

Negotiations with contractors - guide for firms hiring contractors

Once a client has made a decision to [hire a contractor](#), usually after an [interview](#), then the next stage in the process is negotiating with the contractor, either directly or through a recruitment agency. This process is likely to cover rates and any specific terms in the contract the client or contractor would like to be included.

Negotiating with a contractor is not like negotiating with a potential permanent employee. Contractors are like any other business supplier of services, so they enjoy no staff benefits, perks and the like to use as bargaining tools in a negotiation. The primary tasks of the negotiation are to agree what services the contractor is going to provide, the length of the contract and the contractor's hourly or daily rates.

In many client organisations, the procurement function can become involved in negotiations with contractors. This can cause issues for the client project manager, as procurement teams are sometimes only focused on cost and not value. So, it is not uncommon for contractor negotiations to fail when procurement tries to drive the contractor's rates down.

If using an [agency to hire contractors](#), the client may already know the range of rates they are likely to have to pay, and the negotiation is direct with the recruitment agent, who will in turn be negotiating with the contractor.

But when [hiring contractors directly](#), end-user clients will have to negotiate with their prospective contractors and should be aware of the differences between dealing with contractors and employees.

Negotiating - the agency route

When using an agency, the client will never actually contract direct with the contractor, so all the finer points of the negotiation over rates and contractual terms are in the hands of the agent.

Typically, the client chooses an agency and agrees terms and conditions that will apply to all contractors going forward. The agency finds the contractors and sends a list of CVs with contractor rates plus the agency margin, so the client knows at interview approximately how much each contractor will charge.

Once the interviews are complete and the client has chosen the contractor they want, they will call the agent with their decision. It's then up to the agent to negotiate with the contractor and agree final rates and contractual terms, plus complete the final paperwork to be signed by all parties.

At this point, the contractor knows they have the contract in the bag. Naturally, this puts them in a stronger negotiating position, although it does not mean that the client/agency has to roll over and give the contractor whatever they ask!

The only time a client might become involved is if the contractor requests a higher rate than they initially discussed with the agent. Sometimes the agent will absorb the increase in their margin, but the agent might talk to the client about increasing what the client is prepared to pay.

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Negotiations when hiring direct

When the client is hiring and contracting direct with the contractor, they are responsible for the final negotiations. The client will have sourced CVs with rates, interviewed and selected the contractor they want to hire.

After interview, the next stage is usually for the client project manager to call the contractor and offer them the contract. By doing so, even over the phone, the client has legally formed a contract and technically cannot back out.

The client will negotiate direct with the contractor, discuss and agree rates and finalise the contractual terms. The contractor will send the contract to the client, after a check by their contractor lawyer, as they are the service provider.

Once the contracts have been finalised the contractor will send the final version to the client for signature and the contract will start as agreed.

Contracts

Once the contractor has accepted the role and agreed a rate, the next step is for the contracts to be signed. Clients will be sent a contract via the agency or the contractor if they are dealing directly. This can also be when a procurement department might step in, insisting that the contractors rates must be negotiated down.

For agency sourced contractors clients should expect the contractor to get the contract checked by a legal adviser who is a specialist in contractor affairs and [IR35](#). It is quite normal for the contractor to ask for changes to the contract, and for HR/finance/procurement to insist on sticking rigidly to the original

contract they've agreed with the agency.

This is another danger point where the client could lose the contractor they really want, because their colleagues won't negotiate contractual terms, so it is up to the client to champion their contractor internally. Generally, if a contractor asks for specific clause to avoid IR35 it means any subsequent claim for employment rights, which is what client organisations really fear, are likely to be weakened. So it is in both sides' interests to be flexible over the wording of contracts.

It sounds obvious, but the client would be wise keep basic notes and records of the conversations they have with the contractor during the negotiation stage, as well as any email or other correspondence. Alongside the final signed contract, such documentation can prove very useful in case there are ever any disputes with the contractor.

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