Why & How to Manage Contracts with Your Vendors

Bring a keen eye to your contracts to avoid lawsuits, extra costs, and other pitfalls.

By Robert Rohr

Your organization probably has a variety of vendors, and their costs may take quite a large chunk out of your budget. Consider the price you pay, for instance, for office supplies, software, marketing, telecommunications, utilities, waste management, rent, training, and insurance, to name just a few of the possible vendors who provide products and services to your organization. You can save a great deal of money by paying attention to your contracts with these suppliers.

You Have the Power

As a relatively small organization, you may think you have little negotiating room over contract terms with your vendors. But there are ways to increase your bargaining power. One is to look for strong alternatives. Another is to show vendors how it's to their advantage to partner with your organization. Perhaps the vendor is trying to enter the nonprofit market and can use your organization as an entry point. You can tout your organization's strengths (for example, you can show that your organization is growing, has clean audits, and is financially healthy). With such arguments, you may be able to get a lower price, better terms, or other advantages.

Choose a Reviewer

It's a good idea to appoint someone to review all contracts as part of the contract approval and management process. Having a designated reviewer can ensure that all contracts contain essential information and equitable terms. Also, the reviewer may identify issues that you were unaware of.

The reviewer's role is to act as a management consultant, not an approver. A recommendation from the reviewer is just that – a recommendation only and not a requirement unless the clause in question is against law or organizational policy.

Ask These Questions

A contract review should start with the very basics. Think of a football game. A fancy play may appear to win the game, but if you have fundamental errors such as a bad snap or too many players on the field, your team may never have the opportunity to make that play. In contracts, too, don't overlook the basics. These may not all be legally required but they're still essential. Ask, for example, basic questions such as the following:

> **"Have someone review all your contracts."**

Are all the parties clearly identified?

What are the dates the contract begins and ends?

Are reviews required on certain dates?

Is the scope of work described in sufficient detail?

Pinpoint Possible Stumbling Blocks

Be on the lookout for potential problems such as these:

Lengthy terms

If the terms of the contract are too long (for example, five years), it may be hard and costly to terminate the contract if you're not happy with the vendor's performance. Over the years, technologies might change and the system may become obsolete. Prices in the market may drop and there may be better and less expensive options out there. The organization is then bound by fees that are out-of-the-market. The vendor may have escalation fees to protect it from market price increases, and they reap further profit if prices drop. If you try to end the contract to take advantage of a better price or product, you could be liable for hefty termination fees, particularly if it's early in the contract period.

Though a one-or-two-year contract may be more expensive on a per-year basis, it allows you to try out the vendor. If you like the vendor's work, you can always renew for a longer term. If not, you save money by terminating the contract at the end of a shorter period.

Termination terms that are absent or too one-sided in favor of the vendor

Some contracts are very detailed about the rights of vendors if they want to end the contract but provide little or nothing about your right to do the same. Some contracts have no termination terms at all, which can lead to legal disputes.

Contracts that bind all sites as one unit

Imagine a situation in which you no longer need the vendor's service at one of your sites. The contract may not let you end that service without terminating the whole contract. If you try to make a change at one site, the vendor may argue that you're breaching the whole agreement. An expensive lawsuit may result.

Inconsistencies in pricing

Sometimes a contract may provide a price that seems fine unless you notice that there's an attached schedule of payments or itemized list of services which add up to another price. This problem often occurs because of poor communication or faulty processes within the vendor's organization.

No countersignature

Here's another common stumbling block; consider this scenario: The department manager receives the unsigned contract from the vendor and signs it or sends it for approval within the organization. After the organization signs, the contract is never sent back for the vendor's signature. Performance of the contract begins. It can then become a legal ordeal to enforce the contract. It's crucial to have the contract signed by both parties, clearly documenting mutual assent to the terms.

Use Your Voice

If you're not happy with a contract, speak up. You may think that a standard boilerplate contract can't be changed, but that's untrue. Contracts are two-way agreements, and you should feel free to make your wishes known. If the other party refuses your suggestions, you may want to walk away and look for a different vendor.

Reading Suggestions

Available at NonprofitWorld.org

Restructuring Contracts in Stressful Times: Strategies for Successful Contract Negotiation (Vol. 28, No. 3)

Four Steps to Manage Vendors and Reduce Fraud (Vol. 33, No. 1)

Where to Find Free Legal Assistance (Vol. 26, No. 2)

Rule Changes the Way You Report Your Contracts (Vol. 34, No. 4)

Are You Fulfilling Your Financial Trust? (Vol. 17, No. 1)

Risks Get Riskier for Nonprofits: ERM Can Help (Vol. 38, No. 1)

Best Practices to Budget (& Spend) for Marketing (Vol. 41, No. 3)

Is a Performance Audit in Your Future? (Vol. 41, No. 2)

Fourteen Questions to Ask before You Hire an Attorney (Vol. 34, No. 1)

The Most Likely Lawsuits – and How to Protect Yourself (Vol. 19, No. 1)

Seven Risk Questions for the Board (Vol. 33, No. 4)

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