



Fire Department

“Serving the community since 1926”

HEADQUARTERS

4410 Cathedral Oaks Road
Santa Barbara, CA 93110-1042
(805) 681-5500 FAX: (805) 681-5563

Mark A. Hartwig
Fire Chief
County Fire Warden

Rob Heckman
Deputy Fire Chief
Administration

Anthony Stornetta
Deputy Fire Chief
Operations

Wednesday, November 23, 2022

VIA EMAIL AND U.S. MAIL

Phung Loman
Chief Procurement Officer
General Services Department
Purchasing Division
County of Santa Barbara
260 N. San Antonio Rd.

AND

American Medical Response West (AMR)
Mike Sanders, Regional Director
240 R. Highway 246, Ste. 300,
Buellton, CA 93427

The name and address of the Protesting party and its relationship to the responding RFP:

Protestor: Santa Barbara County Fire Protection District (RFP 8010001 Respondent)

Representative: Fire Chief/Fire Warden Mark A. Hartwig

Address: 4410 Cathedral Oaks Road
Santa Barbara, CA 93110
805-896-6400

Identification of the proposed contract/project: Formal Protest by Santa Barbara County Fire Protection District in Response to Notice of Intent to Award County of Santa Barbara RFP No. 8010001 (Emergency Ambulance Services) to American Medical Response, Inc. (AMR)

Supplemental Information In Support of November 4, 2022, Formal Protest in Response to County of Santa Barbara RFP No. 8010001 (Emergency Ambulance Services)

In light of new information becoming available related to AMR's contract and compliance within Sonoma County, we are requesting that this additional information and attachments be included to supplement the information and documents in our initial

protest, submitted on November 4, 2022, to the County of Santa Barbara RFP No. 8010001 (Emergency Ambulance Services).

Per the County's RFP protest instructions (Page 26, Section H), additional information provided by a protestor is contemplated and "Any written submissions after the initial filing shall, at the LEMSA's discretion, be limited to information that was not, and could not have been, known at the time of the filing of the Protest."

The below information and attachments were not available to the Santa Barbara County Fire Protection District at the time of the November 4, 2022, RFP Protest deadline. The Santa Barbara County Fire Protection District became aware of the Sonoma County contract and compliance matter on November 21, 2022. The letter dated October 14, 2022 from AMR to the County of Sonoma was not publically posted by Sonoma County and therefore could not have been known at the time of our protest.

The County Fire Protest, dated November 4, 2022, asserts that "AMR is false and misleading as to RFP Section 2.9 Minimum Qualifications because AMR failed to identify recent noncompliance and, thus, the panel should have scored this requirement with a "fail" and discontinued consideration of AMR's proposal." Not only did AMR cite within their proposal a contract with Santa Clara County (AMR Proposal Page 108) to establish its minimum qualifications in their proposal they also cited their contract with Sonoma County (AMR Proposal Page 110) as proof of "...a stable track record of rendering emergency, nonemergency, and urgent ambulance services...", meeting minimum qualifications in Santa Barbara County. AMR included Sonoma and Santa Clara Counties as evidence of performance BUT chose to omit the ongoing contract dispute, including AMR's assertion it no longer needs to comply with performance requirements with Sonoma County (and non-compliance in Santa Clara County). AMR does not have a stable track record of providing agreed-upon services in Santa Clara County or Sonoma County and AMR's citation to these jurisdictions is false and misleading and must be rejected.

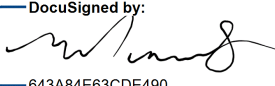
On November 18, 2022, Counsel for the Sonoma County Department of Health Services responded to a notification provided by AMR to the County of Sonoma Board of Supervisors regarding their contract (dated October 14, 2022). As evidenced by correspondence between Sonoma County and AMR, AMR claims bad faith on behalf of the County and unilaterally asserts that the terms of the contract (e.g. response time and financial remuneration) no longer apply to AMR, essentially terminating their agreement with Sonoma County and advising that they will continue to provide services only under a "best effort" service commitment, not the required reponse times in the contract. AMR also includes a demand that first responder payments and performance penalties be returned to AMR, dating back to 2020, indicating that performance penalties have been assessed in the past under the contract. The dates of the correspondence and the timeline included within them demonstrate that AMR knew of the dispute before their bid submission and/or their presentation in Santa Barbara County.

Furthermore, as stated in AMR’s letter to Sonoma County (Attachment 1), dated October 14, 2022, AMR asserts that they have not been under contract with Sonoma County since 2020. However, AMR characterizes Sonoma County as a client and proof of a stable track record (AMR Proposal Page 110), which these documents provide evidence is false.

In Sonoma County’s response to AMR, the County “understands that the ambulance industry has faced unprecedented and substantial challenges in the last few years, including but not limited to supply chain disruptions and difficulty recruiting and retaining licensed and certified EMS personnel” and makes it clear that AMR has also not complied with requests for response time data (“To the extent that AMR is struggling with contract compliance due to these challenges...Among other things, AMR must immediately submit past-due final response time compliance reporting for August and September 2022 by December 1, 2022 and comply with the annual contract audit for fiscal years 2020-2022. Failure to do so would constitute a breach of the Agreement.”).

We believe that AMR’s unilateral move to vacate their existing agreement with Sonoma County and not comply with any performance requirements from the contract (in addition to demanding payment from from the County) eliminates them as a “qualified bidder” under the current procurement.

Thank you for accepting this new information that was not, and could not have been, known at the time our protest was filed.

DocuSigned by:

643A84E63CDE490...

Mark A. Hartwig
Fire Chief / Fire Warden

ATTACHMENTS

Attachment 1

AMR Letter, dated 10/14/22 - Notice that Emergency Ground Ambulance Services in Exclusive Operating Area #1 Between County of Sonoma and American Medical Response West dated December 31, 2008 as amended from time-to-time (collectively, “Agreement”), Ended on June 30, 2020

Attachment 2

Sonoma County Response, dated 11/18/22 - Re: Emergency Ground Ambulance Services in Exclusive Operating Area 1



October 14, 2022

Tina Rivera
Director
Department of Health Services
County of Sonoma
1450 Neotomas Avenue, Suite 200
Santa Rosa, CA 95405
tina.rivera@sonoma-county.org
Via Email and Overnight Courier

Bryan Cleaver
Regional EMS Administrator
Coastal Valleys EMS Agency
195 Concourse Blvd., Suite B
Santa Rosa, CA 95403
Bryan.Cleaver@sonoma-county.org
Via Email and Overnight Courier

Board of Supervisors
County of Sonoma
575 Administration Drive
Room 100 A
Santa Rosa, CA 95403
Via Email Only

Sonoma County Counsel's Officer
County of Sonoma
Attn: Deputy County Counsel for Health Services
575 Administration Drive, Room 105
Santa Rosa, CA 95403-2881
Via Email and Overnight Courier

Re: Notice that Emergency Ground Ambulance Services in Exclusive Operating Area #1 Between County of Sonoma and American Medical Response West dated December 31, 2008 as amended from time-to-time (collectively, "Agreement"), Ended on June 30, 2020

Honorable Board of Supervisors, Director Rivera and Administrator Cleaver:

American Medical Response West ("AMR"), and its predecessor companies have been proudly caring for the citizens of the County of Sonoma for over 30 years without any cost to the County of Sonoma (the "County") and without county subsidy or any taxation to any of the communities we serve. Working together with the County and local public safety agencies, we have positively impacted thousands of lives with exceptional emergency medical care. Under our exclusive Agreement with the County, AMR currently provides services in Exclusive Operating Area #1 ("EOA 1"), where AMR responds to over 35,000 calls annually.

Attached is a letter from the State of California Emergency Medical Services Authority ("EMSA") dated June 17, 2022 declaring that the Agreement is non-exclusive. *See* June 17, 2022 EMSA Letter attached as Exhibit 1. This loss of exclusivity fundamentally undermines the material term of the Agreement and eviscerates the Fourth Amendment to the Agreement effective July 1, 2022. Specifically, Coastal Valley EMS Agency ("CVEMSA") and the County's actions have caused the County to lose exclusivity, and both entities have failed to cure this issue with EMSA. As a result, the terms and conditions of the Agreement are no longer in effect and AMR is no longer operating under the terms of the Agreement.

Notwithstanding, AMR will continue to provide emergency medical services as it has done over the decades while the County's request for proposal process ("RFP") continues. To be clear, AMR is no longer under contract to the County, and all terms of the Agreement, including, but not limited to, first responder fees and performance requirements have ceased and any payments should immediately be returned to AMR.

In support of our decision, we have provided a brief and high level timeline below.

- In December of 2008 the County and AMR entered into the Agreement for emergency ground ambulance service in EOA 1, with an initial term of July 1, 2009 to June 30, 2014, and provided an option for two (2) extension periods with good performance, which we were awarded both times, for a total maximum of 10 years, concluding June 30, 2019.
- In March of 2017, AMR was notified that before an RFP for EOA 1 would be released the County desired to complete an ambulance ordinance revision process. In April of 2018, the County postponed the EOA 1 RFP and AMR was asked to sign a three-year extension that was set to expire June 30, 2022. This extension to the old Agreement of 2009 and its standards has resulted in instability to the system due to the delay of changing antiquated practices and implementing EMS system enhancements and innovation needed to improve the system. This instability has caused inefficient resource utilization and significant recruitment and retention problems, which have only been exacerbated by the global COVID-19 pandemic.
- On February 4, 2022, we were again approached by County Public Health to sign an extension in lieu of submitting a RFP response. While AMR was fully prepared to respond to the RFP and meet the March 1, 2022 RFP deadline, AMR was informed that the County would not be able to finish the competitive RFP process due to a potential bidder complaining about supply chain issues and its ability to procure ambulances. While not in AMR's best interests, we agreed to a 18-month extension of the Agreement with some provisions we believed would help enhance the system inefficiencies and improve instability, which included the implementation of a tiered response ("Tiered Response") system for a more effective use of resources and a rate increase to support employee wage adjustments.
- On February 17, 2022, the County settled litigation with Sonoma County Fire District and the California Fire Chiefs Association, Inc. related to EOA 2 ("EOA 2 Settlement"). EOA 2 is an agreement between the County and Bell's Ambulance – not AMR. Yet, the EOA 2 Settlement would only be effective if the County postponed the RFP for EOA 1. *See* EOA 2 Settlement dated February 18, 2022. In other words, the County settled an unrelated case involving EOA 2 by using EOA 1 as leverage. Again, Sonoma County Fire District presumably benefitted because it was unprepared for a March 1st RFP deadline for EOA 1.
- On February 18, 2022, AMR and the County attorney signed the first Fourth Amendment to the Agreement and the County Director of Health Services signed on February 22, 2022. *See* first Fourth Amendment to Agreement. The County did not inform AMR about its EOA 2 Settlement until after AMR signed the first Fourth Amendment to the Agreement. Despite material agreement on the terms of the first Fourth Amendment to the Agreement, the County Board refused to ratify the first Fourth Amendment and then later the County forced AMR to change the first Fourth Amendment.
- On February 18, 2022, the County cancelled the RFP for EOA 1 to meet the EOA 2 Settlement requirements.
- In May 2022 during the County Board meeting, we were ordered to make changes to our agreed upon February 2022 first Fourth Amendment as it relates to the implementation of Tiered Response.

Tiered Response is industry standard and matches the right ambulance resource to the right call. Since that time, the County has been unable to make any material progress with Tiered Response. This is largely due to efforts from fire departments to obfuscate and delay through an unnecessary process of 18 meetings. Tiered Response could have been implemented almost immediately as the EMS industry has done in other areas including, in both public and private provider systems. The failure to implement Tiered Response on July 1, 2022 or earlier has compounded the system instabilities resulting in over 4,000 missed opportunities to keep advanced life support resources available in the 911 system to respond to high acuity patients in the need of life-saving services.

- On June 7, 2022, AMR signed the second Fourth Amendment to the Agreement.
- On June 13, 2022, the County knew there was no exclusivity and sent a letter to EMSA. Specifically, the County Director of Health Services requested an extension of the exclusivity for EOA 1.
- On June 16, 2022, the County signed the second Fourth Amendment to the Agreement acknowledging exclusivity for EOA 1.
- On June 17, 2022, the County received the EMSA letter that states, “[t]he exclusivity for Sonoma County EMS Sub-Area #1 expired on June 30, 2020.”
- Since June 30, 2022 and despite a lack of exclusivity, AMR has paid over \$330,000 in first responder and County oversight fees.
- As of October 14, 2022, the County has failed to cure the June 17th loss of exclusivity – over 100 days.

The County approached AMR on multiple occasions regarding an extension to the Agreement and we put the interests of the community first. The County seemingly forced the extensions to allow the local fire department to better compete against AMR in the future RFP. The local fire department has limited or no comparable experiences running a complex and large system such as EOA 1, with only a few ambulances and it has no comparable experiences in the intricacies of third-party billing. These delays and the fundamental changes to the RFP caused the County to lose exclusivity and caused the Agreement to end.

The County has made repeated changes to its draft RFP to ostensibly favor the local fire department and ease credentialing requirements in the RFP. These decisions were made over the services that have been provided and proven by AMR for more than three decades. In essence, the County has actively advocated and supported the fire department’s ability to “compete” against us, abandoning its role to be a fair arbiter in the procurement process and influencing what is intended to be an equitable and competitive process as required by California law – §1797.224. Given the above, the County has abandoned its obligations under the Agreement and abandoned its obligations under the California EMS Act which necessitated our decision today. We are fully prepared to protect our legal interests under the California EMS Act and our former Agreement.

Please feel free to contact our Region Director, KT McNulty (KT.McNulty@gmr.net) or me. **Again, even though this was forced upon us, AMR will not abandon our Sonoma County community and will continue to provide the services and excellent patient-focused care that the community knows and expects. Our dedicated union clinicians live and work in the County. We are prepared to protect their interests and our interests in order to continue providing our excellent services for years to come.**

Sincerely,

AMERICAN MEDICAL RESPONSE WEST



Sean Russell
President Pacific Region
916.921.4000
Sean.russell@gmr.net

Enc: Exhibit 1 - June 17, 2022 EMSA Letter

Cc: Susan Gorin, District 1 (Susan.Gorin@sonoma-county.org)
David Rabbitt, District 2 (David.Rabbitt@sonoma-county.org)
Chris Coursey, District 3 (district3@sonoma-county.org)
James Gore, District 4 (district4@sonoma-county.org)
Lynda Hopkins, District 5 (lynda.hopkins@sonoma-county.org)
Elizabeth Basnett, Acting EMSA Director (Elizabeth.basnett@emsa.ca.gov)
Adam Radtke, Esq., Deputy County Counsel (adam.radtke@sonoma-county.org)
Jordan Kearney, Esq., Hooper Lundy & Bookman (jkearney@health-law.com)
Nicole Henricksen, AMR Vice President
KT McNulty, AMR Regional Director
Law Department, AMR
Pamela Johnston, Foley & Lardner, LLP (pjohnston@foley.com)

Attachment 1

June 17, 2022

Tina Rivera
Department of Health Services
Coastal Valleys EMS Agency
195 Concourse Blvd., Ste. B
Santa Rosa, CA 95403

Dear Ms. Rivera,

The Emergency Medical Services (EMS) Authority has received and reviewed the Sonoma County Department of Health Service's June 13, 2022, request for extension of the exclusivity for Sonoma EOA #1. The EMS Authority does not have authorization in statute or regulation to issue extensions to EMS areas or sub-areas determined exclusive by competitive process as outlined in Health and Safety Code Section 1797.224. While the EMS Authority understands there have been many situations that could affect the local EMS agency's ability to conduct a competitive process, we are unable to approve your request for extension.

The exclusivity for Sonoma County EMS Sub-Area #1 expired on June 30, 2020. The EMS Authority recognizes Sonoma County EMS Sub-Area #1 as non-exclusive. In order for Coastal Valley EMS Agency to designate this sub-area as exclusive under HSC 1797.224, a new approved competitive process will need to be conducted.

If you have any questions, please contact Angela Wise, Assistant Chief of EMS Systems Division at (916) 431-3708.

Sincerely,



Elizabeth Basnett
Acting Director
Emergency Medical Services Authority

cc: Bryan Cleaver, Administrator, Coastal Valleys EMS Agency

Attachment 2

HOOPER, LUNDY & BOOKMAN, P.C.

HEALTH CARE LAWYERS & ADVISORS
101 MONTGOMERY STREET, 11TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104
TELEPHONE (415) 875-8500
FACSIMILE (415) 986-2157
WEB SITE: WWW.HEALTH-LAW.COM

OFFICES ALSO LOCATED IN
LOS ANGELES
SAN DIEGO
WASHINGTON, D.C.
BOSTON
DENVER

WRITER'S DIRECT DIAL NUMBER:
(415) 875-8497

WRITER'S E-MAIL ADDRESS:
JKEARNEY@HEALTH-LAW.COM

November 18, 2022

VIA EMAIL AND U.S. MAIL

Sean Russell
Region President
American Medical Response
930 South A Street
Santa Rosa, CA 95404
sean.russell@gmr.net

Re: Emergency Ground Ambulance Services in Exclusive Operating Area 1

Dear Mr. Russell:

The Department of Health Services (DHS) is in receipt of your October 14, 2022 letter, which unilaterally asserts that the Fourth Emergency Ground Ambulance Services in Exclusive Operating Area #1 Between County of Sonoma and American Medical Response West dated December 31, 2008 as amended from time-to-time (collectively, "Agreement"), Ended on June 30, 2020" (the Notice Letter).

DHS disputes both your conclusion that the Agreement has ceased to exist and your recitation of the background facts in your letter; DHS's position is that the Agreement is lawful and enforceable. The Agreement does not allow AMR to unilaterally terminate, and the Agreement remains in effect.

DHS's mission is to protect the health and well-being of individuals and the community by ensuring the availability of the highest quality emergency medical services within a coordinated local emergency response system and delivered in an equitable manner. While DHS appreciates AMR's stated desire to keep doing business in the County and your corresponding commitment to remain in EOA-1, your unilateral rejection of the Agreement puts our residents at risk. This is not an outcome that DHS can allow.

That said, DHS understands that the ambulance industry has faced unprecedented and substantial challenges in the last few years, including but not limited to supply chain disruptions and difficulty recruiting and retaining licensed and certified EMS personnel. DHS believes that it has shown itself to be a willing partner to work collaboratively to address these challenges.

Attachment 2

HOOPER, LUNDY & BOOKMAN, P.C.
HEALTH CARE LAWYERS & ADVISORS

Sean Russell
November 18, 2022
Page 2

To the extent that AMR is struggling with contract compliance due to these challenges, and AMR wishes to approach the County to seek a reasonable solution to address those factors, then AMR must utilize the mandatory dispute resolution provisions contained with the Agreement (Sec. 11).

Although DHS is willing to discuss your concerns through the appropriate processes, in the interim, AMR must continue to comply with its obligations under the Agreement. Among other things, AMR must immediately submit past-due final response time compliance reporting for August and September 2022 by December 1, 2022 and comply with the annual contract audit for fiscal years 2020-2022. Failure to do so would constitute a breach of the Agreement.

DHS would like to discuss appropriate next steps on a call with you. Please reach out to me at jkearney@health-law.com to facilitate this conversation.

Very truly yours,



Jordan Kearney

JCK

cc: Pamela Johnston, Foley & Lardner, LLP, pjohnston@foley.com
Walt Landen, Deputy General Counsel, walt.landen@gmr.net
KT McNulty, AMR Regional Director, kt.mcnulty@gmr.net
Nicole Henricksen, AMR Vice President, nicole.henricksen@gmr.net
Law Department, AMR
Tina Rivera, Director, Department of Health Services, tina.rivera@sonoma-county.org
Adam Radtke, Esq., Deputy County Counsel, adam.radtke@sonoma-county.org