



## RECORD STORAGE STRATEGIES

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It is widely believed that the oldest legal document known to mankind is the Code of Ur-Nammu, created in 2050 BC by King Hammurabi. This is not entirely accurate. In truth, the oldest legal document known to mankind is the off-site records storage contract that was created in order to store the code off-site from King Hammurabi's palace. Rumor has it the Sumerians are still negotiating re-boxing fees.

For anyone who has ever dealt with off-site records and negotiated the contract for these services, you may recognize the truth in the hyperbolic jest. Off-site records storage is an industry based on antiquated policies and terms that may present issues resulting in, if not the world's first epic poem, epic financial penalties and other costs if you are not careful.

Here are some negotiating strategies to help you be careful and achieve the contract that most benefits your firm.

### **Define the Purpose.**

When we engage with a client to work on their off-site records storage contracts, one of the first questions we ask the client to clarify is the purpose of the off-site records function as it relates to the overall goals of the firm. Specifically:

- Is off-site records storage going to be an extension of the on-site records storage (if applicable)?
- Will the off-site location house active records or will it be only for inactive records?
- Are you looking for one vendor to represent the firm in all your geographic locations?
- Alternatively, would different business partners in different cities be acceptable – as long they have similar terms and pricing?

The answers to these questions will help determine your off-site records storage service level requirements and can also dictate the types of business partners to whom you should be talking. If your service level requirements are minimal, then it may be possible to utilize an alternative vendor such as a moving and storage company.

### **Destruction**

We have clients whose off-site records storage contracts haven't been looked at since Nixon was President. Once the contracts are reviewed, they often reveal these types of hidden fees:

- Evergreen clauses with mandatory storage charges
- Excessive permanent withdrawal fees
- Contract termination fees

One contract Mattern & Associates recently reviewed included not only permanent retrieval fees, but bound the firm to owe the monthly base charges for the balance of the contract.

When terminating a contract, firms tend to exaggerate the amount of document destruction they will be able to accomplish and have consultants negotiate a large amount of "free" destruction. The destruction of records is a tedious process if done correctly, and firms often vastly overestimate the amount of records their attorneys will allow them to destroy.

In order to minimize the termination and withdrawal fees as well as limit the amount of document destruction, be realistic. Your permanent withdrawal fees have been accumulating for years; they are not going to go away overnight. Additionally, make sure you have the firm's management agreement and the process in place before you over-commit to any amount of destruction.

### **Get Competitive. Get a Request for a Proposal.**

Getting great pricing and terms never happen when you deal one-on-one with a new vendor or if you are negotiating a new contract with your current vendor. You may get better terms and pricing than you have currently (which only means your current pricing and terms are weak), but not great pricing. The only way you will get the most competitive pricing and terms the market has to offer is to

create a competitive situation, and the only way to do this intelligently is to solicit competitive proposals through a request for proposal process.

***Know the Market and the Vendor.***

Even when you complete a request for proposal, most vendors will not put forth their most competitive terms unless the vendor is explicitly asked or you are asking the decision maker.

For example, certain vendors will waive permanent withdrawal fees if they consistently fail to meet the performance standards outlined in their contracts – but these details are only revealed upon request.

***Contract Negotiations: Just Say No.***

Off-site records storage is an extremely competitive market and the vendors will back-down on terms only if they are pressed and only if they know their competitors are involved. We suggest prior to selecting your short list, create a list of deal killers that you refuse to give in on and inform the business partners that they will not be allowed to participate in the final round unless they address them in writing.

After this exercise, you will have a pretty good idea of the vendors who will be willing to negotiate a competitive contract.

In summary, the failure to negotiate a competitive contract in the off-site records storage area will create long-term financial implications and handicap the firm greatly in creating a firmwide strategy to manage effectively these paper files. By following these steps outlined above, you will vastly improve your – and your firm's – chances of an advantageous agreement.