Jack Stout

INTERFACE

When to Say No

Eight Tips for Evaluating Ambulance Service Contracts

At least 30 major types of ambulance system structures, as well as over 2,000 public and private provider organizations to work within those structures, have been created within the past two decades. With a few hundred million dollars in federal aid, local tax subsidies now approaching a billion dollars annually, and an anything-goes approach to regulation, almost any idea could be sold somewhere, and anyone with a few bucks and a line of credit could start an ambulance company.

The past two decades spawned and nurtured new companies and new concepts, and in general the environment has been tolerant of both bad concepts and weak organizations. But those times are rapidly drawing to a close, and the next two decades will be a time of testing—an industrywide shakedown of both ideas and organizations. Inferior system designs and inferior provider organizations will give way to others. By the 21st century (only 16 years away), this industry will be an oligopoly—the economists' term for an industry dominated by a few companies whose main competition is each other, and who collectively control so much of a market that smaller competitors have little impact and limited growth opportunities.

This article is written for those men and women who look forward to the coming shakedown as competitive opportunity rather than as a threat. Such people must learn to recognize industry "hotspots." That is, you must learn to be in the right places at the right times, and unless your name is Carlos Castenada, that means you must simultaneously avoid being elsewhere, i.e. the wrong places at the wrong times.

As an employee, you'll want to link your career fortunes to a winning provider organization, and in a future "Interface" column, I'll offer tips for predicting the future of potential employers. But as an owner/operator, you'll want to link your corporate future with the kinds of system designs and business structures that are most likely to survive into the future.

Expansion Fever

I believe our industry somehow senses that the shakedown has already started. There's a kind of gold rush mentality, where some companies will participate in almost any local procurement, bid on nearly anything, compete with nearly anyone, sign any contract, and never say no to an expansion opportunity. But when the dust finally settles, the winners will be those who carefully selected expansion opportunities, and who took secret delight in seeing their strongest competitors "land" potentially fatal expansion contracts.

This article offers eight tips for evaluating ambulance service contract opportunities. But just as expansion fever may be fatal in the long run, waiting for the perfect expansion opportunity may be just as dangerous. No flawless expansion opportunities exist. These eight tips must, therefore, be applied with judgment and intuition.

1. Understand the Type of Procurement

This is perhaps the most important and most complex aspect of evaluating an expansion opportunity. There are literally hundreds of generic procurement strategies, each with its own pitfalls and potential strengths. Ideally you should be able to examine a prospective contract or bid document, quickly categorizing the arrangement as, for example, a "term agreement for requirements with minimum/maximum quantity guarantees, stipulated maximum unit prices, using quality of service as the competitive bid variable, with prescreened bidder qualifications." That's one of several hundred kinds of procurements you could be looking at, and to evaluate the deal, you need to understand what's good and bad about that type of procurement, and whether this particular buyer is properly applying the administrative technology that goes with that kind of business proposition.

Probably the most dangerous business arrangement is one where the "type of procurement" isn't really clear. You will see requests for proposals (RFPs) and related contract documents which simultaneously incorporate conflicting boilerplate provisions from two or more contract types. This happens because local officials often piece together their own documents by borrowing from similar documents obtained from other cities and counties. For example, one northern California county recently released bid documents prepared in part by a West Coast consultant, and containing entire paragraphs, unchanged, from some of my own work in the Midwest. County officials were unaware of the true origin of the borrowed clauses, and I was flattered that another consultant thought so highly of my work. Unfortunately, the borrowed clauses were related to an entirely different type of procurement, and simply had no legal meaning as applied in the context of the procurement at hand.

If the generic type of procurement is unclear, or if the procurement incorporates incompatible features of several procurement types, steer clear of the deal. If nothing goes wrong during the course of the contract, the instability of such an

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arrangement may never be revealed, but if problems should develop, it's anybody's guess as to what the outcome may be.

If you are properly prepared, a pre-bid conference provides the best opportunity to raise questions of clarification regarding generic procurement type. Submitting your questions in writing, preferably by registered mail, before the pre-bid conference will allow government officials to prepare an answer, and may avoid you inadverently embarassing public officials with questions they are unprepared to answer.

Keep in mind that the primary purpose of contract documents is to make the business arrangement clear to both parties, to avoid misunderstandings and legal complications. Some public officials mistakenly believe that, being "buyers," they are all-powerful, and that it is the responsibility of "sellers" to cater to the buyer's every wish. Fortunately, that's a rapidly dying myth. Governmental buyers of ambulance service need qualified bidders far more than qualified bidders need governmental buyers. Schooling bluefish will hit any hook in the water, and I eat a lot of bluefish.

2. Check for Bidder Qualifications

Avoid procurements that allow almost any provider to participate in the final stages of the contractor selection process. Unless unqualified companies are somehow weeded out before the final stages of competition, one of two bad results may occur.

First, if the contract is awarded to a well-qualified firm, lawsuits may be filed by less-qualified firms arguing that their prices were lower or that the award was made unfairly. Such lawsuits rarely are successful, but they can create expensive delays, unexpected legal costs, and may disrupt the winning bidder's financing arrangements until the dispute is resolved.

Second, frightened public officials may feel forced to award the contract to a marginally qualified company represented by saber-rattling attorneys. In this case, more qualified companies have wasted their time and money participating in the procurement, lending an air of respectability to the whole affair. Later, public officials may find themselves covering up poor contractor performance to avoid accepting responsibility for conducting a faulty procurement in the first place.

There are many ways of structuring procurements to reduce or eliminate these potential problems, and there isn't space here to outline the various procurement strategies. However, develop a sensitivity to the issue of bidder qualifications, and avoid participation in procurement free-for-alls.

3. Isolate the Competitive Bid Variable

Many ambulance service procurements are so poorly managed that participating companies never really compete with each other at all. This is especially true when local officials aren't exactly sure how to define what they are buying, and ask prospective bidders to submit their own ideas and recommendations for the services to be provided.

I recently reviewed a major procurement process in which the buyer's bid documents merely stated the level of subsidy to be offered and the hoped-for response times. Bidders were asked to submit their own system designs, hardware requirements, clinical standards, rate/subsidy structures, and performance assurances. Thirteen organizations submitted 13 entirely different proposals for 13 completely different levels of service, with 13 different methods of financing the services, and 13 different levels of performance assurance.

In such a "competition," the company that wins is the company that most accurately guesses at what the buyer really wants. Good guessing is what wins, not necessarily quality of service, efficiency, or bidder qualifications.

If the buyer doesn't know enough to structure the procurement to narrow down the selection process to a single competitive bid variable (e.g. price or quality of care or response time performance or bidder's qualifications, with all other variables held constant), then the procurement should be structured in two stages—one to select a winning proposal or winning system design, exclusive of price considerations, followed by a second stage involving sole-source negotiations with the company that submitted the preferred design. If these second stage negotiations fail to produce a mutually acceptable contract price, the buyer can retain the right to institute an additional stage of competition, utilizing the winning proposal as the "statement of work," restricting participation to pre-qualified bidders, but allowing price to be the final competitive bid variable.

In general, avoid procurements where the final award is to be made by a committee or board who will "weigh bidders' qualifications, proposed service offerings, and pricing considerations" to select the winning bidder. Such affairs are not competitive procurements in any serious sense, but rather high stakes parlor games with amateurs on both sides.

4. Avoid Free Consulting

It's a common theme. One local official learns of your company from an official of a neighboring jurisdiction, or at a national conference. Not knowing much about ambulance services, they call you directly, flattering you with reports of your own reputation, and inviting you to visit them, usually at your own expense.

Understandably flattered, you and some of your own company executives visit the community in question, and in the beginning it looks like a marriage made in heaven. At some point in the conversations, they ask you to "submit a proposal." They already know they want you, and the proposal business is just a formality.

You honestly believe the deal is in the bag, and you conservatively tell folks back home that the contract is 80 percent sold. With all that confidence, you and your employees invest thousands in time and expenses professionally preparing the requested proposal, covering all the little details that must be accounted for to turn a corporate wish into a business contract.

You submit your proposal, and the honeymoon ends before the wedding begins. The city attorney has "some questions,"and the city procurement officer thinks it might be necessary to "bid this one." The local fire chief wonders why "it shouldn't be in the fire department," and if it's already in the fire department, why it shouldn't stay there. Some local BLS transport provider gets mad and starts bad-mouthing your company to the local press, and before long the controversy is being reported in your own hometown newspapers. Finally, the consumer advocate on the city council wants you to guarantee that

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your rates won't increase as long as the wind blows, grass grows and rivers flow.

Now you've got a real mess. If the community in question ignores your proposal, you'll be able to bid on what may be a stupid system concept. And if the community uses your proposal to write its own bid documents, you may be accused of "writing your own ticket," and might even be disqualified from bidding. And if you bid and win, you may be sued by a disgruntled competitor on grounds that you had unfair advantage.

If you see this scenario in the making, give me a call, and I'll put you in contact with several top private providers who have been down that road and won't go again.

5. Who Will Evaluate Your Work?

Avoid contracts wherein your company "reports" to a local government department head or other local government staff person. Also avoid contracts wherein your clinical work is subject to evaluation by a politically appointed physician. In times of real controversy, you may have to depend upon these people to vigorously defend you against unfair or uninformed criticism, and depending upon the nature of the controversy at hand, you may find yourself standing quite alone. I have found that the best, most informed, and fairest clinical performance evaluations are done by committees or organizations made up of full-time emergency physicians from the community's acute care receiving facilities. While intolerant of chronic performance deficiences, such physicians will be quick to defend you against unfair criticism, political interference or unfair press coverage.

Where the issue at hand is less clinical and more business-oriented, I prefer contracts which allow a committee or organization of local business people and health care administrators to review such issues as rate adjustments, billing practices, assignment policies, etc. Elected officials and city/county staffers may be less qualified to evaluate complex financial issues, and may be more tuned into short-term political considerations than to the ambulance system's long-term financial stability.

6. Check Out Transition Planning

Making the transition from one type of ambulance system to another, or even from one provider to another, is traumatic and complicated under the best of circumstances. Find out how much planning the buyer has done towards smoothing the transition process, both in regards to your initial take-over of services and as a future transition to another provider when your contract is terminated.

Transition planning should answer some important questions: How will the communications systems and dispatching infrastructures change hands? Will ownership of non-emergency telephone numbers and yellow page ads be transferred? Can the incumbent contractor's employees

sign contingent labor contracts with competing bidders? Must the incoming bidder assist the outgoing bidder with employee recruitment during the late stages of the outgoing bidder's contract? What will happen to the outgoing bidder's central supply inventory? Where labor is organized, what is the legal relationship between a winning bidder and the incumbent labor force?

Even the most carefully planned transitions will present numerous unforeseen, if not unforeseeable, difficulties. But without the buyer's informed assistance, transition hang-ups can sour the sweetest contract award.

7. Reasonable Term and Renewal Provisions

Avoid any procurements which involve an initial contract term of less than three years. I prefer a minimum of four years, with the possibility of a couple of two-year extensions. Even when the buyer furnishes all necessary equipment and facilities, bidding and startup costs will usually require several years of amortized recovery, unless prices are set at such exorbitant levels as to recover these costs more quickly.

I advise my clients to make provision for limited non-competitive contract renewals, provided service is excellent and negotiated renewal prices are acceptable. With such renewal provisions stipulated up front, many bidders are willing to focus more heavily upon service quality and customer satisfaction, and less upon initial profitability, figuring that profits will be easier to come by during renewal periods, and that the services rendered under this contract may be a showcase for marketing other communities.

I also advise my own clients to incorporate limited price advantages for an incumbent bidder in future competitions. That is, if the clinical and response time performance has been generally excellent over the term of the agreement, then I recommend giving the incumbent bidder a 3 to 5 percent price advantage over competitors in future competitions.

Ideally, I like to see a four-year initial contract term, with two optional renewals of two years each, conditioned upon service excellence (i.e. not mere compliance) and an acceptable negotiated renewal price. Thus, if all goes well, the successful contractor and its labor force will not have to face the trauma of bidding for eight years. At some point, however, it is probably good to run the test of competition, if only to assure the public and elected officials that the services being delivered and their costs are reasonable by fair competitive standards.

8. Assessing the Risk

This last tip requires real thought and some experience. In this business, risks come from every possible direction, and it's impossible to isolate every one. However, it is wise to analyze the system design and the buyer's contract offering in light of the following question: *Will my company be held responsible for the actions or inactions of persons not under our control?*

In simple terms, you don't want to accept responsibility for that which is outside your control. If you are not allowed to do your own dispatching and your own system status management, then you should not be held responsible for the response time results. If you are not in control of your own in-service training program, either in-house or by way of your own subcontract, then you should not be held accountable for the resulting clinical performance. If you are not in charge of your own budgeting and approval of expenditures, then you should not be held accountable for financial performance.

The linkage of authority with responsibility seems obvious to most of us, but the concept is apparently not obvious to everyone. Many ambulance contracts prescribe coverage levels, staffing plans, and even post locations, prohibiting the contractor from making any related changes without the permission of the buyer. And yet these same contracts purport to hold the contractor responsible for response time results.

Some municipal contracts even require the contractor to go through an annual budget approval process which makes it hard to distinguish the contractor from a department of local government. The government desires to control the process while holding the contractor accountable for the consequences. □