



**STAFF REPORT
ACTION REQUIRED**

Request for Expression Of Interest (REOI) No. 9134-13-7281 for the Prequalification of Vendors to Provide Supplementary Legal Services For Insurance Claim Defence

Date:	February 6 , 2014
To:	Government Management Committee
From:	Deputy City Manager and Chief Financial Officer Director, Purchasing and Materials Management
Wards:	All Wards
Reference Number:	P:\2014\Internal Services\pmmd\gm14003pmmd (AFS 19087)

SUMMARY

The purpose of this report is to obtain authority to enter into retention agreements with seven recommended respondents based on the results of the Request for Expression of Interest (REOI) No. 9134-13-7281, for insurance claim defence legal services to supplement City Legal Services.

RECOMMENDATIONS

The Deputy City Manager and Chief Financial Officer and Director, Purchasing and Materials Management recommends that:

1. City Council authorize the Deputy City Manager and Chief Financial Officer to enter into retention agreements for a period of five years from April 1, 2014 to March 31, 2019 with the following recommended seven legal firms having achieved the highest overall evaluation scores that are consistent with the terms, conditions and hourly rates of the REOI submissions in a form and content that is satisfactory to the Deputy City Manager and Chief Financial Officer and the City Solicitor:
 - a. Boghosian + Allen LLP
 - b. Borden Ladner Gervais LLP
 - c. Clyde & Co Canada LLP

- d. Gowling Lafleur Henderson LLP
- e. Loopstra Nixon LLP
- f. Paterson MacDougall LLP
- g. Shibley Righton LLP.

FINANCIAL IMPACT

There are no immediate financial implications arising from this report. Costs of insurance claim defences are ultimately reflected in corporate insurance charges to Divisions and applicable insured Agencies, Boards and Commissions. The 2014 Non-Program Operating Budget for Insurance Premiums & Claims of \$59.2 million includes \$12.75 million for external legal firm billings. The 2015 Non-Program Operating Budget submission includes \$12 million and the 2016 budget includes \$11.3 million for external legal firm billings. In 2012 and 2013, the total fees billed by the nine external legal firms retained for insurance claims defence were \$12.7 million and \$13.0 million, respectively (See Table One).

**Table One
External Legal Firm Billings for Insurance Claims Defence**

Year	2010	2011	2012	2013	2014 Budget	2015 Outlook	2016 Outlook
Amount (\$Million)	10.484	11.355	12.744	13.000	12.750	12.000	11.300

On average, at any given time, external legal firms handle about 1,900 litigated insurance claim files for the City of Toronto. Litigated claim files are assigned to City approved external legal firms pursuant to the City's Claims Legal Procedures as adopted by City Council. External legal firms retained by the City are utilized to supplement the City's Legal Services. Work amongst the external firms will be assigned on the basis of several factors including particular individual expertise, the nature of the claim and simple rotation.

In this regard, it should also be noted that the 2014 Approved Operating Budget and 2015-2016 Outlook for the City of Toronto Legal Services incorporate increased resources of five solicitors and one paralegal staff, phased in over 2014-2016, to enhance its capacity to provide insurance claim defense. In 2010 an Auditor General report recommended a cost benefit analysis to determine the advantages of transferring a certain level of external legal services to internal solicitors. The rationale for the in-house resource increase is that it would result in reduction of contracted legal service expenses with net savings once the change-over and caseload redistribution stabilize. Legal

expense savings are projected to begin appearing in 2014, with additional savings as more work is handled internally in 2015 and beyond. At the same time, it should be recognized there are many factors influencing the volume of litigated claim files including weather and despite the effort at cost containment, the volume may rise over the next several years as a result of the weather events in 2013.

In the mean time, it is important to ensure that adequate supplementary external legal services are available to the City when it cannot be provided by members of the City's Legal Services. This report recommends that the City enter into retention agreements with the seven highest scoring respondents as a result of the REOI evaluation.

DECISION HISTORY

City Council on April 12 and 13, 2011 adopted Government Management Committee item GM2.13 thereby approving the results of the Request for Expressions of Interest 9134-11-7028 for the retention of legal firms to supplement the work of the City's Legal Services for the defence of insurance claims, including the terms and conditions and recommended successful legal firms. The City entered into retention agreements with nine legal firms for periods of three years which expires on March 31, 2014.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2011.GM2.13>

ISSUE BACKGROUND

City Legal Services provides defence for litigated insurance claims. In addition, Insurance & Risk Management utilizes external legal firms directly related to:

- Specific expertise needed not found within the City's Legal Services;
- Complexities of the claims;
- Severity and frequency of claims;
- City Legal Services' capacity to accept claims defence work; and
- Conflict of Interest matters.

It is important to ensure that adequate supplementary external legal services are available to the City when it cannot be provided by members of the City's Legal Services. This report recommends that the City enter into retention agreements with the seven highest scoring respondents as a result of the REOI evaluation.

COMMENTS

Request for Expression of Interest (REOI) was issued by Purchasing and Materials Management Division (PMMD) on December 2, 2013 for the prequalification of vendors to provide supplementary legal services for insurance claim defence and was available for download in PDF format on the City's internet website. In addition, eleven (11) external legal firms were notified of the REOI when it was issued and available for purchase from the City. This resulted in a total of thirteen (13) submissions being received on January 3, 2014 from the following firms:

1. Boghosian + Allen LLP
2. Borden Ladner Gervais LLP
3. Clyde & Co Canada LLP
4. Evangelista Barristers & Solicitors
5. Forbes Chochla LLP
6. Gowling Lafleur Henderson LLP
7. Loopstra Nixon LLP
8. McCague Borlack LLP
9. Miller Thomson LLP
10. Moodie Mair Walker LLP
11. Papazian Helsey Myers
12. Paterson, MacDougall LLP
13. Shibley Righton LLP

The intent of the REOI was to pre-qualify up to twelve (12) top scoring Respondents for any subsequent work assignments. The REOI included the selection criteria to be used for evaluation. Insurance & Risk Management and a representative from City Legal Services formed a selection committee and proceeded with the evaluation stages of the REOI as required.

The selection committee followed the prescribed three-stage REOI evaluation process.

Stage 1: Mandatory Requirements

Respondents were required to meet all of mandatory requirements in order to move forward to Stage 2. All thirteen respondents met Stage 1 and continued onto Stage 2.

Stage 2: Detailed Evaluation of Technical Response

The criteria selected for the technical evaluation reflect the City's need for qualified legal firms to provide a variety of insurance-related legal services and to assist the City in implementation of its claims and risk management programs. Respondents were expected to demonstrate a substantial history and established practice in the defence of municipalities in Ontario and have an established and proven track record in the defence and management of insured claims.

The evaluation of Responses was completed in accordance with the parameters set out in the REOI. The following lists the key criteria against which each response was evaluated:

- Company Profile
- Experience and Qualifications
- Proposed Staff Team and Resources
- Service Approach

Respondents were required to meet a minimum threshold of 75% (67.5 points out of 90) in Stage 2 to be further evaluated for cost. The seven recommended firms met this minimum threshold in Stage 2 and were further evaluated for cost.

Stage 3: Costs of Services

Cost evaluations considered the hourly rates by the seniority level of individual service providers calculated by the formula provided in the REOI. The technical scores along with the cost of services scores were summed, resulting in overall scores ranging from 76.5 to 94.4.

The seven (7) recommended firms met the requirements of the REOI and met the threshold score to be prequalified as vendors for the provision of insurance related legal services.

Effort will be made to distribute work equally among the prequalified vendors however, work assignments will not necessarily be awarded simply on a rotational basis. The complexity of the project, current work load, expertise, value and work load of previous work assignments of each firm will be taken into consideration when awarding a work assignment. The number of insurance claims work assignments which will be sent to the prequalified vendors is not known. There is no guarantee of the volume or regularity of claims, which will be assigned to the recommended firms. It is understood that the prequalified firms will provide supplementary services to City Legal Services.

Respondents' scores by criteria, price comparison and a staff analysis of the evaluation results can be provided in an in-camera presentation if requested by Committee Members.

The Fair Wage Office has reported that the recommended firms have indicated that they have reviewed and understand the Fair Wage Policy and Labour Trades requirements and have agreed to comply fully.

CONTACT

Joe Farag
Director, Corporate Finance
Tel: (416) 392-8108
Fax: (416) 392-4555
Email: jfarag@toronto.ca

Victor Tryl
Manager, Professional Services Purchasing
& Materials Management
Tel: (416) 397-4801
Fax: (416) 397-7779
Email: vtryl@toronto.ca

Jeff Madeley
Manager, Insurance & Risk
Management, Corporate Finance Division
Tel: (416) 392-6301
Fax: (416) 397-4555
Email: jmadeley@toronto.ca

Jim Kidd
Supervisor, Insurance & Risk Management
Corporate Finance Division
Tel: (416) 392- 3917
Fax: 416) 397-4555
Email: jkidd@toronto.ca

SIGNATURE

Robert Rossini
Deputy City Manager & Chief Financial Officer

Michael Pacholok
Director, Purchasing and Materials Management