

# *Planning to campaign and bargain on outsourcing*

**If it becomes apparent that your management is considering outsourcing of some of your institution's functions it is important to move very quickly to build a campaign and start making the case for the union's right to be consulted and negotiated with early in the process.**

In some parts of the public sector, outsourcing, contracting out and privatisation have been very common for a while. As a result, unions have established agreements that regulate this process and allow them to play a role that has enabled them to mitigate some of the worst effects.

No such agreements exist in further and higher education.

Our experience shows that university and college managements are likely to do everything possible to keep UCU and other unions out of the process until the last possible point.

That's why it's so important to mobilise a campaign as early as possible.

Experience also shows us that when we have been able to mobilise our members in a campaign against privatisation, we have also been able to win some key bargaining objectives.

## **UCU's strategic objectives**

We have two main strategic objectives:

- 1.** To target the institution's constitutional decision-making bodies with a campaign aimed at deterring them from pursuing outsourcing, or at the very least of winning secondary objectives that ensure the institution consults and negotiates with us.
- 2.** To use consultation and negotiation to slow down the process of moving toward outsourcing and win key protections for staff. This also has the effect of raising the cost of any bid, reducing its attractiveness to cost-cutting companies and making an in-house option more attractive.

These two objectives support one another and one pursued without the other is not likely to work.

## **Targeting the decision-making process**

The democratic elements of university and college governance structures have been weakened over the years and senior managements now dominate decision-making. These senior managements have to a large extent internalised ideas of 'lean management' from the private sector.

However, it is still the case that the governing bodies to some extent represent a range of different stakeholders who embody the wider college or university community. Governing bodies are supposed to act in the interests of the college or university as a whole and to defend its financial solvency and its reputation. This gives us a valuable source of leverage.

Our aim is to show that the key stakeholders in our institution are united in opposing outsourcing and believe that it will be costly and highly risky to the institution's reputation—to split away the governing body, as far as possible, from the management team likely to be driving the project.

1. Call a meeting of the affected members and of the general membership and mobilise them for a campaign against outsourcing. Use our 'Making the case against outsourcing' document.
2. Talk to the other campus unions and the students union about a united campaign. It may well be the case that outsourcing affects the more than one union.
3. Identify the key dates for meetings of your governing bodies and key committees. These will be the focal points of your campaign.
4. Identify sympathetic people such as staff council members or governors on these bodies and talk to them about the campaign.
5. Once you have wide support on the campus, lobby your local councillors and MPs asking for their support and make sure that the issue is pushed into the local press. Focus your message on the unpopularity of the proposals, the impact on staff and the impact on the reputation and finances of a large local employer.
6. Focus your campaign on putting mass campus-wide pressure on these bodies through open letters, petitions, lobbies and protests and ask your external supporters to contact these bodies too.
7. Focus the message to your governing body on the effects of outsourcing on the quality of provision, the risks to reputation and the poor basis of claims about cost-savings. Use our 'Making the case against outsourcing' document.

You can get more help in building a campaign against outsourcing from your Regional Official and the National Campaigns Team, at [campaigns@ucu.org.uk](mailto:campaigns@ucu.org.uk).

### **Bargaining around outsourcing**

Our aims are to:

- i) protect our existing members
- ii) win the case for consultation with the union
- iii) if outsourcing goes ahead, win the case for an in-house bid
- iv) ensure that outsourcing does not result in a two-tier workforce by winning protection for all workers in the outsourced service for the life of the contract.

These are all reasonable trade union bargaining objectives. But they also support our strategic objective of preventing privatisation by making outsourcing less likely and less attractive.

### **Bargaining around key stages in the outsourcing process**

**Service review and options appraisal** Before any move toward outsourcing and tendering, there is likely to be a phase where a service is reviewed and options for its future are considered.

Given that the main reason managements seek to outsource is because they believe it will be cheaper, they are likely to try to ensure that any review or options appraisal process is short, largely hidden and completely biased, being designed to arrive at the conclusion that there is no alternative to outsourcing.

However, there is established good practice for doing this properly, which involved consulting the unions and making sure that cost is not the only criteria on which any decision is made. We should be pressing for a thorough and transparent process.

#### ***If you become aware that a service is under review:***

- Argue that the union should be consulted about the process for conducting the review.

- Argue that quality and reputation are part of any review of a service, not simply its cost.
- Argue for a full and transparent exploration of possibilities for service improvement before any move to appraise alternative options.
- If there is a move to an options appraisal process, argue again for UCU to be consulted about the range of options and the criteria to be used for deciding. Again, cost cannot be the only criteria.
- Any options appraisal process should involve consideration of the impact of any particular option on:
  - student experience;
  - reputation;
  - employment of staff;
  - equality;
  - sustainability;
  - the wider local community.

**The tendering process** If your institution reaches the point of entering the tendering process, it's important to know which process they will use as this affects the shape of your campaign and bargaining plan.

There are four main tendering routes:

- 1. The open procedure** This is where all interested suppliers are asked to return tenders by a set date. These are then evaluated and the contract is awarded. This procedure is often used by local councils.
- 2. The restricted procedure** This is a two-stage process. In the first stage, interested suppliers are asked to fill out a questionnaire and a short-list is drawn up. In the second stage, the shortlisted suppliers are invited to respond to an Invitation to Tender (ITT). The tenders are then evaluated and the contract awarded.
- 3. The competitive dialogue procedure** This procedure is used for more complex procurements. After a selection process, the buyer then negotiates with suppliers and invites chosen companies to put in a bid. Suppliers put in their tenders and the contract is awarded.
- 1. The negotiated procedure** In this procedure, the buyer enters into contract negotiations with one or more suppliers.

<https://www.gov.uk/tendering-for-public-sector-contracts/the-procurement-process>

Most outsourcing projects will use either the restricted or competitive dialogue procedures. This table shows the differences in the two procedures:

<b>Restricted</b>	<b>Competitive Dialogue</b>
OJEU Notice	Prior Information Notice (PIN)
Shortlisting	OJEU Notice
Invitation To Tender (ITT)	Pre-Qualification Questionnaire (PQQ)
Contract Award	Shortlisting
	Invitation To Participate in Dialogue (ITPD)
	Invitation To Submit an Outline Solution (ISOS)
	Invitation To Submit a Detailed Solution (ITDS)
	Invitation To Submit a Final Tender (ITSFT)
	Appointment of Preferred Bidder
	Clarification
	Contract Award

Once again, our aim must be to get into this process as early as possible and make the case for our consultation and involvement in monitoring it. Our institutions are likely to want to exclude the union until the very last point.

Most commonly, this is the point when TUPE legislation obliges them to consult with unions representing the affected transferring staff.

## **Checklist**

- 1. Establish which tendering process is being used.**
- 2. Argue for consultation at the stage of drawing up the Invitation to Tender document and the advert in the Official Journal of the European Union (OJEU). We should aim to insist that ability to offer a low cost is not the only criteria for the bid and that ability to ensure quality, employment record, equality considerations and a positive attitude toward trade unions, for example, will be taken into account.**
- 3. Argue the case for a properly-resourced in-house bid. This should not be developed by the union, but we should be consulted by the management team and relevant staff groups.**
- 4. Seek information on the bidders. We can sign a commercial confidentiality agreement if necessary to ensure this, but take advice from your regional official before considering this.**
- 5. Seek agreement that the bidders be invited to give a presentation to the unions. Some questions you can ask are listed below.**
- 6. Argue for protection for staff employed under the transferred service – not just transferred staff but all staff, in order to prevent a two-tier workforce. This is often referred to as TUPE Plus. An example of the kind of agreements to seek is listed below.**
- 7. Perhaps the most important objective is to achieve protection of pension provision for transferred staff and if possible, ‘broadly comparable’ pension provision for new starters in the transferred service. The level of pension provision in services like ours is the single biggest deterrent to private companies seeking to profit from public services.**

## **Further resources**

Useful Questions to ask your management:

Useful Questions to ask potentially contracting companies

Fair Employment Agreement