



EL PASO



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**EL PASO COUNTY EMERGENCY SERVICES AGENCY
SPECIAL MEETING AGENDA
Wednesday, May 27, 2009 – 10:00 a.m.
Pikes Peak Regional Building Department
2880 International Circle, 2nd Floor Hearing Room
Colorado Springs, CO 80910**

This meeting is being tape recorded to assist in the production of meeting minutes.

1. NEW BUSINESS

- A. Report Relating to Security Fire District’s Participating Agency Status with the ESA (Jane Fredman)

ADJOURNMENT

Pursuant to the Colorado Open Meetings Law, CRS §24-6-401, et Seq. and ARTICLE TWO Section 2.9 of the Intergovernmental Agreement Concerning the El Paso County Emergency Services Agency, this agenda was posted on the public bulletin board at the City Clerk’s office and the Lobby bulletin board in the El Paso County Administration building on or before May 21, 2009. Please call Eileen Gonzalez at 520-7654 or email her at egonzalez@springsgov.com if you wish to submit your name and e-mail address to receive notice of future meetings.

To: Jim Reid, ESA Board Chair
From: Jane Fredman
Date: May 22, 2009
Re: Whether the Security Fire Protection District may remain as an ESA participating agency upon its contracting with a private ambulance services provider to provide emergency ambulance services within its territory

Background

Since at least 1997, the Security Fire Protection District (SFD) has been a participating agency in the ESA by virtue of its execution of the *Intergovernmental Agreement for Emergency Ambulance Service* (“Agency IGA”) in 1997. The original Agency IGA referenced the intergovernmental agreement between the City of Colorado Springs and El Paso County which formed the ESA, and further provided that the Agency IGA was for the purpose of ensuring “a coordinated, effective, and efficient emergency ambulance service.” The Agency IGA was promulgated pursuant to Section 29-1-203, C.R.S., which provides the statutory backbone for intergovernmental agreements. The statutory section provides, in relevant part, that governments may cooperate and contract with one another to provide any service lawfully authorized to be provided by each of the governmental units, as long as the cooperation or contracts are authorized by the governing bodies of each entity. If the parties to the agreement no longer desire to cooperate or contract with one another, then the purpose of combining efforts through a mutual agreement does not exist. Thus, if the City, County and participating municipalities and districts no longer desire to have a coordinated, effective and efficient emergency ambulance service in this region, then their cooperative agreement can be terminated.

The Agency IGA executed by the ESA and SFD was primarily for the purpose of authorizing the ESA to act on behalf of the SFD to prepare an “ESA Ambulance Plan” and to procure an exclusive ambulance contract for all participating municipalities and agencies to operate within an exclusive service area. As early as 1994, an advisory committee appointed by the County Commissioners determined that open retail competition for ground emergency ambulance service in El Paso County had proven to be chaotic and unstable, and the committee deemed competition among private ambulance services for patients to be unacceptable for the public health and safety of residents of the County and the City of Colorado Springs. By 1997, the ESA was in the process of procuring a contract with one emergency ambulance provider to serve the region. The exclusive area was comprised of municipalities, unincorporated portions of

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the County, and fire protection districts that did not provide their own ambulance service and which desired to be part of an overall emergency ambulance system overseen by the ESA. The Agency IGA provided that a participating agency could discontinue its involvement with the ESA at any time upon 60 days' written notice. Pursuant to Section 32-1-1002, C.R.S. of the Colorado Special District Act, a fire protection district has the legal right to operate an ambulance service. El Paso County Resolution No. 98-403, Ambulance – 5, adopted by the Board of County Commissioners in 1998 (“Resolution”), sets forth the requirements for provision of emergency ground ambulance services within the County. Article II, Section 31 defines the “Emergency Services Agency” as follows:

[T]he El Paso County Emergency Services Agency, established by El Paso County and the City of Colorado Springs, for the purpose of providing ambulance service and other related emergency medical and rescue management services pursuant to the provisions of the enabling intergovernmental agreement.

Article II, Section 33 of the Resolution defines “Exclusive Area” as follows:

[A] single operating zone servicing the City of Colorado Springs, unincorporated El Paso County, and the municipalities and fire protection districts that have signed intergovernmental agreement(s) to participate. Exceptions to the exclusive area shall be defined in the emergency ambulance transport service contract for the exclusive area and may include federal reservations, non-participating jurisdictions, and fringe areas of the participating jurisdictions that are best served by ambulances based outside the County.

The current ESA contract with AMR (the “Contract”) does not specifically delineate the exceptions to the exclusive area granted to AMR. However, it is implied in the Contract that any fire district that provides its own ambulance service, as authorized by the Special District Act, is excluded from the exclusive area because it is not using AMR as its ambulance services provider. The Contract was negotiated based in part on the knowledge that certain municipalities and fire protection districts provided their own ambulance service, including the City of Fountain, and the Black Forest and Tri-Lakes fire protection districts.

For an approximate 18-month period beginning in 2007, the ESA worked on developing an ambulance services RFP process, which culminated in an award to AMR for the Contract commencing January 1, 2009. During 2008, ESA’s board members and the ESA’s RFP consultant met with representatives of fire districts and municipal fire departments to learn of their concerns and issues related to the ambulance RFP and contract. Attendees were encouraged to share their concerns about the then-current provider, in an effort to ensure all needed or desired changes to ambulance services (e.g., response times, system status plan, etc.) were incorporated into the new contract. SFD was notified of meetings concerning the procurement and contracting process. According to the RFP consultant that conducted the meetings, no representatives of SFD attended those meetings, including the one that was held in their own facility in Security. As a

member of the contract negotiation team, I am aware that concerns about service issues under the old contract that were brought up by other fire protection districts and agencies during pre-contract discussions were taken into consideration when the Contract was negotiated.

Before the Contract was finalized, representatives of several fire agencies reviewed and commented on the proposed contract. At no time before the Contract was signed by the parties was the ESA or AMR provided with information from SFD that it was not satisfied with AMR's provision of ambulance services in its territory, or that SFD desired a shorter response time for ambulances responding within its jurisdiction. The ESA has never received any written complaint from SFD on any issue related to ambulance services provided by AMR.

Approximately one month after the Contract went into effect, the ESA was advised that SFD was considering contracting with a private ambulance services provider for emergency medical service within the SFD territory. Despite the efforts of the ESA and AMR in seeking to meet with SFD to discuss those concerns, SFD notified the ESA by letter to AMR dated May 11, 2009, that it intends to commence its own emergency ambulance service through a contract with a private ambulance provider beginning June 1, 2009. Although the Agency IGA signed by SFD in 1997 obligates SFD to provide sixty days' notice of its discontinuance of its involvement in the ESA, no prior notice of such discontinuance has been received by the ESA.

Issues and Analysis

1. Is SFD in breach of the Agency IGA by not providing written notice of termination at least 60 days in advance of contracting with a private ambulance services provider?

SFD's recent decision to provide its own ambulance service within its jurisdiction, rather than remain part of the ESA's exclusive service area, means that SFD's territory can no longer be included within the exclusive service area granted to AMR pursuant to the Contract. Technically, SFD is in breach of the Agency IGA by its failure to provide 60 days' written notice of discontinuance to the ESA. By letter dated May 11, 2009 from an SFD board member to AMR, the ESA was notified that SFD's ambulance provider would commence service on June 1, 2009. That letter is not sufficient for written notice as required under the Agency IGA.

As set forth in the documents referenced above, participation in the ESA obligates the agency to be included within the ESA's exclusive service area. The County Resolution states that exceptions to the exclusive service area, such as non-participating jurisdictions that provide its own ambulance service, will be defined in the ESA ambulance contract. Because of the lack of notice from SFD, SFD's jurisdiction was not identified as an exception to the exclusive service area in the Contract, and the Contract

was negotiated on the basis that SFD's jurisdiction was included in the exclusive service area.

2. Can the ESA unilaterally end SFD's participation in the ESA when SFD has not provided the required notice under the Agency IGA?

The Agency IGA has no provision allowing the ESA to terminate SFD as a participating agency. Despite that omission, the ESA can end its relationship with SFD, since the purpose of an intergovernmental agreement is for governments to cooperate to provide a service that each is authorized provide on their own. Without that cooperation, the need for an intergovernmental agreement no longer exists. The recent action by SFD to contract with an ambulance provider to offer exclusive service within its territory effectively ends its relationship with the ESA, since SFD's territory is no longer part of the ESA's exclusive service area that can be provided to AMR under the Contract.

3. What ESA benefits will SFD no longer be entitled to receive after its involvement with the ESA is discontinued effective on June 1, 2009?

The ESA provides a variety of services and benefits to participating agencies. Upon SFD's discontinuance as a participating agency with the ESA, SFD will no longer receive the benefit of the ESA's medical, financial, administrative and legal oversight of the ambulance provider. SFD will not be able to restock its EMS supplies located at AMR and the hospitals, which inventory is provided by AMR through the Contract with the ESA. SFD will not be eligible to receive grants for EMS and safety-related equipment, which are funded through assessments paid by AMR to the ESA based on AMR's performance standards under the Contract. SFD will not be part of the coordinated and comprehensive EMS ambulance system within El Paso County that is supervised by the ESA. Other benefits provided by the ESA or AMR, through the contract, include, without limitation, oversight of programs benefiting the community (e.g., car seat checks, vaccination clinics, transportation for terminally ill patients, AED equipment installations and community CPR training programs), and EMS training and development of participating agency personnel.

4. Is the ESA unfairly differentiating between the fire agencies that provide their own ambulance service (e.g., City of Fountain, Black Forest) and SFD, which is providing ambulance service through a private contractor?

The fire agencies that currently provide their own ambulance services are not-for-profit government entities. As government entities, they are not in competition with AMR to make money from providing ambulance services for their residents. Except for the volunteer hours of some of the ESA board members, virtually all of the benefits provided by the ESA to its participating agencies are funded by AMR, since the Contract requires AMR to pay 100% of the ESA's costs for administrative support needed to oversee the Contract. In addition, the ESA's grant program is funded solely from assessments paid by AMR in accordance with the Contract, and the EMS supplies provided to participating

agencies come directly from AMR. It would be unfair for SFD and its private contractor, which is a direct competitor of AMR, to remain eligible to receive the ESA's benefits if SFD remains as a participating agency. If SFD remained eligible to receive the ESA's benefits as a participating agency, AMR would be subsidizing its direct competitor.

5. Is AMR required to provide backup response to SFD's contractor?

AMR's entry into response agreements with other agencies in El Paso County is entirely at its own discretion. The ESA's role is to approve those agreements once they have been entered into by the parties, and to monitor the responses that occur under those agreements to ensure that AMR continues to meet its obligations under the Contract. The ESA has no authority to compel AMR to enter into any such agreements with SFD's contractor.

6. If SFD withdraws or is no longer associated with the ESA, can it initiate participation with the ESA at some point in the future?

Yes, subject to a possible renegotiation or amendment of the Contract as a result of the expanded exclusive service area.