You *Can* Get There From Here: The Road to Downsizing in Higher Education
Second Edition

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Chapter 4

Contracting Out: Deciding Whether to Lease or Own

"Outsourcing, also called contracting, is a form of privatization that refers to a university's decision to contract with an external organization to provide a traditional campus function or service. The contractor then either takes over the employees of the university, paying the group according to its standards, or replaces the university employees with its own staff." (Ender and Mooney, 1994) "Outsourcing assumes that if an institution cannot provide a service or product at less cost than, and of equal quality to, an external provider, then it should purchase the service or product from an external provider. Advocates of outsourcing argue that the private sector provides service more efficiently and at lower cost that the public sector, which is unmotivated by profit." (Jefferies, 1996)[1]

Many of the auxiliary functions that support the educational mission of a college or university can be performed efficiently and cost-effectively — sometimes even *more* efficiently and *more* cost-effectively — by outside providers. Contracting out these non-mission-driven services reduces hands-on, day-to-day management of functions that are tangential to supporting the academic goals of teaching, research, and public service. Doing so can reduce internal costs for salaries, benefits, retained risk and full cost of ownership. There are, however, costs, both tangible and intangible, for contracting with an outside vendor to provide services on-campus.

Outsourcing a service does not relieve the administration of its responsibility. Administrators must still ensure the contracted services fit campus needs and culture. Complaints and requests still will be directed to the college/university administrator who will be expected to respond. Expectations regarding service delivery and success need to be realistic. To insist that the vendor achieves standards that internal administration could not is unrealistic and can be a path to failure. Indeed the "bar should be raised," but not so high as to become unattainable.

Example: The University of Pennsylvania has created relationships with third parties to manage several functions, but the overall strategy and responsibility remains with the university. These experiences have been translated into an organizational practice on how to successfully address outsourcing decisions. Penn's Division of Human Resources is a part of all outsourcing decisions that directly affect staff.

The auxiliary businesses of a college or university are many and far-reaching. The following list of service areas that could be run by outside contractors is by no means exhaustive:
- Benefits administration,
- Benefits call centers,
- Billing,
- Bookstore,
- Centralized multiple service or call centers,
- Child care,
- College or university press,
- Construction,
- Copy centers,
- Dining services,
- Faculty club,
- Fire services,
- Gardening and grounds maintenance,
- Human resources transactions,
- Information technology,
- Janitorial services,

- Laundry services,
- Legal services,
- Parking and traffic enforcement,
- Payroll services,
- Police and security services,
- Public relations,
- Student center operations,
- Student residential operations,
- Temporary services, and
- Transit services.

Administrators are responsible for providing these and other auxiliary services. Student residence halls must support students with a living and learning environment and the campus community must be protected from crime. But the college or university administration does not have to run the facility, prepare the food, or hire and train the police officers itself; these are not inherent, mission-driven or core competencies of the organization.

Example: The University of Miami has contracted to acquire all materials required for repair, maintenance, and operations at its main campus and medical center; Chatham College has hired a contractor to run its library and hire most of the library staff. (van der Werf, 2000)[2]

Although contracting a vendor to provide a particular service does not free campus administrators from responsibility, it does free some of their time for other more core contributions. The vendor is an expert about a business whose primary focus is to provide that particular service. Contracting out can:

- ***Ease day-to-day management loads.*** Contracts give outside contractors the responsibility for the delivery of detailed tasks in skilled service areas.

- ***Stabilize or, in some cases, increase income.*** An outside retailer, for example, often knows more than a college or university administrator about running a profitable store.

- ***Control or, in some cases, reduce expenses.*** Food services that run cafeterias throughout a local region can capitalize on economies of scale by buying supplies in bulk and passing along savings to customers.

But transferring the responsibility for providing services to an off-campus agent may result in layoffs or salary reductions that diminish staff morale, changes in cost and quality of services delivered, issues of liability that may leave the institution vulnerable, and reduced campus control, which may erode institutional identity.

Deciding whether to contract out for services differs from function to function and from campus to campus. In making the decision, the institution’s leadership must bear in mind that while service performance can be contracted out, responsibility cannot. If the food is bad, if the crime rate is high, if the bills are paid late, if the computer goes down, the student, faculty, and staff “customers" who suffer the consequences ultimately will hold the institution responsible for the problem.

Auxiliary versus Central Services: The Case of Contracted Teaching Services

Teaching is intentionally absent from the list of service areas for which to consider outside contractors. Teaching is not an auxiliary business of a college or university: teaching is primary to the institution's mission.

A June 1993 report on the status of non-tenure-track faculty published in *Academe* magazine found severe negative consequences from assigning substantial portions of the institution's teaching load to part-time, non-tenure-track faculty. Researchers acknowledged that part-time temporary faculty are sometimes legitimately used to meet unexpected enrollment demands, to teach a special course not ordinarily offered by regular faculty, or to develop a new program that regular faculty eventually will staff. But, overall, the researchers found that "the growth of non-tenure-track faculty erodes the size and influence of the tenured faculty and undermines the stability of the tenure system."[3]

Specifically, the study in *Academe,* by the American Association of University Professors (AAUP), reported:

- Risk to the quality of education when curriculum, advising, and instruction are not in the control of faculty to whom the institution has made the kinds of commitments that ensure scholarly development and recognition of performance. (Most institutions lack a process to review the performance of part-time, non-tenure-track faculty.)

- Reluctance to grant tenure to teaching faculty leaves institutions vulnerable to charges that they pursue research at the expense of teaching.

- Lack of office space or basic equipment plagues part-time, non-tenure-track faculty members' efforts to prepare course materials and meet with students.

- Vulnerability of academic freedom to manipulation and suppression as more faculty agree to work without tenure.

- Status level of faculty when so many are subject to working conditions inconsistent with professional standards.[4]

In short, basic instructional responsibilities should not *depend* on faculty who are denied professional considerations and who are exempted from the evaluations that are essential to maintain academic standards. The AAUP has recommended that institutions should limit the use of special appointments and part-time, non-tenure-track faculty to no more than 15 percent of the total instruction within the institution, and no more than 25 percent of the total instruction within any given department. The AAUP also recommends that institutions of higher education provide the conditions necessary to perform assigned duties in a professional manner, including appropriate office space, necessary supplies, support services, and equipment.

Contemplating the Use of Contractors

Contractors can be valued partners in enhancing service and deliverables.

Example: In 1998, the new University of Pennsylvania Bookstore opened after a two-year planning, design, and construction project resulting from a partnership with Barnes & Noble for the management of Penn's store. The University built and owns the facility, which combines the best elements of a full-service academic bookstore with the amenities of a Barnes & Noble superstore. At 50,000 square feet, the store is approximately 60 percent larger than the prior one and houses a significantly increased number of both academic and trade books, making it one of the most comprehensive academic bookstores in the country. These changes would have been virtually impossible without the contractor's expertise.

There are six primary areas of responsibility to consider in deciding whether to provide auxiliary services in house or to contract with someone else to provide them:

- ***Finances, including direct and indirect costs associated with the selected method.*** For example, evaluating a facilities maintenance contractor's bid should include consideration of a deferred maintenance program, electrical, plumbing, and other systems upgrades, and energy costs. Similarly, intellectual property rights and fees should be considered in selecting a computing service.

- ***Human resources, including effects on employees, compensation, benefits, and diversity objectives.*** Consider the effect of contracting out dining services, housekeeping services, or grounds and gardening services — areas historically staffed with a significant percentage of minority employees — on the institution's equal opportunity employer status and on goals supporting diversity.

> *Example*: Campus leaders must be aware of various benefit differences between the college's benefits and that of the vendor. Penn was one of the first universities to offer domestic partner benefits to same-sex couples. Penn worked with an outsourcing partner to help the vendor implement a similar benefit the individuals working on the vendor's account on the Penn campus. The vendor now offers this benefit to all its employees at all sites across the country.

- ***Mission and culture of the institution.*** Don't overlook the potentially conflicting goals of a bookstore operator's interest in profit and the institution's interest in providing learning materials at the lowest reasonable cost.

- ***Control and efficiency.*** Explore the contractor's ability to quickly issue unanticipated checks with the institution's own accounts payable department and with potential accounts payable contractors. Measure the response in time, quality, and the contractor's ability to meet expected standards.

- ***Service quality.*** Consider turnaround time, frequency of cost overruns, and instances of multiple requests for the same repair, for example, when comparing equipment repair contract bids.

- ***Legal and ethical considerations*.** For example, determine who would be liable for, finance charges due to a computer vendor's equipment failure that makes it impossible for the institution to issue checks. Ascertain who is liable for a food poisoning incident when a contractor provides the institution's dining services. Compute the cost to the institution of unrelated business income tax (UBIT) when a bookstore vendor shares profits with the institution in exchange for exclusive rights to set up shop on-campus.

Concerns that may arise when contracting with outside vendors to provide campus services include:

- ***Loss of institutional control.*** Contracting with an outside vendor to run the campus bookstore or a campus convenience store might result in the availability for sale of products the administration considers inappropriate, such as pornographic magazines, cigarettes, alcoholic beverages, or state lottery tickets.

- ***Less responsive service.*** Hiring an outside company to repair office equipment may result in several days' delay in response to repair calls. A busy office in need of its photocopier to duplicate a report on deadline may have to pay an additional fee — to have the machine fixed right away or to duplicate the reports at a copy shop — or wait until the day the vendor is scheduled on-campus, miss its deadline, and suffer the consequences.

- ***Increased cost to student and faculty "customers."*** Take, for example, a campus service station vendor that charges customers (mainly students, faculty, and staff) more than the going rate for gas and automotive repairs. The administration may choose to raise objections, or it may let market forces prevail. When an outside vendor of services that are essential to the academic mission inflates charges, the administration may choose to take a more active position.

- ***Displacement* of *employees.*** The decision to contract out a service previously provided by campus staff may result in layoffs if the contractor is unwilling to hire the staff already involved in the operation. Campus leaders must be aware of the reputational risk and political implications of employee displacement. Even when the same employees are rehired by the vendor, there can be a perception that the individuals have been excluded from the campus community.

- ***Erosion* of *institutional identity.*** In the case of graphic arts services, contracting work from off-campus artists might diminish the instant identification of a brochure, poster, or other publication as campus-related information. The administration must actively impose brand standards

- ***Lack* of *understanding and support for the institutional culture and mission.*** A food service vendor who is not inclined or incented to employ student workers may limit the breadth of financial aid that an institution can provide or identify. At many institutions, financial aid officers stretch their scholarship dollars by helping students find flexible work-study opportunities — often in the area of food services — that will not interfere with their academic work.

- ***Short-term gains offset by long-term losses.*** This result is particularly noticeable in the area of building maintenance, where a vendor bidding on a five-year contract might ignore making moderately costly major repairs on a routine rotation in order to offer the institution a low bid for services. Deferred maintenance can result in the need to replace expensive building systems over the long term.

Charting the Course: The Decision-Making Process

Decisions about whether to contract with outside vendors for services generally are made by committee. A well-rounded committee might be composed of a financial manager, a human resources manager, a legal expert, a "customer" or two of the service being considered (such as a student and a faculty member), and the current manager of the service under discussion.

The committee should start its process by assessing the strengths and weaknesses of the current structure. It needs to consider the service's financial health, the staff involved in providing the service, and how the service fits in with the mission and culture of the college or university. The committee will want to weigh the importance of institutional control over the delivery of the service, the efficiency and quality of the service, and the legal and ethical considerations in providing the service.

With a clear picture of how the service currently is provided, the committee can then brainstorm alternative ways to meet the needs of the campus community. An important consideration in selecting a service delivery system may be to minimize disruption. Disruption of service is certainly a significant factor in the case of computing services. It may be that continuity of service overrides the potential pluses of interrupting the current service to convert to a new, untested one. Similarly, choosing vendors who offer services at an unbelievably low cost will almost surely result in subsequent disruption when the initial low-bid contracts expire and the vendors discover that they must raise their rates in order to cover their own costs and generate a profit. The institution will likely consider, and may ultimately select, a new vendor, which results in more transitional downtime.

In its publication, *Contract Management or Self-Operation: A Decision Making Guide for Higher Education,* the Council of Higher Education Management Associations suggests these 10 steps to determine whether to provide a service in house, or contract with an outsider to provide it on-campus:

1. Identify key participants in the decision-making process, including committee members, focus groups of service providers, and customers.

2. Develop an analytic framework, including criteria by which to make the decision to provide services or contract an outside firm to provide them.

3. Assess the current environment, including the current service's infrastructure and its mission statement. This step could be carried out by the committee, or by a consultant.

4. Identify customer requirements.

5. Develop an operating design. If a decision is made to enlist a contractor, to whom will the contractor be responsible? In some cases, such as a retail bookstore or convenience store operation, customers will let the vendor know if the level of service is acceptable; if it is not, they can shop elsewhere. In other cases, such as computing, maintenance, or billing services, the decision to contract out may still require the institution to employ an on-site manager, a contract administrator, or a vendor liaison.

6. Identify operating alternatives, including a survey of how peer institutions provide the same or similar services, and issue a request for proposals to find out how different vendors would go about providing the same service.

7. Review legal, ethical, and community considerations, including the intangible considerations of staff morale, or the appearance of offering an unfair advantage to a single vendor within the local business community.

8. Compare and contrast alternatives.

9. Select the preferred alternative.

10. Establish a continuous assessment and improvement process.[5]

To these 10 items, the authors add:

1. Determine whether the vendor relationship will stand alone or be co-branded with the institution.

2. Prepare to communicate internally, locally, and throughout the community. Determine who needs to be advised of any change. This may include the governing board, students, faculty, staff, unions, community members, elected officials, and internal and external media.

3. The vendor's contract should be reevaluated as services and market change. Once a decision to outsource a service is made and a vendor is selected, it is prudent to revisit the competitive market and rebid the services every three to five years**.**

> *Example:* By rebidding its benefits call center and switching to a new vendor, Penn reduced its outsourcing costs by $500,000 per year.

4. Finally, an organization should be prepared to respond if a vendor relationship is not meeting expectations or if the vendor determines they no longer want to be contracted to perform the services.

> *Example*: At Penn, facilities administration was contracted to a third party. After several years it was mutually determined that this relationship should end. Penn examined third-party options and ultimately decided to bring the service back in-house. Penn's Human Resource department was responsible for supporting the recruitment and selection of employees to be employed in the new function. Since many of the individuals were previously Penn employees, benefits portability had to be examined. Penn recognized that long-term employees transferred to the vendor and rehired by the university needed bridged service for specific benefits and subsequently modified its benefits summary plan descriptions so this break in service did not adversely impact retiree medical benefits.

Caveat Emptor: As a Buyer, Beware

Buying services from an outside vendor does not free an institution from its legal responsibility to employees. Generally speaking, customers are as responsible to a vendor's employees as to their own to provide a clean, safe workplace, to conduct fair labor practices, and to uphold an individual's civil rights and the rights to participate in union-related activities. In general, vendors are responsible for paying workers' compensation insurance, recording hours worked, recording vacation and sick time accrued and used, paying their employees, and withholding the appropriate amounts for taxes. Before entering into a contract that will bring a contractor's employees into the campus workplace, it is advisable to consult an attorney regarding co-employment issues, tax and insurance obligations, and compliance with civil rights and labor relations laws.

Co-employment arises when two or more employers may be legally obligated to the same employee or employees to provide particular working conditions and compensation packages. The best way to ensure that an outside vendor manages all the pieces of the employment picture that the institution expects it will, is to spell out the obligations of both the institution and the vendor in a contract. Such situations can become murky when, for example, a college or university manager oversees the work of a temporary agency's employee. Does the manager retain the right to fire an agency employee? Can the manager impose a schedule that requires the temporary employee to work overtime, odd hours, weekends, or holidays? Who responds to such an employee's concerns or grievances? Such issues should be clarified before work commences.

While temporary agencies and other vendors are responsible for most legal areas, the college or university ("customer") must uphold civil rights and labor laws. The customer can be held accountable for unlawfully discriminating against an outside vendor's employees. For example, a college or university manager who dismisses a vendor's employee, or refuses to permanently hire that employee on the basis of sex, race, religion, or national origin, is subject to legal action. Even though the employee technically works for the outside vendor, federal courts consistently have ruled that a customer who controls the work environment, schedules, and assignments effectively serves as an employer, and is held to the legal standards of one. It is interesting to note that even if the customer were not legally considered an employer, Title VII of the Civil Rights Act of 1964 allows law suits against those "who are neither actual nor potential direct employers of particular complainants, but who control access to such employment and who deny access by reference to invidious criteria." Customers who violate an employee's civil rights are not protected from legal responsibility just because they use an outside vendor.

On July 26, 1992, the Americans with Disabilities Act became effective for most employers. The act makes it unlawful for customers to reject a vendor's employee on the basis of a disability. In fact, it is unlawful for a vendor to comply with such an order from a customer. Although the law does not require a vendor to physically alter a customer's premises, the vendor must provide reasonable accommodations to facilitate its employees' disabilities. Although untested in the courts, it appears from other civil rights cases that customers, too, must reasonably accommodate the disabilities of their vendors' employees, as well as their own staff.

Just as with their own employees, institutions that lease employees on a long-term basis legally are barred from interfering in union-organizing and union-related activities. Efforts to transfer or remove employees because of their union-related activities could result in an unfair labor practice charge against both the vendor and the customer.

Similarly, the customer, not the vendor, is responsible for compliance with requirements of the Occupational Safety and Health Administration (OSHA).

A vendor could only be cited for a health and safety violation if it knowingly sent an employee to an unsafe workplace.[6]

In Summary

The distinctive qualities of each different service on each different college and university campus require administrators to make case-by-case decisions on whether to contract outside vendors to provide campus services.

For each service area, institutions need to weigh the pros and cons of both in-house service and contracted service. Any partnership with a contractor will only be as good as the resources they bring with them. The on-site manager must be a seasoned professional, not a management trainee coming through the development program. Moreover, it's important to strike the right balance between the dedication of internal institutional and contractor resources to make the relationship work.

The Council of Higher Education Management Associations suggests that institutions consider the following questions in these critical areas:

***Financial*:**

- How much will it cost the institution to maintain or expand the service's operations?
- How much will it cost to provide the area with central administrative support services, such as accounting, human resources, procurement, and payroll?
- How much potential revenue has the institution forgone by using a contractor? Conversely, what levels and types of costs has the institution not had to bear as the result of contracted versus self-operated services?
- Are the revenues and expenses of the service area in line with those of other areas? [The authors add: Are the contractor's projections realistic? Do they accurately reflect market costs?]

***IT Systems and Program* [added by the authors]:**

- Can the vendor's systems supplement existing institutional investments in technology?
- Are the vendor's systems compatible within the college/university environment?
- Will the purchaser be required to support system upgrades or are they part of the contract?

***Human resources*:**

- What is the projected growth in employee compensation, including benefits?
- Do employees have the right skills?
- Are employees receiving adequate training?
- Is the work force unionized?
- Does the contractor have experience managing in the unionized environment? Does the contractor have experience with a particular union? [added by the authors]

***Institutional mission and culture*:**

- What are the institution's expectations for the service's performance, especially in the areas of financial position, scope and quality of services, and cost to customers?
- How other campus employees would react to the introduction of a contractor, or conversely, to a switch from vendor-provided services to self-operation?

- How would outsourcing decisions impact town/gown relations?

- Do alumni come in contact with this service? What are their expectations?

***Management control and efficiency*:**

- Do the policies and procedures strike a reasonable balance between efficiency and control?

- Are the service's operations consistent with industry standards?

- Is management responsive, efficient, and effective?

- What is the turnover rate for management at other accounts? [added by the authors]

- Does management work within the fiscal boundaries proscribed for them?

- Are the facilities and equipment sufficient, or do they hinder the ability to provide high-quality service, minimize costs, and maximize revenue?

- Does the service area have the necessary information systems to operate efficiently?

- What level of control does the institution need to retain?

***Service quality*:**

- Who are the customers?

- What services do customers expect?

- Are customer needs being met?

- Is the appropriate emphasis placed on customer satisfaction and quality?

***Legal and ethical considerations*:**

- What are the potential risks to the institution in operating this service?

- Are risk management costs in line?

- Does the institution need to insulate itself from all or part of the risk associated with this service?

- What is the current tax status of the service? Is the institution seeking to reduce its exposure to UBIT or property taxes?

- In providing this service on-campus, is the institution subject to allegations of unfair competition from the local business community?

- Who maintains responsibility for compliance with local, state, and federal regulations?[7]

These questions offer institutions a way to evaluate and select the best operating and management approach to provide specific auxiliary services. Whether the institution selects to self-operate, contract with a vendor, or combine the two approaches, successful use of services depends on the quality of the management team, responsiveness to campus constituents' needs, and the effectiveness of the partnership among area managers, customers, and the administration.

Notes

1. ERIC Identifier: EJ620011, publication date: 2001-00-00, authors: Bartem, Richard; Manning, Sherry, source: Change, v33 N1 p42-47 Jan-Feb 2001 title: Outsourcing in Higher Education; A business Officer and Business Partner Discuss a Controversial Management Strategy.

2. Ibid.

3. "Report on the Status of Non-Tenure-Track Faculty," *Academe* (July-Aug. 1993): 39-46. And The Status of Non-Tenure-Track Faculty compiled by the American Association of University Professors and originally published in the February 1996 ASA Newsletter. Growth and Distribution of Non-Tenure-Track Faculty · Guidelines for Improvement · Professional Standards - Notes

4. Ibid.

5. Goldstein, Philip J., et ai, *Contract Management or Self-Operation: A Decision-Making Guide for Higher Education* (Washington, DC, The Council of Higher Education Management Association, 1993), 81-83.

6. Lenz, Edward A, *Co-employment-A Review* of *Customer Liability Issues in the Staffing Services Industry* (Alexandria, VA, National Association of Temporary Services, 1993), 1-13.

7. Goldstein, Philip J., et al, "Contract Management or Self-Operation," 81-83.

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