



AICP Suggested Best Practices – Bidding - 2026

The AICP would like to emphasize the importance of best practices when bidding and remind its members, as well as advertising agencies and advertisers, of the basics of best practices when engaging a director/production company or post-production company on a possible project. The goal is to ensure fair and transparent bidding procedures so that members can provide accurate responses to RFPs and provide services to agencies and advertisers in an efficient manner, rather than merely a semblance of order. This document is designed for informational purposes to alert the user of issues/topics to consider and to provide suggestions on best practices for bidding that should benefit all parties involved. Below is a list of common questions/variables that are recommended to be discussed prior to bidding a project.

Pre-bidding

Item to be discussed at the outset of bidding should include:

- Is the project in a pre-bid/testing phase or has the creative been approved by the advertiser?
- What is the proposed budget? Is it “all in”?
 - Does that include socials, stills, BTS, etc.?
 - Does that include post, talent, VFX, music, finish, etc.
 - Does that include production insurance or is agency providing wrap-up insurance?
 - Agencies should give clarity as to their definition of “all-in” during the initial outreach.
- Is this project a single bid or multi-bid?
 - Single Bid – Reaching out to only one director/company for the upcoming campaign.
 - A production/post company should not accept any projects that directly conflict with the schedule of the single bid project.
 - As a matter that is an appropriate subject for negotiation and agreement between the production/post company and the agency/advertiser, an agency/advertiser should not unilaterally require the production/post company to submit a treatment for a single bid project.
 - Multi-bid – i.e., Triple Bid
 - Who are the directors/companies bidding the project? (For efficient deployment of the production/post company’s bidding resources, *multi-bid jobs are typically limited to (3) directors/companies unless the agency/advertiser determines that for some outlying reasons, more or less is required, in which case the agency/advertiser should disclose the number of bidders in the bid pool prior to the onset of bidding*). Disclosure of the names of directors and identities of companies bidding on the project are strictly matters within the discretion of the agency/advertiser, however, this disclosure has proven to be useful information for the most streamlined bidding process. If the agency/advertiser is unwilling to disclose the names of the other directors/companies in the bid pool, the agency/advertiser should disclose whether any of the other bidders in the bid pool are:
 - A preferred or rostered vendor.
 - An incumbent director/artist who has been engaged on prior commercials in the campaign.
 - An “In-House Entity” as defined in the section below entitled “Bidding”.
 - A foreign based production entity.
 - A union or non-union production company (*i.e., IATSE, DGA, and/or Teamster signatory*) for purposes of commercial production.
 - If any of the bidders are In-House Entities (at either the agency or advertiser), what contractual assurances will the production/post company receive that require the agency/advertiser to keep the independent production/post company’s bid confidential (*i.e., not shared with any competitors, including an In-House Entity*)?
 - Bidders should be notified when a company/director drops out and/or others are added to the bidding pool.
 - Bidders should be notified when the job awards and whether the job was awarded to an In-House Entity, preferred vendor, incumbent director/artist, foreign based production entity, non-union entity, etc. This information can be useful when considering working together on future projects.



A comprehensive, non-exhaustive, list of items to be discussed at the outset of bidding are included in the **AICP Bidding Reference Guide**.

Agencies following best practices should be fair to all bidders by:

- Supplying all bidders with the same job-scope information and the opportunity to bid.
- Safeguarding as confidential, each bidder's creative ideas and bid details, including but not limited to costs and prices, and confirm such confidentiality obligation in writing by providing each bidder with a mutual NDA prior to the submission of their bid.

Prior to submitting the bid, and in order to protect its ideas expressed in the bid, it is recommended that the production/post company:

- Add a copyright notice to its treatment and mark all documents in the bid package "Confidential and Proprietary Information" of the production/post company.
- State that "images/videos contained in the treatment are for reference only".

The agency and advertiser should note that ownership of the production/post company's intellectual property (which includes the creative contributions and project specific financial information in the bid package) does not transfer to the advertiser unless the project has been awarded and subject to the terms of a work for hire agreement that has been entered into by the parties.

If an advertising agency asks the production/post company to provide pre-bid estimates, creative input, and/or other expertise prior to the agency selling the project through to an advertiser, any fees for such work should be disclosed in advance, and pre-negotiated together with the production/post company's right of first refusal on the project. If there is a proprietary aspect to the production/post company's approach, it should be held in strictest confidence, unless the production/post company is awarded the job, or it gives written permission for those ideas to be incorporated into the overall specs of the job.

Bidding

Production/post companies submit their bids with the understanding that the agency's solicitation of bids in connection with the project is following all applicable laws.

Unless notified otherwise, production/post companies submit their bids/treatments with the understanding that to ensure a fair and non-conflicted bidding process, no entity in the bidding pool or that is a potential candidate to produce the project, directly or indirectly, is a parent, subsidiary, division, affiliate or sibling of the agency or advertiser (each, an "In-House Entity"). If notice of the participation in the bidding pool or consideration process of an In-House Entity is not given to the bidding entity prior to submission of its bid package/treatment, and if the job is then awarded to the In-House entity, production/post companies should be reimbursed for its bidding costs. Reimbursement of costs is not the sale of IP and does not confer a license on agency/advertiser or transfer of any IP rights that the production/post company has in the bidding package.

Pitch Fees

The practice of providing a treatment of varying detail with a bid has become expected – and in most cases, required – by advertising agencies and advertisers. This requirement has been exacerbated by ever-changing creative and the requests for multiple bids and treatments. In addition to the added work/expense of multiple rounds of bidding, an increasing number of projects are being cancelled or bid without having been pre-sold to the advertiser, leaving the production/post company with no way to recoup their treatment and bidding expenses.

A pitch fee reflects the collaborative nature of the creative development process and helps support the resources allocated by the production/post company in preparing the pitch. If the production/post company decides to charge a pitch fee, the fact of the fee and the amount of should be discussed and agreed upon in advance, so that the agency/advertiser is aware of the cost.

If the pitch fee is not negotiated up front, the production/post company may want to consider requesting a pitch fee under the following circumstances as they affect the production/post company in each case:



- When the scripts/idea have not been sold through to the advertiser, or the job is canceled or postponed indefinitely during the bidding process.
- When there are more than (3) bidders.
- When an incumbent director/company is engaged on the pitch at the request of the advertiser after the initial group of bidders is engaged on the project.
- When talent requests or dictates the director/company choice after the production/post company has engaged on the project.
- When the job is awarded to an agency or advertiser in-house production/post-production unit without full disclosure that the in-house unit was part of the bidding pool.
- When the agency/advertiser requires extensive work/effort prior to award such as multiple bid locations/scenarios, extraneous treatment revisions.
- When the scale/scope of the creative or deliverables are significantly changed during the pitch process or after award.
- When a director/company must bid in a compressed time frame (for example, over a weekend) in order to meet the agency's required submission deadline.

As noted under "Bidding" above, a pitch fee is the reimbursement of costs to create the bid and treatment but does not transfer any IP rights that the Production/Postproduction Company has in the bid package or in any elements of the bid package. If a company chooses to charge a pitch fee, the following sample language may be used on the invoice:

"This invoice represents the reimbursement of costs to create the bid and treatment for the above referenced project but does not transfer any intellectual property rights that [Production/Postproduction Company] has in the bid package or in any elements of the bid package. The confidentiality obligations in any non-disclosure agreement (NDA) entered into between the parties shall continue to apply."

Award

- When awarding a project to a production/post company, the agency should send confirmation of award in writing. As a matter of professional courtesy and so that the unsuccessful bidders remove any "holds" that they may have placed on company resources, the agency should also send an email or place a phone call to the production/post companies that were not awarded the project and, if known and disclosable, identify when any factors that resulted in an unsuccessful bid. All information and feedback are valuable.
- Upon award the agency should be prepared to forward the contract or purchase order to the production/post company so that they may begin work immediately. Production/post companies should not be expected to begin work until they have a contract or purchase order committing the agency/advertiser to payment.
- The agency should submit the production/post company's invoices as soon as they receive them and follow up with their accounting department regarding the project's contractual payment due dates.
- If the production/post company or agency/advertiser has a specific policy regarding their payment requirements or terms (*such as receiving funds prior to commencement or holding fees while waiting for a purchase order*), that information should be exchanged during the bidding phase.

Legal Compliance

The U.S. Department of Justice has discussed the legal caveats presented by what is sometimes called "Complementary Bidding":

- Complementary bidding (also known as "cover", "check", or "courtesy" bidding) occurs when some competitors agree to submit bids that are either too high to be accepted or contain special terms that will not be acceptable to the buyer.
- The agency should not request "check bids" from its bidders. For the bids to remain independent the agency may not share any information from one bidder with another bidder (including any agency in-house production/postproduction units that are included in the bid pool).



- Check bids are not intended to secure the buyer's acceptance but are merely designed to give the appearance of genuine competitive bidding.
- Complementary bidding schemes are the most frequently occurring forms of bid rigging, and they defraud purchasers by creating the appearance of competition to conceal secretly inflated prices.
- Production/post companies following best practices should not accede to any request or demand to share such job and bidding information with competitors, regardless of the source of the request or demand.
- The U.S. Department of Justice has issued legal warnings about such behavior. As an example, if an agency were to provide target numbers to better position other bids, the request may – by itself, and particularly if acted upon by the production/post company – raise legal questions about whether it has the potential to undermine competition in a bidding process that the advertiser may expect to be competitive.
- Providing a check bid to fulfill an advertiser's triple-bid requirement, or to comply with a diversity requirement would not be considered best practices for the production/post company, advertising agency or advertiser, and worse, might be deemed anti-competitive or in violation of the law.

See e.g., Rattoballi v. United States, 452 F.3d 127, 128-130 (2nd Circa 2006): Conviction for conspiracy to rig bids and mail fraud: defendant, a sales representative for a print brokerage firm, (i) made cash payments and gifts to advertising agency purchasing agents and (ii) submitted exaggerated "cover" bids to advertising agency to help agency create the illusion of competition among potential suppliers to agency's advertiser.

Please bear in mind that these Suggested Best Practices do not represent any Association policy or agreement, and each party must make its own independent business decisions about how to conduct its business. In addition, these Suggested Best Practices are not meant to be legal advice with respect to any set of circumstances, and members are advised to consult with legal counsel for advice in connection with any specific business context or transaction.