

AMENDMENTS TO UTAH EMERGENCY

MEDICAL SERVICES ACT

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Rebecca D. Lockhart

LONG TITLE

General Description:

This bill amends the Utah Emergency Medical Services System Act to clarify the procurement procedures that must be followed by a political subdivision issuing a request for proposal for emergency 911 ambulance services.

Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ clarifies that the procurement process must be based on competitive sealed proposals;
- ▶ requires a presubmission conference;
- ▶ requires fair treatment of all proposers;
- ▶ prohibits certain requirements in the request for proposals;
- ▶ requires certain information in the response to requests for proposals;
- ▶ clarifies the appeal rights for the selection of a proposer; and
- ▶ gives the State Appeals Board jurisdiction to review an appeal of the political subdivision's selection.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

26-8a-405.1, as last amended by Chapter 277, Laws of Utah 2004

26-8a-405.2, as last amended by Chapter 277, Laws of Utah 2004

ENACTS:

26-8a-405.3, Utah Code Annotated 1953

Uncodified Material Affected:

ENACTS UNCODIFIED MATERIAL

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **26-8a-405.1** is amended to read:

26-8a-405.1. Selection of provider by political subdivision.

(1) For purposes of this section and [~~Section~~] Sections 26-8a-405.2 and 26-8a-405.3:

(a) "911 ambulance or paramedic services" means either 911 ambulance service, or 911 paramedic service, or both and:

(i) means a 911 call received by a designated dispatch center that receives 911 or E911 calls; and

(ii) does not mean a seven digit telephone call received directly by an ambulance provider licensed under this chapter;

(b) "political subdivision" means:

(i) a city or town located in a county of the first or second class as defined in Section 17-50-501;

(ii) a county of the first or second class;

(iii) the following districts or service areas located in a county of the first or second class:

(A) a special service district created under Title 17A, Chapter 2, Part 13, Utah Special Service District Act;

(B) a local district created under Title 17B, Chapter 2, Local Districts, for the purpose of providing fire protection, paramedic, and emergency services; and

(C) a county service area created under Title 17A, Chapter 2, Part 4, County Service

Area Act, for the purpose of providing fire protection, paramedic, and emergency services; or

(iv) areas coming together as described in Subsection 26-8a-405.2(2)(b)(ii)[:];

(v) municipalities and counties joining together pursuant to Title 11, Chapter 13,

Interlocal Cooperation Act; or

(vi) a special district for fire protection as defined in Section 17A-2-1304.

(2) (a) Only an applicant approved under Section 26-8a-405 may respond to a request for a proposal for 911 ambulance or paramedic services issued in accordance with Section 26-8a-405.2 by a political subdivision.

(b) A response to a request for proposal is subject to the maximum rates established by the department under Section 26-8a-403.

(c) A political subdivision may award a contract to an applicant for the provision of 911 ambulance or paramedic services:

(i) in accordance with Section 26-8a-405.2; and

(ii) subject to Subsection (3).

(3) (a) The department shall issue a license to an applicant selected by a political subdivision under Subsection (2) unless the department finds that issuing a license to that applicant would jeopardize the health, safety, and welfare of the citizens of the geographic service area.

(b) A license issued under this Subsection (3):

(i) is for the exclusive geographic service area approved by the department in accordance with Subsection 26-8a-405.2[~~(3)~~](2);

(ii) is valid for four years;

(iii) is not subject to a request for license from another applicant under the provisions of Sections 26-8a-406 through 26-8a-409 during the four-year term, unless the applicant's license is revoked under Section 26-8a-504; and

(iv) is subject to supervision by the department under Sections 26-8a-503 and 26-8a-504.

(4) ~~[The]~~ Except as provided in Subsection 26-8a-405.3(4)(a), the provisions of Sections 26-8a-406 through 26-8a-409 do not apply to a license issued under this section.

Section 2. Section **26-8a-405.2** is amended to read:

**26-8a-405.2. Selection of provider -- Request for competitive sealed proposal --
Public convenience and necessity.**

(1) (a) A political subdivision may contract with an applicant approved under Section 26-8a-404 to provide 911 ambulance or paramedic services for the geographic service area that is approved by the department in accordance with Subsection (2), if the political subdivision complies with the provisions of this section and Section 26-8a-405.3.

(b) The provisions of this section and [~~Section~~] Sections 26-8a-405.1 and 26-8a-405.3 do not require a political subdivision to issue a request for proposal for ambulance or paramedic services. If a political subdivision does not contract with an applicant in accordance with this section and Section 26-8a-405.3, the provisions of Sections 26-8a-406 through 26-8a-409 apply to the issuance of a license for ambulance or paramedic services in the geographic service area that is within the boundaries of the political subdivision.

(c) (i) For purposes of this Subsection (1)(c):

(A) "local district" and "county service area" are defined in Subsection 26-8a-405.1(1)(b)(iii);

(B) "participating municipality" means a city or town whose area is partly or entirely included within a county service area or local district; and

(C) "participating county" means a county whose unincorporated area is partly or entirely included within a county service area or local district.

(ii) A participating municipality or participating county may contract with a provider for 911 ambulance or paramedic service as provided in this section and Section 26-8a-405.3.

(iii) If the participating municipality or participating county contracts with a provider for 911 ambulance or paramedic services under this section and Section 26-8a-405.3:

(A) the county service area or local district is not obligated to provide the ambulance or paramedic services that are included in the contract between the participating municipality or the participating county and the 911 ambulance or paramedic provider;

(B) the county service area and local district may impose taxes and obligations within the

county service area or local district in the same manner as if the participating municipality or participating county were receiving all services offered by the local district or county service area; and

(C) the participating municipality's and participating county's obligations to the local district or county service area are not diminished.

(2) (a) The political subdivision shall submit the request for proposal and the exclusive geographic service area to be included in the request for proposal to the department for approval prior to issuing the request for proposal. The department shall approve the request for proposal and the exclusive geographic service area:

(i) unless the geographic service area creates an orphaned area; and

(ii) in accordance with Subsections (2)(b) and (c).

(b) The exclusive geographic service area may:

(i) include the entire geographic service area that is within the political subdivision's boundaries;

(ii) include islands within or adjacent to other peripheral areas not included in the political subdivision that governs the geographic service area; or

(iii) exclude portions of the geographic service area within the political subdivision's boundaries if another political subdivision or licensed provider agrees to include the excluded area within their license.

(c) The proposed geographic service area for 911 ambulance or paramedic service must demonstrate that non-911 ambulance or paramedic service will be provided in the geographic service area, either by the current provider, the applicant, or some other method acceptable to the department. The department may consider the effect of the proposed geographic service area on the costs to the non-911 provider and that provider's ability to provide only non-911 services in the proposed area.

~~[(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract let to the lowest, responsive, and responsible bidder after publication of notice at least once a week for~~

~~three consecutive weeks in a newspaper of general circulation published in the county, or if there is no such newspaper, then after posting such notice for at least 20 days in at least five public places in the county.]~~

~~[(ii) The applicants who are approved under Section 26-8a-405 and who are selected under Subsection (3)(a)(i) may be the political subdivision issuing the request for proposal, or any other public entity or entities, any private person or entity, or any combination thereof.]~~

~~[(b) A political subdivision may reject all of the bids.]~~

~~[(4) In seeking bids and awarding contracts under this section, a political subdivision:]~~

~~[(a) shall follow the provisions of Section 63-56-20;]~~

~~[(b) shall consider the public convenience and necessity factors listed in Subsections 26-8a-408(2), (3), and (4);]~~

~~[(c) shall require the applicant responding to the bid to disclose how the applicant will meet performance standards in the request for proposal;]~~

~~[(d) may not require or restrict an applicant to a certain method of meeting the performance standards; and]~~

~~[(e) (i) shall require an applicant to submit the bid based on full cost accounting in accordance with generally accepted accounting principals; and]~~

~~[(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide.]~~

Section 3. Section **26-8a-405.3** is enacted to read:

26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.

(1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under Section 26-8a-405.2 shall be solicited through a request for proposal and the provisions of this section.

(b) The governing body of the political subdivision shall approve the request for proposal prior to the notice of the request for proposals under Subsection (1)(c).

(c) Notice of the request for proposals must be published at least once a week for three

consecutive weeks in a newspaper of general circulation published in the county, or if there is no such newspaper, then notice must be posted for at least 20 days in at least five public places in the county.

(2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiations.

(b) (i) Subsequent to the published notice, and prior to selecting an applicant, the political subdivision must hold a presubmission conference with interested applicants for the purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

(ii) A political subdivision shall allow at least 90 days from the presubmission conference for the proposers to submit proposals.

(c) Subsequent to the presubmission conference, the political subdivision may issue addenda to the request for proposals. An addenda to a request for proposal must be finalized and posted by the political subdivision at least 45 days prior to the date on which the proposal must be submitted.

(d) Offerors to the request for proposals shall be accorded fair and equal treatment with respect to any opportunity for discussion and revisions of proposals, and revisions may be permitted after submission and before a contract is awarded for the purpose of obtaining best and final offers.

(e) In conducting discussions, there shall be no disclosures of any information derived from proposals submitted by competing offerors.

(3) (a) (i) A political subdivision may select an applicant approved by the department under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the most responsible offeror as defined in Subsection 63-56-5(24).

(ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the political subdivision, taking into consideration price and the evaluation factors set forth in the request for proposal.

(b) The applicants who are approved under Section 26-8a-405 and who are selected under this section may be the political subdivision issuing the request for competitive sealed

proposals, or any other public entity or entities, any private person or entity, or any combination thereof.

(c) A political subdivision may reject all of the competitive proposals.

(4) In seeking competitive sealed proposals and awarding contracts under this section, a political subdivision:

(a) shall apply the public convenience and necessity factors listed in Subsections 26-8a-408(2) through (6);

(b) shall require the applicant responding to the proposal to disclose how the applicant will meet performance standards in the request for proposal;

(c) may not require or restrict an applicant to a certain method of meeting the performance standards, including:

(i) requiring ambulance medical personnel to also be a firefighter; or

(ii) mandating that offerors use fire stations or dispatch services of the political subdivision;

(d) (i) shall require an applicant to submit the proposal based on full cost accounting in accordance with generally accepted accounting principals; and

(ii) if the applicant is a governmental entity, in addition to the requirements of Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and in compliance with the State of Utah Legal Compliance Audit Guide; and

(e) shall set forth in the request for proposal:

(i) the method for determining full cost accounting in accordance with generally accepted accounting principles, and require an applicant to submit the proposal based on such full cost accounting principles;

(ii) guidelines established to further competition and provider accountability; and

(iii) a list of the factors that will be considered by the political subdivision in the award of the contract, including by percentage, the relative weight of the factors established under this Subsection (4)(e), which may include such things as:

(A) response times;

(B) staging locations;

(C) experience;

(D) quality of care; and

(E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

(5) (a) Notwithstanding the provisions of Subsection 63-56-2(3), the provisions of Title 63, Chapter 56, Part H, Legal and Contractual Remedies, apply to the procurement process required by this section, except as provided in Subsection (5)(c).

(b) The Procurement Appeals Board created in Section 63-56-51 shall have jurisdiction to review and determine an appeal of an offeror under this section in the same manner as provided in Section 63-56-54.

(c) (i) An offeror may appeal the solicitation or award as provided by the political subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror may appeal under the provisions of Subsections (5)(a) and (b).

(ii) The factual determination required by Subsection 63-56-57(1) shall be based on whether the solicitation or award was made in accordance with the procedures set forth in this section and Section 26-8a-405.2.

(d) The determination of an issue of fact by the appeals board shall be final and conclusive unless arbitrary and capricious or clearly erroneous as provided in Section 63-56-57.

Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

Section 5. Application of effective date.

The provisions of this bill apply to:

(1) a request for proposal issued by a political subdivision after the effective date of this bill; and

(2) a request for proposal issued by a political subdivision prior to the effective date of

this bill if the political subdivision requesting the proposals has not contracted with a proposer prior to the effective date of this bill.