

Managing Contracting Risk: How Do Your Practices Stack Up?



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The expression “[nothing is certain except death and taxes](#),” is attributed to Benjamin Franklin. This week, in between reading a terrific book on [The Swedish Art of Aging Exuberantly](#), I’m pondering a third inevitability for nonprofit organizations: contracting snafus.

If your organization is like every other we’ve advised and supported over the years, you have been challenged by a contract with unfavorable terms. Or walked away from a contract with terms you couldn’t live with. Or discovered, at the last possible minute, that your understanding of a key contract term differed from the understanding of the other party to the contract.

Using the term “risk” to refer to a future, uncertain event or outcome, my list of top contracting risks includes:

- Executing a contract with requirements or expectations you don’t understand OR can’t possibly satisfy
- Cloaking staff in your nonprofit with “apparent” contracting authority
- Changed circumstances that make contract fulfillment impossible or impractical (e.g., venue contracts during COVID-19)
- Executing a contract before you have completed due diligence with a new vendor

All of these risks can be avoided with sound contracting practices. The above risks infer some of the tips we share year-round with clients and Affiliate Members:

1. Never sign a contract with terms you don’t understand; ask the other party to explain anything that is unclear and try to reach a compromise on asks that are impractical.
2. Make it absolutely clear to staff in your nonprofit who has the authority to sign contracts binding your nonprofit, and who does not.
3. Include an ‘escape hatch’ in every contract; wherever possible, build in flexibility to cancel the contract if circumstances make it extremely difficult, impractical, or unwise to proceed
4. Complete all due diligence (including reference-checking!) on new vendors before contract signing.