WHAT TO DO IF YOUR CONTRACT IS TERMINATED FOR CONVENIENCE

READ THE CONTRACT

If an owner has indicated an intention to terminate you for convenience, it is important to read the contract immediately. Termination for convenience is allowable only if expressly provided for in the contract, and the nature of your remedy and recovery is dictated by the contract’s terms. Most contracts, including documents promulgated by The American Institute of Architects (AIA), allow owners to terminate contractors for convenience at any time without cause. If an owner chooses, he or she usually may require you to assign to the owner any open or pending subcontracts or purchase orders relating to the work. Most contracts also contain a general set of directions to be followed in the event of a termination for convenience. Typically, you are required to cease roofing operations as directed in the notice of termination for convenience; to take any actions necessary, or that the owner may direct, to protect and preserve the work; and to terminate existing subcontracts and purchase orders unless otherwise directed.

In addition to setting forth your obligations in the event of a termination for convenience, the contract should set forth your rights in the event of a termination for convenience. Generally, you only are entitled to receive payment for the work executed, including properly stored materials, and for costs incurred as a result of the termination for convenience, such as demobilization costs. Any costs incurred as a result of the termination for convenience should be carefully recorded so complete backup documentation can be forwarded to the owner on request. Although
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the standard AIA documents also entitle a party terminated for convenience to reasonable overhead and profit on the work not executed, it is common for an owner who has promulgated his or her own form or modified the AIA documents to expressly exclude recovery for such damages. Unless overhead and profit on work not executed is expressly identified as recoverable in the termination for convenience provision, you generally are not entitled to reimbursement for those damages.

The same also applies if you have contracted with a general contractor rather than an owner. If a general contractor’s contract is terminated for convenience, the owner may require the subcontract with the roofing contractor to be terminated for convenience or assigned to the owner. Damages and costs recoverable by the roofing contractor from the general contractor typically mirror the damages and costs recoverable by the general contractor from the owner.

MAINTAIN CLOSE CONTACT WITH THE OTHER PARTY

Between the time a notice of termination for convenience is received and the time you complete demobilization, your primary duty is to follow instructions of the terminating party and to take whatever actions are necessary to protect and preserve the work. It is important to keep lines of communication with the terminating party open so that they are aware of your intentions and progress. You should confirm via phone the instruction to immediately terminate all subcontracts and purchase orders except those expressly identified in the notice of termination for convenience and confirm that conversation in writing. Procedures for protecting the work should also be discussed at this time. The terminating party should be frequently and expeditiously updated regarding the status of assignments of contracts and purchase orders,
protection procedures and costs you incur.

**WHAT TO DO IF YOUR CONTRACT DOES NOT ADDRESS THE ISSUE OF TERMINATION FOR CONVENIENCE**

If a contract does not specifically allow for termination for convenience, any effort to terminate for convenience is typically a breach of contract, entitling you to a full slate of remedies under the law. You should seek to contact the terminating party, state that you reject the termination for convenience because of a lack of authority and request that the terminating party provide proof of authority under the contract to terminate for convenience. If the party is not able to provide such proof, you should advise that such termination is a breach of contract, and rejection of the termination should be confirmed in writing. A breach of contract usually entitles you to damages commensurate with your expectations regarding the project: the profit you would have made, less the savings realized by not being forced to perform the work. An offer by the terminating party to pay for overhead and profit on the work not performed, in addition to payment for the work executed and reasonable costs incurred as a result of the termination, should usually be accepted because remedy at law for a breach of contract is unlikely to exceed such a sum even before accounting for court costs and attorneys’ fees. Any lesser offer is at your discretion to accept.

**CONCLUSION**

Termination for convenience is, understandably, a frustrating occurrence. Although you have done nothing wrong, the work is abruptly stopped, and a job that may have been relied on disappears. Unfortunately, assuming the contract allows for termination for convenience, there is
simply nothing that can be done once an owner has decided to invoke this right. The best course of action, after verifying contractual authority to exercise the remedy, is to make your best effort to wrap up the job promptly, smoothly and efficiently so you can be paid as quickly as possible.