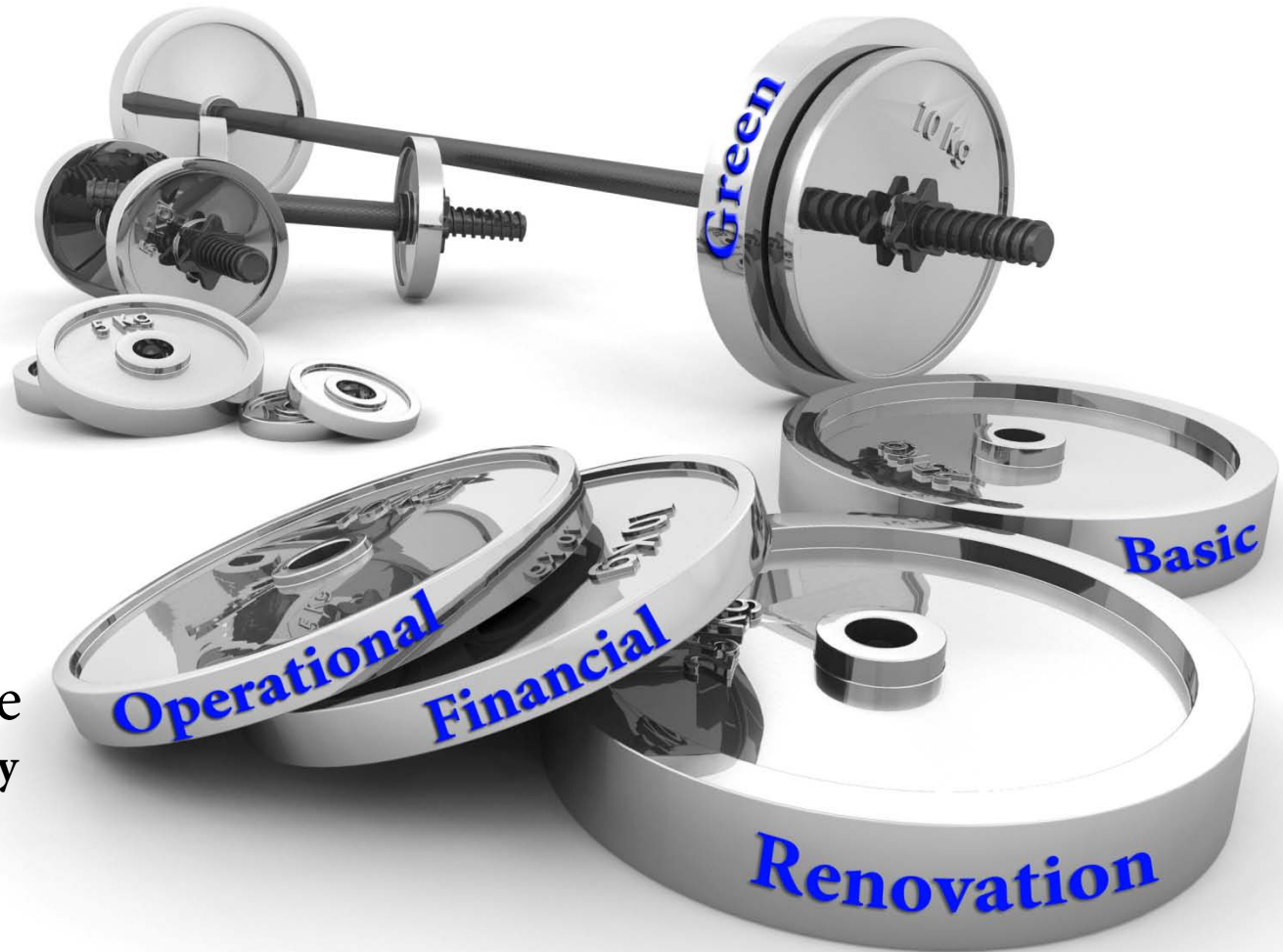


PUMP IT UP !

Using Universal Contract Clauses to Strengthen Your RFP



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Basic Clauses

CONTRACT TERM

- The contract term should be structured to comply with any applicable regulations you may be governed by and also meet the needs of your institution. The term of the contract can be stated as an initial flat period ("X" years) or as initial term with option to renew for "X" years.

SCOPE OF WORK

- Include language indicating that the contractor will provide all necessary services (management, labor, etc.) in accordance with terms of the contractual agreement.

COMPANY PROFILE AND REFERENCES

- Strong financial company with a record of providing service to institutions of your size and complexity. Provide financial statements (audited) and references of current and former clients.

Financial Clauses

One Time Unrestricted Contribution

One Time Unrestricted Contribution – A clause requiring the respondent to state the amount it will provide the University in the form of a one-time unrestricted contribution is frequently used and is an excellent method to improve your liquid position. Be sure to state that *‘the contribution will be used at the sole discretion of the University’*. State when the contribution is payable (e.g. upon contract signing).

Campus Card Transaction Usage Fee

Campus Card Transaction Usage Fee - Charge partners a percentage for transactions processed on your campus card (e.g. 1.5% of transaction amount) to offset costs associated with this activity.

Guaranteed Minimum Annual Payment

Guaranteed Minimum Annual Payment – Request a guaranteed minimum annual payment to reasonably assure that your annual revenue will not fall below a certain amount during the contract term.

Equipment Repair and Replacement Fund

Equipment Repair and Replacement Fund - Require contracted partners to establish and fund on an annual basis an equipment repair and replacement fund to help offset costs. Utilization of the fund may be mutually agreed upon.

Annual Exclusivity Fee

Annual Exclusivity Fee – Require an annual amount for granting exclusive rights to your campus community for the service(s) being provided.

Point of Sale Fee

Point of Sale Fee - Require the Contractor to pay a portion of the annual software license amount based upon the number of POS stations required for service operations.

Financial Clauses Cont.

Rebate/Credit Sharing Proposal

Rebate/Credit Sharing Proposal - If contractor is getting rebates/credits resulting from operations at your university, ask for a percentage of any rebates/credits received. REASONING: The only reason the contractor is getting these rebates/returns is because they have been selected to serve your university community.

Capital Investment Fund

Capital Investment Fund - Include a clause requiring the respondent to state the amount it will commit for current and future renovation and expansion of existing service facilities; establishment and construction of additional service locations; and any other uses deemed appropriate by the University. Include language requesting that any other additional financial considerations to be offered to the University for Investment purposes be provided.

Unamortized Investment Balance

Unamortized Investment Balance - If you project that there will be an unamortized balance remaining at the end of a current contract term, be sure to indicate what you will require from the successful respondent in terms of amount to pay.

Annual Scholarship Contribution

Annual Scholarship Contribution - Request respondents to indicate how much they are willing to provide for annual scholarship contributions.

Sales Commissions

Sales Commissions - If commission is involved and it usually is, request an attractive commission schedule, based on gross sales less taxes, commensurate with the value and growth potential of likely contract revenues.

Renovation Clauses

Branded Concept Updates

Periodically, branded concept providers require updates due to architectural changes and/or décor. If you are not financially able to participate in these periodic updates take measures to insulate yourself from these type payments by including language in your contract requiring the updates to be paid for by the food service provider (licensee). Consideration should be given to whether the concept will continue to be an on-going concept on your campus.

Operational Clauses

Holdover clause

If the current provider cannot continue to meet the terms and conditions of the contract, the holdover clause requires that the partner perform under current terms and conditions until a new provider is contracted. This option should be chosen if there are no other options available to you as partner service levels are likely to be negatively impacted.

Campus Card Revenue Acceleration

If you charge partners a percentage for transactions processed on your campus card, get your money the same time your partner does. Contractually indicate that funds remitted for card sales will be net of any amounts due the card office for card transactions (e.g. partner bills weekly, you get your fees weekly).

Capital Investment Amortization Term

Try to avoid amortization terms that exceed or significantly exceed your contract term. This will result in funds being returned to the provider by you and/or a new provider. Excessive amortization term may impact a subsequent contract in terms of value received.

Price Increase Limitations

Do not allow price increases during the first "X" years of contract or restrict to annual basis only. This prevents purchaser shock. Ideal time for price change is usually during summer term. Midterm price increases tend to negatively impact sales.

Operational Clauses Cont.

Equipment Reader Minimums

Students rarely use cash to pay for campus purchases. Specify the minimum number/percent of vending machines that will require the installation of a campus card reader and/or a credit/debit card reader.

Operational Reports

Require the following from your partner:

- Development of an annual sales plan including annual goals and projections. These should be reviewed and revised with the campus administrator as provided.
- Provide monthly and YTD sales reports by cash, credit and campus card.
- Provide a monthly and YTD P&L statement. You should know the direct sales and costs associated with providing services to your campus.

Program Review

The Campus Administrator should meet with the Partner on at least a quarterly basis to review overall operations including, in part, the annual sales plan, recycling initiatives and campus marketing. Such reviews can be used to review the progress of the sales plan; program weaknesses identified by the Campus Administrator through Partner's reports and through regular inspections; proposals by the partner to strengthen and improve the program; and any other matters involving rights and obligations of the partner or the University. These type reviews send a clear message to the partner that you are actively monitoring and managing the contractual relationship.

Green Clauses

Use of Efficient Machinery – Require the use of machines with the “energy star rating” or “vending miser compliant” in vending operations with automatic temperature setback controls during building non-operational hours. This will assist in energy reduction efforts.

Recycling and Green Initiatives – Require the Contractor to utilize recyclable materials wherever possible and be responsible for sorting recyclable materials at all operational locations. Establish green initiatives with partners and include students in the planning and continuing phases of these joint projects.

Utility Cost Sharing Proposal - Utility expenses may be one of the largest expenditures you occur monthly. Require contracted partners to pay a percentage or all of their utility expenses. Requesting all may result in a percentage compromise. This is an additional tool you may use to get partners on board with your energy reduction efforts and sustainability programs.

Special Needs

Visually Impaired Services

If you have specific areas of your campus that have students/staff that are visually impaired you may consider including a clause requiring brail on vending machines. The following clause is an example. "Machines utilized by visually impaired individuals must be brailled as to content and price." You should subsequently define those areas in the RFP.

Emergency or Displacement Situations

Include a contractual clause requiring the applicable partner to require a plan to provide water and/or meals to residential board plan holders, at no additional cost, should they have to be housed off campus by the University due to a disaster or displacement for unforeseen reasons.

Criminal Background Checks

If your institution requires the successful completion of criminal background checks as a condition of employment, you should consider requiring your contractor to adopt this policy as part of their hiring process with periodic updates. This reasonably assures that there is a process in place with contractors to help protect your University population.

Data Security Protection

Require contractor to be in compliance with all applicable regulations and standards relating to the Payment Card Industry Data Security Standard (PCI/DSS) for any merchant ID's Contractor may have and use on your network. Any protections needed to comply should be the sole responsibility of the Contractor. It is always a good idea to consult with your IT department on any computer and network issues.

Consulting Work

Request what facility planning and consulting work the respondent will provide to you on at no charge as well as the rates that will be available at a cost to the university.



Green Clauses

Renovation Clauses

Basic Clauses

Operational Clauses

QUESTIONS