

TEPR Conference

Negotiating a Winning EHR Contract

presented by

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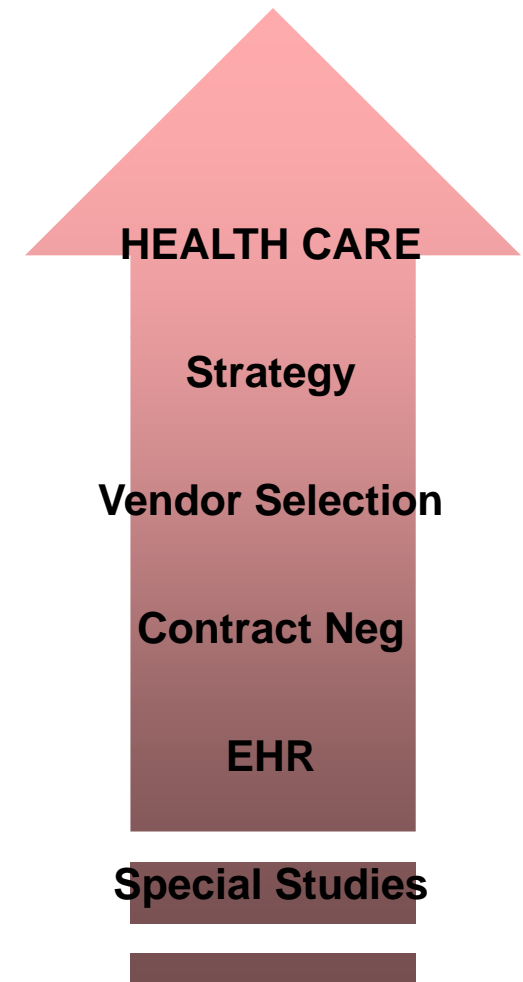
CPHIT, CPEHR, FHIMSS

MRC Consulting Group



About the Speaker

- **Mike Cohen FHIMSS, President MRC Consulting Group and Principal at Cardinal Consulting Inc.**
 - ❑ 25+ years as administrator, vendor and consultant
 - ❑ Focused exclusively in healthcare IT consulting for providers and vendors
 - ❑ Wide variety of IT services, including CPR, HIPAA, Strategy, Evaluation & Selection, Contract Negotiations, Implementation, Problem Solving, Consulting for Vendors, Special Projects
 - ❑ Fully independent – no “side deals” or commissions with vendors to benefit from the sale or implementation of their systems
 - ❑ Helped dozens of providers successfully negotiate IT contracts with most of the leading vendors
 - ❑ One of the first become a Certified Professional in Health Information Technology (CPHIT) Certified Professional in Electronic Health Records (CPEHR)



The Art of Negotiation

"Negotiation is a communication process in which the exchange of information is the key that enables the parties to find complementary interests that lead to agreement." -- *Steven P. Cohen (no relation)*

"Price is what you pay. Value is what you get."
-- *Warren Buffett*

Negotiation Activities

- Clarify what you are buying
 - Documentation and technology review
 - Product and technology issues/resolution
- Negotiate “The Deal”
 - Terms and conditions
 - Economics
- Understand and agree upon Implementation Plan
 - Resource requirements: Who does what
 - Project phases and Timing

The
Contract

The diagram consists of three black arrows pointing from the negotiation activities to the text 'The Contract'. The top arrow originates from the 'Product and technology issues/resolution' sub-item and points to the top of 'The Contract'. The middle arrow originates from the 'Negotiate "The Deal"' main item and points to the middle of 'The Contract'. The bottom arrow originates from the 'Understand and agree upon Implementation Plan' main item and points to the bottom of 'The Contract'.

Clarify What you are Buying

What You Buy

- Application software (including all extra's)
- Interfaces
- Implementation
- Hardware/equipment
- Conversions and specials

Where it is Defined

- User and technical manuals and RFP (if attached)
- Usually vague unless you specifically define and attach
- Work plan and scope document
- H/W Contract
- Usually vague unless you specifically define and attach

Resist temptation to work out details *after* contract is signed. Remember, what you are told during demos, see on site visits, and told by the vendor has no contractual impact unless you get it in the contract

Plan the Implementation

Tie implementation plan to contract:

- Implementation is critical to successful deployment
- Your leverage in getting the right implementation terms and support will never be stronger than BEFORE contract is signed

INTERNAL

- Develop project management methodology
- Clarify project objectives; how will you define success?
- Identify key targets for process improvement
- Organize the team

CONTRACTUAL

- Define timeline and key project milestones
- Performance criteria and payment terms
- Define tasks & responsibilities by team member (incl. vendor)
- Quantify level of effort

Negotiate Rest of Contract

- System Capabilities
- Terms and Conditions
- Economics
- Legal
- Technical
- Everything else

Overriding consideration should be *Pay for Performance*

Examples of *Pay for Performance*

- Implementation assistance – you are buying a successful implementation, *not a fixed number of days*
- Assure equipment configuration is sufficient – even if not buying the hardware through software vendor
 - Response time
 - Downtime
 - Sufficient capacity for growth
- Tie payment terms to milestones that are meaningful to you; *not to arbitrary dates of timeframes*
- Attach requirements, interface specs, issues responses, etc. to contract
- Consider asking vendor to share the risk/reward. Tie payments to achieving measurable objectives

Practical Tips: Getting Ready

- Develop a negotiation team, with clear roles and responsibilities
 - The hired gun
 - The legal beagle
 - The voice of reason
 - The technology guru
 - The hammer
 - Etc.
- Decide how much you want this deal
 - Are you ready to walk?
 - Is there a “Plan B”?
- Establish a negotiation strategy and a target (but not rigid) timetable

Key Philosophies to Consider

- Not a zero sum game; find “win-win” solutions whenever possible
- **Integrity**, on both sides is critical. Demand it from your vendor and from your team. Be sure you deliver and maintain it
 - Delivering comprehensive set of issues early, and sticking to the spirit of it, helps immensely
 - Do not underestimate the power of good faith, or the disruption caused by a lack of it
- Beware of overemphasizing cost too early!
 - “If I had known you wanted that when we agreed to price I never would have given you that price. We need to charge extra for that”
- This is an iterative process. Resist the temptation for a “quick close”

The Details

- Work internally to define what you think you want to buy (and get ready to refine it with the vendor). Think of the details
 - Hardware
 - Software
 - Implementation support
 - Interfaces
 - Conversions
 - Customizations
 - Networks/infrastructure
 - Attach RFP response
- Document initial issues and positions – be as thorough as you can
 - Product capabilities
 - Cost and payment terms
 - Technical
 - Installation and Implementation
 - Other business and contractual

The Details (cont.)

- Identify and manage potential issues throughout process – proposal review, demo's, site visits etc
- Request complete set of product documentation – and arrange for users to read it
- Consider a final “due diligence” product demo
- Clearly establish accountabilities and expectations
- Find your leverage pointsand theirs too. Monitor them continuously
- Use the calendar to your advantage. Year end and quarter end deals can still happen - don't let your vendor hide too much behind Sarbanes-Oxley etc.

The Details (cont.)

- Know your opposition at the negotiation table
 - What are their needs? What is their style?
 - The company
 - The lead negotiator
 - Ask other customers what worked for them
- Identify and resist (or create leverage from) closing tactics
- Identify “deal breakers” on both sides as early in the process as you can.
 - Many vendors will walk from a deal rather than violate one of their sacred cows (limitation of liability comes to mind)
 - Prioritize other issues
 - Try to avoid the “quid pro quo” game – but be prepared to “trade-off” some issues

The Details (cont.)

- Track the written changes carefully
- The economic deal goes far beyond the price
 - Payment terms = pay for performance
 - What/when is “final system acceptance”
 - Maintenance/support fees and Inflation clauses
 - Price protections
 - Fixed fee for Implementation? Expense controls/cap?
 - ASP, term or perpetual license
- Consider negotiating line total cost of deal (or component) rather than getting wrapped up in line item detail
- Define performance criteria, remedies and dispute resolution processes in terms you can understand and measure

The Details: The End Game

- Get out your crystal ball – plan for contingencies
 - Is your organization going to change (grow, shrink, refocus etc.)
 - Must keep current with federal, state and regulatory requirements
 - What if the vendor leaves the business? (software replacement clause, escrow etc.)
- Beware of last minute product substitutions
- Beware of “Evergreen Clauses” (automatic renewal)
- Have a contract management plan
 - Highlight key clauses for easy reference
 - Periodically review it
 - It’s not a hammer – but sure can clarify things during disputes

Some closing thoughts

1981 - Tommy Lasorda , Dodger manager, when asked what terms Mexican-born pitching sensation Fernando Valenzuela might settle for in his upcoming contract negotiations:

"He wants Texas back."

Some closing thoughts

My father said: "You must never try to make all the money that's in a deal. Let the other fellow make some money too, because if you have a reputation for always making all the money, you won't have many deals."

J. Paul Getty 1892-1976, American Oil Tycoon, Billionaire

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