Survey Says: Contracting Risk Survey Insights

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You've just accepted a new role as a nonprofit CEO or risk leader. You quickly realize that, before you arrived, no one was formally assigned responsibility for reviewing contracts. When issues arise with vendors, you find incomplete files and partially executed agreements.

That's just one of the stories we heard when we surveyed our audience to gauge their experiences around contracting procedures. Nonprofit leaders shared their most difficult lessons learned and recommended game-changing contracting procedures that can make a difference for your organization.

Contracting risk is a major issue for nonprofits, as we wrote in our RISK eNews two weeks ago. While our survey has a small sample size, it provides an informal opportunity to benchmark your organization against our data.

Representatives from 46 nonprofits responded to our survey. Nonprofit sizes represented ranged from less than $10 million in annual revenue to more than $100 million. 64% of respondents were from nonprofits with annual revenues under $50 Million, while 36% of respondents were from large organizations, with annual revenues in excess of $50 Million.

The majority of respondents, 66 percent, have no in-house attorney to review contracts. But a similar number, just under two-thirds of respondents, have a written policy or procedure that governs how they handle contracts. The most common element of those written policies or procedures is language clarifying who is authorized to execute contracts. Contracting policies also frequently designate contract review by a non-attorney staff member and specify the level of review based on the contract size or scope. Only 22% of organizations with a contracting procedure require that all contract signers participate in contract process training.

About 17 percent of respondents review and revisit standard contract language annually, 52 percent review it periodically, 19 percent never review it, and 12 percent review it on some other schedule.

More than 80 percent of respondents don't use a third-party vendor for contract review and management.

Practical Steps to Manage Contract Risk

We asked respondents if they would strongly recommend any of their contracting procedures to others. One nonprofit leader shared simple, emphatic advice: "Clearly define who has authority to sign, and adopt a review

process by appropriate staff." Another leader said their nonprofit has benefited from a set of templates with color coding and comments that show which contract provisions are negotiable and which aren't.

Another organization recommends a standardized checklist for vetting vendors. (NRMC has received requests on this topic recently and is working on a resource for that, so stay tuned!) Another nonprofit leader recommended that organizations learn to explain insurance requirements to vendors and share why those requirements vary based on the scope of work. Yet another respondent offered two pieces of sage advice that we heartily endorse: "Limit who is/are authorized to sign contracts. Vet all contractors, including references, to confirm they have the ability to do the work they were contracted to do."

What Next? Plans to Strengthen Contracting Processes

We asked respondents how they plan to improve their contracting programs. Some of the plans shared by survey takers included:

- Documenting contract policies and procedures
- Formalizing a contract review procedure and providing tools for staff who are involved
- Bringing our leadership team together to identify what we need in terms of a formal process
- Improving our process for vetting vendors
- Implementing a structure that defines who can sign contracts based on contract levels
- Clarifying when and how to obtain and provide a Certificate of Insurance and agree to list another organization as an Additional Insured
- Tracking vendor contracts through a Purchase Order system to ensure that contracts are in place before any invoices are paid
- Expanding our contracting team from two to four people

Contracting risk is an exposure shared by all nonprofits. Building structure, and identifying ways to improve and document processes are well worth the time and effort involved. And the best news is that it's never too late to make progress to close the gaps and build greater resilience against contract risk.

Rachel Sams is a Consultant and Staff Writer at the Nonprofit Risk Management Center. Her biggest lesson learned on this topic: always read the fine print. Reach out to her with your questions or insights about nonprofit contracting issues at rachel@nonprofitrisk.org or 505.456.4045.