



Guide to Best Practices in Cultural Management

Associació de Professionals de la Gestió Cultural de Catalunya



Presentation

This is the *Guide to Best Practices in Cultural Management*.

This initiative was born in response to requests from a large number of members of the Association who informed the Board of the need for an orientative document detailing the best practices in our profession. The initiative received a large number of contributions over the course of the last three months, and this Guide is the result of the efforts undertaken by many Association members and by the working committee, aided by experts in the matter. We would like to extend our most sincere thanks to everyone who made a contribution.

The Guide provides a description of the different aspects that contribute to improving the quality of practice in our profession. We hope that it will be distributed to a large audience, that it will be widely referenced and that it will be very useful.

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01/ Preamble

Justification

The practice of any profession is linked to the characteristics and the needs of the society in which it emerges. This Guide was created in Catalonia and is based on nearly 25 years of experience among professionals in the field of cultural management in our country, which is at the forefront of the sector in Europe. The Guide was created in the spirit of education and improvement.

The Guide is a working tool: it is a frame of reference for reinforcing the autonomy and independence that any cultural manager needs when facing situations or dilemmas resulting from the practice of his or her profession.

Professionals employed in cultural management orient their activities so that all members of society will be able to access cultural goods and services. They should be very strict in complying with all those laws and regulations that have special relevance in our sector.

Professionals employed in cultural management are fully aware that culture is a fundamental right (article 27 in the Universal Declaration of Human Rights) which allows for a broadening of individual and collective liberties.

Objectives

This main aim of this Guide is to promote high-quality professional work among cultural managers.

The Guide's specific objectives are:

- a) To serve as a guide for the responsible practice of the profession.
- b) To recognize that the practice of cultural management carries with it a series of professional rights and obligations.

c) To contribute to the knowledge of technical and legal regulations.

d) To inform society about the work that cultural managers do and to make it evident that our commitment to professionalism is in the interest of society and the common good.

e) To contribute to creating a better balance between the different agents who participate in cultural processes and to underscore the relevance of the collaborative spirit.

f) To promote adopting an adherence to the Guide as an indicator of quality in cultural management.

Definition

Cultural managers are mediators between the phases of creation, participation and cultural consumption. They should be capable of helping to develop artistic and cultural work as well as integrate it into a social, territorial or market strategy. Professionalism in management is a deciding factor in the viability of a cultural project in terms of its economic, social, political and territorial aspects. Cultural managers are considered to be bona fide professionals when they have the proper qualifications or experience in the industry, and when activities related to cultural management constitute their principal source of income.

We recommend the use of the title “cultural manager”, as opposed to “cultural technician”, “sociocultural facilitator” or other similar titles.

Distribution

We encourage project directors and others responsible for cultural projects in Catalonia—independently of whether the projects are public, private, or carried out by an association—to distribute this Guide to their teams.

02/ Competencies

Cultural managers devise, create and develop their activities based on planning, which must be coherent with users' needs. Cultural managers practice their profession by acting as experts in methods, in the required theoretical and regulatory frameworks and based on their knowledge of culture and the arts.

Managers should strive to achieve a maximum of quality in their management. A large part of a cultural manager's professional competencies can be acquired with training, although there are a series of competencies that have to do with acquired cultural knowledge, with personal creativity or with experience.

We will discuss quality cultural management in relation to the factors that are involved in obtaining results. Among these factors we find:

1. Effectiveness
2. Efficiency
3. Criteria
4. Knowledge
5. Flexibility

2.1. Effectiveness

Effectiveness is the ability to achieve objectives. It requires:

- a) Working with the aim of achieving results.
- b) Working toward the continued improvement and development of projects.
- c) Maintaining a cooperative attitude with the working group and the project associates.

2.2. Efficiency

Efficiency entails a balanced relationship between the results obtained and the resources used. To this effect, it is important to:

- a) Establish a balance among economic, social, territorial and technical conditions.
- b) Strive for quality in all processes.
- c) Contribute to improving the organization and operation of cultural institutions and organizations.
- d) Build sufficient, complete and stable teams.
- e) Be aware of a project's sustainability; avoid using up resources unnecessarily.
- f) Apply the criteria of flexibility, creativity and innovation when working.

2.3. Discernment

Discernment is the ability to emit judgments concerning the quality of a project and to add value to programming and proposals, either through personal contributions or in accordance with the criteria established by third parties (other programmers or the audience itself). Discernment must also be exercised in making management decisions and in taking care of the finishing touches on cultural products. Discernment has to do with expertise and knowledge and can be acquired through rigorous training and a continued, in-depth, contrasted practice of the profession.

2.4. Knowledge

Working in the context of artistic creation requires that cultural managers have the necessary knowledge to evaluate creative work and to interpret in the appropriate way. It is also necessary to be able to recognize talent and to know how to manage and develop it, using a shared code that supports

dialogue between artists and managers. Creative work must be handled with sufficient knowledge to allow for attention to the details and nuances involved in the artistic process, and in order to attend to the specific needs of creators.

2.5. Flexibility

The work of a cultural manager is linked to creative processes, to intensely dynamic production processes and to a direct delivery to the public or the user, often in a short period of time, and sometimes in the context of a short-term temporary exhibition. In more administrative aspects of cultural management (resolving contracts, budgets, reports, regulations, etc.), the capacity to adapt and to understand each specific case and particular context is also necessary.

The cultural manager must have the ability to provide a rapid response to the demands of the dynamic context in which he or she operates; he or she must use and develop abilities related to entrepreneurship, initiative, interdisciplinary vision, adaptability and cooperation--working as part of a team, in a collaboration or as part of a network.

03/ Quality

When we talk about orienting cultural management toward results, we are also talking about objectives that are related to quality and values. We will seek to provide quality in our cultural offerings and to support the values that are complementary to cultural activities without losing sight of the positive aspects and the visibility that are usually linked to other quantitative indicators.

Cultural managers should understand quality work as work that manages to associate values with the provision of cultural services or the offering of cultural products. Those values may be aesthetic, moral or intellectual; they may be related to innovation and risk, education, social intervention or economic revitalization.

Cultural managers must encourage and emphasize the role of cultural activities in education, training, social aspects and research and they must be conscious of their responsibility in raising social awareness in their immediate environment.

3.1. Aesthetic, Moral or Intellectual Values

Cultural managers must be sensitive and should pay attention to emergent creative languages and contemporary creation, in order to avoid conceptual and aesthetic stagnation. They should seek out, encourage and spread debate, and introduce new points of view and ways of thinking. They should contribute to the creation of critical thinking in society, which is the antidote to conformism and the gateway to a demand for higher quality and rigor.

3.2. Innovation and Risk

Some criteria that should be incorporated into our work are: innovation, risk and cultural and artistic experimentation, as well as rigor in the use of contemporary language and technological media. These objectives are applicable to any aspect of cultural and artistic activity, both in live arts and in

classical culture but also in popular and traditional culture, and scientific and technological culture.

The cultural industry and cultural management need to invest in research as a source of development (R+D). As such, special interest will be shown for those proposals that are creative and innovative from the cultural point of view or from the standpoint of management, since cultural management is also understood as participating in the processes of research, development and investigation.

It is necessary to incorporate the use of new technologies both in the creation of activities/contents and in communicating with audiences. As such, special interest will be shown for those proposals that are creative and innovative from the cultural point of view or from the standpoint of management.

3.3. The Educational Function

Culture and education are closely related. Culture can be used to educate people in a variety of ways; it can serve to cultivate their minds and their sensibilities, from infancy and into adulthood. The opposite is also true: we achieve culture as the result of an educational process.

Cultural managers must make sure that any service, project or cultural facility naturally incorporates an educational dimension that will be visible, respectful and of high quality, in order to guarantee widespread access and a democratization of cultural and artistic activities.

The intent is to promote accompaniment and discovery through educational tools that seek to create significant discoveries and experiences without restrictions with respect to age, habits or previous knowledge. The goal of the educational function is not teaching or transmitting content from the point of view of instruction, but rather creating experiences that promote intuitive learning in the spirit of play.

Through the educational function, cultural managers should orchestrate a positive stimulus in connection with cultural and artistic activities. As such, through their professional ac-

tivity, they will become a catalyst for experiences which, in the long term, tend toward improving the quality of life of the general public.

3.4. Cohesion and Social Development

Cultural managers must be conscious of their function and their contribution to the development of society. Culture is a key factor in social cohesion, a necessary tool to achieving it.

The function of culture in social cohesion demonstrates possibilities for work in the future that should be explored. This should be undertaken through research, the implementation of new proposals and constant innovation. Work in culture in favor of social cohesion implies ensuring the right to access to culture under equal conditions; it means making it possible for everyone, independently of their condition, to develop their creativity and encouraging the formation of solid and inclusive social networks as a result of cultural activities.

Through cultural management, projects promoting community development will be spearheaded and work will be done toward creating new audiences, with the aim of reaching all sectors of society, and consolidating existing audiences.

In professional practice, intercultural dialogue in society should be promoted, taking into account the concepts of cultural minorities, multiculturalism, and interculturality..

3.5. Economic Revitalization

Cultural managers must take into account the impact of the cultural industry on the economy, which translates into a strong influence on the GDP. The weight of cultural industries like publishing houses, communications companies, the performing arts and music, and heritage management, among others, is especially relevant. The cultural sector creates jobs in its own sector and revitalizes other economic areas like hotel management, commerce and tourism. As such, cultural managers must make sure to develop their capacity for promoting economic revitalization and to demonstrate it by using contrasted indicators.

It is necessary to set up collaborations between public and private management, in the interest of improving the quality of cultural offerings, to ensure their economic viability and to seek out profitability, both from an economic and a social point of view. On the other hand, the public sector must avoid any kind of unfair competition with respect to the private sector and must promote the development of business activities in culture and related areas.

04/ Tools

The quality of work in cultural management can be evaluated through the presence and use of methodological tools (or standards) which are particular to the profession. The existence of these standards and the degree to which they are achieved are indicators of quality in cultural management.

It is recommended that any task carried out by a cultural manager, even if it is for small projects and cultural activities, be based on a plan. Planning is a very useful tool which can be adapted to different needs and territories, so that day-to-day management tasks do not get in the way of general organization or of carrying out a high-quality service or activity.

The principal tools (or standards) in cultural management which merit special mention are:

1. Manual of procedures
2. Viability plan or business plan
3. Development plan
4. Marketing and communications plan
5. Security plan and maintenance for buildings and equipment
6. Inventory of property and equipment
7. Participation systems and evaluation
8. Briefs and justifications
9. Evaluation

Whenever it is possible within the given budget, these plans should be developed by specialized professionals, either in-house or through a contract with an external company, for each of the areas listed. If there are not enough resources, the cultural manager should write up the plans: the multi-faceted nature of the profession should come into play when there are limited economic and human resources.

4.1. Manual of Procedures

This tool establishes how each of the principle actions should be developed; it allows for the transmission of knowledge

and the homologation of all criteria for action.

Protocols for processes and tasks serve to ensure that our efforts will be profitable and to control results. That said, it is important to prevent the procedure itself from becoming the focal point of interest, and to make sure that what it is meant to achieve, and what justifies it, is the goal and not the process itself.

4.2. Viability Plan or Business Plan

This tool studies and evaluates whether a project is possible or not, given the available means, and whether it will be able to attain the objectives it lays out: in short, whether the project will be profitable and justifiable in the end.

In the case of projects and services in the public administration, consideration must be given to how they fit in with the term plans (which are often quadrennial) created by the governmental body of the institution. In cases where the use of a new space will be necessary, aside from defining all the previously mentioned points, a plan for the use of spaces must also be drawn up. The viability plan will define:

- The project that is to be developed
- Its objectives
- The necessary materials, spaces and human resources
- The corresponding budget (estimate of earnings and expenses), the necessary spaces, the execution plan, and the marketing and communications plan
- The results that are expected

In the case of private projects, there should be a cultural business plan, a document that identifies, describes and analyzes the timeliness and the technical, economic and financial viability of the cultural business project, which it lays out and organizes. It will be necessary in order to request a loan or a subsidy. Elements of a cultural business plan:

- Identification: Name and address of the company. Name and CV of the promoter/s and the people involved in writing the business plan and launching the activity.

- Description of the business: a detailed description of the characteristics of the product or service that is expected to be carried out or developed, the real necessities that it will imply and the definition of the market it will be addressed to.

The objectives that are expected to be achieved in the case of dealing with the development of public cultural policies.

- A Market study, taking the market to mean all the possible persons (natural or legal) to whom the project is directed. An analysis of supply and demand (competition) should be carried out.

- Communications and marketing plan: it should reflect all of the commercial strategies that must be followed in order to deliver the product or service to its potential consumers.

- Technical description: from the production process to the location of offices, workshops and storage facilities as well as furnishings, machinery and necessary supplies.

- Purchasing plan: includes the list of raw materials and the necessary supplies for producing and commercializing the product or service. It must also include the suppliers and the conditions for payment.

- Organization and human resources: this includes the tasks involved in direction, production, communication and commercialization as well as the people who will be needed in order to carry them out and their respective competencies. Description of positions and their functions, as well as their payment and the safety conditions in the workplace (prevention of job-related accidents).

- Economic-financial study: necessary resources, sources of funding and costs.

- Legal form of the company: this will include a definition of the legal form, the fiscal regime and the affiliation of its members, if there are any, as well as the necessary administrative and legal paperwork that will be necessary to set up the company.

Keep in mind that certain legal forms require a specific number

of participants. The liability assumed by the company must also be determined (if it is unlimited, the business owner must respond with his or her personal assets; if it is limited, the person is only responsible for the value of his or her investment in the company), some legal forms require a minimum initial capital, consider the fiscal costs (taxes) and social security.

4.3. Development Plan

This tool guarantees that a project or service progresses adequately while avoiding stagnancies and involutions.

The development plan can also be referred to as the action plan or strategic plan.

The most basic level is the action plan, which describes the actions that should be undertaken in order to achieve specific objectives in the short term and in relation to the objectives and strategic lines established in the medium term and the long term.

The most complex level is the strategic plan, which lays out the lines to be developed and the objectives that should be achieved in the medium and long term. One of the central tools in the strategic planning of services and cultural projects is the management contract between the cultural manager and the public administration (this document is described in more detail in section 6.2.2).

Both cases involve a development plan. The basic tools that it should include are:

- a) Improvement plan and/or plan for the continued development of the project or service
- b) Maintenance plan for spaces and infrastructures
- c) The definition of goals, the evaluation system and reports

It must be guaranteed that all of the previously mentioned phases will be carried out from the beginning.

4.4. Marketing and Communications Plan

This tool promotes the access to cultural experiences and contact with artistic creation and makes them accessible to the entire community.

Any project or service will have a marketing and communication plan as an integral part, which, must be backed up by sufficient economic resources to put it into effect.

The marketing plan is the document that details the actions required in order to get to know and understand consumers in order to offer them a project or service that is perfectly adapted to their needs. Before undertaking the development of the plan, different key elements should be taken into account (target audience, intermediaries, interest groups, competition, environments).

The marketing plan will include the following points:

1. Analysis-diagnosis: it will include an analysis of the general framework for the plan. It may include a historical analysis of the results obtained, the situation and the evolution of the markets and the competition, the behavior of prices, the general socio-economical situation in the sector, the environment, brand image, legal framework, qualifications of the professional team, communications policies that have been carried out, etc. It may be complemented with a SWOT analysis (Strengths, Weaknesses, Opportunities and Threats) of the company or cultural service and of the competition. The goal is to discover the differential advantage of our offering.

2. Determining objectives and indicators: a numerical determination will be made to represent goals and how to reach them. They may be presented as a solution to a market need or as the exploitation of an opportunity. There are four types of objectives in cultural marketing: positioning, quality, sales/audiences and viability of the proposal.

3. Establishing strategies and action plans: they will describe how goals are to be achieved and what kind of positioning will be used for each of the elements in the marketing mix: product, price, distribution channels and promotion. The positioning will be defined in relation to the characteristics of the target

public, the budget and the profitability study.

4. Establishing systems for control and evaluation: this will include a definition of how to evaluate the degree to which objectives have been achieved and which actions should be taken to diminish possible deviations by using indicators to measure results (sales, users, professional results, ratios of uses and income, etc.)

The communications plan is the document which defines the strategy used to improve the relationship with clients/users, with suppliers and with the working team itself. The creation of a communication plan is based on the analysis of the situation (SWOT) which is used to construct a corporate image and to define strategies for external communication (to arrive at our target public) as well as internal communication (for better effectiveness and more interaction among participating agents). It is worthwhile to treat communication as one more system for working toward organizational transparency.

The marketing and communications plan will also be responsible for establishing the information system and the system for managing contacts/clients. It will also include the development of positioning and visibility strategies in order to generate high-quality contacts. Using e-mail marketing, we can carry out mass mailings which are personalized, dynamic, environmentally friendly, and very cost-effective.

The application of Web 2.0 tools and the use of social networks has become key to promoting cultural products and services on line and to encouraging user participation. All the same, it should be remembered that a presence in virtual environments (web 2.0, blogs, wikis, YouTube, Facebook, RSS, Tuenti, MySpace, Twitter, LinkedIn, etc.) requires a considerable investment in maintenance and, above all, the constant generation of attractive content. It is advisable to study which tools will be the most adequate for each case.

Some of the most innovative companies are beginning to implement Open Innovation (collaborative management of innovation and talent), which allows them to learn what their clients think and how they value the cultural products and services provided.

4.5. Security Plan and Maintenance of Buildings and Equipment

This tool guarantees the safety of users and the security of infrastructures.

Building and equipment maintenance must be planned in order to ensure a maximum of durability and adaptation to the tasks to be carried out. The required on-the-job security and health measures will also be adopted. The plan will also include a protocol for evacuation of the buildings. In order to draw up the plan, it will be necessary to seek out the advice of a specialized professional.

4.6. Inventory of Property and Equipment

This tool provides the details on the available assets and equipment.

Cultural managers need to know what materials they have on hand, and that is why they should carry out inventories of assets and equipment, indicating their technical characteristics, locations and their acquisition value.

4.7. Participation Systems

This tool relates citizens with cultural management.

One could say that the participation of the public allows for the incorporation of society's point of view and, as such, it can create a more widespread acceptance and a feeling of collective responsibility concerning the decisions that are made in a public context. We must remember, however, that the final decision in a participative process is always the responsibility of the person directing the process.

We should also remember that cultural offerings are oriented toward user satisfaction and that we should be able to learn about the user's degree of satisfaction through the use of evaluation surveys and complaint forms. The results must be taken into account in order to promote continued improvement of the work that is dedicated to meeting the needs of clients or users.

In designing and programming activities, the incorporation of

participative processes will be taken into account in order to achieve a more appropriate relationship between supply and demand. It will also be taken into account that projects should encourage cultural democracy, where all individuals are able to express themselves in a significant manner.

4.8. Reports and Justifications

This tool allows for describing the work that has been done.

Cultural managers for the public sector and for associations have the obligation to create reports on their activities and the expenses incurred. Cultural managers in the private sector who work on projects that are funded or subsidized by the public administration are required to submit their accounts to those public administrations that have provided economic resources in the form of a project report, a financial report and a justification of spending

4.9. Evaluation

This tool relates objectives with results.

The cultural manager will determine the objectives and desired results for the project, as well as the evaluation system to measure the extent to which they have been achieved. He or she will also set up measures to collect information on users' evaluations and their interests.

In addition, cultural managers must plan their own evaluations, in the role of professionals in charge of the activities carried out under their direction or action. As such, the evaluation will be based on the extent to which the best practices (both instrumental and with respect to competencies) have been achieved.

In the evaluation of the activities, special consideration should be given to: economic management, visibility, territorial impact, the impact on context and on users, the return on resources, the maturity of the professional relationships that have been established and the quality of the projects or cultural services being managed (for the definition of quality, see Chapter 3).

It is considered a best practice to present a summary of the

results obtained to the contracting party, to the agents who financed the projects and to all superior organizations, as the case may be. In this day and age, it is also recommended to be open to the social responsibility exercised by organizations belonging to civil society.

In any case, there must be a periodic evaluation in order to achieve continued improvement and a progressive evolution of the activity, service, project or cultural space being managed and the co-responsibility among all agents and/or professionals involved will be encouraged in the efforts to achieve the stated goals.

Whenever necessary, professionals in the area of cultural management can act as external evaluation agents for projects and services managed by others.

In short, cultural managers must achieve their goals in keeping with the rules governing efficiency, economy and both social and economic profitability. In order to carry out this evaluation, the objectives for the actions and activities will be defined and the indicators, the methodology and the schedule for evaluation will be determined.

The system of indicators for the evaluation of cultural management must take into account both quantitative aspects (attendance, the index of user satisfaction, the relation of cost/user, etc.) and qualitative ones (evaluation of quality, impact, etc.). It should be remembered that qualitative indicators are difficult to measure and that they are often based on opinions or assessments (which cannot be translated into data). Indicators which measure the impact of the activity are especially meaningful and necessary, and it is important to measure both the social and the economic impact. For this reason, we recommend undertaking studies on the impact of cultural activities in the cultural sector itself as well as in other sectors.

Another important indicator concerns satisfaction, a concept that refers to the individual satisfaction of users or consumers, although, in the public sector, collective satisfaction will also be of importance. Satisfaction can be measured using information that can be gathered by using a system of audience surveys or user surveys either on the Internet, in person, in writing or orally.

05/ Managing Intellectual Property and Users' Rights

5.1. The Obligation to Respect Intellectual Property

The right to intellectual property is a subjective right made up of a series of personality and economic rights attributed to the authors of artistic work, among others. Cultural managers have the obligation to respect these fundamental rights, in keeping with the current copyright laws in each territory and respecting the authors' freedom of creation and expression.

As a result of this obligation, cultural managers must deal with all copyright payments derived from the exploitation of creative work, whenever the management that they have been commissioned requires it and providing that the rights are not reserved solely for the author or that they are free from any agreement with a rights management entity (under Copyleft licenses like those provided by Creative Commons, for example)

In accordance with the current copyright laws in each territory, the series of rights or faculties that the cultural manager will have to respect include personality rights (moral rights) and economic rights (basically exploitation rights), which provide authors with the full control and exclusive exploitation rights to their work, with the specific limitations according to the respective laws.

It should be noted that the notion of "copyright" that is applied in territories under Anglo-Saxon influence (United Kingdom, Ireland, Malta, Cyprus...) places more emphasis on economic rights than on personality or moral rights, which sets them apart from the majority tradition concerning copyright in Europe which clearly incorporates both types of rights.

5.1.1. Personality Rights (Moral Rights)

Moral rights are a series of rights that are inherent to the condi-

tion of artistic creators. They are rights that cannot be transferred or renounced, to that point that any agreement to transfer moral rights will be null and void. Moral rights that are recognized as corresponding to artists (either authors or performers) include:

a) Deciding whether the work should be made available to the public and in what manner. Disclosure is the first manifestation of moral right and consists in the act that makes the work available to the public for the first time in any form. This right allows the author to choose not only whether or not to make the work available to the public, but also when and in what format (reproduction and distribution in stills, in graphic format, a public live event, etc.). In general, and leaving aside some doctrinal points of view, the right of disclosure expires once the public has had initial access to the work in any form.

From that moment on, the author may no longer invoke the right of disclosure to control the public's access to the work in the different ways that may follow. The author will be able to exercise control by invoking the exploitation rights, which will be discussed further on.

b) Deciding whether the work should be associated with his or her own name, a pseudonym, or anonymously. The artist has the right to demand recognition of his or her paternity with respect to a work; he or she also has the right to conceal that paternity.

c) Demanding recognition of his or her condition as author of the work. This right is a direct consequence of the act of creation.

d) Demanding respect for the integrity of the work and preventing its transformation in any aspect. This right prevents others from modifying or distorting the work without the author's consent. It is a way of maintaining the integrity of the work. It includes the right that the work should be received as it was conceived and that it should be maintained in the same state until its creator decides to modify it or alter it.

e) Modifying the work while respecting possible rights acquired by third parties. This right is in reference to modifications which

involve changes in the content and essential elements of the work through the process of substituting the work in its previous configuration for the same work in a new configuration.

f) Removing the work from circulation as a result of changes in the author's intellectual or moral convictions or because he or she considers that it no longer achieves the desired degree of perfection, provided that those who hold the exploitation rights are compensated for any damages. This right is known as the right of withdrawal.

g) Accessing a unique or rare copy of the work when it is in another's possession in order to exercise the right of disclosure or any other right that corresponds to the author. The artist exercises this right when he or she accesses the unique copy in order to exercise the right of disclosure, as long as the author is still in possession of the right to public exhibition or to make changes to the work.

Managers must remember that neither they, nor any mediating agent or media outlet may censor or modify the work of an artist or author, under any circumstances.

Finally, it should be understood that full references must be made to participants and authors in the credits of all activities, understanding participants and authors, in the context of this Guide, to be those who participated directly in the creation of the artistic object or activity from a creative standpoint.

5.1.2. Economic Rights

There are a series of economic rights recognized by law which are attributed to the artist, performer or author. These rights are transferrable and are divided into two types:

a) Exploitation rights

A series of transferrable rights which may be exercised by the person who is in possession of them. The rights included in the category of exploitation rights are usually considered as independent rights and they are as follows:

1. The right of reproduction consists in the right to create reproductions or copies of the work, through its exteriorization in a tangible medium. It is important, because the public will have access to the work through these copies.

The two principle forms of communication are graphic representations and sound recordings. The latter is achieved through the execution of the work by artists or performers, and it is recorded in a tangible format so that the work can be transmitted.

2. The right of public communication consists in any action by virtue of which a number of people may gain access to the work or its performance without a prior distribution of copies. This is the right which most clearly affects the cultural manager in the context of communicating an artistic work to the public.

Under the law, the category of public communication includes, among other things, staged performances, concerts, public representations of dramatic-musical works, the screening of audiovisual works, visual arts exhibitions, radio broadcasts of musical work, cable transmissions, or access to the work via Internet streaming.

Any act which communicates a protected work to the public will require consent from the artist in order for it to be legal.

3. The right of distribution consists in making the original work or copies thereof, or recorded performances in a tangible format, available to the public through sales, renting, lending or any other form of access. This includes Internet distribution rights via downloading.

4. Transformation rights include adaptations and any other modification that results in a different work. The author or artist, performer or musician, as the case may be, should authorize this transformation, and may receive economic compensation in return.

b) Rights of remuneration

The combination of rights that are paid out to the author either directly or through a collective rights management entity or spe-

cifically authorized mediator, as is the case with distributors. As it was indicated earlier, only the artist or author can decide whether to make his or her work freely available to the public through the use of an open license (for example, a Copyleft license).

c) The special regulation of use in education and heritage institutions and in educational and scientific institutions.

In the educational context, the inclusion of fragments of other works in the body of an original work is allowed (in the case of written formats, audio formats and audiovisual formats as well as free-standing visual arts and figurative photography), as long as the works in question have been disclosed and their inclusion is used as a reference or as the basis for analysis, critical commentary or a critical opinion. This type of use can only be carried out with didactic purposes or for research, to the extent that the incorporation is justified in that context and always indicating the source and the name of the author of the work. This exception is not applicable in the case of cultural activities that have an educational purpose but which also imply the sale of tickets, for example an educational concert that the audience must pay to attend.

In fact, strictly speaking, the exception is only applicable to formal educational institutions and in the case of reproducing excerpts of works, and not works in their entirety, since the exception is based on achieving increased familiarity with the work.

In museums, libraries, sound recording archives, film libraries, periodicals libraries, public archives, or archives that are part of cultural or scientific institutions, the reproduction or loan of works is unrestricted so long as there is no profit obtained and the reproductions are solely for the purpose of research and conservation.

As such, the previously-mentioned heritage institutions or scientific institutions and non-profit educational organizations or teaching facilities within the educational system do not need authorization from the owners of the rights, nor will they be required to provide any remuneration for the loans they carry out.

The author's authorization is also not required in the case of allowing access to works for concrete individuals for the purposes of investigation as long as this occurs in a closed, internal network using terminals on the institutional premises intended for that purpose and providing that the works are included in the institutions' own collections and are not subject to conditions of acquisition or licensing. All of the above is understood without detriment to the author's right to receive fair remuneration and including all possible variation that the laws in different territories may incorporate into this general rule.

5.2. Management and Custody of Personal Information

Cultural managers often rely on personal databases of users and suppliers in order to carry out their profession. Aside from using the information for aspects that are related to administrative management, a database of users is absolutely necessary in order to carry out communications activities.

In any case, cultural managers must be aware that the information and databases may not be transferred without the consent of the persons whose information is included therein. In this sense, one must respect the laws governing the protection of personal information in each territory, which serve to guarantee and protect public liberties and the fundamental rights of natural persons, in the context of the use of their personal information, with special emphasis on their honor and personal intimacy.

Cultural managers, as a result, will protect the personal information in their possession as well as the information of those persons who are connected to their activities.

06/ Managing Activities, Services and Spaces

6.1. Possession of Cultural Spaces, Property and Facilities

Cultural managers are responsible for the proper use of the spaces and facilities that they are entrusted with, and must also demand that any others who use the spaces do so in a responsible manner.

Cultural managers will attempt to remove architectural, sensory and linguistic barriers, orienting their actions toward accessibility in all possible aspects.

Cultural managers will be rigorous concerning their obligations in preventing job hazards and protecting the safety of workers and users both in the use of facilities and in carrying out activities in a public setting.

As such, they should take out the necessary insurance policies in order to cover any damages to property or persons that may result from the corresponding activities.

All the same, cultural managers need to be aware that the establishment of excessively limiting protocols and operational regulations can be a hindrance to the development of the cultural activity. The aim should be to promote the use of facilities, while avoiding an excess of zeal or prohibitions that may unnecessarily limit the possibilities of their use.

6.2 Good Governance of Projects and Services

One of the functions carried out by cultural managers is the governance of projects and services that are addressed to the public (citizens, the community, the general public).

- “Projects” are those activities or offers of resources that are still in the development process, from the initial idea up to the implementation, as a prior phase to their consolidation as a service.

- “Services” are those activities and resources which have achieved continuity over time, in a structured and viable manner.

Cultural managers are responsible for managing artistic and cultural projects and services such as foundations, societies, trusts, independent organizations, associations, companies, centers and facilities. In any case, whether it is in the public or private sector, or from a more or less independent standpoint, cultural managers must be able to guarantee good governance as subject to the principles described in Chapter 1 of this Guide. In the management of institutions which are entirely or partially funded by public resources, cultural managers must give visibility to the public interest and public function of the service or project in question, as a justification for the allocation of public resources.

Cultural management in the public sector is renewed and improved with the introduction of results-based management. Adapting activities to the needs of society promotes greater public participation, more and better transparency, the assumption of responsibility and accountability.

Cultural management in private law institutions with public funding should adhere to this model, adapting it to the particular characteristics and operational conditions.

There is always the possibility of looking to external consultancy in order to receive an impartial evaluation of the workings of the service or project, from the standpoint of best practices and with respect to the degree of fulfillment of objectives.

6.2.1. Control Mechanisms for Projects and Services with Public Funding

Public cultural services and projects which are totally or partially funded through public subsidies must present their accounts to the participating administrations in the form of reports and justifications in keeping with the current law regarding subsidies.

In the context of public or private cultural services and projects that are funded with a majority of public resources, a results-based management system should be designed, which should include mechanisms for publishing financial reports from a posi-

tive and constructive point of view and not as a kind of rigid dirigisme.

As such, the organisms and mechanisms for control must be defined, including those that ensure the proper provision of public services with the aim of improving service and promoting an increase in the quality and effectiveness of management, which is most certainly an added value for the services in question. To this effect, it is important to:

a) Establish goals that respond to the principle of general interest (at least in proportion to the allotment of public capital) and which are proportional to the available resources. The extent to which those goals are being achieved should be evaluated periodically (at least twice a year) using reference indicators that will reveal any deviations, either positive or negative, that occur in order to implement the necessary measures as a result and to orient actions toward continued improvement.

b) Create information systems that allow for controlling public activities, informing society and identifying and evaluating the contributions that have been made. Transparency measures are a good tool in the fight against corruption because they reduce the chances of a conflict between public obligations and private interests. In the public sector, this responds to the fact that the information produced by the public Administration must be in the public domain.

c) Establish contracting systems which guarantee that the cultural managing directors and their working teams have the proper qualifications and that they will contribute to good governance and the continued improvement of the service in terms of efficiency, productivity, the quality of services to the public and the creation of public value.

d) Ensure that the members of the controlling organizations are compatible and that they will guarantee a level of dedication that will allow them to carry out the tasks under their responsibility.

e) Protect and respect laws and regulations, avoiding any form of fraud or corruption.

f) Carry out economic management in a transparent and public fashion, making budgets and reports of results available to the public.

It is highly recommended to commission external auditing of accounts as a measure of contrast and self-monitoring.

In order to establish a plan for the development, follow-up and control of a project or service, the principle participating public organization (the public organization that provides the largest economic contribution) must set up a management contract for the service, project or cultural organization. Remember that it may also be helpful to:

- a) Arrange for the external auditing of accounts as a measure of contrast and self-monitoring.
- b) Create a specific body to control management and, in the case of an obvious problem, create the necessary unit to investigate possible negligence, fraud or corruption.

6.2.2. The Management Contract

The management contract is a strategic planning tool that defines the agreements between the principal administration and the cultural organization, thus identifying them as jointly responsible for pursuing the objectives of the project or service. At the same time, it sets the stage for both parties to receive the benefits of achieving the objectives for improvement that they have proposed conjointly. It could be decided that any subsidy awarded should correspond with the degree to which the established objectives have been achieved, thus serving as an incentive for orienting efforts toward improvements and an evolution in the service.

Contents of the management contract:

a) Definition of the mission: the conceptual framework for the project or service; it must also define the object and the proposal as clearly and succinctly as possible. If necessary, it can be revised after a period taking into account any internal changes and in keeping with the context.

b) Institutional, corporate and organizational setting.

c) Strategic framework: definition of the strategic angles and the plans for executing the mission.

d) Budgetary framework: strategy, economic structure and funding. It must be proportional to the objectives.

e) Human resources: the team that will be dedicated to the project or service, organizational structure, list of positions and functions.

f) Operational objectives: objectives and indicators for evaluation. This is the way to clearly express how public resources are to be used and what results are expected. They should be measurable, clear, easy to understand and related to a specific time period (a year, a day, etc.).

g) Information system: compiling indicators in order to provide a measurement for the operational objectives and information on whether the desired results are being achieved.

h) System of incentives: rewards or penalties according to the degree to which the desired results are achieved. For example, an increase or a decrease in funding.

i) Institutional framework for managing, evaluating and following-up on the contract. The system and entity in charge of assessment and monitoring, as necessary: board of directors, executive committee, monitoring committee. In any case, the group will be appropriately defined along with its functions, its schedule and the information that will be used to evaluate the degree to which the objectives have been met. It will also keep watch over the compliance with best practices and, in case of doubt or an obvious case, a specific tool will be created that will be compatible with the existence of external, independent control mechanisms, either tied in with the Parliament, with service inspectors or with ombudsmen.

07/ Cultural Policies: Collaboration and Autonomy

7.1. Support for Third Sector Creation and Projects

Cultural managers often take part in the evaluation of political, technical and creative projects as well as projects proposed by associations or cultural industries, among others.

Their job is to employ a maximum of rigor and impartiality in order to determine the viability and interest of the projects, according to specific criteria, before those projects are given the go-ahead to be implemented. They may also evaluate creative projects or projects proposed by organizations with the view of establishing possible working agreements or subsidies.

The actions carried out by cultural managers must work toward stability in the sector. The following considerations should be kept in mind:

- a) The actions carried out by cultural managers should ensure that cooperative programs, agreements and accords are not subordinate to political calendars.
- b) Economic awards and budgets for subsidies should be approved and executed as swiftly as possible, so that the payment calendar is in synch with the agent's program of activities.
- c) The programming of activities should be included in long-term planning; regulating it by way of an accord would ensure that both parties are committed to follow through with the programming.
- d) The agents who have a working agreement should commit to presenting a periodic complete evaluation of the management and activities they have carried out using the indicators that have been agreed upon.

e) Adherence to this Guide will be a factor in evaluating requests for support or subsidies for artistic and cultural proposals.

Work should also be done toward establishing agreements and accords with other agents for carrying out activities and, as a result, encouraging cooperation in any of its possible forms (local, regional, national and international and, also, between the public sector and the private sector), with the understanding that dialogue is a necessary tool in the endeavors of a cultural manager.

7.2. Technical and Organizational Autonomy

The practice of cultural management must be carried out without interference or threats to professional liberty, independence or autonomy. In that respect, it is important to defend the liberty of professional practice in the face of possible pressure coming from interests that are external to one's own professional objectives.

It is a best practice for a cultural manager to be true to his or her technical criteria for evaluation and programming. All the same, that technical rigor must be compatible with the attempt at finding ways of arriving at a consensus in order to carry out specific projects; it should also be compatible with the need to make sure that the programming is accessible to diverse publics and interest groups.

Without contradicting the principle of loyalty to the institutions, companies or organizations that hire cultural managers, it is also important that cultural managers seek to maintain the independence of existing spaces and their respective management structures, especially when those structures have been at the root of the preservation and development of effective working programs. For that reason, we choose to promote cultural management models that are characterized by their independence and transparency.

Cultural management professionals are agents who provide the evaluation criteria for the development of cultural policies through the assessment of public funds dedicated to re-

search, production and diffusion of contemporary creation and culture in general.

7.3. Cultural Policies

Cultural managers contribute to the creation and promotion of norms and policies for cultural development. The political forum receives the expression of the public's will, and the collaboration of cultural managers with governing politicians is absolutely necessary in order to encourage the development of creative initiatives that will be of value to the public.

As such, management in a political context is just one more function associated with cultural managers, who coordinate their own technical criteria with the political wills that operate in their sphere of activity. In this sense, cultural managers should look to cement their tasks in the planning stages in order to disengage themselves from the electoral calendar.

7.4. Collaboration among Agents

The present cultural dynamism and the diversity of participants means that policies are developed and services are provided based on more or less complex collaborative formats, in which public and/or private organizations, either seeking to obtain economic profit, or in a not-profit context, work together to achieve common objectives in the public sphere. Collaboration is another form of effectiveness. On the contrary, possessive visions, organizational isolationism and sectarian or overbearing attitudes are detrimental.

It is also considered a best practice to provide the public with access to studies that have been undertaken concerning audiences, the social and economic context, the results of specific activities, etc., with the idea that the information can contribute to a better understanding of reality and to the development of individual criteria in the general public which may be of use to other cultural agents or to the community.

08/ Managing Human Resources

8.1. Human Resources and Contracting Professionals

Cultural managers will often need to rely on the collaboration of different professionals (personnel from their own organization, agents, external companies, independent professionals, other entities...) in order to develop a service, project or activity.

Cultural managers should ensure that the contracting of external services or employees is undertaken according to processes that guarantee transparency; they should be publicized and open to free competitive participation, either in the form of a competition (public or restricted), through internal promotion or selection carried out by specialized companies, among others.

However, in the cultural sector, there is often a need to contract singular and unique professionals such as artists, intellectuals or cultural managers with outstanding careers. Direct hiring in the case of specific profiles can be an option as long as the specific profile of the candidate (professional qualifications and adequacy of the individual's profile) is evident and demonstrable.

8.2. Procedure for the Selection of Personnel

The contracting of personnel should be carried out using an evaluation of the candidates' profiles and suitable skills, in order to guarantee that the candidate who is selected will be able to attain the established professional objectives. These are the fundamental aspects involved in the selection of personnel:

- a) Call for applicants and/or the announcement of the selection process
- b) Announcement of the type of selection process and the list of requirements
- c) Publication of the characteristics of the position (physical lo-

cation and means available)

d) Definition of the required profile, competencies and functions

e) Specifications concerning the type of contract, the duration of the contract, salary, and payment conditions

In order to guarantee a fair and objective selection, the process will be commissioned to an external company dedicated to the selection of personnel, or renowned external specialists will be called in to sit on the evaluation committee.

It must be ensured that the personnel hired in the end possess the necessary qualifications and skills.

8.3. Contracting Public Service Managers

One of the functions carried out by a cultural manager is determining or proposing the method to be used in the selection process, and the hiring conditions to be followed, for executive positions in cultural management. They may also be called upon to be a part of a selection committee. On the other hand, given the importance of the figure of the executive cultural manager, the need to seek out transparent processes for selecting these professional profiles is widespread. The following are important considerations:

a) The executives will be selected according to their merits and capabilities.

b) We recommend carrying out a selection process. Although the selection process may take different forms according to the circumstances governing each case (public, restricted, or open competition; internal promotion; selection using the services of a specialized company; with publicity or without), we support the option of an open competition with publicity as the best selection practice, because it guarantees equal opportunities for all.

c) The executive will be evaluated based on the adequacy of his or her profile and the requirements provided by the contracting body.

d) The contractual relationship will be a management contract for a specified time period. The duration of the contract will have to be long enough to allow for fulfillment of the programming objectives. Contracts may then be extended to encompass a new period and a new program, as long as the evaluation of the tasks that have been carried out is positive.

e) The management contract will define the objectives, the assessment indicators, the results that should be achieved, the conditions, the means that will be available and the execution period. A more detailed description of the management contract can be found in section 6.2.2.

f) The director will present a report every year, which will serve as the basis for the evaluation. He or she will also present a report whenever it is required by the contracting body. Before finalizing the contract, he or she should present a global brief for the entire period.

g) The evaluations should be carried out by a monitoring committee, which will issue an evaluation report addressed to the contracting body. Experts who are external to the organization should participate in the evaluation. They will evaluate the degree to which the goals that are indicated in the management contract have been fulfilled. If the evaluation should be negative, the contracting body may request the adoption of corrective measures or, if necessary, they may rescind the contract for breach of contract.

h) If the contract should be ended, a new selection process will be undertaken to fill the position. The exiting director will ensure the adequate operation of the service until the incorporation of the new director and he or she will keep the service up and running so that it can be properly transferred during a minimum time period.

8.4. Sufficient, Complete and Stable Teams

Sufficient, complete and stable teams should be developed in order to ensure the proper operation of projects, services and spaces. We recognize the need for multi-faceted natures in individual cultural management or in the context of small teams in

the same way that specialization on the part of cultural managers is valued in the context of complex professional teams.

8.5. Practices in Training and Volunteering

The collaboration of students in training and interns should have an educational purpose and the people who work as volunteers should always carry out complementary tasks. In both cases, the functions and tasks that are assigned cannot be equivalent to those of a professional nor can they serve as the substitute for an employee position. Interns may receive economic compensation to cover expenses and transportation. Students in training may receive remuneration in the form of a contribution toward the costs of education. Providing voluntary support cannot be compensated economically. In any case, the relationship between both parties will be established via a written contract or work-study agreement.

8.6. Incompatibilities

The exercise of a profession in public institutions is considered incompatible with the development of private activities or personal activities which might constitute a conflict of interest or which could adversely affect the obligations of the public place. Professionals must demonstrate the impartiality of their actions by showing absolute dedication to the functions that they have been assigned, and which should not be affected by other activities or interests, so that they may serve the general interests of the public with maximum efficiency and objectivity.

Contracting activities must be carried out with objectivity and neutrality, based solely on an interest in the project which is being represented and removed from any personal, family-related, corporate, or client-related circumstances, etc. In the case of a conflict of interests, the professional will decline to take part in the hiring process.

Favorable treatment that implies privileges or unjustified advantages will not be accepted, either for one's self or for one's family, from the persons or companies related to the hiring processes or in the decision-making involved in those processes.

Both in the public sector and the private sector it is considered bad practice to accept commissions, positions and functions that one is unable to carry out with the dedication and professionalism that they require and which would take one's attention or dedication away from one's principal occupation.

8.7. Health and Safety in the Workplace

Work stations will comply with the corresponding conditions concerning safety, health and job hazards. Cultural managers should be concerned with ensuring the appropriate working conditions for their working teams and their external collaborators. To that effect, they should inform artists, authors or performers of the existing risks and working conditions in keeping with current legislation.

8.8. Rights and Obligations with Respect to Training

Professionals in the field of cultural management must contribute to the normalization and professionalization of the cultural sector. That is why it is very important for cultural managers and their teams to be adequately trained in order to be able to evaluate the dimension of a project, its viability and the complexity of its production and implementation, among other things.

Cultural practices are in a constant state of evolution and, in parallel, they transform our profession. As a result, aside from initial training, a process of continuing education will be entirely necessary.

The cultural managers with the most knowledge, experience and skills contribute to the education of their collaborators, colleagues or other members of their working teams. This should be undertaken with a spirit of professionalism, respect and acceptance on both sides.

Professionals should maintain a permanent critical perspective and a reflective attitude toward their own endeavors in order to guarantee a constant process of improvement.

8.9. Right to an Acceptable Work-Life Balance

Measures should be adopted to encourage a healthy work-life balance for professionals in the cultural sector. The activities of various professionals in the cultural sector must necessarily be undertaken at night or on holidays, especially in the areas of the performing arts or music.

Cultural managers are responsible for offering professionals in the cultural sector (themselves included) ways of creating balance or compensating the non-conventional schedules they keep in order to carry out the services or activities that require it.

09/ Economic Management

9.1. Principles of Economy and Balance

Planning for cultural services and cultural spaces must always take economic criteria into account in proportion to the physical space, the number of services and the material and human resources. As such, the budget will be the basic, necessary tool in the implementation of the services.

The economic management must be planned out in order to include a provision for income and expenses, in order to ensure a balance between resources, activities and services.

Cultural managers should make sure that there is a proportional relationship between the economic resources used in carrying out a cultural or artistic activity and the final result or impact obtained.

Cultural managers will need to carry out an economic viability study for all projects, in order to be aware of the information concerning the implications that their full development will imply and the resources that will be necessary.

Once the project has been carried out or the service has been provided, we recommend carrying out a study on the economic impact to allow for an evaluation of the importance and the profitability of each project or cultural service.

Cultural managers have to guarantee that the expenses incurred are equal to or inferior to the available economic resources.

9.2. Financing Cultural Projects

Cultural managers should also deal with looking for new resources with the goal of guaranteeing the continuity and the improvement of cultural projects. Diversifying the sources of funding is a medium-term strategy in order to avoid being economically dependent on one sole source.

Long-term goals are viability and sustainability. Investment cri-

teria should be defined and should be evaluated with the long-term in mind. The possibilities for externalization and internalization should be evaluated according to clear criteria and the most practical economic option should be opted for.

Should a project or an activity generate revenue, it should be encouraged, though it should not cause a decrease in social or educational endeavors or in the creation of new audiences; on the other hand, new ways of creating complementary income should be sought out, for example through the rental of spaces and the provision of services, among other things.

There should be continued research into the suitability of all types of subsidies (EU, national, regional, local) and collaborations that include a balanced interchange.

Expenses should be kept to a minimum, either through savings in means or by seeking out more advantageous prices when making purchases, which will imply a close management of purchasing and contracting. Costs must be optimized by assessing the processes that increase effectiveness and productivity, thus reducing costs. Attention should be paid to fixed expenses that do not provide added value to the cultural project, but which are indispensable--though also controllable, like cleaning and supplies.

9.3. Sponsors

Possible collaborations involving sponsorship should be sought out, focusing on those sectors and companies that may be interested, without falling into the trap of easy money in exchange for associating a cultural project with a dubious brand (which would damage the image and credibility of the project and the individuals working on it).

The research on funding stemming from sponsorships requires precise planning, specific marketing and communication techniques and a strict system of control. The basic principles in collecting funds are diversification, complicity, networks, opportunity, transparency, ethics and trust. It is important to keep in mind that, in all cases, sponsors are interested in those projects that can provide visibility, provide guarantees and generate so-

cial and economic value (in keeping with their parameters of analysis). In some cases, sponsors will be interested in innovative projects that create new ways of understanding culture and society. Transparency must be present in all projects, especially from the standpoint of accounting, since there is a question of administering funds that are provided by a third party.

Should the request for sponsorship be accepted, the conditions will be established in a written contract, including the execution period and the monitoring system.

Work should be done so that companies that incorporate programs in the context of Corporate Social Responsibility (CSR) can include cultural elements and cultural content in those programs.

9.4. Economic Rights for Managers, Artists and Creators

Economic and other considerations must be established in a fair manner and agreed upon by both parties.

Cultural managers will accept the fees (in return for services rendered, which does not mean a fixed salary) that are established and agreed upon, either based on exploitation rights or as remuneration for the work that they have carried out.

Cultural managers are advised to publish the fees that they use to pay for the services of professionals in culture and the arts.

The costs of the services, productions and research that are commissioned must also be taken into account. When a service or a space commissions a newly created work, it must cover the total cost and, if they settle on the adaptation of an existing work, the costs of the adaptation. When the creation of a presentation requires preparation involving research or investigation, the space or agent doing the contracting will also cover the costs corresponding to that part of the work. In any case, if it is believed that a work may go on to generate a profit, the producing agent and the author can come to an agreement from the outset concerning the conditions for a return on the initial investment after the concrete economic results have been obtained.

Cultural managers in the public sector are dedicated to fomenting the public good. Cultural managers who work in the context of associations or who exercise their profession in foundations act in a non-profit capacity to promote the goals of the associations or foundations that they represent. In these two cases, the cultural manager's work will be compensated through specific fees as stipulated by a contract. Only cultural managers who work in the private sector will benefit from business profits, even if their companies or businesses serve a public purpose.

It should be noted that the practice of one manager charging commissions based on the work of another is anti-professional in all cases; however, the division of fees is acceptable when it also implies a division of the services rendered between the two parties.

9.5. Calculating Fees

The contracting will be carried out based on normalized salaries. To that end, comparative studies will be undertaken to look into professional services with equivalent fees in order to determine the corresponding budgetary allocations.

The following elements will be considered in the calculation of fees: the hours of dedication; the complexity of the work; the cost of materials; the novelty, difficulty or originality of the work; the comparative study of fees corresponding to similar work in both the private and public sectors; the seniority of the client; whether the project is repetitive, and how much experience is contributed.

Cultural managers should avoid fees that overestimate or undervalue the work that they carry out.

10/ The Aquisition and Contracting of Works, Services and Supplies

10.1. General Considerations in the Public and Private Sectors

Cultural managers will have to acquire goods and contract the labor and services of external companies in order to carry out their activities. The relationship with any professional that is hired must be based on reciprocity and co-responsibility, with the understanding that each party should know his or her rights and obligations. Although verbal agreements are respectable, we highly recommend opting for a written contract. Once the contract for the provision of services has been established and formalized between a cultural manager and a client, whether it is oral or written, neither of the two parties can cancel it unilaterally without a previous agreement. Both in the public sector¹ and the private sector, it is considered best practice to evaluate at least three proposals before choosing the most appropriate one.

10.2. Public Contracting

Contracting undertaken by the public sector is regulated by the valid contract laws for the public sector in each territory, which serve the purpose of guaranteeing that the contracts maintain the principles of open access to bidding processes, publicity and transparency in the proceedings.

Generally, these laws provide definitions for different types of contracts according to their object:

- Administrative (for the concession of public works, for the management of public services involving supplies, for services, for collaborations within the public sector)
- Private (subscriptions, productions, etc.)

- Mixed (when different concepts are combined, such as supplies and installation or work, giving prevalence to the most expensive concept)

The most common types of procedures for awarding contracts are: minor contract, open, restricted, negotiated (with publicity or without) and the competitive dialogue (the amount of the contract is understood as encompassing the entire duration of the contract, including possible extensions).

a) Minor contract: works and supplies for a small economic quantity.

b) Negotiated: works, supplies and services for a mid-range economic quantity.

c) Open or restricted (whichever is most appropriate): works, supplies and services for a large economic quantity. Any interested company may submit a proposal in an open procedure, whereas a restricted procedure will only accept proposals from those companies that have been previously selected by the administration. The administration may use an open or a restricted procedure according to its needs.

d) Open or restricted for contracts subject to harmonized regulation: because of the contracting body, the type or the quantity, these contracts are regulated by the respective state regulations and are subject to the EU regulations contained in Directive 2004/18/CE and they must be published in the BOE and the DOUE.

e) Negotiated procedure: when the awarding of the contract falls to the tenderer that has been justifiably selected, the contract is negotiated and discussed and at least 3 companies that are qualified to assume the contract are considered.

The negotiated procedure may be held with publicity or without publicity, depending on the amount of the contract or in a case where the proposals received in open procedures have been irregular or when the overall amount of the contract cannot be determined.

Awarding Procedures:

- Direct: only with minor contracts.

- Negotiated: the contract is awarded in a justified manner after having consulted various candidates and having negotiated the contract conditions with them. All candidates must receive equal treatment at all times during the negotiation process.

- Without publicity: the contracting body consults with (asks for an offer from) a minimum of 3 possible candidates who are qualified to assume the contract.

- With publicity: there is a public call for proposals and any candidate may participate. It can also be employed when the proposals received in open procedures have been irregular or when the overall amount of the contract cannot be determined.

- Public: the competition is announced publicly.

- Open: any company has the opportunity to present a proposal

- Restricted: only those tenderers who have been selected from within the participants in the public competition may present proposals.

The collaboration contracts between the public sector and the private sector (for whatever amount), along with any project contract worth more than € 5.150.000 and any other kind worth more than € 206.000, are regulated, in addition to the respective territorial laws, by the EU regulations contained in the Directive 2004/18/CE (harmonized regulation) and must be published in the BOE and the DOUE.

- Competitive Dialogue: this procedure is indicated for especially complex procedures, with the purpose of closely determining the object of the contract. After a public announcement of an call for submissions including the requirements, a dialogue is opened with a series of selected candidates in

¹ Public sector: administration, proper; independent organizations and public business entities tied in with the public sector; consortiums, corporations and foundations with direct or indirect participation in the public sector in excess of 50%.

order to develop solutions that will serve as the basis for the presentation of proposals. Collaboration contracts in both the public and private sector will always be awarded using this procedure.

10.3. Specifications of Technical Requirements

The document must clearly define the conditions and the objectives that are to be achieved through the external contract. In a large part, these specifications are the basis of the contract between the administration and the private company through a public tendering process. A cultural manager will often be involved in the definition of the specifications. Setting aside the type of contract, since there are a number of options according to circumstances and preferences, the following is a list of clauses that the specifications should include. They are classified into two areas: the administrative clauses inherent to any contract--they will be provided by the administration's secretarial and legal services-- and the technical clauses, which are the ones that will necessarily be put together by the cultural manager in question:

a) Administrative clauses: legal nature of the contract, the procedure for its awarding, administrative documentation, contracting committee, opening of tenders, guarantees, formalizing the contract, breaches, penalties, extinction, financial and employment obligations, etc.)

b) Technical clauses: object of the contract, objectives, place (if applicable), management model, duration of the contract, services that are to be provided, programming (quantative minimums), rights and obligations of the concessionary, obligations of the administration, personnel functions, audiences, schedules, spaces and installations, inventory of resources, investment on the part of the concessionary, assignation of the assets from the concession, price of the contract, taxes, method of payment, sources of funding, capacity for carrying out the project, evaluation criteria, monitoring process, control and evaluation and finalization of the contract.

11/ Contracts

It is necessary and useful to establish contracts to regulate the conditions and agreements involved in the professional relationship between the contracting body—whether it is the public administration, a company, or an association—and the artist, author, performer, cultural agent, company, etc.

It is strongly recommended that the contract be formalized in writing in order to clearly and precisely specify the agreements to be entered into and the requirements for their fulfillment, and in order to assure a comfortable legal relationship that will be free from litigation or extrajudicial conflicts. If a conflict cannot be resolved and there is only a verbal accord to represent the desires of both parties, neither of their interests will have sufficient legal security, seeing as it will be very difficult to prove the fulfillment of the established agreement.

The written formality can take the form of a public contract (signed by the parties in the presence of a public official, like a notary) or a private contract (created with only the participation of the interested parties). A private contract can later be notarized if one of the parties should request it.

Both types of contracts are valid, but it should be noted that the public contract has more legal weight because it is made effective in the presence of an official who certifies its authenticity, although notarization is not an essential condition in achieving the sought-after legal security.

The contract will lay out the details of the accords so that the interchange will be fair and favorable for all parties involved. It is the responsibility of those parties who sign the contract to respect the budget limitations and the time-frame that are agreed upon, to guarantee the quality of the work that has been accorded and to maintain a professional attitude with all of the collaborators brought in by both parties.

A cultural manager may act as contracting party or as a contractor. The recommendations in this section are applicable

to both situations. The contracts that are formalized cannot violate the ethic principles laid out in this Guide.

All contracts should contain:

- A Header

- The date and place of the signature of the contract. This is not an essential requirement for the legal validity of a contract, but it is recommended, given that there may easily be an established agreement, a circumstance or a legal precept which refers to one of these dates as a basis for its application.

- Information on all parties. The precise information corresponding to all parties who will be signing the contract must be clearly included: first and last names, whether either of the parties is a minor, marital status (optional), profession (optional), address and ID/passport number for a natural person.

In the case of a legal person, information must be provided on the natural person acting as a representative, with emphasis on their address and the position they hold, along with the legal person's information (business name, trade name, date of establishment, tax number, registration information, etc.).

In the case of a natural person acting as a representative for a business entity or a third party, information detailing the power by virtue of which they are appearing must be included and it should be confirmed that the natural person in question actually possesses the capacity of acting on behalf of the legal person. As such, it is absolutely necessary that the powers transferred to the natural person who is acting in as a representative endow him or her with sufficient capabilities to act on the behalf of the party that he or she is representing.

It is advisable to cross-check the information on the signers which is included in the contract heading against the original documents.

- Expository section and manifestations The parties must recognize their mutual legal capacity for signing the contract,

and compile a section including the necessary information to allow for a proper interpretation of the contract.

Here, the parties make their declarations of intentions which consist in fixing a series of antecedents in reference to the document they are about to sign and which will help us to interpret it, and they assert their mutual interest in signing the contract.

-Operational section This is the section where all agreements and accords are established by both parties, based on independent volition. Here, the parties will determine:

1. The object of the contract. It is essential to determine the object of the contract, which will cover a cultural activity, service or project.
2. The execution period or the duration of the contract.
3. The economic conditions. This includes the budget allocated for the activity and its funding, professional fees and a definition of the payment method and schedule.
4. The conditions or the technical project. Description of the work to be carried out, the objectives, locations, infrastructure provided by each party, the phases, working plan and expected results.
5. The details of the technical conditions for the artistic or technical work.
6. A definition of the working spaces.
7. The support from other companies or professionals which will be contracted.
8. The security and custody measures and working materials.
9. The copyright payment method, in the case of an artistic commission. The type of exploitation rights included in the contract will be precisely determined.
10. The place, time and period for carrying out the work, and

the procedure that will be following in case it is postponed.

11. The distribution that is expected to be carried out.

12. The evaluation system.



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