

**Board of Regents Subcommittee on Dining Services
Murray State University
October 8, 2018**

Call to Order

Regent Daniel Kemp, Chair of the Board of Regents Subcommittee on Dining Services, called the meeting to order at 8:30 a.m.

Roll Call

The roll was called by Secretary Jill Hunt and the following members were present: Katherine Farmer, Sharon Green, Daniel Kemp, James T. Payne and Phil Schooley. Absent: none.

AGENDA

Contract Approval for the Management of Dining Services*

(*Indicates Recommended Action to the Board)

Dining Services Contract, discussed

Chair Kemp reported that at the June 8, 2018, Quarterly Board of Regents Meeting this Subcommittee was appointed and given the responsibility of reviewing and approving or disapproving a contract for the outsourcing of Dining Services at Murray State University. Since that time staff have been working diligently to negotiate a contract and the process has reached the point where the President is prepared to recommend a contract for approval. This will be the business the Subcommittee will address today.

Dr. Jackson reported that the process to review the potential of outsourcing Dining Services at Murray State University began over 11 months ago at the direction of the Board of Regents. It has represented an exhaustive and detailed process and many individuals have been involved. Appreciation was expressed to all who accomplished this work, specifically Jackie Dudley, Vice President for Finance and Administrative Services; David Looney, Executive Director for Auxiliary Services; Rob Miller, General Counsel; John Rall, former General Counsel; Joyce Gordon, Director of Human Resources and Beth Ward, Director of Procurement. A Request for Proposals (RFP) team also spent a great deal of time with regard to this process. Appreciation was expressed to Regent James T. Payne who served as a member of the RFP team which reviewed bids received for the outsourcing of Dining Services and addressed issues as they arose. Appreciation was also expressed to this Subcommittee for their willingness to serve the University in this capacity to address likely the largest contract ever awarded in the history of the University. Members of the Board who have been involved in this project in some capacity were also thanked for their efforts.

If approved, the proposed Dining Services outsourcing contract will help Murray State University in the areas of recruitment and retention. Having many name-brand options in the Dining Services area will prove to be beneficial. Many maintenance needs and upgrades will be made by the selected vendor and those will also be beneficial to the University.

Ms. Dudley also expressed appreciation to all involved in the Dining Services outsourcing process. The Committee and administrative work involved has been intense. The contractor which has been chosen is Sodexo and the associated contract has been provided to the Subcommittee members for review and consideration. Mr. Looney reported that a summary of the Dining Services outsourcing agreement was also provided to the Subcommittee. Highlights of the contract include:

- Sodexo will function as an independent contractor but there are controls, agreements and regulations in place to ensure the company is meeting the University's expectations.
- The term of the contract is from December 15, 2018, through June 30, 2029 – or approximately 10.5 years in length and all amortization schedules are based on this timeframe.
- Accountability expectation meetings will be held twice per year with senior leadership from both Sodexo and Murray State to ensure progress is on track with the deliverables and the company is meeting the expectations and needs of the University. The University will be very clear with Sodexo in terms of expectations.

- Termination without cause and termination with cause provisions are included within the contract. If the University determines Sodexo is not meeting expectations there is a clause included within the contract that would allow for termination of the contract with 90-days' notice. There is also an agreement that any associated transition would only occur between semester breaks. These provisions could also be invoked by Sodexo. One risk associated with this contract is that if the University decides to cancel the contract it may potentially need to rehire employees and identify a new management team.
- The University is giving Sodexo – through the contract presented – exclusive rights to retail food activity on campus. They will operate the Dining Services locations and all retail food activities. This would restrict other vendors from retailing food on campus. The definition of retail activity is the actual selling of food. If a caterer is being hired for a specific event but the attendees are not buying retail activity that is not restricted under this agreement (except in certain locations). If a caterer is hired for a specific event and food is being sold that does represent a retail activity and is restricted under this contract.
- In addition to retail activity, Sodexo is being given exclusivity on catering in the Curris Center and Winslow Dining Hall. Exclusivity is defined as anywhere there is a grease hood in operation. If a new dining option is constructed in a facility on campus and has a grease hood then the entire building would have exclusivity for catering activities by Sodexo. In the various venues on campus where meetings are held and there is not a grease hood – such as the CFSB Center – there is not exclusivity for catering through Sodexo. There would be no exclusivity restriction for offices hosting an event if there is no grease hood in the building.
- The University is retaining all of its rights on approving pricing, hours, trademarks and operations. Current meal plan pricing and structures that require Board approval remain intact. The Board continues to maintain authority for approving pricing, determining the meal plans that will be offered and setting hours of operation. Language is included in the contract where Sodexo financial proposals are based upon cost-of-living adjustments but those will come to the Board first for approval. If the Board chooses not to approve pricing adjustments that are submitted, Mr. Looney will be responsible for working with Sodexo to identify compensating factors which would also be presented to the Board for approval. The contract does not include any new fees and any fees included currently exist. Confirmation was provided that pricing for the various meal plans has not changed from what was previously approved by the Board and this includes faculty and staff programs. There is also no change in the way these programs are currently being operated.
- The campus buildings and all equipment within those facilities will remain the property of Murray State. The University will still be responsible for maintenance and repair of the facilities and equipment. Sodexo will provide a maintenance and repair budget that will be used for repairing equipment and, while they will be responsible for calling the service technicians to keep the equipment running, the equipment remains University property. Confirmation was provided that this provision includes any new equipment which is purchased.
- The commission structure is 20 percent for meal plan activity, 10 percent for retail sales, 10 percent for catering, 10 percent for camps and conferences and 40 percent for concessions. Information was provided on the minimum commission guarantee from Sodexo each year based on assumptions which have been made on meal plan participation. When the RFP was prepared an estimate was provided on how many students currently are on meal plans as well as growth expectations. The financial proposals are based upon meeting these assumptions. If the University should deviate from these assumptions the right to renegotiate some of the terms to offset variances is contained with the contract provisions instead of the solution being an automatic reduction in commissions to the University.
- In terms of investments, upon signing the contract with Sodexo a \$3 million investment will be made available to the University for renovations, upgrades and enhancements to the Dining Services program. The \$3 million influx on December 15 will be on a straight-line amortization over 10.5 years. The usage of this investment will be based on mutually-agreed upon ideas. Work will be undertaken to identify what is important to Murray State students to determine how the money should be utilized and where investment is needed in the Dining Services program. A second investment by Sodexo of \$3.5 million will occur on July 1, 2020, for enhancements and investments in the Dining Services program and this will be amortized over nine years. A third investment of an additional \$1 million will occur July 1, 2021, and will be amortized over eight years. The amortization for all investments ends on June 30, 2029. The fourth investment is an unrestricted fund of \$1.5 million – or a signing bonus – that will come to the University on July 1, 2019, and will be on a straight 10.5 year amortization.
- If the University determines the contract with Sodexo should be terminated – with or without cause – there is the expectation that the unamortized balance of Sodexo investments would be returned and this does represent a risk for the institution. Ms. Dudley clarified if the University maintains its contract with Sodexo for five years but needs to terminate the contract, the investment amounts that are not amortized would be owed back to the contractor. Sodexo is investing \$3 million but is allowing the investment to be recovered over a ten-year period. If the investment does not reach maturity then the University would owe Sodexo the unamortized balance.
- Sodexo has set up two different funds to help the University with student success and activities. The first is a \$50,000 pre-year fund for student success and the second fund is \$25,000 for student

activities. If students are holding an event and need Dining Services to help subsidize that event, Sodexo is continuing the type of support currently provided by the Dining Services operation. The contract does not define in depth how this funding can or cannot be used and it is the University's responsibility to make those determinations.

- The language within the contract indicates for any type of University approval that is required Mr. Looney is listed as the appointed party with responsibility for communicating to the appropriate parties on campus. His responsibility is to make sure anything requiring University approval gets to the right parties responsible for that approval. This prevents Sodexo from having to navigate the entire University.
- In addition to the Student Success and Student Activities funds, there is an additional \$50,000 per year for VIP catering events. This would include employee appreciation luncheons that Dining Services has typically been asked to help subsidize and these expenditures will likely be at the discretion of the President. Confirmation was provided that the cost for activities for initiatives (such as Senior Breakfast and the Midnight Breakfast) were calculated into the investment provided although specific events were not named to allow for greater flexibility. The President will work with students to determine which events are important to them and that could change from year to year.
- In regard to the Repair and Maintenance Fund, Sodexo has proposed setting up a \$1.6 million fund over 10.5 years for equipment maintenance and repair. This number is a result of an analysis prepared by Mr. Looney based on the past 4.5 years of University equipment maintenance and repair expenses which were actually incurred. This has also been scheduled out for the future with cost increases factored in. If any of these funds are not used in a given year they will be carried forward to the next year and the University can request to utilize these funds for any needed repairs or maintenance. The University will retain ownership of the equipment but Sodexo will help contribute to the cost for the institution to make the necessary repairs.
- In regard to the Utility Fund, currently utilities are cost calculated based on auxiliary square footage usage for the space and was projected out based on past numbers and the calculations for utility consumption throughout the contract. At the University's request, Sodexo will pay utility costs on a monthly basis.
- An additional value Sodexo is providing to students are Meal Plan Scholarships. They projected \$589,589 to be utilized toward meal plan scholarships which amounts to approximately 25 scholarships per year that will be offered as an in-kind contribution. These scholarships will be identified and can be utilized in a number of different ways. The University may choose to dedicate 80 percent of this funding for meal plan scholarships and 20 percent to be utilized for the Food Bank Program to ensure students with need have access to food. Dr. Jackson added that this could represent 25 full scholarships or 50 half scholarships or some other combination.
- There is also an exclusivity contract pouring rights agreement with Pepsi and that is included within the contract. This requires Sodexo to honor the University's pouring rights and other agreements and not violate the terms of any such contracts.

In response to whether candy bars can continue to be sold on campus to raise money to help sponsor local bands and if Girl Scout Cookies can still be sold, Ms. Dudley reported that the University historically has not allowed third-party sales on campus. Confirmation was provided the contract with Sodexo does not address those types of sales but the appropriateness of the sales just mentioned is not being addressed. Mr. Looney reported that the important component of this is the selling of prepared foods because food serving licenses come into play and that type of activity is what has been referenced in the contract.

Confirmation was provided that meetings with affected staff will occur later today and this includes students working in Dining Services. Sodexo will also be available to meet with staff and students. Confirmation was provided that the number of hours students will be allowed to work will be a decision made by Sodexo and the University will not govern student employment because they will be employees of Sodexo.

Ms. Dudley stated that Kentucky Retirement System (KRS) requirements for hourly staff played a very important part of this outsourcing agreement. Mr. Miller reported that Murray State has been very careful to communicate with KRS throughout the entire process. The University received acknowledgement from KRS that the proposed contract for outsourcing of Dining Services would not be an issue for Murray State (compared to another state university that is currently involved in litigation). The way the contract is structured the University will not have a continuing obligation to pay into the retirement system for these employees. The employees will also have certainties relative to their own retirement situations and will be able to access their retirement accounts. All are very pleased that KRS worked with the University in this manner and allowed it to move forward with this certainty. Ms. Dudley reported that the University is obligated to follow the Internal Revenue System 20-Factor Test regarding a bona fide separation of service. It needs to be clear that the University's process will be to end its

relationship with current employees and employment will be terminated based on the KRS requirement. This is being done to protect employee retirement benefits because the University does not want to jeopardize their ability to access retirement accounts. Ms. Gordon confirmed that what was required by the Kentucky Retirement System was reviewed and changes to words and phrases were made accordingly in the contract. The contract language did require a complete break in employment or the KRS system would not count it as a bona fide break in service.

Chair Kemp indicated it is his understanding that the University has approval through the letter dated September 27, 2018, from the Kentucky Retirement System which will ensure that Murray State employees will be able to retire if they so desire and are eligible or can take their money out or leave it in and retire at a later date, dependent on what best meets their individual needs. Confirmation was provided that protecting employees in this manner was key to all work undertaken with KRS.

Ms. Dudley reported that the goal throughout the process has been to provide 90-days' notice to employees although this goal has not quite been reached. This is not a statutory requirement or a requirement per the retirement system. It was determined that it is in the best interests of the University and the employees to move forward with outsourcing now because the next window for making the change would not be until next summer and that was not a desirable scenario. Ms. Gordon added that the University is following the WARN notice – Worker's Adjustment and Retraining Notification – which is statutorily 60-days' notice. A letter from the University will be given to employees but the WARN notice has more official requirements. Confirmation was provided that the University will meet the 60-day requirement and the last day of employment for current employees will be December 14, 2018.

Confirmation was provided that employee insurance coverage through the University ends December 14 as well but this is not part of the contract with Sodexo. There will be a wait period after insurance with the University ends but options for coverage during this wait period will be discussed with individual employees this afternoon.

In response to a question, Mr. Miller confirmed he is definitely satisfied with the contract from a legal standpoint.

Ms. Dudley reported that a financial summary was provided to the Subcommittee related to investments which have been proposed by Sodexo. The University and Sodexo will work together to determine how best to utilize those investments. Some decisions will be made quickly while others will take longer. Sodexo will need to begin analyzing what is best and what needs to be implemented as quickly as possible. For investments which are over \$1 million – although below the University's normal policies and procedures – Murray State will follow state statutory requirements for procuring capital construction. If a project over \$1 million is proposed, the Program Statement would be presented to the Board for approval, as with any other project. Over the next three to four months some of the smaller projects will be formalized but larger, stand-alone or new venues will be presented to the Board for approval as a determination is made on how to proceed.

Confirmation was provided that the investment is being made by Sodexo in fiscal year 2018-19 but the projects may not actually be scheduled until fiscal year 2019-20. No new revenues will be coming into the University for fiscal year 2020. Some projects may be ready to start in Fall 2019 while others will take longer due to their size but this will represent a campus collaborative effort. Sodexo will want to work with students to determine the options they prefer so they can be involved in the decision-making process.

Mr. Payne reported that the RFP Committee considered two companies for the outsourcing of Dining Services and the fact that both were willing to make investments and focus on students, sold him on the idea. Both companies reported that 40 percent of incoming college students use dining services as part of their decision-making process in choosing a university. Currently, Murray State is behind the game in this area. He appreciates Mr. Looney's work with the RFP Committee and thanked him for ensuring a transparent and fair process with regard to the work undertaken. He has never made a more confident decision on behalf of the students he represents through service on this Board in terms of this being the way the University should proceed.

Mr. Looney indicated that what was outlined earlier represents projects Sodexo brought forward during the proposal process and are not necessarily defined as being final in the contract. For fiscal year 2018-19, consideration is being given to Thoroughbred Room renovations which include the installation of a Mexican concept, signage and painting and undertaking different design work. Consideration is also being given to a Winslow Dining Hall and concessions refresh. Discussions have occurred regarding bringing Einstein Bagels and Starbucks to the University and undertaking work in the Business Express which is located in the Business Building. Consideration is also being given to expanding the Fast Track program (convenience store) to increase available options. There is also potential for a project in Hart Hall. For 2020-21 the proposal has been made to bring Chick-fil-A to campus and a Five & Diner which would be set up inside Winslow Dining Hall to provide the concept within a concept experience. Renovations to the Thoroughbred Room are being considered and another proposal included a Freight Cart which is a repurposed shipping container that can be placed on campus in many different locations to house enterprises such as a Steak 'n Shake or other concepts. The concept of a micro-market has also been introduced which would be a self-service store located in the Curris Center and this is a relatively new concept for the college marketplace. For 2021-22 renovations in Winslow Dining Hall have been proposed. The Enhancement Fund of \$1.8 million is for 2023 through 2028 and those decisions cannot be made at this point in time. Confirmation was provided that these are concepts which have been discussed but they do not represent final decisions.

Ms. Dudley was asked to provide a summary of the annual value of this contract to the University. She indicated that annual sales commissions are broken out by three categories. For meal plans the University would receive 20 percent of net sales which has been based on current enrollment and pricing. Retail, catering and camps were discussed previously and the institution would receive 10 percent of net sales. The University would receive 40 percent of net sales related to concessions. Slightly over \$2 million would come back to the University annually. This is a 10.5 year contract and information restating those commissions for the life of the contract was provided and amount to \$21.3 million in commissions over the term of the contract. There is a \$1.5 million signing bonus, capital investments of \$9.3 million, in-kind contributions of \$1.3 million, scholarships amounting to approximately \$600,000 and \$1.6 million for equipment maintenance and repair. All of these investments total \$35.6 million for the 10.5 year contract with a total estimated annual value of \$3.4 million. Information was presented in detail showing how the University would use that \$3.4 million and the analysis of this contract has always been that the Education and General Fund (E&G) would remain whole in terms of what is currently being received from Dining Services. Confirmation was provided that there is the potential for the funding provided to E&G from Dining Services could also increase. The model is commission-based so it is to the University's advantage to identify new revenue opportunities through retail operations and branded concepts because it will receive the commission percentage associated with that revenue. It is up to the University and Sodexo to ensure the growth both desire.

Ms. Dudley was asked to provide a summary of the financial analysis of in-house versus outsourcing to Sodexo that was presented to the Subcommittee. She indicated information was provided on the University-operated summary from 2016-2024. Historical information was provided in terms of what the University has done for 2016-17 and 2017-18 and the net that has been received from Dining Operations. The private-operated analysis includes estimated numbers provided to Sodexo. The net contribution from operation does not match the Schedule presented because it includes building and equipment and maintenance and repair. In fiscal year 2020, \$583,000 in net revenue is estimated for University-operated Dining Services and close to \$800,000 for that year is being estimated from Sodexo. The University will receive commissions but there are still obligations the institution will have to pay. The University will continue to bill students for their meal plans and they will continue to be able to use financial aid but the institution will have some bad debt expense and debt service payments it must continue to make. Dining Services is obligated for these expenditures and they were included in the information presented. These payments must continue to be made even though the University has outsourced Dining Services. The significant change is that for 2020 a Kentucky Employee Retirement System (KERS) level funding amount of \$350,000 has been estimated. This is on the University side of the balance sheet because the institution would have to pay it regardless of being outsourced or not. Level funding means the University may have KERS obligations even with outsourcing but the University is avoiding the increase in rates on a payroll. The University

contributes to the retirement system for employees when the payroll is run and those contributions will not have to continue to be made once the Dining Services operation has been outsourced. The rate increases that may be required due to current and future legislation are estimated to total between \$400,000 and \$450,000. The University will be avoiding the increases in the pension rates on payroll and this is not included in the bottom line numbers presented. Only the level funding amount the University could continue to pay was included. Confirmation was provided that if all assumptions remain as they currently are and the University successfully negotiates amendments to contracts it should have financial benefits.

Dining Services Contract, approved

Mr. Payne moved that the Board of Regents Subcommittee on Dining Services, upon the recommendation of the President of the University, approve the Dining Services Contract with Sodexo, as presented, effective December 15, 2018. Ms. Green seconded. There was no further discussion. The roll was called with the following voting: Ms. Farmer, yes; Ms. Green, yes; Mr. Payne, yes; Mr. Schooley, yes and Mr. Kemp, yes. The motion carried unanimously.

Chair Kemp thanked President Jackson and all staff members for their work to bring this contract to fruition. He feels the Subcommittee has made a good decision that will benefit Murray State University and students, faculty and staff in the years ahead.

Adjournment

Ms. Farmer moved that the Subcommittee on Dining Services adjourn. Mr. Payne seconded and the motion carried. Adjournment was at 9:20 a.m.



Daniel Kemp, Chair
Board of Regents Subcommittee on Dining Services



Susan Guess, Chair
Board of Regents



Jill Hunt, Secretary
Board of Regents

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