

Criteria:

1. Bid Documentation

All bids / estimates submitted must be supported by the following:

a. Directors Treatment

Director's treatments are very costly to the production company, especially when the company doesn't win the job. In addition, we would like to remind Heineken that all presentation concepts and materials are being provided for the sole purpose of allowing Agency or Heineken to determine whether or not to engage the Production Company's services, and Production Company shall retain all right, title and interest in connection with the presentation concepts and materials.

- e. Where applicable, *Service company estimates* in native currency must be provided, along with Service company bid letter to the Production Company outlining their production approach and assumptions.

The production company is the entity contracted to produce the job and will outline the approach and assumption in its bid letter. Any communication between the production company and its' vendors is considered confidential and proprietary information of the production company, which production company should not be required to divulge.

2. Integrated Productions:

- a. Heineken and its Agencies are actively looking to work with Production Companies in an integrated manner. Where footage or still images or digital assets are required for different projects or platforms and they can be produced in an integrated fashion, Production Companies are encouraged to present solutions for all aspects of the material to be captured.

Provided all solutions and approaches shall remain the confidential proprietary information of the production company until the job is awarded.

3. Bid and Price Communication

- a. Roster members will submit their bid materials to Agency representative or other Heineken agent confidentially, and agree to discuss those bids and estimate costs with no other parties. Likewise, Heineken Agency and other Agents will maintain confidentiality on all Prod Cobids.

Heineken Agency and other Agents, including Heineken consultants, should only use such confidential information in evaluating the job to be produced in accordance with the AICP Mutual NDA found here. In light of the US Department of Justice investigations, we suggest this document to safeguard all customary information, and to ensure a fair and legal environment.

5. Production Company Mark-up

All bids submitted for projects commissioned from Heineken Global Commerce/UK/US Commerce shooting in the host country of the Production Company shall carry mark ups as follows:

a.

- ii. US: Maximum of 20% mark-up for productions in the USA.

Each project is a commissioned piece of work for a specific director. While most production companies have a standard mark-up for their company which contemplates compensation for its contribution to the work, and has a threshold to maintain to remain profitable and solvent; each production company may discount its production fee on a case by case basis if it so chooses. Such discounts will differ amongst companies and will be based on the circumstances, the creative, the director, or a number of other factors such as volume of work or preferred payment terms.

b.

- ii. US: For bids submitted which include a service company mark-up, the project shall have a combined mark-up of no more than 25%.

This language is not reasonable or realistic. The production company's mark-up is based on its effort, time, and risk. If the production company is limited to a 25% mark-up on the job (which is within the standard industry practice), the service provider would not be able to mark up their services at all. It is not reasonable to think the producer will be able to find competent service providers that are willing to do the work for free.

- c. Lead Production Company will not take mark-up on Service Co mark-up.

It is wrong to think the service company provides a service that is redundant to the service that is provided by the production company. The production company manages the activities of the local production service, has total fiscal and creative responsibility for the job, and assumes all the risk. Every item and every service that is used for production was marked up at least once before it was put into the bid. The foreign service company provides an expert service to the production in the same way that other companies, which are fully marked up, provide other expert services, i.e. companies that deal in special effects, mechanical effects, set building. The service company's mark-up is no different.

6. National Insurance/Social Charges/Crew Fringes

- c. US Crew fringes and payroll taxes will be handled as below the line, cost plus line items, with maximum handling fee of 15%

While AICP advises against designating costs as cost plus within a firm bid job there may be times when costs are unknown or too difficult to determine that both parties find it necessary. In such cases these unknown costs may be handled as cost plus prevailing mark-up.

The production company's mark-up is based on its effort, time, and risk and is designed to compensate the production company for its overhead as well as profit. Denying mark-up is insinuating that there are neither overhead costs that are incurred by the production company, nor profit that is earned by assuming the obligation and risks involved with the job. A line item designated as costs plus takes more time for the production team and internal accounting department to reconcile, thereby increasing overhead costs. The line items dealing with payroll taxes and union pension and welfare costs are the most difficult and onerous responsibilities that a production company shoulders and carries the most risk. These line items (plus wages) are the only lines in the entire bid for which officers of production companies can be held personally liable. As a signatory to crew collective bargaining agreements, the production company, as the employer, is obligated to make payment to the employees within the timelines of the various state labor codes and is obligated to make sure that all fringes are calculated correctly and made to the appropriate plans. If payment is not made within the time limits of state labor code (usually 2 weeks), companies as employers are exposed to fines and class action suits; this is without regard to whether or not the production company has received payment from the agency.

In addition, by requesting that crew fringes be treated as cost-plus, Heineken is exposing itself to additional costs after the fact. Practices that are in effect today could be challenged in the future and claims can be made retroactively. Producer contracts with unions allow their funds to audit for a period of up to 4 years, and these costs can be audited by both the Federal and state tax bureaus for 7 years. Therefore the job will be kept "open" until various statutes of limitations are met and all associated costs are realized by the production company. Any additional costs incurred based on audits or legal challenges shall be passed on to the client.

7. Travel & Director Base

- a.
- ii. US: if shoot location proposed is a major production hub (example LA, NY), cost of director travel to that hub will be borne by the production company.

If a director is based in a city other than the city that the client wishes to shoot, travel for such director is directly related to the cost of the job and should be included in the bid.

- iii. All international travel for relocating Director to be quoted as Business Class.

All international travel for relocating a Director should be bid in accordance with the current Directors Guild of America (DGA) contract.

- b. Hotels and Per Diems rates to be negotiated by production consultant.

The producer who is responsible/liable for producing the job should be the party who negotiates rates for the job. Per Diem rates should be paid in accordance with prevailing union contracts, industry custom and IRS rules.

- c. Crew travel must be fully detailed with travel calendar and costs, and listed below the line with a maximum production fee of 10%.

The Production Fee is designated as compensation to cover a production company's risk liability, management, overhead as well as profit. Denying or discounting the production fee is insinuating that there are neither overhead costs that are incurred by the production company, nor profit that is earned by assuming the obligation and risks involved with the job. The production company has the obligation to make sure that all members of the crew arrive at the location of the shoot at the appropriate time no matter where their home location is. They need to make sure that the crew arrives in a timely manner, and has accommodations that are in keeping with appropriate requirements. In the case of overtime or extended shoots, adjustments may have to be made for all members of the cast and crew. The production company often commits to a firm cost for travel despite the fact that airfare rates change constantly and travel arrangements for crew must adhere to various union regulations dealing with travel and rest periods. While AICP maintains that the integrity of the bid is compromised when costs are moved below the line with a lower mark-up, when the job has very simple travel requirements, some members have agreed to a handling fee on travel of no less than 15%.

- d. For crew travel outside of host country, only Director, Line Producer, and DOP will be accepted in production bids. Other key crew maybe approved on a case-case basis/exceptional circumstances.

As stated, there may be other key crew that may need to travel, either as a union requirement (as in a 1st AD), a creative requirement, or skill/technical requirement.

- e. For crew travel in-country, all fares must be in Standard/Coach class unless mandated otherwise by the crew member's Union contract.

It is common practice for the producer to travel in the same class of service as the Director in order to make the best use of their time and to manage the job. This is even more important now, since prep times are getting shorter and shorter.

8. Equipment discount

- a. Production Company will pass equipment discounts onto Heineken.

Any equipment discounts Producer is able to obtain should be utilized to benefit the outcome of the job. To be clear, there are no customary "rebates" in the US, and under no circumstances should the Producer be required to "rebate" equipment discounts to Heineken.

- b. On projects of three or more shoot days, three day weekly rentals for Camera, Lighting, and Grip equipment are expected.

Commercial companies, as a matter of course, find and negotiate the best deals possible for any production. It is standard for equipment rental companies to make weekly rental deals on equipment for film and television based on the length of the rental of the equipment. It is not standard industry practice for the commercial production industry.

9. Image Capture

- b. Transcoding should be done by DIT on set. Additional OT may be permitted if there are camera complexities, to be discussed case-by-case.

Additional OT is almost always required for the DIT since transcoding is done after the shoot/ during wrap.

10. Editorial Costs

- b. Editorial Mark-up of 10% allowed on additional charges/costs

Customarily, in the U.S., editorial is handled directly by the agency, please clarify the situation where the production company might be involved and there would be "additional charge/ costs."

11. Post Production Partners

- a. The Heineken Company and its Agencies are partnered exclusively with Smoke and Mirrors for Visual Effects, Animation, Graphics, and Finishing on Heineken work. All Production Companies and Directors agree to work with Smoke and Mirrors. Agency will advise Prod Co on Smoke and Mirrors contact at onset of bidding for each project so that Prod Co/ Director has opportunity to brief SM on their VFX considerations and needs. SM will then submit their quote to Agency and/or Production Consultant.

Standard industry practice dictates that the director have input as to the company producing visual effects, etc.

12. Cost Plus items

a.

- ii. US: Heineken may request that certain line items/categories be treated as cost-plus prevailing mark-up.

While AICP advises against designating costs as cost plus within a firm bid job there may be times when costs are unknown or too difficult to determine that both parties find it necessary; and while it may seem advantageous to designate certain line items/categories as cost-plus, please note that there are risks that come with the reward. If the line item comes in under budget, Heineken is only obligated to pay the actual cost spent, but if the line item exceeds the budgeted amount, Heineken is obligated to pay this increased cost. In addition, cost plus items take more time for the production team and internal accounting department to reconcile, thereby increasing costs for the production company; and production companies may not bill for these items until they are reconciled thereby delaying payment, which in turn also increases costs for the production company. These inefficiencies ultimately come out of the production company's production fee.

- b. Cost plus line items will be actualised and back-up documentation provided by production company, and mark-up paid on those approved actualised costs at the agreed upon mark-up.

Mark-up on cost plus line items should be paid at the "prevailing mark-up" as stated in 12.a. above.

13. Overages

a.

- ii. US: Production Overages will be treated as Cost Plus at 15% handling fee.

Mark-up on Production Overages should be paid at the "prevailing mark-up" as bid. An overage by definition is a spec change by the client or agency. If the client or agency had supplied the correct information during the bidding phase the costs would have been marked up accordingly. The producer's mark-up should not be reduced for making changes at the request of agency or client.

14. Production Insurance

a.

- ii. US: In most instances Agencies will provide Wrap Up insurance, and Production Companies will be advised as to the % insurance allowed.

When Agency provides Wrap Up insurance it should be primary and non-contributory and should include all coverage necessary for production including E&O, with the only exception being workers compensation and employer's liability, which should be supplied by the production company.

- iv. US: in cases where Production Company provides insurance, rate should be no more than 2% of hard costs (A through K in AICP)

Insurance costs vary from company to company. While AICP does not advise on cost, industry standard is 2.5% - 3% of A-K plus additional costs for Special Risks insurance. Your limit at 2% seems arbitrary, for this function, is there any rationale for discounting this important function?

15. General Overhead/Pre-production costs

- b. Phones, cell phones, cables, couriers, office rentals, office working meals, staff employee time/costs will not be accepted on production bids.

Couriers are incurred only as needed for the job, therefore it is a job cost, not overhead. Phones and office rental should be paid when offices are rented on location. Working meals should be paid for crew during pre-production, production and wrap. Staff employee time/costs should be paid if they are performing a job in lieu of a freelance employee.

- c. Agency and client entertainment/meals (exception is meals on set) will not be accepted on production bids.

Agency and client meals are not limited to on set. Agency and client meals should also be approved for casting, tech scouts, pre-pro meetings, etc. These meals are not entertainment and are a requirement of the job.

16. Talent Costs

- c.
 - ii. US: Heinekens preference is that Agencies pay talent cost directly to Service Companies, with maximum 8% handling fee to the Service Company for their talent payment services.

The service company is a vendor of the Producer and should not be paid directly by agency.

- d.
 - ii. US: All talent costs are paid at actual cost plus 8% handling fee.

While AICP maintains that the integrity of the bid is compromised when costs are moved below the line with a lower mark-up, some members have agreed to a handling fee on talent of no less than 10% in the US and no less than 15% in the UK. It is not in the best interest of the Production Company to discount handling fees on talent when they are obligated to coordinate all talent (union and non-union), have responsibility for all talent reports, must abide by the rules of any collective bargaining agreements that production company is not signatory to, and contractually agree to assume the liability for any issues arising out of violations of union contracts which employ agency employees. In addition, if talent costs are designated as cost-plus, that adds more time for the production team and internal accounting department to reconcile, thereby increasing overhead costs for which it is not being compensated.

17. Fair Wages

- c. Production and Service companies may be required to substantiate payments made to local hires at Heineken's request.

Substantiation of payments made to local hires should only be necessary in the event of an employment claim, such as discrimination in wages, and only for the employees whose wages should be commensurate with the local hire making the claim, or when ordered by a court of law.

20. Exceptions.

- a. Heineken has the right to offer to alter any of the above terms on a project by project basis for reason of creative execution.

If Heineken is reserving the right to alter any of these terms in order to induce a production company to produce their job, what is the benefit of any company agreeing to these terms?