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Abstract

The authors provide tips for institutions wanting to place a contract for operation of their food service and for companies and/or individuals in the business of managing food service operations for a fee.

Keywords

Robert T. Gordon, Michael M. Lefever, Food Service Contracts That Win: Essentials in the Development of a Food Service Agreement, Request for Proposal – RFP, Institutional Food, Customer Satisfaction, Planning, Survey, Boilerplate

Food Service Contracts That Win: Essentials in the Development of a Food Service Agreement

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The authors provide tips for institutions wanting to place a contract for operation of their food service and for companies and/or individuals in the business of managing food service operations for a fee.

When a food service contract wins, or when it is satisfying to both sides, it is because considerable thought and analysis have gone into the process of selecting a food service contractor. This process is critical for the institution desiring to place a food service contractor on its premises. It is equally critical for those organizations in the business of providing food service on a contractual basis.

The food service department is a critical area in every organization. It is intended as a service for customers. Those customers may be employees, tourists, patients, visitors, or inmates, and how they view the food service program will impact on their overall opinion of the host company or institution. Since companies and institutions want to be viewed in the best possible light, it follows that each function of an organization is an important part of the total picture.

A Contract is a “Two-Way Street”

There are two basic methods utilized by organizations in the operation of food service departments. Some hire and retain their own food service staff. Many of these so-called “self op” organizations produce a highly satisfactory service for their institutions. Their management and employees are skilled and dedicated and they deliver an acceptable product at an acceptable cost.

The other method utilized by many organizations is the placing of an operating contract with an outside firm (contractor) that specializes in food service operations and administration. In a way,

contracting for a service can be compared to a marriage. When two persons - bride and groom - take their marriage vows they promise to honor and obey and to shelter each other from harm, just as when an institution contracts with an outside firm for services. During negotiations, each party promises to honor and enhance the reputation of the other. Further, they promise to protect each other's assets during the life of the contract.

When this approach to contracting is taken before and after signing a formal agreement, there is a better than average chance that both parties will have significant gain in the process. It has been called "win-win" by several authors and simply means that each party to a contract emerges as a winner. More importantly, when a food service contract is properly negotiated and administered by both parties, there is a third winner — the customer. And when the customer is satisfied, the process of "winning" is complete.

Planning is the Key to Success

There is a plan at the root of every successful venture, and that includes the process of negotiating with a food service contractor. In this particular situation, the starting point for a plan is the recognition of the wants or needs of the contracting institution. That must be accomplished by a careful analysis of the present or intended food service program. The person or persons analyzing the needs of an institution prior to requesting proposals from contractors must be skillful and experienced.

The findings of such an analysis must be totally objective. Sometimes internal staff persons have trouble seeing the total picture due to preconceived ideas or opinions. For that reason, it may be advisable to retain the services of an outside consultant to perform this task.

Typical needs easily uncovered by an outside consultant and often not clearly seen by management include the following:

- It is a fact that a kitchen staff must have adequate equipment to produce a quality menu. Food service managers aren't always able to convey these needs to the proper authorities, and as a consequence are blamed for doing a poor job.
- An institution may be experiencing high labor costs but management may not realize that they have imposed difficult demands on food service with policy decisions on service hours or budget constraints.
- The food service department may have inadequate controls on costs and there may not be any persons in authority who know how to institute proper cost control systems.
- A poor organization plan may exist that creates a shortage of supervision during a critical service period.

After completing the analysis of operations, the institution's management will have sufficient information by which to make a decision relative to the contracting of its food service programs. Sometimes the analysis will indicate internal administrative or management deficiencies that can be corrected, thereby removing any need for a contractor. In any event, the institution's management should never make a decision to contract without first having made a thorough analysis of its present situation. Unfortunately, this is not always the case and food service contractors are often called in to bid before any study has been made by the institution.

Some institutions are able to absorb losses in food service. Food service contractors cannot; they are in business for profit. While some contracts for service may produce higher revenue than others, the total of all contracts must be profitable. Before entering into any contractual arrangement with an institution, the efficiently managed food service contractor will carefully analyze the prospective food service operation. Contractors refer to this analytical exercise as a survey.

The survey is done for the purpose of ascertaining the feasibility of entering into a contract. Contractors must determine for themselves if the service requested can be provided

- in a manner that will financially be acceptable to the institution's management
- in a manner that will be aesthetically pleasing to the patrons who partake of the food served
- in a manner and at a cost that will meet the profit objectives of the contractor

Developing a Good Contract is Critical

After completing the analysis, the institution's management can begin the task of developing the specifications on which the prospective contractors are to bid. The "specs" are to be incorporated in the request for proposals (RFP). This document is delivered to those companies invited to bid and contains the guidelines to be followed by each of the bidders. When the process is handled in this way, each of the bids received will contain the information asked for by management. It will allow management to properly evaluate each proposal against the standards as established in the RFP. Asking for bids without following this procedure often results in such predictable and undesirable conditions as the following:

- Proposals will not be balanced in content. For example, one might emphasize cost controls and supplies leverage while neglecting the other areas.
- Proposals will not address the conditions or problems outlined in the operations analysis. For example, the analysis may have determined that equipment in the kitchen had deteriorated and frequently malfunctions. It is imperative that certain pieces be

replaced while the institution itself does not have sufficient capital funding available. If this situation is not addressed in the RFP, it will not become part of the submitted proposals.

- Proposals will incorporate ideas and desires of the bidding companies that may not be in the best interest of the institution. For example, certain companies may want to extend service (e.g., mobile carts) into areas where such service is not warranted. If such service is included, it will affect the pro forma by inflating sales, thereby showing a bottom line which may be impossible to attain without the unwanted carts.

- The evaluation of each proposal will be virtually impossible due to the lack of guidelines for preparation. For example, when an RFP does not include instructions for documenting stated labor cost by including job analyses, the bids will very likely include "low ball" offers that can't be properly evaluated against others.

- The final outcome may be a contract that is undesirable for either or both parties. For example, the case of an RFP that does not spell out janitorial responsibilities by area can result in an ongoing contract dispute over cleaning responsibility and the cost of labor for either side. Final results will undoubtedly be unsightly areas not appreciated by the customers.

Food service contractors often encounter great difficulty trying to find out just what an institution expects from a contract. Instead of being open and factual during the pre-bid and bidding stages, some institutional executives withhold certain facts and information critical to a satisfactory contract. The contractors must be sufficiently skilled to construct proposals that are salable and viable. For this reason it behooves the contractor to encourage institutions to properly prepare for the bidding of services.

Most of the contractors have skilled people who participate in surveys and these individuals can often uncover the necessary facts. Smaller contractors do not always have this capacity to put salable proposals together. Conversely, this same inability to recognize potential problems may result in "low ball" bids that can not produce satisfactory contracts. This is not to imply that "small" contractors cannot provide satisfactory service. On the contrary, large contractors often suffer from inflexibility. They can become slow or unable to react to changes in customer demands due to heavy administrative costs and structured debt. Smaller companies may not have this inflexibility and may be able to provide excellent service when given the proper contract to work with.

There is a tendency on the part of many people to view institutional food service (college, school, manufacturing plant, hospital, etc.) as a business that deals with a captive market. There is no such thing. Or if there is, it might exist to some degree in a prison or mental hospital facility. But even in those organizations food is available in commissaries or from friends or relatives who have access

from outside the institutions. The importance of food service can be illustrated by the posted menu on the door of the dining hall at Alcatraz Prison on March 21, 1963: assorted dry cereal, steamed whole wheat, one scrambled egg, two milk, stewed fruit, bread, butter, coffee.

The importance of more than just adequate food in reducing tension was not overlooked at Alcatraz. While some might scoff at the idea of comparing Alcatraz to a modern institution, it nevertheless amplifies the importance of thinking about the welfare of patrons.

Developing the RFP is Starting Point

There is a strong link between the operations analysis, the final contract, and the steps in between. If followed, this process will ultimately lead to a satisfactory contract if the decision is to engage a contractor. In any event it will result in the best possible arrangement for the patrons.

The RFP is the document prepared by the institution (potential client) and offered to each qualified bidder (contractor) as an invitation to submit a proposal (bid) to operate the food service program. It is not a legal offer and does not bind the institution in any way. It must be remembered, however, that each RFP relates to a specific situation and must be "tailored to fit."

Following acceptance of the winning bid there undoubtedly will be negotiations that may alter provisions as set forth in the RFP. Regardless, the RFP has to be the starting point and the basis for negotiation between the parties and the drawing of the contract.

Since the RFP is a starting point for the institution in preparing to bid, the guidelines for developing it are the same for contractors developing proposals. Contractors are bound to use instructions found in an RFP when structuring bids. But if an institution requests bids without guidelines (without an RFP) then it is up to the bidding contractors to design proposals that will fit the needs of the institution.

The following information can be used equally well for construction of proposals by contractors or for development of RFPs by institutions.

Boilerplate Provides Key Information

A major portion of any RFP and/or contract is dedicated to the boilerplate, a series of somewhat standard clauses containing instructions, conditions, and qualifications. Several key clauses and their critical elements are discussed below. Contractors bidding with or without RFP instructions must follow these guidelines in their proposals if they are to secure contracts.

- **Quotation organization:** This section explains how to organize the material to be included in the proposal and submitted by the bidders (prospective contractors) to the institution (future client) in answer to the RFP. It is, in effect, the directed table of contents for the

proposal. In addition, it can stipulate the maximum length of the proposal and any criteria related to the inclusion of brochures, artwork, etc. This section will inform the bidders of the need for prompt and fair evaluation of each proposal and the importance of their care in preparing their proposals. Often it will establish the length of time for each bid to remain valid and acceptable by the institution.

- **Qualification of contractors:** All contractors may not be qualified to operate the service being offered for bid. A statement to that effect and the right of the institution to qualify organizations should be included. Submitted proposals would include information about contractor qualifications in a manner intended as sales literature for the bidder.

- **Award of contract:** Here contractors are notified of certain stipulations such as the possibility of award without discussion of proposals received or that proposals deviating from stated specifications may be rejected as unresponsive.

- **Proprietary data:** This is a statement to the effect that the institution may use contractor information, ideas, and materials unless restricted by the contractor.

- **Authority to bind contractor:** This section explains the institution's right to contractually bind the contractor. It will also name the contract representative designated as the contact during the bid process.

- **Acceptance, negotiation, and award:** This section generally reflects the following points: A contract may be awarded if deemed most advantageous to the institution; the institution reserves the right to reject any or all quotations; and the institution also reserves the right to accept other than the lowest cost proposal.

- **Late quotations and modifications:** This states that any quotations and/or modifications received after the stated submission deadline for proposals will not be considered. It may also state that any modification that makes the terms of the "otherwise successful" bid more favorable to the institution may be considered.

- **Responses to inquiries:** This statement explains how answers to any inquiries by bidders will be disseminated to all others as an amendment to the original RFP if deemed necessary.

- **Response and contract type:** This section names the person to whom the proposal is to be directed. It also states that proposals must be based on guidelines as established by the appropriate sections of the RFP.

- **Period of performance:** This statement discusses the length of the contract to be awarded along with any other information related to option periods and cancellation clauses.

- **Revised and/or additional provisions:** The institution states its right to revise, add or delete any article or clause in the RFP prior to awarding the contract. In addition, there will be a provision that any resultant contract will include other provisions mutually agreed upon or as required by law.

- **Exceptions:** This clause states that any bidder responses not coinciding with RFP provisions must be duly noted and attached as addenda to the proposal.

- **Method of assessing quotations:** This explains how each proposal will be examined and evaluated in accordance with the criteria as set forth in the body of the RFP.

- **Date of award:** The expected date on which the contract will be awarded is specified in this clause.

- **Bid submission procedure:** Bidders are instructed to abide with the institution's bidding procedure in the preparation and submission of proposals. This section also specifies the name and address to whom the proposal is being delivered and the date and time at which proposals must be received.

There may be additional clauses deemed appropriate to the RFP. Laws regarding the regulation of business are constantly changing and present the need to incorporate provisions that require adherence to by both parties.

Specifications Must be Clear

The balance of the RFP will spell out the specifications to be followed by the bidder chosen as the contractor of the food service programs. In order to develop meaningful specifications, the parameters must be clearly stated. This is accomplished with a descriptive text that adequately describes the facility. The text will define the physical plant, population, estimated customer participation, days/weeks/months of operation, meals to be served, time schedules, and guest policies.

The major sections related to these specifications follow. Great care must be exercised in their development. Included are clauses sometimes found in signed contracts that later prove troublesome to both parties. Oftentimes, disputes from such clauses can be avoided if properly clarified beforehand in the RFP.

- **Service concept:** Once the facility and program have been defined, the RFP must specify what the food service program is to provide. If the design and layout of the facility combine cafeteria service with certain "help yourself" stations, it is advisable to describe the intent of the design and how it should be utilized by the customer and food service employees.

For example, it may be necessary or desirable to provide for "carry out" as part of the service. Acceptable service and packaging must be defined. "Carry out" service is very popular and if the contract is not

specific, problems can develop after the start of operations.

An example of a common service clause reads: "In order to accommodate those people wishing to take food from the dining room, disposable chinaware will be available."

This clause does not address items that may very well prove troublesome in the future. For instance, is the disposable chinaware to be bio-degradable? Many contractors use imprinted (name and logo) packaging. Will such packaging be approved for use? Will the contractor be allowed to levy a surcharge to cover the cost of packaging? The impact of these questions can weigh heavily on the contractor's bottom line and the success of the contract.

- **Menu:** The importance of menu specifications is a given. The RFP should be developed in sufficient detail to allow bidders to evaluate the intent and requirements of the program. Availability of products, adequacy of equipment and size of dining space have a direct relationship to the type of service desired. Bidders must be able to relate these items to their ability to provide necessary food and service at a cost acceptable to both parties. This section will specify with sample menus or prepared food lists, or both, what will be expected of the contractor. The bidders, in turn, will also evaluate these expectations in terms of their ability to provide them.

How can trouble arise when precautions are not taken with menu specifications? Easy — here is another sample clause from an actual contract: "Food Service and Menus: Contractor will purchase, prepare, and serve all food, food products, candy, and non-alcoholic beverages in client's cafeterias and will provide client with meals for its customers and guests at such hours as client and contractor mutually agree upon."

The trouble can easily start with the words "mutually agree upon." If in this case the contractor is at financial risk in a profit and loss contract and the client wants to greatly extend the hours of operation, "mutual agreement" will be most difficult to attain if the contractor feels that these hours will yield insufficient sales to cover expenses.

- **Operating cycle:** This section will explain certain restrictions and/or policies that determine the manner in which the food service program is to be operated. It will discuss purchase techniques from the standpoint of cost and quality. Restrictions or limitations on the receiving, handling, and storage of products along with preparation techniques related to raw or pre-cooked inventory will be stated. Also, the method for handling trash and garbage will be discussed. Items such as nutritional requirements, food selections, and cooking methods will be dealt with in the menu specifications attached as a supplement to the RFP.

The operating cycle section also will include those guidelines related to the operation itself. They will address the matter of acceptable management and staff and their relationship to the institution's

administrative personnel. They will also address such areas as financial responsibility for furnishing equipment and supplies, utilities, maintenance, and sanitation. They should adequately define each party's responsibility in the various areas that could be categorized as overhead expense. They should also set forth the staff requirements deemed adequate by the client. This would include the size of the work force and the level of required skill for everyone in the program.

There are many "gray" areas in the operating cycle section of a contract and clauses often become troublesome to both parties. For example: "The receiving dock is accessible from the kitchen via the main corridor to the service elevator. Foodstuffs will be transported to the kitchen's receiving area by the purveyors via hand trucks and carts. Deliveries will be prohibited during the luncheon meal due to the traffic congestion in the corridor and for operational reasons."

Obviously this clause presents more than one problem for the food service contractor at this facility. The biggest headache will come from trying to force various food purveyors to deliver on the client's schedule. Here is a clear case of theory versus reality, with the contractor placed squarely in the middle.

- **Financial management guidelines:** The institution's management should set forth its expectations as to the kind of contract it hopes to develop. This section should disclose management's desires on how the matter of risk and/or subsidy is viewed. Is it to be a pure profit and loss contract, one with some subsidy, or a simple management fee?

While management may not want to state its ultimate desires in writing (and that's all right), qualified bidders will have a very good idea as to whether or not the expectations are realistic and financially obtainable. When they are not, the result will be a refusal by the potential contractors to bid. When this happens and the job goes out for re-bid, the bidders will have gained somewhat of an upper hand and will be in a stronger position as to the development of the financial terms of the contract.

Most institutions will have various kinds of service to be provided. Each of these requirements, including manual and vended service, coffee carts, and coffee machines, must be addressed. Trouble can develop with clauses that do not completely spell out the manner in which a specific situation is managed. A typical clause dealing with capital investment in the client's physical plant might read as follows:

Contractors are specifically instructed that Client is not soliciting investment capital from any food service management company and that investment in facilities and/or equipment by Contractor is not required as a condition for proposal. Client will consider, however, offers of investment capital when evaluating submitted proposals.

The foregoing is confusing and can become extremely troublesome if an investment is actually made by the contractor and the financial arrangements demand a 50 percent net profit split without provision for amortization of the investment as an expense item.

- **Evaluation criteria:** Establishing the qualifications of each bidder responding to the RFP as directed is paramount. A good way to accomplish this is to publish the guidelines used in the actual evaluation procedure. These guidelines must follow the detail of the RFP.

The institution will want each bidder to describe its reputation and experience in detail. It will want information about other clients served, its overall organization, financial health, resources available, accounting methods utilized, operating philosophy, food service expertise, and proposed financial arrangements.

- **Criteria for contract award:** This section, when included, will illustrate the actual form of the criteria for evaluation, the importance of each criterion, and the method of rating each proposal.

The institution may also want to ask bidders for such items as staffing charts, pay scales per position, cost of benefits provided to employees, and the overall cost of labor in the program. It may want to include an actual financial bidding format to be used in the proposal even though such a format may be different from the one actually employed by the bidding company. Also, there will be work rules pertinent to contractor personnel and these should be set forth in the RFP.

There are consultants, who are qualified to carry out the entire task as outlined. In addition, a few books have been written about this process. If an equitable contract is to be developed and if the client and its customers are to receive the best possible program with monies and resources available, the bid process must be carefully planned and handled from beginning to end.

Bidding without the benefit of instructions (RFP's) will test the skill of any contractor staff. Trying to pinpoint the needs of an institution requires a great deal of experience at bidding as well as a thorough understanding of food service operations. In addition, it will require the ability to structure an imaginative program that will "sell the job" and keep it sold over time.

**Management Fee, Manual Food Service
Sample Contract Form**

THIS AGREEMENT, made this _____ day of _____, 19____, by and between _____, a corporation of the State of _____, (hereinafter referred to as (institution)) and (contractor).

WITNESSETH THAT:

1. (institution) hereby grants to (contractor) the exclusive right to sell food products and non-alcoholic beverages manually at its premises located at _____.

2. FACILITIES AND EQUIPMENT (institution) agrees at its expense to provide (contractor) with suitable cafeteria space (including adequate sanitary toilet facilities and dressing rooms for (institution)'s employees completely equipped and ready to operate, together with such heat, refrigeration and utilities services as may be reasonably required for the efficient performance of this agreement. (institution) shall furnish building maintenance services for the premises and shall make all equipment repairs and replacements. (contractor), however, as a direct cost of operation, will maintain the initial adequate inventory of chinaware, glassware, pots, pans and silverware furnished by (institution). (contractor) will be responsible as a direct cost of operations for routine cleaning and housekeeping in the food preparation and service areas and for the cleaning of dining room tables and chairs, but (institution) will provide regular cleaning service for dining room walls, windows, floors, light fixtures, draperies and blinds and periodic waxing and buffing of floors. (contractor) will maintain high standards of sanitation. (institution) will be responsible for trash and garbage removal and for extermination service.

3. (contractor) AGREES:

A. FOOD SERVICE: To furnish nutritious, wholesome, palatable food to the employees and visitors of the (institution) at such hours as (institution) may from time to time determine.

B. MENUS: To submit menus at least twenty-four (24) hours in advance of offer for sale to such persons as (institution) shall designate.

C. PERSONNEL: At all times to maintain an adequate staff of its employees on duty at (institution)'s premises for efficient operation thereat, and to provide expert administrative, dietetic, purchasing, equipment consulting and personnel advice and supervision.

_____(contractor)_____ agrees that no employees of _____(institution)_____ will be hired by _____(contractor)_____ without specific permission of _____(institution)_____ for the period of this agreement and six months thereafter. _____(institution)_____ agrees that, without specific permission of _____(contractor)_____, former employees of _____(contractor)_____ will neither be hired by _____(institution)_____ for the period of this contract and thereafter, nor will _____(institution)_____ permit former employees of _____(contractor)_____ to be employed in the _____(institution)_____ food service facilities for a period of six months subsequent to the termination of this agreement, unless the employee or employees were formerly employees of the _____(institution)_____.

D. PURCHASING: _____(contractor)_____ will take advantage of all local trade discounts, and prices negotiated for local billing will be at levels at least as favorable as prices otherwise available in the area. However, _____(contractor)_____ will not credit to the cost of operation advertising allowances, cash discounts, or national trade discounts.

E. HEALTH EXAMINATIONS: To cause all of its employees assigned to duty on _____(institution)_____’s premises to submit to periodic health examinations at least as frequent and as stringent as required by law, and to submit satisfactory evidence of compliance with all health regulations to _____(institution)_____’s medical department upon request. The cost of such examinations shall be a direct cost of operation.

F. INSURANCE: To furnish _____(institution)_____ with a certificate of insurance in form acceptable to _____(institution)_____ certifying that _____(contractor)_____ carries workmen’s compensation, comprehensive (including products), bodily injury and property damage liability insurance in such amounts as are acceptable to _____(institution)_____. The cost of such insurance shall be a direct cost of operation. _____(institution)_____ and _____(contractor)_____ hereby waive any and all right of recovery from each other for loss caused by perils defined in their respective fire, extended coverage and sprinkler leakage insurance policies.

G. RETURN OF EQUIPMENT: To return to _____(institution)_____ at the expiration of this agreement the cafeteria premises and all equipment furnished by _____(institution)_____ in the condition in which received, except for ordinary wear and tear and except to the extent that said premises and equipment may have been lost or damaged by fire, flood or unavoidable occurrence, and except to the extent that said premises or equipment may have been stolen by persons other than employees of _____(contractor)_____ without negligence on the part of _____(contractor)_____ or its employees.

H. LICENSE FEES AND TAXES: To secure and pay, all federal, state and local licenses, permits, taxes and fees required for operation of the food services provided for hereunder, as well as pay all sales, excise and state income taxes attributable to the food services facilities herein. The cost of all such items shall be a direct cost of operation.

4. FISCAL ARRANGEMENTS: It is hereby agreed that _____ (contractor) shall receive for its services reimbursement for all direct costs of operation at _____ (institution) 's premises, together with a service fee of _____ dollars a week or _____ percent of gross receipts, whichever is greater. _____ (institution) hereby guarantees such costs and service fee to _____ (contractor).

5. ACCOUNTING: The accounting periods in each quarter shall consist of twelve (12) weeks and the accounting year shall consist of thirteen (13) months. Within twenty (20) days following the close of each quarter _____ (contractor) shall submit to _____ (institution) an operating profit and loss statement therefore and shall pay the _____ (institution) the amount, if any, by which gross receipts for the quarter covered by the statement exceeded the sum of the costs of operation plus the service fee. Should gross receipts be less than the sum of the costs of operation plus the service fee, the _____ (institution) shall reimburse _____ (contractor) for the deficit within ten (10) days of invoice date.

6. ACCESS AND RECORDS: _____ (institution) shall have full access at all times to the cafeteria premises and equipment with or without notice. _____ (contractor) shall keep full and accurate accounts and sales records in connection with the food service covered by this agreement. All such records shall be retained by _____ (contractor) for a period of two years and may be audited by _____ (institution) at any time during regular working hours.

7. TERMINATION: This agreement may, at any time more than ninety (90) days from the date that _____ (contractor) shall begin to provide food service hereunder be terminated as of the end of any _____ (contractor) accounting period by either party, by giving the other not less than sixty (60) days written notice of intention to terminate as of the date specified.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized representatives the day and year first above written.

BY: _____ (institution)
BY: _____ (contractor)