

Should public institutions not be choosing the lowest responsible bidder?

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Public institutions the world over are required to spend their funds responsibly. Commonly, this is done by requiring them to host bids for purchases or services above a certain threshold. If you work at a public institution and have wondered, e.g., why you are only allowed to buy a computer from your computing facility which only sells one particular brand, then the answer likely is that this brand won the bidding contest.

The idea here is, to quote from an old (1942) [document](#) from the US:

The awarding of contracts by municipal and other public corporations is of vital importance to all of us, as citizens and taxpayers. Careless and inefficient standards and procedures for awarding these important community commitments have increased unnecessarily the tax burdens of the public. To secure a standard by which the awarding of public contracts can be made efficiently and economically, and with fairness to both the community and the bidders, the constitutions of some states, and the statutes regulating municipal and public corporations provide for the award of public contracts to the lowest responsible bidder.

As far as I know, most countries have such purchasing rules in place for essentially every service or purchase. However, it seems one area of services is exempt from this rule: scholarly publishing services, in particular journal article publishing (not sure about books). While every major plumbing operation, every ventilation improvement and every cleaning contract needs to be signed after a competitive bidding procedure, we negotiate subscription deals behind closed doors and the signed contracts are often hidden behind non-disclosure agreements. It seems to me that the second sentence in the quote above describes the consequences of these back-room dealings quite accurately. What evidence is there to support this view?

If one looks at the [costs](#) of these subscription deals, one finds that they amount to about US\$5,000 per published subscription article. However, open access publishing costs (not article processing charges, APCs!) range from below US\$100 to around US\$500, depending on a [variety](#) of [factors](#). Hence, publishing services which let everybody access our literature would blow out any subscription publisher if a competitive bidding process would take place! (Note that some publishers charge their customers much more than their bare-bones publishing costs for a variety of reasons)

As everyone knows, the justification for subscriptions purchases is that the subscribed content can only be obtained at this one publisher, so there cannot be any bidding. The subscription business is essentially one of monopolies, obviously. This argument is about as superficial as it is vacuous. Institutions currently spend huge sums acquiring large collections of journals only few of which are heavily used. From a single article perspective, these collections provide a massive oversupply: institutions pay for access to many more articles than their faculty actually read. If our institutions were instead to focus on serving their faculty's publishing rather than reading needs, the money would arguably be spent much more effectively.

For quite some time now, we have observed the development new business models such as those of [Ubiquity](#) or [Scholastica](#). These service providers allow their clients to switch services if they are not satisfied. Let's say we, University of XYZ, find Scholastica's US\$100/article service is

the lowest responsible bidder. After a year or two we get so many complaints from our faculty about what a horrible service this is, that we decide to have another round of bidding, where we include a more extended range of services. Let's say the US\$500 per article service of Ubiquity wins the bidding this time. University of XYZ can easily switch, without losing access to any of the published articles, simply because the articles remain under the control of University of XYZ. From one year to the next, the service provider switches and our faculty are much happier than before. University of XYZ can make a good case that it is getting a better value for money now than it did with the nominally cheaper option, because it still went with the lowest responsible bidder. Such a situation would create a truly competitive service market (as long as anti-trust regulations remained in effect).

Conversely, does this technical possibility mean that public institutions who are still negotiating with individual subscription publishers without a competitive bidding process could now be sued ?

Phrased differently, now that we no longer have to hand over our manuscripts to publishers for them to create a monopoly with our work, aren't we legally required to make sure there can be a competition?

Phrased yet differently: Every single subscription to scholarly journals can be seen as an anti-competitive act that keeps a new business model that allows for competitive bidding from emerging. Shouldn't there be some legal pushback against this perpetuation of tax-waste?

UPDATE – an analogy due to online questions:

Suppose University of XYZ needed all their windows cleaned. For some historical reason, faculty decided to all sign over their rights to access their windows to any company of their choosing, such that no other company could come and clean them. Afterwards, the university had to pay outrageous fees for the various cleaners chosen by faculty, because only they had the rights to clean the particular windows the faculty had given to them. You could only get Window X cleaned by Cleaner Y. This is analogous to how we currently publish scholarly works. Shouldn't we instead keep the rights to our works and have 'publishers' compete for our business?