E D I T O R I A L

Welcome to the Winter, 2006 edition of Mattern Matters. My name is Rob Mattern and I am the President of Mattern & Associates, LLC.

Welcome Aboard:

I would like to welcome Deidre Rathburn, Account Executive, to the Mattern organization. Dee will be based in the San Francisco office and will be covering the western United States for Mattern. Dee comes from William Lea (Bowne) and has over eight (8) years of experience in the outsourcing sales arena.

I would also like to welcome Sean Mason to Mattern having recently joined us as a consultant in the Wilmington Office. Sean's background includes over eight years in the outsourcing industry and stints with Canon and Archer/Oce.

Last but not least, I would like to welcome Dan Ayars to our organization, Dan will be joining us after the Holidays and taking over our pre-sells and marketing activities. Dan comes from a sales background that includes CopyAmerica and Sir Speedy.

Holiday Giving:

It has been our at Mattern & Associates custom that in lieu of providing presents to our clients we make a financial donation to a number of charities on their behalf. The charities that we chose this year are:

- Supporting K.I.D.D.S. - a counseling agency that assists children involved in death and divorce
- American Red Cross - specifically the Hurricane Relief Fund
- US Troop Support - an organization that supplies prepaid phone cards tour troops

If you have a charity that you would like to be considered for this donation next year, please email me at rmattern@matternassoc.com.

Happy Holiday

Lastly, on behalf of the staff and myself here at Mattern & Associates, LLC we would like to wish you a wonderful Holiday and a great New Year. If we can be of any service to you in the coming year please do not hesitate to contact us.

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MATTERN MATTERS

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Records Management Help for Law Firms

Processes and procedures necessary to determine retention periods and disposition of records

Third and final part in a series of articles to help you manage your records

The final elements to developing and implementing a retention policy relates to the review criteria and disposition processes. The follow items identify the elements that are necessary and the steps to properly notify clients and dispose of records.

Determining retention periods for records requires the following research:

1. Investigation into any state and/or federal regulations regarding the records in question such as:
   a. Internal Revenue
   b. Securities and Exchange Commission
   c. Public Utilities Commissions
2. Investigation into any Bar Association practices regarding the retention and/or client notification, former attorney records transfers and unidentifiable records
3. The need for information by a department or practice group
4. A review of any client's retention policy that the firm may violate by retaining information too long and possibly invalidating the client's retention and disposition requirements

Following the above procedural steps, retention periods can be determined and finalized. The finalization should include approval by each department and/or practice group. The finalized schedule can then be put into practice. While the retention periods vary by state and practice group, the following procedural steps are basic to any retention and disposition process:

1. Client notification should be made when the matter is closed and prior to destruction. This is normally done by certified mail to the client.
2. File review is an essential part of the process. From an ethical standpoint,the file should be reviewed by an attorney prior to disposition. Preliminary reviews may be completed by paralegals and/or legal assistants, but the attorney is responsible for the overall review of the file contents.

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Getting the most from vendor meetings

As the year draws to a close, vendors will be gathering data to provide their year-end reports. These reports and meeting are vital to fostering a meaningful partnership with your vendors. Here are some suggestions to maximize the value of these meetings:

Pre-Meeting:

- Schedule in advance and meet with the vendor – while this may sound obvious, it is important to dedicate this time to meet with your vendor.
- In preparing for this meeting, review the most recent report/information provided by your vendor, as well as any notes you have from your last meeting. Make sure part of the meeting is spent updating any outstanding issues/action items.

During the meeting:

- Review the historical data – Have the vendor identify any significant problems that occurred and their resolution for those problems. Also, have the vendor identify any significant improvements that were implemented and review the impact of those improvements.
- Review Scorecard – If your contract specifies that your vendor is supposed to meet or exceed certain performance criteria, be sure this is discussed in your review. Indicate what,if any, penalties will be assessed if they are not meeting the performance standards. Most importantly, be sure your vendor has, or will be submitting an action plan to correct any deficiencies and meet the required service levels.

Discuss vendor's recommendations – Using the historical data, vendors should be providing recommendations. Depending on the vendor you are meeting with (duplicating equipment, outsourcing, supplies, etc.) you may see recommendations that address the following:

- Reducing/increasing monthly minimums based on volume
- Process/workflow changes to increase efficiency
- Headcount reductions/increases
- Equipment "balancing" (i.e., redeploying existing duplicating equipment throughout the office, swapping units from heavily utilized areas to less utilized areas)
- Additions/reductions of contract items for office supplies
- Software/application recommendations to increase efficiency/provide more capabilities

If your vendor does not provide recommendations, ask them, "Based on this information, what do you recommend we do next?"

Action items – At the conclusion of your meeting, do a recap and outline any follow-up or action items,identifying who is responsible for addressing and time frame for completion. Also, be sure to set up a time to follow-up on action items, and, if practical, determine the date or potential dates for your next review.

Other items – That may be addressed during your meeting may include:

- Financial status of vendor
- Your firm's strategic plans for the next year
- Vendor's strategic plans for the next year

Finally, if appropriate, be sure to commend the vendor for good work. M

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Cost Plus Contracts – Are they worth it?

Cost plus contracts – outsourcing contracts where your vendor gathers all their costs and marks them up by a pre-determined percentage to generate your monthly invoice – seem to be getting more and more popular in the outsourcing market. While they may sound intriguing, and are appropriate in very specific situations, what we have found at Mattern & Associates is that they often prove to be a time and resource drain for both the client and vendor without any appreciable cost savings for the client.

Let's examine these types of contracts:

1. Over-emphasis on the "bottom line"

In order to invoice under a cost plus contract, the vendor must dedicate numerous hours preparing back-up documentation to prove they are meeting the agreed upon margin. It takes the focus of the contract away from operational excellence to watching and monitoring the bottom line at all times. From the client point of view, they will also need to dedicate extra resources to review the quarterly or bi-annual documentation and compare them against the contract and/or prior reports.

While the "bottom line" is important, the emphasis on the cost side of the vendor/client relationship usually takes time away from the operational aspect of the contract.

2. Increased time to manage the contract.

One of the reasons that organizations outsource is to reduce the amount of time they spend on managing the areas that they want to outsource. When there is a cost plus contract, then each new employee, vendor and piece of equipment will need to be discussed and documentation produced to substantiate the new price.

3. What motivation is there to reduce costs when the vendor is getting paid a percentage on the total costs? In other words – higher costs – higher mark-up.

When vendors are forced to justify each item in the contract and the margin they have on it, they are less likely to reduce costs willingly and to initiate efficiencies in the operation. Instead of the customer and the vendor being partners- the customer ends up being the "cost" cop on the contract.

In summary, when a fair contract price, derived through benchmarking and a competitive RFP process is agreed upon by the vendor and the client, then only questionable invoices and possible annual price increases need to be discussed. By implementing a contract that has clearly defined costs for adding additional personnel or equipment, such as menu pricing, the client can assure themselves that they will get a fair price through the length of the contract while also knowing how much to budget as their situation changes. M

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3. A sub-file may be created for reference materials from a file that should be retained permanently. This may include items such as a very successful pleading or strategy that could be useful in the future.

Finally, the disposition of the files should include the following:

1. Define the disposition approval levels
2. Define the type of destruction necessary, such as:

   a. On-site shredding
   b. Commercial shredding
   c. Commercial recycling
   d. Witnessed destruction (Shredding/recycling)
   e. Other

In conclusion, the retention policy program is an essential part of a firm's administrative practices. It can be very cost effective and beneficial to the firm, as well as good business practice. M

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Question – Another company just acquired my outsourcing provider. I am happy with my current staff and operation. Is there anything I should do?

Answer – It's great that you are happy with your current staff and services. We recommend that you meet with the representatives of the new organization and ask the following questions:

- Confirm that they are going to honor the terms, conditions and prices through the conclusion of your existing contract.
- How is my account going to be affected from a personnel point of view?
- Is my account part of the new organization's target market? Many of the outsourcing vendors are looking to sign only national accounts or accounts that will bill X number of dollars. Make sure your account falls into that criteria.
- Will the services they offer to their clients change from what has been previously offered?
- Will the benefits offered to their employees change?
- Will they have an equipment preference different then what has been placed previously?
- What type of commitment are they making to the geographical (Chicago, for example) or vertical market (legal) you are in.

If you are unhappy with your current services, or with the new vendor (previous negative experience, etc.), this may be an opportunity to make a change. Mattern recommends the following:

1. Pull out your contract and review the terms. Did you include language that allows you to cancel your contract if another entity purchases your vendor? If not, do you have a cancellation for convenience clause in your contract which means you can cancel for any reason whatsoever? If you answered "no"to both of these questions then your options are somewhat limited and you will probably have liquidated damages or buyouts to contend with. If the only "out"is a cancellation based upon performance, then make sure you have quantifiable, measurable criteria in place.
2. Meet with the representatives of the new organization. Ask the same questions as noted above. In addition, detail in writing the problems with your current services and/or new vendor. Ask for a detailed action plan to address and correct these issues.
3. Regardless of whether you are happy or not, or decide to make a change, there will most likely be a period of time where the new vendor is providing your services. Mattern recommends that during this time, you monitor your monthly invoices closely. Make sure any special payment terms or pricing arrangements are adhered to by the new organization. If you are not happy with the responses to the above, it may be time to take a look at the market and see what other vendors are out there or possibly bring the services back in-house.

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