

OCEMS 2014 Plan
and
OCFA 9-1-1 Ambulance Transport RFP Process

Orange County Health Care Agency
Health Disaster Management Division



Overview

- EMS Act (Health and Safety Code, Div 2.5)
 - Local EMS Agency
 - California EMS Authority determination for conduct of OCFA Cities Sept 1, 2014 RFPs for ambulance transport contracts
 - Exclusivity: What is it and What does it provide

OCEMS 2014 Plan

- Exclusive ambulance operating areas
 - Exclusivity in Orange County is limited to 9-1-1 emergency ambulance transport
- Proposed regionalization of 19 OCFA service area cities

PROPOSED ORANGE COUNTY EXCLUSIVE OPERATING AREA AMBULANCE ZONES
EMERGENCY MEDICAL SERVICES, ORANGE COUNTY HEALTH CARE AGENCY



Upcoming 9-1-1 Ambulance RFPs

- RFPs for OCFA areas for Sept contracts
- Selection of contractors
 - Selection Committees
 - Most qualified bidder
 - Contract issuance
- Contract monitoring
 - Use of OC-MEDS data system
 - Performance Reports to cities and system
 - Actions for breach of contract

Questions and Comments



EMERGENCY MEDICAL SERVICES AUTHORITY

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February 3, 2014

Samuel J. Stratton, MD, MPH
Medical Director
Orange County EMS Agency
405 W. 5th Street, Suite 301A
Santa Ana, CA 92701

Dear Dr. Stratton:

This letter is to summarize our meeting with Orange County EMS Agency staff on January 30, 2014 at EMSA (Emergency Medical Services Authority). Upon reviewing the information discussed during our meeting, EMSA's position related to the delegation of statutory authority related to exclusive operating areas and competitive processes as noted in our December 26, 2013 letter has not changed.

On October 25, 2013, EMSA inquired about fair and equitable bidding practices on all Orange County emergency ambulance service request for proposals (RFPs). Available documentation showed that the Orange County EMS Agency (OCEMS) potentially delegated its authority for conducting of the competitive processes for emergency ambulance service in 19 ambulance zones to the Orange County Fire Authority (OCFA). Your response to our October 25, 2013 letter, dated November 22, 2013, stated that the OCEMS had not delegated any of its statutory responsibilities for the OCFA ambulance operator zones.

Rather, OCFA proposed, with OCEMS endorsement, the authorization of the Orange County Board of Supervisors to "conduct a competitive process on behalf of OCEMS for the selection and award of emergency ambulance exclusive operating area contracts for OCFA jurisdictional areas; effective July 1, 2004". Orange County Board of Supervisors Resolution 04-120 approved the OCFA proposal with OCFA conducting the RFP and OCEMS reviewing the process to assure competitiveness. In EMSA's view, this delegation of the competitive process and selection of providers to the OCFA is not consistent with the EMS Act.

Health and Safety Code Section 1797.224 states:

"...A local EMS agency which elects to create one or more exclusive operating areas in the development of a local plan shall develop and submit for approval to the authority, as part of the local EMS plan, *its* (emphasis added) competitive process for selecting providers and determining the scope of their operations...."

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In 2010, the California Appellate Court decision *The County of Butte v. The California Emergency Medical Services Authority, Inc.* (2010) 187 Cal.App.4th 1175 clarified the statutory responsibility of a local EMS agency for administration of RFPs and contracts for exclusive ambulance operator areas.

"...section 1797.200 unambiguously requires the county to designate *one* local EMS agency, not two such agencies sharing the statutory powers and duties of Chapter 4 of the EMS Act. Indeed, the purpose of the EMS Act was to replace the preexisting haphazard regulatory system with a simplified two-tiered regulatory system "governing virtually every aspect of prehospital emergency medical services" (County of San Bernardino, *supra*, 15 Cal.4th at p. 915), including the establishment of EOAs and the designation of exclusive operators within those areas (§ 1797.224)"

This decision clarified that the local EMS agency, including OCEMS, is responsible for the procurement process and contracts awarded for ambulance area exclusivity within the local EMS jurisdiction when seeking State sanctioned antitrust protection under California Health and Safety Code 1797.6.

EMSA has determined that the delegation of the RFP processes to the OCFA is not in compliance with statute and current case law (*Butte Decision*). The 19 ambulance areas specific to this determination are: City of Aliso Viejo, City of Cypress, City of Dana Point, City of Irvine, City of La Palma, City of Laguna Hills, City of Laguna Niguel, City of Laguna Woods, City of Lake Forest, City of Los Alamitos, City of Mission Viejo, City of Placentia, City of Rancho Margarita, City of San Juan Capistrano, City of Seal Beach, City of Stanton, City of Tustin, City of Villa Park and the City of Yorba Linda.

OCEMS must conduct and administer RFPs and contracts for those ambulance areas in order to attain and maintain State sanctioned antitrust protection under Health and Safety Code 1797.6, 1797.85 and 1797.224. OCEMS may contract with neutral third parties, such as consultants who do not have a vested interest in the process, to develop and administer RFPs. However, OCEMS must provide direct oversight, monitoring, and ultimately the selection of a provider as part of the competitive process.

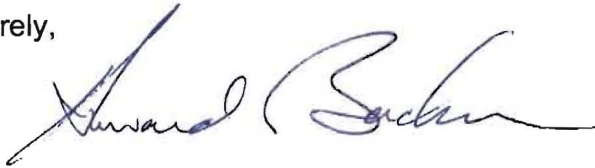
EMSA is aware of potential situations where the top ranked, responsive and responsible bidder for an Orange County ambulance area RFPs has been passed over for a lower scoring bidder when contracts were awarded. The reason for conducting an ambulance RFP is to allow for selection of the top ranking responsive and responsible bidder. With this in consideration, the top ranked bidder in the RFP process is to be awarded the contract for which the RFP is held. This position is supported by the recent California Appellate Court case of *Eel River Disposal Resource Recovery, Inc. v. County of Humboldt* (2013) Cal 1. A135744. This court decision states that in competitive bidding for exclusive contracts, the contract award must be made on the basis of criteria set forth in the published RFP.

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EMSA looks forward to OCEMS submitting an updated EMS plan, and competitive processes, which conforms to EMS statutes. EMSA appreciates the cooperation and support of OCEMS during this review process.

Please contact Tom McGinnis, EMS Systems Division Chief at (916) 431-3695 if you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Howard Backer". The signature is fluid and cursive, with a long horizontal stroke at the end.

Howard Backer, MD, MPH, FACEP
Director

HB:ll

cc: Tammi McConnell, OCEMS Program Administrator