract cancellation

When the local EMS agency policies and procedures have been developed, they should be sent to the EMS Authority as part of the local EMS plan submittal. Approval of the process may be secured prior to plan submittal provided it is later incorporated into the plan.

GUIDELINES FOR CREATING EXCLUSIVE EMERGENCY MEDICAL SERVICES OPERATING SERVICE AREAS

I. INTRODUCTION

In the event a local emergency medical services (EMS) agency decides to create one or more exclusive operating areas (EOA) in the development of a local plan, EMS providers within those areas must be selected through a competitive process outlined in Section 1797.224 of Division 2.5 of the Health and Safety Code unless one of the statutory exceptions to that competitive process exists (Section 1797.224). A local EMS agency creates an "exclusive operating area" whenever it restricts operations in an EMS area or subarea defined by the Emergency Medical Services Plan to:

- one or more emergency ambulance services or
- providers of limited advanced life support (LALS) or
- advanced life support (ALS) (Section 1797.85)

The provisions of Section 1797.224 will apply in the majority of instances in the development of a local plan since most local agencies restrict operations to one or more emergency ambulance services or providers within the EMS area or subarea. This is done in an effort to develop system-wide coordination and predictable EMS response initiated from emergency calls received through a central dispatch facility. If the local EMS agency restricts operations to one or more emergency ambulance services or providers within an EMS area or subarea, exclusive operating areas are thereby created.

A competitive process is not required if the local EMS agency implements a plan "that continues the use of existing providers operating within the local EMS area in the manner and scope in which services have been provided without interruption since January 1, 1981" (Section 1797.224). For this exemption to be available, prehospital EMS services within local EMS area or subarea must have been provided by one or more providers in an unchanged and uninterrupted manner since January 1, 1981. Where those facts exist, a local EMS agency may make a finding within the development of their plan that those services by existing providers shall continue.

If the local EMS agency decides to create EOAs, a Request for Proposal (RFP) shall be developed. An RFP is the awarding agency's description, in document form, of specific services to be provided, in addition to other contractual requirements. An awarding agency may be the county or any other county authorized agency.

II. FORMAL ADVERTISING: INVITATIONS

An RFP should be prepared according to the following requirements. RFPs should contain the applicable information enumerated below and any other information necessary for proposal evaluation. The RFP should also include the eligibility and evaluation criteria including the point system to be used in scoring proposals.

- a. The serial number of the RFP
- b. Name and address of the awarding agency.
- c. Date of issuance
- d. Time and place for submission of responses, including disposition of late responses and potential reasons for rejecting all responses.
- e. Time and place of response opening.
- f. Period of time for which response is to remain in effect.
- g. Guarantee, performance and payment bond requirements.
- h. Responder's certification that all statements in the response are true. This shall constitute a warranty, the falsity of which shall entitle the awarding agency to pursue any remedy authorized by law, which shall include the right, at the option of the awarding agency, of declaring any contract made as a result thereof to be void.
- i. When needed for the proposal evaluation, pre-award surveys, or inspection, a requirement that responders state the place(s), including the street address from which the services will be furnished.
- j. Description or specification of services to be furnished in sufficient detail to permit open competition. The awarding agency shall obtain and distribute information from current contractors necessary for fair responses by all eligible providers.
- k. Time, place and method of service delivery.
- l. Citation of, and required responder conformance to, all applicable provisions of law and regulations.
- m. Requirement for each responder to submit a detailed budget and budget narrative wherein line items are identified as yearly or contract period costs.

III. RESPONDERS' CONFERENCE

The awarding agency should conduct a responders' conference at a pre-designated time during the early stage of the process. The date and time of the conference should be stated in the RFP, or arrangements should be made for contacting RFP recipients.

The purpose of the responders' conference is to provide a forum for answering questions. The conference should be the only time that questions are answered regarding the RFP. This will ensure that all prospective responders receive the same information. Questions and answers need not be put in writing. If a written response to a question is provided then all prospective responders must receive a copy of the question and the answer.

IV. PROPOSAL CONTENTS

1. The RFP should require responders to submit a statement of experience which shall include but not limited to the following information:
 - a. Business name and legal business status (i.e., partnership, corporation, etc.) of the prospective contractor.
 - a. Number of years the prospective contractor has been in business under the present business name, as well as related prior business names.
 - b. Number of years of experience the prospective contractor has had in providing the required services.
 - c. Contracts completed during last five (5) years showing year, type of services, dollar amount of services provided, location, and contracting agency.
 - d. Details of any future or refusals to complete a contract.
 - e. Whether the responder holds a controlling interest in any other organization, or is owned or controlled by any other organization.
 - f. Financial interests in any other related business.
 - g. Names of persons with whom the prospective contractor has been associated in business as partners or business associates in the last five (5) years.
 - h. Explanation of any litigation involving the prospective contractor or any principal officers thereof, in connection with any contract for similar services.
 - i. An explanation of experience in the service to be provided or similar experience of principal individuals of the prospective contractor's present organization.
 - j. A list of major equipment to be used for the direct provision of services.
 - k. The awarding agency should request financial information which will disclose the true cost of the proposed operation and the intended source

of all funding related to the provision of services as specified in the RFP. This may include current financial statements, letters of credit, and guarantor letters from related entities, as well as other materials required by the awarding agency.

- l. A list of commitments, and potential commitments which may impact assets, lines of credit, guarantor letters, or otherwise affect the responder's ability to perform the contract.
- m. Business or professional licenses or certificates required by the nature of the contract work to be performed and held by the responder.
- n. An agreement to provide the awarding agency with any other information the county determines is necessary for an accurate determination of the prospective contractor's qualifications to perform services.
- o. Agreement to right of the awarding agency to audit the prospective contractor's financial and other records.

V. SUBMISSION OF PROPOSALS

1. Management of the proposal process should require that:
 - a. Proposals should be submitted so as to be received in the office designated in the RFP document not later than the exact time set for submission of responses.
 - a. Proposals, with required attachments, should be submitted in the format specified by the awarding agency, and signed. The format should provide for the desired sequence of the proposal's content and a model budget.
 - b. Proposals should be filled out, executed, and submitted in accordance with the instructions which are contained in the RFP. If the proposal is not submitted in the format specified, it may be considered only if the responder meets and accepts all the terms and conditions of the RFP.
2. Any proposal received at the office designated in the RFP after the exact time specified for receipt should not be considered unless it is received before award is made and either:
 - a. The awarding agency has set forth an option, to be contained in the RFP document, for acceptance of proposals by registered or certified mail, sent prior to the date specified for the receipt of proposals.
 - b. It is determined that the late receipt was due solely to mishandling by the awarding agency after receipt at the agency.

3. Acceptable evidence to establish whether a proposal is late or meets some of the exceptions listed above may be:
 - a. The date of mailing of a proposal, proposal modification, or withdrawal sent either by registered or certified mail is the U.S. Postal Service postmark on the wrapper or on the receipt from the U.S. Postal Service. If neither postmark shows a legible date, the proposal, modification, or withdrawal should be deemed to have been mailed late.
 - b. The time of receipt at the awarding agency is the time-date stamp of such agency on the proposal wrapper or other evidence of receipt.
4. Any modification or withdrawal of a proposal should be subject to the same conditions cited above. A proposal may also be withdrawn in person by a responder or an authorized representative, provided his/her identity is made known and he/she signs a receipt for the proposal, but only if the withdrawal is made prior to the exact time set for opening of proposals.

VI. RECEIPT AND EVALUATION OF PROPOSALS

1. Upon receipt, each proposal should be noted with a separately identifiable proposal number, the date and time of receipt.
2. All proposals received prior to the time set for opening should be kept unopened and secured in a locked receptacle.
3. An agency official should decide when the time set for submission has arrived and should so declare to those present. All proposals received prior to the time set for opening should be publicly opened and then following recorded and read aloud to the persons present:
 - a. RFP number.
 - b. Submission date.
 - c. General description of service being procured.
 - d. Names of responders.
 - e. Amounts proposed.
 - f. Any other information the awarding agency determines in necessary.
4. If the number of proposals received is less than anticipated, the awarding agency should examine the reasons for the small number of proposals received. The purpose of this examination is to ascertain whether the small number of responses is attributable to an absence of any of the prerequisites of formal advertising.
5. Should administrative difficulties be encountered after proposal opening which may delay contract award beyond the state deadline for contract award, the responders should be notified before that date and the acceptance period extended in order to avoid the need for re-advertisement.

VII. REJECTION OF PROPOSALS

1. Any proposal which fails to conform to the essential requirements of the RFP documents, such as specifications or the delivery schedule should be rejected as non-responsive. Proposals submitted which do not meet the requirements regarding responsibility should also be rejected.

When rejecting a proposal, the awarding agency should notify each unsuccessful responder that the proposal has been rejected.

2. A proposal should not be rejected when it contains a minor irregularity or when a defect or variation is immaterial or inconsequential.

A minor irregularity means a defect or variation which is merely a matter of form and not of substance, such as:

- a. Failure of the responder to return the required number of copies of signed proposals.
 - b. Apparent clerical errors.
3. Immaterial or inconsequential means that the defect or variation is insignificant as to price, quantity, quality, or delivery when contrasted with the total costs or scope of the services being procured.
 4. The awarding agency should give the responder an opportunity to cure any deficiency resulting from a minor informality or irregularity in a proposal or waive such deficiency, whichever is to the advantage of the awarding agency.

IX. CONTRACT PERIODS

1. The complete process (Requests for Proposals) must be repeated at periodic intervals. The period between RFP requests should be established by local EMS agency policy based upon population, initial investment in provision of service and other relevant factors.
2. Contracts should be reviewed annually, at which time they could be renegotiated if this option is included in the contract. A contract may be renewed without re-bidding if this is stated in the RFP.
3. The rate of reimbursement for additional terms let under the contract should be negotiated with the contractor based on the following:
 - a. Actual expenditures by the contractor, as documented during the first contract term and approved by the awarding agency.
 - b. Changes in state program requirements.
 - c. Other reasonable costs or increases in cost over which the contractor has no control.
4. In negotiating costs, the awarding agency should assure that these costs accurately reflect current contract performance and are not inflated to recover

costs which may have been understated by the contractor during the original RFP process.

5. The awarding agency should assure, by audit if necessary, that all cost increases are reasonable and necessary to the continuation of the contract.

X. PROTESTS

The awarding agency should consider any protest or objection regarding the award of a contract, whether submitted before or after the award, provided it is filed within the time period established in the RFP.

Written confirmation of all protests shall be requested from the protesting parties. The protesting party should be notified in writing of the awarding agency's decision on the protest. The notification should explain the basis for the decision.

The decision of the awarding agency regarding the protest may be appealed to higher authority.

XI. CANCELING THE PROCUREMENT PROCESS AFTER OPENING

1. The procurement process may be canceled after opening, but prior to award, when the contracting officer determines in writing that cancellation is in the best interest of the agency for reasons such as those listed below.
 - a. Inadequate, ambiguous, or otherwise deficient specifications were cited in the RFP.
 - b. The services are no longer required.
 - c. All otherwise acceptable proposals received are at unreasonable prices.
 - d. The proposals were not independently arrived at in open competition, were collusive, or were submitted in bad faith.
 - e. The proposals received did not provide competitive adequate to ensure reasonable prices in accordance with local resources or generally accepted prices.
 - f. No proposal is received which meets the minimum requirements of the RFP.
 - g. The awarding agency determines after analysis of the proposals that its needs can be satisfied by a less expensive method.
2. All responders should be notified in writing of the specific reasons when proposals are rejected.