

Dual-Track Negotiating for a Food Service Contract

Dining Insights, Spring 2010

Fourth and final article in a series about the selection of a food service contractor.

Now that you've read through the proposals, met the food service companies' key players and picked your first and second choices, it's time for the serious work of negotiating the operating contract.

It's important to keep both companies in the process until the end. They both will be more willing to accept your terms if each knows you have what negotiators call a BATNA (Best Alternative to a Negotiated Agreement): the other company.

Parallel contract negotiations can be time-consuming, but worth it. You're contracting for an important service and the financial stakes can be high.

Ignore the 'Standard Contract'

The contractors will want to negotiate from their "standard contract." Don't do it. It's one-sided and not in your favor. Important terms like, for example, an obligation doing a good job aren't in there and cleaning and sanitation responsibilities are vague and limited. Financial and other terms also are likely to be unfavorable to you.

Instead, prepare and negotiate from your own document. Experienced negotiators know it's always better to draft the contract and let the other side pick at it. The contractor isn't going to object to promising to do a good job and will have to tell you how much sanitation responsibilities they want to avoid. You'll have a better chance of establishing financial terms that are reasonably favorable to you.

The major companies will want their sales representative to negotiate the contract. It's a waste of time. Sales reps are empowered only to persuade you to accept their terms, but have no authority to accept yours. They have to go back to a "higher authority" in the home office. This can be a very slow process.

Insist that the higher authority, an executive with decision-making power, represents the contractor. He or she is more likely to accept or compromise over your terms in a face-to-face meeting than when sitting back in a comfortable office telling the hapless sales rep what to do.

Beware of the Legal Ploy

It's always a good idea for both parties to have their attorneys review any legal document, but it also can be a negotiating ploy. If the date for the start of service is approaching, the contract may be "held up in legal" as a device to put pressure on you to accept their terms.

Turn the tables. From the start of the process, set a timetable and stick to it. Be sure the other side knows they must reach agreement by your deadline. Otherwise, the prize may go to a competitor.

While not attorneys, Clarion consultants have extensive experience in drafting and negotiating food service contracts. For information, contact Tom Mac Dermott, president, 603/642-8011 or Angela Phelan, Senior vice president, 973/544-6223 or e-mail us at info@clariongp.com.