

**PBPA Podcast Transcript**  
**Signed, Sealed, Delivered:**  
**Contract Strategy and Management for Your Nonprofit**  
(28:18 minutes)



[00:00:00] **Sireesha:** Nonprofits deal with a wide range of contracts, from volunteer waivers to grant agreements, and from office leases to independent contractor agreements. In this episode of the PBPA Podcast, we will embark on part two of a two-part series of nonprofit contract strategy and management. Thomas Federico will guide us through how your organization can develop a contract strategy to assess and minimize your legal risks before and after you sign. Join us today as we look at the big picture of contract strategy and management.

Hello and welcome to the PBPA Podcast. In each episode of the PBPA Podcast, we explore legal questions relevant to Georgia nonprofits. I'm your host Sireesha Ghanta, Counsel and Education Director at the Pro Bono Partnership of Atlanta. PBPA strengthens our community by engaging volunteer attorneys to provide nonprofits with free business legal services. We provide numerous free resources via our website, including articles and webcasts specific to Georgia nonprofits and their business legal concerns. We also provide direct legal services to our clients. For more information on client eligibility requirements, to apply to be a client or to access our vast learning center, visit our website at [pbpatl.org](http://pbpatl.org). Before we jump into this episode's topic, keep in mind that this podcast is general information, not legal counsel, contact your attorney for guidance on your nonprofits' specific situation.

Thomas Federico is a staff attorney with PBPA. Thomas has a fantastic and diverse background from both in-house and law firm experience, covering such areas of law as technology, privacy, intellectual property, and tax. Thomas was also a dedicated volunteer at PBPA prior to joining our staff. Thomas now brings that robust experience to counseling nonprofit clients every day, and even to conversations like this on the PBPA Podcast. Thomas, I'm looking forward to our conversation today.

[00:02:36] **Thomas:** Thank you, Sireesha. I'm looking forward to talking to you and our listeners as well.

[00:02:43] **Sireesha:** In part one of this two-part series, we focus on key contract terms and risk mitigation techniques. In this episode, we take a step back to look at the big picture of contract strategy and management. Thomas, let's start by clarifying what those terms even mean. What really is contract strategy and contract management?

[00:03:09] **Thomas:** Yes. So the short answer is that contract strategy is this big picture approach to things like risk mitigation, contract prioritization, and negotiation leverage that's used across all of an organization's contracts. And contract management is all of the operational, administrative details once a particular contract has been signed.

For nonprofits, a contract strategy would maybe typically incorporate things like the organization's size and its resources, insurance coverage or a lack of insurance coverage, reliance on grants or government funding, whether, the subject matter is mission sensitive or carries reputational risk,

and also just sort of which side of the transaction does the nonprofit sit - is it the buyer or the seller of services, for example.

And there's some element of a sliding scale of risk involved in all of this. Some examples of strategic positions that nonprofits might adopt with respect to contracts would be we don't indemnify contractors. That's our policy. We like to have clear scopes and milestones before we pay.

Contract management, as I mentioned, is more of an administrative ongoing process of handling contracts from start to finish so that the organization understands its obligations and it reduces its operational risks. In other words, does the organization know what it signed? Does it know what it's supposed to do? And does it know what to do if something goes wrong? And for a not-for-profit, that contract management typically might include things like, keeping copies of all signed contracts, making sure someone's tracking key contract obligations such as deliverables, deadlines, renewals, making sure staff follow the contract terms, and also knowing when a contract can be amended, extended, or terminated

[00:05:05] **Sireesha:** Okay, so it sounds like contract strategy is what nonprofits need to take into consideration before they sign an agreement, and then contract management is after you sign. The follow through.

[00:05:19] **Thomas:** That's correct. That's a great way of putting it simply.

[00:05:22] **Sireesha:** And Thomas, you mentioned in your previous answer, a sliding scale of risk. Can you please tell me a little bit more about that and how can organization assess when something is on one end of it versus the other?

[00:05:37] **Thomas:** Yes. The way I think of sliding scale of risk, the way I interpret it and what it means to me when I talk to clients, is that not all contracts deserve the same level of scrutiny, the same level of negotiation or the same level of legal protection.

It's not possible, and it really doesn't make sense to treat every contract as high risk or treat every contract as low risk. So evaluating contracts using a sliding scale of risk really helps the organization focus limited resources, including limited legal resources, where they matter the most. It helps them align contracts with mission and operational capacity and helps them deliver the right amount of scrutiny to the particular contract that's being considered.

So you-- our listeners might be saying, "Okay, what does this process actually look like?"

Well, organizations would evaluate contracts along a continuum based on certain factors. Some organizations could might set dollar amounts or they might use length of relationship, potential liability exposure, impact on mission, regulatory and compliance consequences as something that, that factors into this sliding scale. Um, and as the risk increases, the nonprofit would expect to ask more questions, maybe negotiate some more terms, be willing to negotiate more aggressively to get more favorable terms, require clearer protections, for their organization, and maybe, also elevate and get the appropriate stakeholders to get involved in the process, including the executive director and the board, again, depending on the risk.

I'd like to walk everyone through some examples, and if you're a visual learner out there, you can think of the risk continuum as a straight line that's maybe moving from left to right with low-risk contracts on the left side, medium risks in the middle, and high risk all the way on the right. Or you can also think of it as a traffic light. Low-risk contracts might be green, medium-risk co-contracts might be yellow, slow down, use caution, and then high-risk, contracts would be in red. You know, full stop, gotta really assess and make sure you're being careful about things before you proceed. And by the way, just 'cause something is green doesn't mean you shouldn't provide any level of scrutiny. It's just that it's low risk and you may just be able to look at it and evaluate it internally. You don't have to involve a lawyer on that.

But low-risk contracts might be small dollar amounts. Say like, maybe five hundred dollars. Each organization would determine what they feel is the right amount for a low-risk contract. Maybe it's a very short duration, the project only lasts a few weeks. It might be easily replaceable services. Think for example, a short-term office equipment lease and maybe minimal harm if something goes wrong.

Medium-risk contracts might be something where there's a more moderate dollar amount. Again, this is sort of more arbitrary, but let's just say instead of five hundred, maybe it's fifteen hundred, two thousand dollars. There's an ongoing relationship with the other party. Maybe it has a programmatic impact, that is an impact on specific, very important programs that an organization might have. And there may be some operational or financial risk that's involved. So maybe an example of this might be an independent contractor that's supporting a core program. Um, maybe a software vendor that's providing some sort of management application which incidentally might be just sort of take it or leave it.

So for this kind of a medium level contract, you might wanna make sure you have very specific scope, deliverable, payment timing. You'd push back on one-sided provisions such as indemnities, and you'd wanna make sure you short up termination rights, um, so as you knew when you could terminate the contract. And then make sure there's no auto-renewal where the organization has to remember that they're supposed to send out a termination request.

And then finally, the high-risk contracts would be things where there's a large dollar amount. Maybe it's a very long-term commitment. There's some serious regulatory safety or reputational exposure, and it's something that maybe is very core to the nonprofit's mission or funding.

These things might be things like government grants, facility leases. Contracts that involve, maybe vulnerable populations that are clients of the not-for-profit. Could be like intellectual property license or some data sharing agreement. Here's where you would really want to have a careful legal review. You wanna have very, very detailed scopes, milestones, and make sure you're, um, providing for yourself some remedies if there's a breach and, good, clear, favorable risk allocation provisions like insurance, indemnification, caps on your liability, termination rights, et cetera.

[00:10:08] **Siresha:** And now if we have an organization, who is trying to formalize their contract approval process and signature policy, can you give us an idea of what that process could look like? And how does that fit into the contract strategy or contract management process?

[00:10:28] **Thomas:** So a contract approval and signature policy, really it helps define who in the organization's allowed to approve contracts and who can sign them, and under what circumstances.

Some organizations might assign specific dollar amounts or you might use other criteria that's linked to roles and titles. You know, if it's this-- under this amount of money, then so and so can approve the contract. Maybe it's a program director. If it's this amount of money, some other sort of criteria, only the executive director can approve the contract. And then for something else, it may require board approval. It would be a chart that the organization and everyone in the organization understands. Um, and an approach like that, which I just described, can really help with risk management, governance, and transparency, all which are very important to a nonprofit's mission and sustainability. If you're thinking about going through this process of formalizing approval and signature policy, you can have this internal conversation whether or not it makes sense.

But, often with nonprofits that have small teams and multiple people that might be interacting with the same vendors or partners on a very informal basis, it does help to formalize the process a little bit because without a clear policy, staff might sign contracts they don't fully understand. They might agree to terms that may go beyond their level of authority, and they may be committing the organization to obligations that it cannot or should not meet or that people weren't even aware of. This contract approval and signature policy also helps create a good oversight structure, particularly if something were to go wrong and questions arise later about why this contract was even signed.

And it does align with the sliding scale of risk that I just mentioned above because the policy could help facilitate using a more streamlined approval process for these low-risk routine contracts that I talked about, but then require more scrutiny and a review for the higher risk contracts. Like I mentioned, maybe escalating it to the executive director and the board when needed, instead of having them review every contract that an organization may need to sign. They certainly don't want to have to look at every routine contract. So it helps eliminate some internal confusion or ambiguity, when contracts have to be signed.

[00:12:53] **Siresha:** Now, Thomas, my next question incorporates some of the recommendations that you shared in your last episode, and some that you shared earlier today. If we have a nonprofit that has followed all of this wonderful advice, where they receive the contract, then they triage it to assess risk, and then they consult with an attorney about the contract terms that have elevated risks, and finally, they follow their contract approval and signature policy process, like you just described, and they sign the contract and they're happy with the terms, is that the end? Can they forget about the contract and move on to the next task on their to-do list?

[00:13:37] **Thomas:** Well, if only it were as simple as that. You know, before we were doing the recording, I was trying to find a, there's a really good quote by Winston Churchill about World War II, and he uses the terms like the beginning and the end, and, it was very well put, and I couldn't find it. But the bottom line is that the signing is not the end, it's really the beginning. I know most organizations may not look at it that way because, especially if it were a high-risk contract where there were a lot of negotiation, so much effort would go into it, one would be relieved to finally say, "Oh, we've signed it, and now it's the end."

But it's the beginning. Because it's the beginning of the relationship between your organization and the other party. And now your organization has to focus on taking steps to manage that contract and the relationship. During that contract review and negotiation process you were probably focusing on theoretical risks and if it were a high-risk contract, working with a lawyer to help you to identify and mitigate those risks.

But really, you were all talking more or less in a vacuum based on what could happen in this particular kind of a contract. But now that you've signed it, um, the reality is that most contract risk arises after the contract's signed because that's when the party's contractual obligations might be missed they might be misunderstood, or they might be forgotten.

So this is where contract management really comes into play. Um, your organization should really think about having some sort of contract management system in place. If a staff member signs a contract and the PDF of it just remains in his or her email or on their computer drive and nobody's recorded it, nobody's summarized it, nobody's ever looked at it again. That's creating real potential exposure to your organization.

You may miss deadlines. You may miss promises that you made in that agreement. You might just inadvertently breach that contract. Or your organization might pass over opportunities to hold the other party accountable if they're not doing what you expected them to do.

So for every contract your organization signs, you should have a system in place to know: What did we agree to? What did the other party agree to? What do they owe us? What are the key deadlines for us and for the other party? What happens if something goes wrong? How long is the contract? What are our rights if we need to terminate early?

Large organizations out there might be fortunate enough to have actual staff that are contract managers and maybe a sophisticated contract management application to help them. But smaller organizations probably need to rely on more kind of a grassroots effort, so to speak, where they have summaries maybe of the contracts, and they have one or more staff designated as contract owners somebody that's responsible for knowing the answers to the questions, you know, for each of these specific contracts that they've signed.

And it doesn't really help the organization if this is compartmentalized. The system really, whatever form it takes, should be centralized so access to the contract management information is not lost when the employee leaves the organization. Sometimes that happens, and that's not a very good result for the organization.

Try to keep all the related information together with the contract so it's easy to find and access. Lots of times, you know, people are only focused on the contract itself the four corners of this document, whatever form it might look like. But there might be schedules and exhibits. Those need to be accounted for.

There might be subsequent amendments to the contract. Are you keeping track of those? What about internal summaries and key correspondence? That should also all be, associated with the contract file so that there's a complete record of everything that went on. Even the key correspondence is very important because there might be a dispute, and that might be a good place to see who said what and when. And if the parties change the terms of the contract after it's signed, for example, if they move a milestone or adjust a payment, or if the scope changes, or they agree to accept a different deliverable, even if it was done informally, like I said, maybe it's through an email or this key correspondence, all that should again be documented and added to the contract file. And you all can work on a particular system that might be work best for you based on the staff that you have. But conceptually, Sireesha, I think those are the things that everyone who's listening should be, thinking about if they're gonna come up with this, um, system.

[00:18:11] **Sireesha:** I think I found the Winston Churchill quote that you were referencing, Thomas. And it happens to be, I think, a good segue to the next question. The quote is, "Now this is not the end. It is not even the beginning of the end. It is perhaps the end of the beginning."

[00:18:29] **Thomas:** So- Thank you. Perfect. That's exactly what I was looking for.

[00:18:34] **Sireesha:** So with a contract with a nonprofit is starting, is the end of the beginning of a relationship, what if there's issues that arise, after the contract has been signed and as the relationship has begun?

Suppose the nonprofit isn't getting the deliverables they were promised, or if the nonprofit can't meet one of its obligations under the contract. That has been known to happen. What should an organization do if situations arise after the contract is signed?

[00:19:07] **Thomas:** Yeah, that's a great question. Monitoring your organization's performance under the contract and the other party's performance under the contract is a really crucial part of this contract management mindset. After signature, your organization, preferably through a person that's tasked with managing the relationship with the other party, really should be keeping a close eye on whether your organization's receiving what it was promised under the contract, and if your organization is delivering something, that it's keeping its promise to the other party, and if there have been any circumstances that have changed that might affect the party's performance under the contract. These are all things that somebody, hopefully at the organization, preferably somebody actually managing the relationship with this other party, is aware of, staying close to.

Because as soon as any issues are detected, whether it's caused by your organization or the other party- Or even if it's something that's beyond either party's control, your organization doesn't wanna just sweep things under the rug and hope that problems go away.

I mean, we all know that just doesn't happen. What happens is it gets worse when people ignore issues that begin to emerge. So it's best to confront the issues head-on and follow a plan. And, here are some recommendations that I think you all should consider.

When the issue arises, most people would agree, okay, the best place to start is at the contract. Review the contract to see what it says about the parties respective obligations, whether there are any notice requirements, if the contract has cure periods, that is. Some contracts say that if there is a breach or a problem, that they have X amount of days to sort of correct that problem before the other party can take any subsequent action. And then you might look at the contract to see if there's an actual escalation process. Some contracts have it, some don't.

However, I like to think before you even go there, take a step back and focus on the promise that's in dispute. What is being alleged to be the problem with the contract? What is the breach? Did anyone document the issue?

If so, are there very specific examples of what was promised, what was actually delivered or what was supposed to have been delivered, what deadlines were missed? What were the circumstances? It's not going to be enough just to go on the offensive or on the defensive, depending which side the organization's on, just by reciting vague objections or there's this general dislike regarding how a party is performing.

To be in breach of a contract, you really have to be able to point to a provision in the contract, and here's the important part, you actually provide detailed reasons for why you believe that the provision was breached by the other party or why your organization fulfilled its end of the bargain if the other party is alleging a breach.

So I'll use a little, an example here. Suppose, we're recording in March. Suppose we go forward to, like, July 1st. One of your staff had been managing the relationship with the other party, and they had been expecting to receive a report by April 1st, so your organization could take some sort of action maybe by the end of June.

So you were hoping to get this report by a certain specific time. But the staff member never said anything to the other party or to her executive director, and now the executive director got involved, and it's a bit of a mess because nobody got a report. Now- It's true that not all breaches are intentional, so sometimes things go astray for no specific ill will.

It's because something may have fallen between the cracks. Maybe there was a miscommunication. Often there's a miscommunication. Maybe the other party had been waiting for more information from your organization, and your staff person thought that she had actually sent that information to them. So this is why it's a good idea to communicate and document, communicate and document after the contract is signed.

I'll say it again. It's a good idea to communicate and document. That's very, very important, those two things, communication and documentation.

So in this example, at the first sign of an issue, maybe two weeks before the deadline, there's still no sign of the report, somebody should have reached out to his or her, you know, that contact at the other party and asked about the report status.

And those communications would... should be clear. They should be professional. They should be courteous. Identify the issue. You know, "What's this report status? When can we expect to receive it?" You can reference the specific contract provision. You should probably reference the specific contract provision, put them on notice, again, in a very professional, polite way, and request a status update.

And if they say, "Oh, sure, we'll give it to you in seven days," and then after seven days there's still no report, again, communicate and document one more time or however many times, and make... maybe, this will be the final request. Again, it depends on the timing and other circumstances.

But my point is just that there needs to be this communication as soon as there's the inkling that something might be wrong, because it could be inadvertent, and they might, you know, immediately correct it, apologize for it. No harm. Everything's okay. Or it might be a more serious issue. But you wanna make sure that you're on top of everything.

And meanwhile, as all this is going on, hopefully the organization also has a policy in place where that staff member that I'm using in this example was continually updating her supervisor, and, um, maybe that supervisor would then update the executive director, and the executive director would update up the chain to the board, again, depending on the severity of the issue and where the contract fits in the risk scale.

And then the organization can assess what its next steps might be. That might include seeking legal advice about their options. Sometimes the contract will spell out specific remedies and the organization might feel comfortable exercising those specific options, such as terminating the contract or maybe paying a reduced fee if that were specifically stated as a remedy in the contract.

But again, kind of going back to the sliding scale concept, if it's a high-risk contract and/or the contract doesn't really provide any specific remedies for the breach, and the organization has reached out to the other party to get an explanation for why they didn't deliver something. At that point, it really is probably a good idea for you all to get legal counsel because your organization doesn't want to come up with a remedy for the other party's breach of the contract and then it turns out your remedy was itself a breach of the contract.

And especially things like demand letters, they raise many issues beyond the scope of this podcast, but they have to be scrutinized and sent by legal counsel. So you definitely don't want to immediately jump to a demand letter stage and do it yourself. It's definitely something you need to get legal counsel.

So I, I don't want to get too bogged down in this, this concept, but I'm hoping that our listeners appreciate that early and frequent communication, about issues and good specific documentation of those issues that can be matched to specific provisions in the contracts will go a long way to either resolving disputes or building a really strong case if the issue needs to be escalated.

[00:26:27] **Sireesha:** So communication and documentation are integral parts of the contract management system, and relationships in general, under a contract. Thomas, do you have any other closing thoughts to wrap up what we've talked about in this episode or in part one of this series?

[00:26:46] **Thomas:** Well, I was thinking about what we covered in part one and what we just covered in part two, and hopefully we've provided our listeners with some practical advice about contracts, from how to triage them, what to look for when reviewing contracts, when to involve a lawyer, and what to do after the contract is signed. And maybe we've even hopefully made contracts a little less intimidating to everyone. As they say, "forewarned is forearmed", so I really hope everyone listening feels a little more prepared to manage whatever contract may happen to land in their inbox.

[00:27:18] **Sireesha:** I think organizations should be intentional about their contracts as a means to mitigate risk, and the information that you have shared in this series will definitely help nonprofits do just that. Thanks, Thomas.

[00:27:32] **Thomas:** Oh, thank you, Sireesha.

[00:27:35] **Sireesha:** We hope that you found this episode of the PBPA Podcast to be informative and helpful. We add new episodes every month with short conversations about general, yet important legal information for Georgia nonprofits. Remember that this is not legal counsel. Talk to your attorney about your organization's specific concerns. Thanks for tuning into the PBPA Podcast. And to all nonprofits listening out there, thank you for all the good work you continue to do in our community.