

Contractors can use pre-start termination clauses if a client cancels a contract

Contractors can introduce a pre-start termination clause to protect them from situations where the client has agreed to the contract but then cancels it before it even starts.

In the event that a contractor has turned down other potentially lucrative contracts in order to work on the cancelled one, a pre-start termination clause could provide some compensation for the 'opportunity cost' they have suffered.

If a client has cancelled projects at short notice before, or has a reputation in the contracting marketplace for changing contract terms at the last minute, contractors should ensure there is some provision for change in the contract. And if a client or agency is unhappy with the concept of a cancellation charge, a pre-start termination clause can be a bargaining tool to gain a concession during negotiations in another area, such as contract rates.

Every new contract is a potential 'opportunity cost'

When a contractor makes a decision about a contract, there is a potential cost of choosing a first opportunity over a second if the second would have left the contractor ultimately better off.

Every new contract opportunity is a potential 'opportunity cost' for contractors. If a contractor takes contract A at one rate for a given duration, will it turn out to be a better or worse option than contract B for perhaps a lower rate but longer duration?

For example, if a contractor turned down a three-month contract at £350 per day worth about £22,050 (21 days per month multiplied by £350 and again by three) for a more generous contract which was then cancelled by the client before it started, the opportunity cost to the contractor is £22,050.

Cancellation fees are normal business practice

Businesses and consumers are charged cancellation fees for a many goods and services. There is no reason why a contractor's services should be any different.

If a contractor had booked a place on a training course and tries to cancel the day before the course starts, they will almost certainly find a cancellation policy in the booking paperwork contract insisting that the course be paid for in full.

Therefore, if a client cancels a contract a couple of days before it is due to start, it is only reasonable for the contractor to negotiate into their contract a pre-start termination clause that allows for what is, in effect, a cancellation fee.

The fee would compensate the contractor in part for the opportunity cost of any contracts they turned down, and as a contribution for the time it will take for the contractor to find a replacement contract.

Negotiating a pre-start termination clause

Contractors should start by suggesting a reasonable pre-start termination clause, whereby the client will pay the contractor a contract cancellation charge based on a number of week's fees at the original contract rate.

Starting out with four weeks would not be unreasonable, although contractors should allow for the client or agency to negotiate down the cancellation period, or even for them trying to have the pre-start termination clause removed altogether.

But if the client has cancelled projects at short notice previously and represents a risk of cancellation this time, contractors should stick to their guns and get a cancellation payment in the contract before they sign it.

And contractors considering several contract opportunities simultaneously should also always ensure that they have signed the contract for their preferred option before rejecting the remainder. That way, if something does go wrong, they have one or more fall-back positions.

Published: Tuesday, January 31, 2012

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