

# Guide

to compose tendering specifications  
for the outsourced migration of audiovisual content

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## *Overview*

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**Preservation and Migration Commission**

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## 1 Introduction

### 1.1 Tendering organisation

Before stating any other aspect of the tender, it is recommended that the tendering organisation be described. This section explains who the organisation is and may refer to:

- the history of the organisation,
- factual information, such as the location of its premises or the number of employees,
- its legal status,
- its main responsibilities, activities and audience,
- key organisational elements such as an organogram,
- a publicly available mission text.

If the tender or project is initiated or conducted by the archives department of a parent organisation with a broader scope (such as the archives department of a public broadcaster), it is recommended to provide this information for the parent entity as well as for the department itself. It is recommended when setting up a migration project at a broadcaster to look at things from a broad perspective and thus to also involve other departments such as the IT, post-production or production department.

This information gives candidates context of the tendering organisation and its working principles. It also clarifies its size, technical capabilities and working practices. Indirectly it provides the candidate with a first indication to estimate for example financial risks, but also more practical aspects such as transport distances.

### 1.2 The project

The next aspect to be covered is a description of the project. As the Background Document will provide much more detail, a statement summarizing the scope and the project timing are enough. This may include:

- formats and numbers of carriers to be migrated and/or their duration,
- carrier formats involved and a brief indication of their condition and/or content,
- output file formats,
- expected end date of the project,
- kind of contract the tendering process wishes to produce, e.g. a framework contract under which several projects can be filed or a contract for one project specifically,
- if applicable: the subdivision of the project in lots.

For these first four aspects, more information can be provided in the Background Document.

#### 1.1.1 Framework contract or ordinary contract

In the case of a **framework contract**, the migration services are provided for a fixed contract duration, at the price and the precise conditions as determined by the outcome of the tender. Sometimes minimum and / or maximum purchase quantities are also agreed.

The advantage of a framework contract is that it offers great flexibility in terms of timing and scope compared to an ordinary contract: although the end date is fixed, the internal timing of the project is often looser, and the number of carriers that need to be migrated can vary, whereas with an ordinary contract both aspects in principle are fixed (possibly with permitted deviations).

The main disadvantage of a framework contract is that the economies of scale may be less: the provider will set its price to the number of carriers that they consider likely to be submitted. If the eventual number of carriers to be migrated is higher, the customer will benefit less from a volume discount that could have been received had the exact number been specified in advance.

For the contracting organisation, a framework contract thus increases flexibility regarding the time window to execute the project and the number of carriers to be migrated, but the flexibility also decreases with regard to the choice of partners: in the case of a framework contract, the tendering organisation is in principle obliged during the term of the contract to have all carriers of the types covered by the contract migrated by the winner of the tender, regardless of their quantity.

With an **ordinary contract** this is different: once the agreed number of carriers to be migrated has been reached, the tendering organisation is free to go to another migration company with other carriers of the same type that was tendered for. Under many legal frameworks, the extent to which the contracting organisation can deviate from the numbers mentioned in a normal contract is limited.

### 1.1.2 Subdivision in lots

As with many tendered projects, migration projects can be subdivided in several parts, called lots. This creates the ability to award those parts to different companies. It is also possible that one company applies for – and even wins – more than one lot.

Common subdivisions for migration projects are according to the task in the project (e.g. transport, migration, post-production, etc.) or according to the type of carrier to be migrated. The subdivision according to task in the project is not very common in the current

migration market for audiovisual data, because most large migration companies are well able to cover all aspects of a broad project. Many contracting organisations also choose to collaborate with only one company that can offer the full range of services. Even if there is an aspect that they are less good at, they may (if allowed) suggest a collaboration with a subcontractor.

The subdivision of the project per carrier type is more common because not every audiovisual migration company is equally specialised in each carrier type. Some carrier types are so specific or exceptional that some large-scale migration companies are not even interested in them at all. In the past, there has been a relatively sharp distinction between companies that specialise in the migration of films and those that specialise in the migration of audio and video. However, this distinction is slowly disappearing.

What are the pros and cons of subdividing a tender into lots? In general, projects are subdivided into lots because the contracting organization expects that they will have to pay a lower price for the different parts than if those parts are executed by one and the same company. In practice, this means that subdivision into lots is often opted for if companies that are highly specialised in the individual tasks described in the lots, might be interested.

Of course, there are also disadvantages associated with working with lots. The main one is probably that working with a single party is in principle easier than working with several parties.

It must also be borne in mind that if a tender is subdivided into lots, the complete procedure (*Overview Document*), technical implementation (*Background Document*) and all other documents must clearly state which provisions apply to the complete tender and which provisions only apply to one or more lots.

## 2 The request for proposal procedure

The content of a tender dossier is not strictly limited to the listing of technical and organisational aspects of the task to be executed. To a large extent it also defines its own procedure and rules. In this regard it always must respect the legal limits of tendering which differ from country to country. Finally, as in many cases the tender also acts as the basis for, or even fully corresponds with, a contract between the tenderer and its winner. The tender should sum up the general contractual provisions, terms and conditions according to which the commissioned task will have to be executed.

### 2.1 Structure of the documents

The tender documents in their entirety may constitute a vast amount of information. For the candidates to find their way it is recommended to give explanation of how the tender is structured, which information can be found, and where, by:

- providing a list of all documents and appendices in the tender dossier;
- summarising their holdings and purpose;
- explaining how the documents should be interpreted and used by the candidates.

Sometimes a tender dossier also provides translated versions of the documents. If so, this section can state clearly which language version is considered leading in order to avoid discussions if a translation is not fully accurate.

### 2.2 Legal framework

When issuing a tender, virtually all government subsidized organisations must comply with legal provisions and rules about

tendering procedures. In principle these provisions and rules aim at making tendering procedures transparent and increasing the chances on a fair awarding of contracts paid by taxpayers' money. Also, in large commercial companies, specific procedures for purchase may apply. Often, these procedures depend on the kind of institution that issues the tender, the amount budgeted and whether it is a national or an international call amongst others.

As these rules and procedures tend to differ largely from country to country, it has been decided not to elaborate on them within this document. However, we felt it necessary to make mention of them and to the good practice of seeking sound legal advice in this regard.

For the candidates it is evidently important to know about this legal framework, because it allows them to learn about the rules that will be applied, the rights that all parties can call upon, etc. Usually the tendering organisation lists a series of laws and other legal provisions applicable to the tendering procedure itself and sometimes also to some contractual aspects that will come into force once the tender is awarded. Typically, the listing only refers to the numbering and does not mention the legal texts themselves. This also allows to repeat these references whenever applicable in further sections of the tendering documents.

### 2.3 Who can be a candidate?

National or regional legal frameworks as well as the tendering organisation itself may aim at excluding certain candidates in advance of the tendering process and deny them the right to submit an offer. By including provisions in this domain, fraudulent, financially unstable or very inexperienced parties should be discouraged from submitting an offer.

A candidate can be a single company, or a group of companies. In the latter scenario, various forms of collaboration are possible, such as a joint venture, a consortium or a collaboration in which one or more companies carry out parts of the assignment as a subcontractor of another company. It is even possible that an offer is submitted whereby the assignment is to be executed by a totally different company than the one that submits the offer. In any case, it is necessary that the tendering organisation is well informed on whose behalf the tender is submitted and who will then subsequently ensure the execution of each part of the assignment as it progresses.

### 2.3.1 Mandatory and optional exclusion

Many legislations make a distinction between the mandatory exclusion of the right of access (the tenderer must exclude the candidate from entering the tendering procedure) and the optional exclusion of the right of access (the tenderer may exclude the candidate from entering the tendering procedure). Also, here, the rules and procedures tend to differ largely from country to country and are not elaborated further. However, it is quite logical and fair - and almost always mandatory - to mention who can or cannot be a candidate. Again, it is good practice to ask for sound legal advice in this regard.

The mandatory exclusion of the right of access often refers to companies who are judged to have committed corruption, fraud, money laundering or other crimes. The optional exclusion of the right of access often refers to:

- The financial and economic capacity of the candidate to bring the task to a successful conclusion.

This includes the right of the tendering organisation to exclude candidates in a state of, or close to bankruptcy or liquidation,

or candidates who haven't paid their social security contributions and other taxes correctly.

- The technical capacity to bring the task to a successful conclusion.

This allows the tendering organisation to exclude inexperienced candidates or candidates who have committed serious professional faults in the past.

### 2.3.2 Proofs against mandatory exclusion and of financial and economic capacity

Usually tendering organisations request the proofs against the mandatory exclusion and of financial and economic capacities by asking the candidates for official documents, depending from country to country. Submitting these documents can be an arduous task for the candidate, as they often must call upon third parties to deliver them. Experienced migration service providers however regularly apply for this kind of tenders and they will have these documents readily available.

It is often legally stipulated which documents may be used as a proof of financial and economic capacities, or to avoid the mandatory exclusion. Usually it is considered enough for the candidate to submit an extract issued from the judicial record or an equivalent document by a judicial or administrative authority, showing that the requirements have been complied with. As sometimes the candidate is just an anonymous company and the people behind them can easily switch from one company to another, it can be interesting to ask for this kind of extract not only for the legal entity, but also for all the members of the Board of the company or for all business managers. Also, if the offer foresees that the assignment will be carried out eventually by several

companies, it is necessary to check the financial-economic (and technical) capacity for all the companies involved in the offer.

As these documents can be considered as the 'entrance ticket' to the tendering procedure, the tendering organisation as well as the candidates should take care not to consider them as just another administrative burden. Cases of falsification (e.g. by altering the date of publication so that an older document seems more recent) have occurred in the past. Verifying these documents and judging their authenticity may seem to require profound legal knowledge, but an easier way is to just contact the official body who issued it and ask for their confirmation.

### **2.3.3 Proofs of the technical capacity**

Proofs of the technical capacity of a candidate to be able to run and finish an audiovisual migration project successfully are usually delivered under the form of one or more references. References are an interesting way to measure an amount of experience, but there's a lot to consider for the tendering organisation.

#### **What kind of experience do you require the candidate to have?**

And how do you translate this into a specification for the requested reference(s)?

If the carrier format to be migrated is very specific, one could ask for one or more references to a project in which precisely that carrier format was migrated.

Some output formats require specific knowledge. It can be interesting to ask for a reference to a project that specified exactly that output format.

Handling a large quantity of carriers is a specialty in itself, in terms of project management and logistics for example. It can be

interesting to ask for a reference to a project of the same magnitude. In the same domain, if it is necessary to process many carriers within a limited timeframe, it can be relevant to ask for a reference to a project with a comparable throughput.

Migration standards and practices are in a constant evolution: older projects might be less relevant as a proof of experience. It can be interesting to ask for more recent projects, specifying a maximum delay. As audiovisual migration projects sometimes take several years, it can be interesting to allow references to projects which are only partially finished.

Who exactly should have the relevant experience? Is the experience necessary at the candidate's company, or is it allowed for the candidate to call upon the experience of members of a consortium or of subcontractors?

#### **How strict should the reference requirements be?**

Asking for many and more specialised references increases the chance of making the tender an all or nothing game: if they turn up, the candidate(s) complying with the required reference specifications are surely very experienced. If no candidate turns up who can comply with the reference requirements, asking for references is in vain. Finally, almost all legal systems foresee that the references asked for must be relevant and justifiable: the aim is to avoid tenders with a required reference list designed to favour one candidate.

To know which company runs or has run certain projects, you should conduct a thorough market exploration before issuing a migration tender. Conferences, publications and websites of international audiovisual archives associations can be an excellent resource.

### Which details should be asked about the reference project?

These details should allow the tendering organisation to verify the references. They should therefore include all the details asked for, but also the contact information of the project lead referred to from the tenderer's side. As a final check it does make sense to verify the references by contacting the tenderer.

#### For example

to show that the candidate has experience in migrating large volumes of VHS cassettes and has experience in migrating to a JPEG2000 encoding with MXF as container they must provide details about implemented projects:

- a maximum of three finalised migration projects from the last 10 years, with a total of at least 1000 VHS cassettes;
- and at least two (at least 25% completed) migration projects from the last 10 years, each concerning at least 10,000 audiovisual carriers (excluding film);
- and at least one (at least 25% completed) migration project from the last 10 years, of at least 100 moving image carriers (any type excluding film), in which the carriers were migrated to JPEG2000 as codec with MXF as container.

The candidate must submit the following details about these reference projects:

- project name;
- name and email address of the principal's project leader;
- name and email address of the contractor's project leader;
- formats and number of carriers involved;
- the output file format (container and codec) to which the carriers were migrated;
- the encoder or encoders (brand and type) with which the carriers were migrated;
- start date and (envisioned) end date.

### 2.4 Timeline of the request for proposals

A full tendering procedure can be considered as a dialogue between the tendering organisation and the candidates. For every question and answer a certain timing must be set. Although delays and postponements are common, for clarity and politeness we recommend that the timeline of the tendering itself is outlined clearly and that all parties involved respect it.

Under most national tendering legislations and for most kinds of tendering procedures the tendering timeline is well defined, including minimal and maximal delays for several steps of the procedure. If applicable, it is highly recommended that these delays are respected by all parties involved, as not doing so may lead to a legal abrogation of the whole tendering procedure, thus also causing vast delays in the timeline of the total project. In principle most national legislations under most procedures allow or even require the tendering organisation to exclude candidates who submit their offers or other kinds of answers late.

For all these reasons it is recommended that sound legal advice is taken to check the minimal and maximal delays applicable in your country for the chosen tendering procedure.

If outlined clearly, this section lists all formal milestones, delays and deadlines of the tendering procedure, detailed to the level of dates, hours and even time zones.

### For example

below is a real-life timeline spanning more than 10 weeks considering all the legal terms for this kind of tendering procedure.

Milestone	Datetime
Tender publication	07.01.2016, 17.00
Visit on site for inspection	21.01.2016, 15.00
Deadline for written questions	22.01.2016, 12.00
Information meeting	02.02.2016, 15.00
Deadline for proposals	08.02.2016, 12.00
Award decision upon approval by the Board	02.03.2016, 17.00
Communication of the award decision	03.03.2016, 11.00
End of legal standstill period <sup>(1)</sup>	18.03.2016, 11.00
effective awarding of the tender <sup>(2)</sup>	18.03.2016, 11.00

<sup>(1)</sup> possibility for the candidates to file an appeal against the award decision

<sup>(2)</sup> on condition that no appeal has been filed

## 2.5 Procedure for questions and answers

Although significant effort should be invested in drafting clear tendering documents, it is of course possible that candidates don't find the answer to outstanding questions they might have about any aspect of the tender. A thorough explanation of how and when questions can be submitted and how they will be answered provides the candidates with an increased certainty that their

answers will be taken into consideration fairly and that no candidate takes profit from having more information than others.

This section should outline:

- what the procedure is to submit these questions: the deadline, the medium and the address;
- according to which criteria questions will be accepted or turned down;
- the procedure for how answers will be given: when, where and the medium.

### For example

the answers will be distributed orally during an information meeting at a certain date and hour, at the premises of the tendering organisation. Afterwards, the transcript of this meeting will be distributed via the same online platform as the original tender dossier was published.

Under most national legislations and tendering procedures one of the core rules is the right of equal access for all candidates to the same information about the tender. Part of this might be the prohibition for the tenderer and the candidates to correspond orally on a one-to-one basis, e.g. over the telephone. In order to avoid phone calls which might become subject to dispute, it is recommended to check the legal provisions concerning this aspect which might apply in your country and to mention these provisions explicitly in the tender.

## 2.6 Instructions to submit a proposal

Candidates should be informed how to submit their proposal. This section should explain:

- when (date and hour) the proposals should be submitted at the earliest and at the latest;
- the medium and form that should be used.

Do you allow or require a paper version and/or a file based one? Which file format do you allow or prefer? For practical reasons it can be recommended to ask for documents which can be searched through electronically. As a proposal might hold a considerable quantity of documents, one could ask to bundle all the documents into a zip file. Many countries these days work with a digital tendering platform on which the offers can be uploaded by the candidates before a certain deadline and downloaded by the tendering organisation after this deadline. These platforms tend to standardise the process of submitting and opening offers and make it compliant with all legal provisions, including certified digital signing. However, the user friendliness of these platforms sometimes suffers from the complexity of governing legislation. If applicable, this section is the place to encourage candidates to test and explore the platform before the deadline, to point to manuals etc.

- which documents should be included or not - it can be useful to set minimal or maximal lengths;
- the languages in which the offers must be written.

### For example

a valid proposal must in any case contain the following documents:

- an executive summary of the offer (maximum 2 pages),
- the details of the bidder and the contact person for the offer, and if applicable: the details of subcontractors and / or members of a consortium,
- a proof of the representative authority of the persons signing the offer,
- a folder containing responses to the specifications (requirements, clarifications, ...) -  
it is recommended to number the technical requirements and questions for clarification and to require the candidate to refer to this numbering, or to include a table or form to fill in the answers,
- a fully completed copy of the prices and references matrix also mentioning for how long the offer is valid,
- proof that the applicant is not in a state of exclusion -  
more details on the documents can be found in the applicable legislation in which the main elements are listed under the heading "legal provisions",
- evidence concerning the candidate's financial and economic capacity.

For all these aspects, often, legal provisions apply in order to guarantee a fair and transparent procedure. Once again, it is recommended to take sound legal advice about the rules applicable in your country or region.

### 3 Evaluation of the proposals

It is fair for candidates to know how their offers will be evaluated before submitting. This chapter should outline which criteria will be used and to what extent they individually contribute to the overall judgment.

It is recommended - and often also mandatory - to work with a staged evaluation process:

- a. checking if the candidate can participate to the tender in the first place (mandatory exclusion, financial and economic capacity, technical capacity);
- b. checking if the candidate complies with a set of minimal technical requirements (to be specified in the background document);
- c. awarding a score to the price offer via a clear and predefined price-to-score conversion formula and to the non-price related aspects of the offer such as the technical quality, the clarity of the offer, or any aspect that deserves a separate scoring.

#### 3.1 Regularity verification

This section should make it clear for the candidates who have submitted the correct proofs against the mandatory exclusion and of financial and economic capacities that there is a minimal quality level that they all should meet in order to be accepted to the next stages of the evaluation process.

The regularity verification process checks if the candidate complies with a set of minimal technical requirements, which themselves can be outlined in the background document. Working with such a set of minimal requirements creates a level playing

field: a threshold to which all candidates comply, so a fair comparison is possible.

The technical comparison itself can then be based on the price score and the non-price related aspects such as the technical quality, the clarity of the offer, or any other aspect that deserves a separate scoring.

Ideally the minimal requirements which create this level playing field are set high enough to guarantee a migration project that meets all the tenderer's need-to-haves. For example, if in theory there is only one candidate meeting these criteria but offering a poor proposal in all other aspects, this candidate will be the winner, and these will be the specifications according to which the project will have to be executed. Of course, it is always possible to cancel and restart the whole tendering process with the hope of better proposals next time, but this has the disadvantage of heavy delays on the project's timeline.

On the other hand, asking for too high minimal levels of quality can cause higher price offers than usual, or even risk receiving no proposals at all.

Setting the balance point between need to have and not too much depends on many factors, e.g. the budget available for the project, the situation within the migration market, etc. Again, we recommend a thorough market exploration before the tender is launched, including discussions with several potential service providers and organisations who have experience in outsourced migration. The conferences of international audiovisual archives associations, tradeshows and other kinds of events in the audiovisual archiving field are therefore recommended as useful points of reference.

### 3.2 Awarding criteria

The candidates should know before they submit their offer how it will be judged: which criteria will be used and how these will be translated into a score. For quantitative aspects this often happens through a price-to-score calculation formula. For qualitative aspects usually specific assessment points or definitions are listed.

In most cases the awarding criteria achieve a certain balance between different kinds of criteria, mainly between price and quality related criteria. But how to achieve balance between these two? When establishing this ratio, it's good to think about the potential scores the offers will receive. In general, this ratio expresses the preference of the tendering organisation either for particularly cheap or high-quality proposals.

#### For example

A tender awarding 80% of the total score to price related criteria and 20% on quality related criteria expresses the preference for sharp pricing and attributes less value to the quality of the proposal. Candidates will be more likely to set a sharp price, because this will give them a high score. If their price is not low enough, even a very high score for quality will not be able to compensate for their disadvantage when it comes to prices.

For a tender awarding 20% of the total score to price related criteria and 80% on quality related criteria the opposite counts: it expresses a preference for a high quality and attributes less value to the pricing of the proposal. Candidates will focus on quality in their offer and might be less tempted to set such sharp pricing, because even a very good score on price related

aspects will not be able to compensate for their disadvantage when it comes to the quality of the offer.

A tender awarding 50% of the total score to price related criteria and 50% on quality related criteria expresses the preference for both a qualitative and well-priced proposal. Candidates will be likely to focus on both aspects.

Via the mechanism explained above, the tenderer in fact indirectly expresses his vision on the project, attributing a value to aspects of pricing versus quality. Tenders aiming at very standardised services and off-the-shelf products tend to leave little room for the candidates to make a difference in quality: the tenderer expresses exactly what he wants, nothing more and nothing less. In this kind of tender the pricing aspect becomes very important and creates a fierce competition between the candidates. In the domain of audiovisual mass migration the degree of standardisation in the process heavily depends on the carrier type to be migrated and on other technical aspects and circumstances. The more common and regular these are, the lower the risk for the tenderer if he chooses to attribute a high value to beneficial pricing. Once again, frequent contact with colleagues via the conferences of international audiovisual archives associations, tradeshows and other kinds of market exploration provide knowledge about what can (or cannot) be expected from migration service providers.

#### 3.2.1 Pricing

Beneficial pricing is often considered as one of the most important awarding criteria, based on a simple principle: the lowest price offered gets the highest score. However, there are some choices to be made to establish the score and these have a big impact on the prices that will be obtained.

### Pricing differentiation and pricing unity

Evidently, the pricing as offered by the candidate is not only the basis for a beneficial pricing score during the tendering process but it also represents the amount due for the services (and sometimes goods) to be provided. These two results should be considered when determining how the pricing should be expressed and how the pricing will be converted into a score.

Usually the task of the migration service provider in an audiovisual migration project can be split up into several smaller activities, services and sometimes also goods to be delivered. There may be project management services involved, logistical services, preparation of the carriers, the migration itself, reporting and so on. In some projects even several carrier formats and several digital output formats may be involved. When determining how the pricing should be expressed, it may be in the interest of the tenderer to know the price for each of the services or goods to be delivered, as it allows them to compare the separate prices between candidates and establish which factors cause a particularly high or low total.

Whether or not costs are subdivided by activity, the price itself can be expressed in several ways. For example:

- a total price for the full project
- a price per migrated carrier
- a price per migrated hour in which all kinds of overhead costs are included yes or no
- a price per working hour
- a combination of several factors mentioned above

Usually in outsourced audiovisual mass migration a price per migrated hour (or sometimes expressed per minute) of content is asked. A price per carrier is often opted for when a large

investment in time or technical equipment is required, independent of the total duration of the content.

For some carrier types, especially those for which one operator can only migrate one carrier at a time (the so-called non-parallel migration) the labour cost constitutes a particularly large share of the total migration cost. For such projects it can be interesting to ask for a *forfait* price for the preparative actions undertaken on carriers that appear to be impossible to migrate. In such a case more than any other it is important to document thoroughly all the actions of the migration process, the moment that they've been done, the actors involved and the outcome.

In principle the more standardised a project is and the better all factors are precisely known beforehand, the more likely it is that a total price for the project is asked. In projects with very variable factors the pricing model becomes more granular. This avoids (negative or positive) surprises with the tenderer as well as with the service provider.

In general, the questions of pricing differentiation and pricing unity are a complex exercise of several factors. The decision about which factors to include heavily impacts the total price of the project. The main factors are the number of carriers involved in the project, their total duration and their technical heterogeneity (how many carrier types and sizes, their playback condition).

As a final remark, if beneficial pricing criteria are split into several factors, they should not represent too small a percentage of the total, even if that aspect of the tender only represents a limited amount or effort. The risk is that a candidate sets a very sharp price on the criteria that are valued most but includes an exuberantly high price on the criterion with a very small score. The candidate's logic in such case is that they settle for a very low score on a

criterion for which their competitors can't make much of a difference, but then largely compensates this with more important criteria. The disadvantage for the tenderer is clear: indeed, for the important aspects they get an interesting price, but the price to pay for the less important parts is so high that this can heavily affect the total cost of the project. Consequently, they have no other possibility than to award the contract to that candidate, or to abort and restart the full tendering procedure.

### The price-to-score formula

Depending on the price differentiation the score awarded for beneficial pricing may be a sum of several factors. Each of these factors is the result of a submitted price for a certain service, converted into a score. This conversion from price to score is usually done via a formula based on the principle of a higher score for a lower price. Several formulas exist, but the most common and straightforward one is:

$$\text{Score} = \text{Score}^{\text{max}} \times (\text{Price}^{\text{min}} / \text{Price}^{\text{proposal}})$$

where:

Score	points awarded for this criterion, for this offer
Score <sup>max</sup>	maximum score of the criterion
Price <sup>min</sup>	lowest price of all proposals approved on regularity
Price <sup>proposal</sup>	price as submitted in this proposal

In this formula the lowest price gets the maximum score for this criterion and the other prices get a score mirroring their ratio as compared to the lowest price.

### For example

A migration project is set up for ca. 10.000 DAT cassettes with an average duration of ca. 2 hours each and ca. 2000 U-Matic cassettes with an average duration of ca. 1 hour each. The tenderer wishes to award the project to one service provider, so both carrier types are bundled into one lot. The tenderer wants to obtain a price per migrated hour including all services requested in the specifications statement. The total maximum score for beneficial pricing is 50 points, with 45 points as the maximum quality score and another 5 points for the clarity of the offer. However, as the migration price of DATs and U-Matic is very different and the quantities are only estimations, the tenderer prefers to obtain a price per hour for both carrier formats separately.

A price score model could then look as follows:

Beneficial pricing criterion for the DAT cassettes:

- maximum score: 35 points
- price-to-score formula:  

$$\text{Score} = \text{Score}^{\text{max}} \times (\text{Price}^{\text{min}} / \text{Price}^{\text{proposal}})$$

Beneficial pricing criterion for the U-Matic cassettes:

- maximum score: 15 points
- price-to-score formula:  

$$\text{Score} = \text{Score}^{\text{max}} \times (\text{Price}^{\text{min}} / \text{Price}^{\text{proposal}})$$

An important remark here is that the U-Matic cassettes only represent 10% of the total duration, but they have a 30% share in the total price score. This is done to avoid the risk of getting inflated prices on smaller parts of the project as described above.

### 3.2.2 Quality

Scoring the quality of an offer may sound easy to project managers who possess technical expertise, as they can easily tell the difference between a better and a worse proposed solution or answer. However, to translate this judgment proportionally, fairly and transparently into a quality score may be harder. As with other awarding criteria, the candidates have the right to a fair and transparent judgment and under many tendering regulations they are even allowed to challenge this judgment in case they feel unfairly treated. A fair and transparent quality score and quality feedback can also be beneficial to them in the sense that it may make their future answers stronger. Clear, thorough and fair feedback can have positive effects on the whole domain of outsourced audiovisual mass migration.

To establish a scoring procedure on qualitative aspects of the submitted offers it is important to know exactly what is going to be scored and how particular scores are defined. We must bear in mind that a minimal professional execution of the project is already guaranteed via the minimal requirements as set for the regularity verification process (see above). If these minima are not met, a candidate should not get a score. But even if the offers are all above these minima, the question remains how to evaluate the quality of their technical answers.

When judging the quality of an offer there are always aspects that are considered more important than others and sometimes even several jury members will have a different opinion about this. If certain technical aspects are considered so important that they deserve a separate scoring, they should be identified as such (see [Other criteria](#)). All other technical aspects are judged upon with one total score.

When establishing such a score it is highly recommended to work with a limited number of stages. While the total maximum quality score might for example be 50 points, the only possible quality scores might for example be limited to 10, each climbing up by 5 points. The reason is the (often legally set) requirement of transparency and the ability to define clearly what the difference is between those stages. The example below shows a staged quality scoring framework of nine steps. The built-in logic of the definitions also refers to a 'basic quality' and an 'added value'. This framework also helps to obtain quality judgments that respect a fair proportionality between several offers.

#### For example

**0% of the maximum for the criterion.** Exceptionally low-quality Proposal. The Proposal answers none of the questions with a basic amount of quality.

**10% of the maximum for the criterion.** Very low-quality Proposal. The Proposal answers almost none of the questions with a basic amount of quality.

**30% of the maximum for the criterion.** Low quality Proposal. The Proposal answers some questions with a basic quality, but for most it doesn't.

**50% of the maximum for the criterion.** Average quality Proposal. The Proposal answers most questions with a basic quality.

**60% of the maximum for the criterion.** Good quality Proposal. Most answers get an answer with a basic quality. Some questions get an answer with more than a basic quality.

**70% of the maximum for the criterion.** Very good quality Proposal. The answers obtain a minimal amount of quality for

all questions and some questions get an answer with more than a basic quality.

**80% of the maximum for the criterion.** High quality Proposal. The answers obtain a basic amount of quality for all questions and in many cases the questions get an answer with more than a basic quality.

**90% of the maximum for the criterion.** High quality Proposal. The answers obtain a basic amount of quality for all questions and in many cases the questions get an answer with more than a basic quality. The offer has an added value on some aspects.

**100% of the maximum for the criterion.** Very high-quality Proposal. The answers obtain a basic quality for all questions and in many cases the questions get an answer with more than a basic quality. The offer has an added value on many aspects.

### 3.2.3 Other criteria

Which other aspects to include in this overall scoring? Sometimes also the clarity of the offer or other aspects of importance are considered; of course, this is all dependent on the wishes of the tendering organisation. Aspects frequently covered are as follows.

#### The clarity of the offer

This aspect usually considers the readability and overall clarity, as proven by the structure of the offer, the presence of a table of contents, how clearly the offer refers to the requirements as listed in the specifications, and / or if the price matrix is completed correctly. Furthermore, it may consider the digital searchability: it is recommended to require the candidates to submit electronically searchable documents. Next, as the number of documents included in the proposals may quickly pile up, it can be interesting to ask the candidates to collect all documents into a zip-file. Finally, candidates sometimes hope to make their proposals

stronger by adding (sometimes large quantities of) information that is *de facto* redundant. It can be interesting to reward the absence of such redundant information. Experience teaches that attributing a small percentage to the clarity of the offer leads to clearer and more comprehensible proposals.

#### Other aspects of importance

Sometimes a part of a tender is so important that judging it as one of the many parts of the basis for the quality score is not enough. Mentioning and scoring it as a separate criterion draws the attention of the candidates. An aspect that could be stressed is for example the project timeline (in case of important deadlines). In that case a score could be awarded for example to factors mitigating the risk of delay.

#### Tests

In order to give proof of their capability to execute a certain task well, the tendering organisation might ask the candidate to do a test. In large scale migration projects this test usually focuses on the migration of a (very) limited number of carriers. Again, for transparency reasons the evaluation of the process and / or tests results must happen in a clear way and the criteria based on which the evaluation will be done, must be set beforehand. The following examples apply.

**The way in which the candidate handles the carriers** before, during and after the migration. The professional execution of the process steps, the materials and devices used, the knowledge levels of the operators. These aspects can best be judged during an on-site visit. If this step is included in the [Awarding criteria](#), it should be mentioned clearly in the calendar of the tendering procedure and practical arrangements should be made well in advance, in order for the candidate to prepare.

**The compliance of the resulting files to the standards and specifications** as set in the tender. It is recommended that this compliance be checked in a controlled environment (e.g. calibrated monitors and vector scopes to judge about the result of a video migration test) with technical experts present in the jury.

## 4 Contractual clauses

The fourth and final major chapter of the Overview Document consists of several more general contractual provisions. These must be stated in the tender documents, because in principle the tender as written and published, supplemented with the quotation of the winning candidate, counts as the contract.

In principle, the legal awarding of the commission to one or more specific parties can be considered as a contract that does not require further signing - unless both parties agree to add separate details to their agreement, for example about whether to accept proposed options. In this chapter we discuss some common contractual provisions. Not infrequently, other provisions are added under the influence of certain circumstances or institutional habits. In this case, it is advisable to obtain legal advice.

### 4.1 Supervising official

Each tendering process in principle is led by a supervising official. Both during the tendering process and later during the execution of the contract, this person will hold the main accountability from the tenderer's side. In some countries, this person even has personal liability. Sometimes this person also acts as the main point of contact for the migration service provider; in other projects a separate project lead is appointed.

In this section it is important to indicate who the leading official is and how she or he can be reached (telephone number, email address).

### 4.2 Duration of the contract

Contracts for the migration of audiovisual archives are usually awarded for a predetermined (estimated) number of carriers. Such contracts typically terminate once the predetermined quantity of carriers has been migrated. Nevertheless, most contracts also provide for a term of the contract. This chapter can be used to indicate this term.

If a certain amount of audiovisual media is to be migrated, this chapter specifies how long the service provider can take to achieve the goal. If no quantity is set, the service provider in principle is supposed to migrate all carriers that are offered to them during the term. In this case this chapter mentions when the contract expires. In this context the term 'framework contract' is often used (see also above). In most legislation a maximum period for framework contracts is stipulated, to prevent the competition being excluded for too long. In several European countries the maximum duration of this kind of framework contracts is four years and reasons for a longer duration must be explained extensively in this chapter.

The duration of the contract can be expressed in the form of either an end date or a maximum duration counting from the award date.

Naturally, all parties involved have an interest in a clear agreement about this deadline or maximum duration. This way the client knows when the project will be finished at the latest, and the service provider knows what their deadline is to finish the project.

The tenderer should carefully consider their interests when setting the maximum duration or deadline for the completion of the project. Together with the number of carriers to be migrated (if set), this time factor will significantly affect the pricing that possible service providers will offer. To estimate realistic timeframes, again it can be very useful to informally discuss this aspect with various possible candidates during a phase of market exploration clearly separated from the official tender phase. What is a candidate's minimum and maximum capacity for the migration of a carrier type? What would it take to expand that capacity? Is such expansion something they envision anyway, or would it be a custom solution only for the tendering organisation? All these considerations can and will affect the pricing level obtained.

In addition to a fixed term, a possible extension of the commission can also be provided. Also, when considering this aspect, the contracting organisation must carefully consider their interests. If the possibility of extension is not mentioned, under many legislations such extension can only take place to the extent that the character of the original contract is not affected, again in order not to exclude possible competition.

### 4.3 Payments

It is advisable to mention clear payment provisions in the Overview Document. Even when the pricing is clearly agreed upon, several other aspects might still have to be dealt with:

- Which event triggers the invoicing?
- Which details must be mentioned on the invoices?
- What is the calendar for the payments?
- What are the terms and conditions such as delays of payment?

Commonly in migration projects an advance payment is made, followed by interim payments and a final settlement. Regarding these payments, various aspects can already be laid down as follows.

#### 4.3.1 Costs calculation basis and pricing unity

The first aspect to be agreed upon, is of course which kind of work is paid for. 'Audiovisual migration services' seems the easy answer, but there's much more to be decided. In most projects the tendering organisation asks the candidates to offer an 'all inclusive' price. This means that not only the costs of the migration activities themselves are included in the price per migrated unity, but also all overhead activities such as transport, project management and communication, the preparation before migration, the generation of technical metadata (if applicable) etc. Still, there might be reasons to take another approach.

Often the price matrix splits up the costs quantified into several categories, so that a detailed comparison can be made between several offers and (the reasons for) a potential underestimation or overestimation can be discovered. Regarding the premise for a pricing unity (number of migrated hours, the number of migrated carriers, ...) as a basis for invoicing, please see clause on [Pricing](#).

#### 4.3.2 Trigger for invoicing

The frequency and the trigger of the invoicing process must be determined clearly, and this chapter offers the ideal place for this. Evidently the frequency and the trigger must fit with the budget terms and payment procedures of the tendering organisation. But if these specifications go too much against the interest of the service provider, it follows they will also try to amortise the effects by charging a certain cost.

For example, if the contracting authority indicates that it will wait with the first payment only until a large amount of migrated files is delivered, the migration service provider may include in its overall pricing the costs of taking a loan for the investments it will have to make before it receives these payments.

#### **For example**

Invoicing triggers may be:

- an invoice is sent once a certain quantity of carriers has been migrated (e.g. every time 1000 tapes have been migrated);
- an invoice is sent once a total duration of migrated files is reached (e.g. every time 1000 hours have been migrated);
- an invoice is sent based on another counting unit significant to the project (e.g. every time one LTO-tape is filled, or every time one batch of carriers is completed);
- an invoice is sent once certain project milestones have been reached (e.g. start of the contract, start of the production phase, end of the production phase, ...);
- an invoice is sent periodically (e.g. every month);
- an invoice is sent every time a certain amount is reached (e.g. in tranches of € 5000).

### **4.3.3 Further invoicing specifications**

The payment of an invoice constitutes an important moment in the completion of a project. The contracting organisation recognises the efforts made and the operator earns back part of their investment.

Although there are accounting standards, many organisations and service providers apply them slightly differently in practice. It

might seem to be a bureaucratic matter, but it is nevertheless important to make prior agreements about the formal aspects of an invoice. In this chapter matters can be clarified such as:

- Should the invoices be sent via mail, electronically or both?
- To whom should the invoices be addressed?
- Is there a procedure of pro forma invoicing, in which the amounts and services can be checked before the actual invoice is sent?

This is often done because many accountancy systems don't allow an invoice to be cancelled once it is sent out and compensating or refunding through a credit invoice can prove to be an administrative burden.

- Should a Production/Purchase Order (PO) be mentioned on the invoice and how can the service provider obtain this number from the tendering organisation?
- What are the terms of payment of the tendering organisation?
- Is there other information to be mentioned within the invoice?

In some projects a specimen invoice is added to the tendering documents, as an example for the candidates. In other projects these aspects are only agreed upon after the contract has been awarded. This way of working is less transparent however and holds the risk of extra costs for one or more parties involved.

### **4.4 Confidentiality and intellectual property specifications**

Many audiovisual archives contain data that due to copyright or ethical reasons should not simply fall into the hands of others. However, this does not mean that any cooperation with an external service provider is excluded. The ethical and copyright restrictions that apply to an archive can in many cases be extended to the employees of the service provider. In many national

copyright legislations, a clause is provided that allows for the making of a digital copy for preservation reasons. In the world of audiovisual archives, this exception often acts as the implicit legal permission to migrate the data on the carrier. Given the generally accepted risks of technological obsolescence and degradation of audiovisual carriers, this exception is hardly ever disputed.

This chapter allows the tendering organisation to set the restrictions of access to the data. Usually it formulates confidentiality clauses applicable to all the staff involved in the project, regarding:

- the content of the carriers, considering aspects of ethical and intellectual property rights;
- all other information that the tendering organisation shares with the service provider;
- the scope, timing, budget etc. of the project itself; usually these clauses allow for a certain procedure to be followed in case one of the parties might want to use this information for marketing or publicity purposes, or to be used as a reference in future offers.

As the migration is in principle not a creative process (the migration should in principle not add new, creative elements to the original content), most legislation specifies that no additional rights for the service providers are created through the process of migration. As such the migration service provider doesn't obtain any new rights for themselves. However, it is advisable to mention this aspect separately and clearly as a liability of the service provider, to prevent any misunderstanding or future conflict.

## 4.5 Surety bond

Many large migration projects represent a substantial financial and cultural value. These projects require a great deal of trust between the parties involved, which is after all commercial in nature. This relationship of trust in a commercial context is supported in many cases by a surety bond. This means that a certain amount is placed on a blocked bank account (the so-called escrow account) by the service provider. This amount can only be returned to the service provider with the tenderer's consent, usually when the project is finished. The contracting organisation may refuse the release of this amount so long as it is not satisfied with the results. The decision to delay the release of a surety bond is anyhow a serious measure that should also be substantiated with sound legal argument.

The amount and further specifications of surety bonds in general depend largely on national legislation. Also, here it is advisable to obtain good legal advice. If a surety bond is required, this chapter should mention:

- the legal basis, as well as the applicable legislation in case of litigation;
- the amount required;
- how the proof of the bond should be submitted;
- when it should be set and when and how it can (in principle) be released.

Setting the conditions (and most of all perhaps the amount) of the surety bond should be subject of careful consideration. On the one hand it must be high enough, so that it can serve as a big stick in case the project goes completely in the wrong direction. On the other hand, the broad tendency of requiring very large surety bonds may have some negative effects on the longer term on the

whole sector of audiovisual migration services. The obligation to keep large amounts in an escrow account for a long time may lead to cashflow problems. This in turn can be at the expense of necessary investments or innovation, and in exceptional cases it can even lead to bankruptcy. Some companies call on venture capital to provide for these surety bonds, but the costs for this are in principle passed on to the customer.

#### **4.6 Ex officio measures**

Although it is very exceptional that contracts are ended before the set date, the contractual provisions must also provide for the way in which the contract can be terminated prematurely. Perhaps even more than in any other aspect of a tendering process, it is advisable to obtain sound legal counsel on this aspect. Given the seriousness of this matter national legislations in principle also contain detailed provisions to be followed strictly.

Reasons for terminating an agreement usually can be summarised as serious or repeated slight shortcomings of the contractor that have not been remedied or sufficiently resolved within the predetermined terms. In any case the tendering organisation should first inform the contractor following the applicable legislation, for example by registered letter. This communication should highlight the shortcomings and set a reasonable deadline for them to be addressed. When this deadline is not met or when shortcomings continue to exist, a contract can be definitively terminated. In this chapter the tendering organisation can explain the full procedure according to which such a termination of the contract may be executed.

Furthermore, this chapter may contain provisions in case of:

- **bankruptcy of the service provider**,  
often in this case the contract is terminated with immediate effect and all preliminary results are transferred to the contracting organisation;
- **force majeure circumstances**,  
one of the most common provisions is about the termination of a contract in case of a government decision to abolish the contracting organisation or to reduce its operational resources to such extent that the project can no longer be continued.

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