A BRIEF INTRODUCTION TO TENDERING

Jill Taylor-Roe


I intend to adopt a very simple, and I hope, logical, approach, based on the sort of questions which someone facing the subject of tendering for the first time might reasonably ask.

What is it? At its most simple level, a tender is a proposal, usually in writing, offering to provide particular goods and/or services for a specific price, and usually for a fixed period of time. Tenders are highly competitive, and proposals, once made, are usually evaluated against a set of controlled criteria in order to determine which tender represents the “best”, i.e. most economically advantageous, offer for the client. Tenders are routinely used in the construction industry, and when negotiating for the supply of commodities such as furniture, computer equipment, and consumables. In the Library sector, it is far more likely that you will have tendered for the supply of goods and services if you are a Special Library or a Public Library. Academic Libraries have generally shown little inclination to tender, particularly where books and serials are concerned.

There are three distinct types of tender: open, restricted, and negotiated. An open tender is one which is widely advertised, and all qualifying suppliers who respond to the notification are entitled to participate in the tender itself. The keyword here is “qualifying”. I could express interest in an open tender to supply periodicals, but unless I could demonstrate that I had the commercial status, capital and supply infrastructure to substantiate this interest, I would not qualify for further consideration. An open tender is undoubtedly the simplest type of tender, but it can involve an enormous amount of work at the evaluation stage, to sift out the genuine qualifiers from the “also rans”.

One way of avoiding some of this work is to use a restricted or selected tender. This is where the organisation offering the contract for tender draws up a shortlist of desirable suppliers and invites them all to tender. The same concerns apply as with an open tender, i.e. you must be sure that the companies concerned can deliver the goods or services, but the process of shortlisting should include the necessary financial and commercial checks to ensure that only those fit to tender are actually invited to do so. If
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adoption this approach, you must specify at the outset that the tender is a restricted one. In the past, you used to have to provide a written justification for selecting this method over an open tender. However, as long as you can demonstrate that you have used objective criteria to draw up the list of preferred suppliers, open and restricted tenders are now deemed to have equal status.

By far the most unusual type of tender is a negotiated tender, where a direct contract is drawn up with a selected supplier or suppliers, and negotiations are only conducted with them. Not surprisingly, there are very strict considerations governing this type of tender. It can only be used if there are specific, valid and/or technical reasons which only a particular supplier or suppliers can meet, or unforeseen circumstances requiring urgent action. An example of the latter might be the need to replace library resources urgently after a flood or fire.

So - given all these complexities, why should we think of tendering? There are various reasons which may apply. You may be unhappy with your existing supplier and wish to try out another one. Even if you are content with the service provided by your current supplier, you may still want to test the market, particularly if your existing arrangements are long-standing.

Another reason for tendering may be pressure from internal management. This is usually driven by the desire or necessity of saving money, and the pressure may come from the Vice-Chancellor, the Librarian, or, as is more likely these days, the Purchasing Officer, who will be more aware of, and more actively involved in, tendering arrangements for other commodities required by the institution. One of the main reasons, however, for tendering is the need to comply with EC Regulations - which is where it starts to get complicated!

Let's start with the easy bits. An integral part of the drive towards greater harmonisation in the EC is the need to ensure free and open competition amongst the member nations. This principle was embodied in the Treaty of Rome, and has subsequently been reinforced and refined by subsequent EC directives. These are the current directives pertaining to supplies and services:

- Public Supplies Directive 93/36 EEC
- Public Services Directive 92/50/EEC
- Public Supply Contracts Regulations (Statutory Instrument 1995 no.201)

Essentially, what these directives are saying is that in order to ensure free and open competition, all public bodies are required to tender for the provision of goods and services over and above a specific fiscal value. The current threshold for supplies and services is 200,000 ECUs, which is approximately £150,000. From the library point of view, the emphasis is on the supply of goods (serials, books) in which case it appears there is a lower threshold of 130,000 ECUs, (equivalent to circa £100,000), which applies. These thresholds are revised (upwards) biennially, usually on the 1st of January. The next revision is due in January 1996.

Most, if not all, UK academic libraries' serials bills are likely to be in excess of this figure, although very few are currently tendering their serials contracts, and I would guess from my own contacts that very few really want to tender them. The question of whether we ought to be tendering is clouded in uncertainty, and I cannot pretend that I have yet found a satisfactory answer. All I can do is summarise the main arguments and interpretations, and tell you what I know of current national initiatives to provide an interpretation which if not definitive, at least has the weight of major academic bodies such as SCONUL and CVCP behind it.

The nub of the argument appears to centre on whether books and serials can be regarded as "goods of a type". We would tend to argue that they are not, and that consequently there is no need to aggregate the contract values. This is clearly the case where institutions operate separate departmental libraries which have control over their own budgeting and ordering processes, but is much less certain when all acquisitions are handled centrally. At its simplest level, it can be argued that if an institution places all of its orders for publications through a single source of supply, and the value of that contract exceeds the current threshold, then that contract must be put out to tender.

However, it has also been said that if a contracting authority or agent goes out to
different sources (= publishers) for different products (=serials), because that is the most sensible, or indeed the only way to obtain the range of materials needed, then these would be discrete contracts to which the regulations would apply individually if the value of the individual contracts exceeded the threshold. Both of these arguments have been advanced by purchasing officers, and discussions with an expert in European Competition Law suggest that as the legislation was clearly not drawn up with books and serials specifically in mind, and in the absence of a definitive ruling, or test case, it is impossible to say whether the second argument, (which on the surface at least appears to offer us a valid reason not to tender for serials), would prevail if tested at law.

What is clearly desirable, indeed essential, is for a national library initiative on tendering. Progress is being made in this direction, but there are complex issues to be resolved, which mean that the process inevitably takes longer than we would like it to. The National Acquisitions Group has produced an excellent Guide to Tendering, and the advice they offer is that you should tender, although they do say that the guide primarily refers to books, not serials. There is also a SCONUL Advisory Panel on Funding which is looking at this issue, particularly as it relates to serials.

So what do we do in the meantime? As always, there are several options. We can do nothing - i.e. keep our heads down and hope the problem will go away. This is what many of us have been doing, and in the light of the uncertainty surrounding the issue, it is perfectly understandable. However this position is becoming increasingly untenable, particularly as more libraries elect, or are pushed into, tendering.

We can set up Framework Agreements with preferred suppliers. This is where costs and service levels are defined but the amount of business is merely estimated. Such agreements are not directly referred to in the EC Directives, and it is not clear whether they reflect the spirit of those directives, or contravene them. Framework Agreements are broadly how one would describe the arrangements made by existing academic consortia such as SUPC and NEYAL where we negotiate with preferred suppliers, and set up service level agreements based on estimated turnover over a period of time (usually three years). Many libraries have thus far favoured this approach over tendering, because it enables them to use their collective purchasing power to establish a better commercial understanding with agents whose services are known and valued.

Most libraries would prefer not to rush into tendering without confirmation that they are legally required to do so, and a definitive national view on this is anxiously awaited. I feel confident that there will be some progress on this matter before the end of the year - preferably before we all start looking at subscription renewals. If expert opinion concludes that we must tender for serials, there may be scope for undertaking some of this work at a national or regional level, thus minimising workloads on individual libraries. This of course is in the future - but if you are in the position of having to tender NOW, I would like to spend a little time outlining the basic stages in the tender process. I will do no more than that because I know that subsequent papers will be covering this process in more detail.

The tender process begins when the institution with the contract to award publishes an invitation to tender in the supplement to the Official Journal of the European Community (often referred to as the OJ). This is essentially a statement of intent, and interested parties are invited to submit expressions of interest for preliminary appraisal. This is followed up with the formal Invitation to Tender, which is issued to all suppliers that meet the requirements of the initial appraisal. This is where the real work begins for all parties. You must clearly specify all contract terms and conditions, indicating what is essential, desirable, negotiable, and provide relevant background information about the institution, including how it functions, and what it requires from the tender. Contact names and the address to which the tender is to be sent must be clearly specified, together with the date by which the tender must be received. In the period leading up to the submission date, there is scope for what is known as pre-tender negotiations, which aim to resolve any queries, or ambiguities arising from the tender documentation. During the actual assessment period, when all tenders have been received, there may also be some post-tender
negotiations, which provide an opportunity for suppliers to refine terms, and correct mistakes. This period must not be used for a Dutch Auction and great care must be taken to treat all bidders fairly and equally.

There is often great pressure to accept the lowest tender, but experience has shown that this is not always the right decision, as it may not take account of service quality, which is clearly an important factor, but one on which it may be hard to put a value. It may be helpful to use the phrase “most economically advantageous tender” when determining which supplier is to be chosen, as this gives some scope for incorporating service considerations in the final decision. Once the tender has been awarded, notice of the successful tender must be placed in the OJ, and unsuccessful bidders must be notified within seven days of tender being awarded. They must also be given the opportunity for debriefing, so that they can be advised of where their submission was felt to be deficient. As I said, this is just a brief outline of the procedures involved and I would like to conclude by looking at some of the benefits and disbenefits of tendering.

Arguably one of the greatest benefit of tendering is that it demonstrates public accountability for spending public funds effectively. This ties in well with the growth in academic audit, and with the increasing devolution of budgets to departments. As more people in academic institutions become accountable for and interested in the management of resources, it is essential that the library can demonstrate that it is deploying its resources most effectively in support of teaching and learning. The process of tendering also implies that there is better monitoring of services and standards, as these should form part of the tender agreement.

If you have gone out to tender, you should be able to demonstrate that you have submitted the supply of library goods to fair and open competition, in accordance with EC regulations. Another more tangible benefit could be that you find you have better service level agreements with suppliers. I wonder how many libraries, who are not at present tendering, have service level agreements with their suppliers? I suspect that there are not many who have gone down this route, although it accords well with the various QA assessments/awards, such as BS5750, Chartermark etc., which many of us (libraries and suppliers), are currently pursuing.

Better value for money is something we are always striving to achieve and demonstrate, both to our own and our paymasters’ satisfaction. Tendering may deliver this, but I am not convinced that it always does, or that anyone has undertaken a thorough cost-benefit analysis, taking account of opportunity costs (i.e. what you could have been doing with all that staff effort if you weren’t tendering?) All of the above benefits pertain to libraries, but what about benefits to agents? Clearly the primary benefit for them is security of business, at least for the term of tender. However, this has to be offset against the initial cost of tendering, which involves them in a considerable amount of work.

Inevitably, everything has its price, so what are the disbenefits of tendering? I think that top of most people’s list would be the loss of control and flexibility in the choice of agent. In particular, the fear of being tied to a supplier for the duration of a contract, and being unable to take advantage of a better offer that may come along during that period. You might also be concerned about what you can do if the supply and service standards specified in the tender award are not met. A great deal depends on the nature of the penalty clauses that are written into the original contract. These can be invoked if there is a clear and sustained default, but this may be difficult to prove, and unless there is a major problem, you would generally be bound to honour the contract for the agreed term.

Linked with the above point, there is the increased sense of risk incurred by having entered into a formal contract with a supplier. None of us likes to have all our eggs in one basket, although you can mitigate this concern by dividing the portfolio up into more than one tender. Even so, there is still a legitimate concern that you might end up being tied to a supplier who may become commercially disadvantaged, or in extreme cases, go out of business, during the period of the tender. However, in many respects, this risk is not much greater than that which we already run by paying up-front for goods which will, we hope, be supplied in the coming year.
A tangible disadvantage of tendering is the sheer volume of work involved, in preparing, evaluating, implementing and monitoring a tender. Some of this is one-off work, but much of it is recurrent, and you may understandably be loth to add to the pressures on staff who are already considerably overstretched. This also links in with the question of cost-benefit analysis - there is a common assumption that going out to tender will save you money (which it may) but there is also a danger that any saving on subscriptions is cancelled out by the staff costs associated with conducting such an exercise.

That is a brief introduction, and I would like to conclude by offering some references to material which I have found, and continue to find, useful in my attempts to negotiate a way through this complicated and challenging subject:

1. *Good Purchasing Practice: A Report by Ernst & Young for the CVCP and SCP, HEFCE, 1994.*

I have also found useful articles in the following serials:

4. *Purchasing and Supply Management,* published by the Chartered Institute of Purchasing and Supply. ISSN: 0265 2072.