

Published on Auntminnie.com

March 17, 2011

## HOW TO SHIELD AGAINST "WEAPONIZED" RFPs

BY: MARK F. WEISS, J.D.

Spring may be on its way, but the forecast is increasingly gloomy for many radiology groups. More and more hospitals are disrupting their longstanding radiology group relationships as they seek to cut stipends and get more for nothing. The favored tool? A "weaponized" form of the request for proposal (RFP), designed to get a group to grovel for the continuation of its contract.

Consider a typical group, we'll call it Springdale Radiology, which held the exclusive contract with Quad Cities Regional Medical Center for almost three decades. As the facility grew so did Springdale and its expertise, recruiting subspecialty radiologists to the practice despite the hospital's less than desirable location and, in some subspecialty practice areas, lack of sufficient case volume.

The symbiosis between the group and the facility was enhanced by the coverage stipend paid by Quad Cities and by the fact that both the breadth and depth of coverage provided by the fully board-certified group had enabled the hospital to expand into profitable service lines.

As the years passed, contract term seemed to meld into contract term. There were simple negotiations around renewal time and, on occasion, a bump or two over demands for new coverage or more money, but as the years progressed the pats on the back of a job well done became more and more hearty. Until one day, like a turkey fattened for months prior to Thanksgiving, the ax fell: Called to a meeting in the CEO's office, Springdale's president was handed a notice of an RFP.

Later, Springdale's leader recalled having heard the CEO say, "We hope that Springdale submits a proposal," or words to that effect. At least his head was still attached to his neck.

Unfortunately, this scene is playing out with increasing frequency, as if the tactic were in the air or, at least, the topic of a detailed briefing at a hospital association conference.

Of course, the concept of an RFP is not new; it's been used for decades across many industries and by government agencies. But as opposed to its traditional use, identifying vendors for discrete supply orders or for a one-time project, the current radiology services RFP is increasingly being used as a club to beat down the expectations of the present provider group.

### **The three RFPs**

Having dealt with hospital RFPs over four decades, I've classified them into three distinct categories.

1. True RFPs: These are actual searches for the best quality provider with a favorable quality-cost ratio. This type of RFP is the closest in relationship to the traditional form used in industry

and government. It's commonly seen in situations in which the current, or sometimes very recently former, group has "blown up" and can no longer provide coverage, and in situations in which the current group has completely lost the facility's trust.

2. Fictitious RFPs: These RFPs belie the fact that hospital administration is not interested in the merits of any response; they have already decided to whom they will award the contract. Yet, for one political reason or another, they've decided to issue a phony RFP to project a patina of "fairness" to the medical staff, to the hospital's own board, to some third party ... or perhaps to you.
  
3. Fulcrum RFPs: This is the increasingly common type of weaponized RFP. As the name implies, fulcrum RFPs are designed to create leverage. The facility intends on renewing with the present group but uses the RFP as a tool to dictate terms by fiat and to pressure the group into negotiating against its own best interests out of fear of replacement. Nonetheless, the facility is open to competing proposals.

### **Category dictates strategy**

It's essential to understand in any particular situation what type of RFP you are dealing with to calculate your group's response or, in some cases, to determine whether or not you will respond at all. It is also necessary to develop good intelligence on the other responding parties.

For example, why incur the cost of responding to a fictitious RFP if your group is not the anointed one? After all, the "fix" is already in; the coronation has already occurred. You'll simply become a bit player in someone else's play, all while you'll be incurring significant expense and devoting considerable effort.

Or, in connection with a true RFP, especially in situations in which national providers or radiology staffing companies are "bidding," it's vital that you weigh the possibility that the process will simply result in a race to the lowest bottom line. Will the former accountant turned national practice executive not actually care if his group's proposal does not make economic sense because holding the contract will increase the company's market share? The strategy involved in a potential response and the tactics your group will employ depend on a proper assessment of the RFP's character and on the likely competitors for the contract.

Finally, the increasingly common fulcrum RFP situation requires the most advanced strategic thinking and tactical awareness on the part of the group. Your group must deploy both defensive and offensive tactics: On the defense, you need to hold your group together under the strain of what is actually a violent attack. On the offense, in launching this type of RFP, the hospital has left itself vulnerable as its preference is not to replace the current group. This leaves open the possibility that the current group can transform the situation into an even stronger position.

Of course, the best strategy for any group includes the creation of an experience monopoly for the hospital, referring physicians, and patients that results in a situation the hospital would be foolish to disrupt -- even if the hospital does turn to the use of an RFP, it would be comparing others' lesser packages to yours. But, just as "of course," some hospitals are run by fools who know price but not value, which is why the best strategy also includes never being wed to serve only one facility.

As financial pressures on hospitals increase and as commoditization of radiology services continues, the trend toward RFPs will intensify. Develop and implement your strategy now, preferably years before you find yourself on the receiving end of an RFP designed to replace you, to force disadvantageous terms, or, even worse, to have you offer to cut your own economic throat in the mistaken belief that a slow bleed is better than a quick chop.

---

Mark F. Weiss is an attorney who specializes in the business and legal issues affecting radiology and other physician groups. He holds an appointment as clinical assistant professor of anesthesiology at USC's Keck School of Medicine and practices with the Advisory Law Group, a firm with offices in Los Angeles and Santa Barbara, Calif. He can be reached by email at [markweiss@advisorylawgroup.com](mailto:markweiss@advisorylawgroup.com) and by phone at 800-488-8014.

To receive complementary copies of our articles and newsletters, opt in to our emailing list at [www.advisorylawgroup.com](http://www.advisorylawgroup.com).