How not to get paid

Peter Bowbrick

Elsewhere I showed how easy it was to end up being paid a third to a half less than the fee you thought you had negotiated for a freelance contract. This week I am going to identify some of the traps which can leave you with nothing at all.

I am quite happy to take all the risks of a consultancy project and do all the work, as long as I get 100% of the fee. When I work as a freelancer I get only part of the fees, so I do not expect to bear all the risks.

Reputable consultancy firms employ you for your labour. You undertake to do the work and to do it professionally, and if you do, you are entitled to be paid. They take all the other risks, and charge 50% of the total fee to cover this. When they do not take the risks, but merely identify a freelance consultant for a job, they charge a small ‘finder’s fee’ of perhaps 10%.

Obviously, when there is a consultancy team of three to thirty people, they cannot all be held responsible for any failure. It is the firm‘s responsibility to assemble a team of people competent to do the job, and the firm should take the responsibility rather than the other freelance consultants.

Even when there is only one consultant on the project, the firm provides other team members. For example, the job is sold to the client by another team member, a salesman. The consultant is in a very difficult position if the salesman has given the client a completely wrong idea of what would be done and how it would be done.

Inevitably, too, some clients are difficult. They may have very odd views. There may be cultural differences which prevent the contract working - it is not easy to explain the free market in the Former Soviet Union for instance. It may be unethical to do what the client wants. Some clients will reject a report, not because it is bad, but as a way of avoiding payment. Some just do not pay, because they can get away with it, or because they are bankrupt.

One or two unscrupulous consultancy firms try to make the freelance consultant carry all this risk. They put in the contract that payment will only be made in stages after the inception report, the interim reports, the draft final report and the final reports are accepted. They may say that payment will only be made after the final report has been accepted and paid for. They may ask the consultant to pay for any time spent in rewriting the report. Effectively, they are asking the consultant to carry all the risk, even when he is only one of a team.

This approach puts a moral hazard on the consultancy firm's salespeople. They get their commission if they sell, and they lose little or nothing if the project fails. There is a strong incentive for them to go for high risk contracts that reputable companies turn down. They can promise the client the earth, knowing that they do not suffer if the freelance consultant fails to deliver. They can promise anything the client wants, even if it is unethical, or if it is not what the client needs. They can sell it to an obviously unstable client. They will clinch the deal even if they believe that it is 2:1 that the client will not pay up.

It is symptomatic that one firm that offered me such a contract also paid less than the going subsistence rate *and* asked me to pay for my taxis, typing, paper and interpreters out of it!

Occasionally for a very short term job where you are the only consultant, it may be alright to agree to be paid on acceptance of the final report. Even here, though, it is normal to be paid two thirds of the final fee on submission.

WHAT IF THEY TRY IT ON?

What do you do if you have negotiated a contract in good faith and they send you a contract with all the tricks I have described? In this case you should negotiate for a standard consultancy contract. You are in a strong bargaining position. They have the job and have signed the contract with the client, so they must deliver. It will not be easy for them to get a new consultant acceptable to the client at the last moment - especially if they are looking for someone else who will accept these terms. They know what the standard contract terms for the rest of the industry are, and they should be willing to pay.

If they will not budge, ask yourself ‘Why not?’ The implication is that they regularly use the escape clauses to the detriment of freelance consultants. It suggests that they use selling techniques that are dubious or downright dishonest. If reputable companies can prosper without this kind of contract, why can’t they?