

Award of Request for Supplier Qualifications No. 9134-18-7160 for the Prequalification of Vendors to provide Supplementary Legal Services for Insurance Defence

Date: February 14, 2019
To: General Government and Licensing Committee
From: Executive Director, Corporate Finance, Chief Purchasing Officer,
Purchasing and Materials Management Division, City Solicitor
Wards: All

SUMMARY

The purpose of this report is to advise on the results of the Request for Supplier Qualifications (RFSQ) 9134-18-7160 for insurance claim defence legal services to supplement internal City Legal Services for the contract term of April 1, 2019 to March 31, 2024, and to recommend entering into retention agreements with the nine (9) highest scoring law firms.

The estimated costs identified in this report represent legal fees for insurance claim defence services. The estimated costs are not claim payments made to settle claims.

RECOMMENDATIONS

The Executive Director, Corporate Finance, the Chief Purchasing Officer, Purchasing and Materials Management Division and the City Solicitor recommend that:

1. City Council authorize the Executive Director, Corporate Finance to enter into retention agreements for a period of five (5) years from April 1, 2019 to March 31, 2024 with the following recommended nine (9) law firms having achieved the highest overall evaluation scores meeting all the requirements that are consistent with the terms, conditions and hourly rates of the RFSQ submissions which will also include insurance litigation files which were opened but not resolved prior to the March 31, 2019 contract expiry date, such agreements to be in a form and content that is satisfactory to the Executive Director, Corporate Finance and the City Solicitor:

- A. Boghosian + Allen LLP
- B. Borden Ladner Gervais LLP
- C. Clyde & Co. LLP

- D. Forbes Chochla LLP
- E. Gowlings WLG
- F. Hicks Morley Hamilton Stewart Storie LLP
- G. Lerner LLP
- H. Loopstra Nixon LLP
- I. Shibley Righton LLP

FINANCIAL IMPACT

The total expected cost for the City is estimated to be \$67,539,823 net of HST recoveries, and \$75,000,000 including HST and all applicable charges, as detailed in Table 1.

Sufficient funds have been included in the 2019 Staff Recommended Non- Program Operating Budget under cost centre NP 2530. Additional funds will be requested in the 2020-2024 Non- Program Operating Budget Submissions.

Table 1* Projected External Legal Fees (\$000's)

Cost Centre NP 2530 C/E 4010	Apr. 1, 2019 to Dec. 31, 2019	Jan. 1, 2020 to Dec. 31, 2020	Jan. 1, 2021 to Dec. 31, 2021	Jan. 1, 2022 to Dec. 31, 2022	Jan. 1, 2023 to Dec. 31, 2023	Jan. 1, 2024 to Mar. 31, 2024	Total
Expected external legal costs net of HST recoveries	10,500	13,700	13,500	13,300	13,200	3,300	\$67,500
Expected external legal costs including HST	11,200	15,300	15,000	14,800	14,600	3,700	\$75,000

*Note: As a result of the variable and unpredictable/unforeseen nature of insurance litigation, the volume and expense of legal fees is difficult to forecast.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the Financial Impact information.

DECISION HISTORY

City Council on April 1, 2, and 3, 2014 adopted Government Management Committee item GM28.15 thereby approving the results of the Request for Expressions of Interest 9134-13-7281 for the retention of law 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 law firms. The City entered into retention agreements with seven (7) law firms for periods of five (5) years which expires on March 31, 2019.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.GM28.15>

COMMENTS

Generally, the City's insurance policies issued by insurers approved by City Council annually contain \$5M deductibles. The City's Insurance & Risk Management group manage litigated insurance claim files that do not reach the insurer's layer of coverage. It is important to ensure that adequate supplementary external legal services for litigated insurance claims are available to the City when it cannot be provided by the City's Legal staff. On average, at any given time, external law firms handle about 1,400 litigated insurance claim files for the City of Toronto. Litigated insurance claim files are assigned to City approved external law firms according to the City's Insurance Claims Administration Procedures as adopted by City Council.

It should also be noted that the 2019 Approved Operating Budget and 2020-2021 Outlook for the City of Toronto Legal Services incorporate increased resources of 3 solicitors phased in over 2019-2021, to enhance its capacity to provide insurance claim defense. The rationale for the in-house resource increase is that it will result in a reduction of contracted legal service expenses. Additional in-house capacity was added during the 2014 to 2019 term. Over that period the proportion of new work assigned to in-house lawyers increased from 30% to 45%. Legal expense savings are projected to continue in 2019, with additional savings as more work is handled internally in 2020 and beyond. At the same time, it should be recognized there are many factors influencing the volume of litigated insurance claim files including weather and despite the effort at cost containment, the volume may rise over the next several years as a result of severe weather events.

Work amongst the external firms is assigned on the basis of several factors including:

- particular expertise;
- familiarity with City operations/Divisions;
- experience with a previous similar matter;
- experience with plaintiff's counsel;
- quality;
- reputation;
- past service levels;
- conflicts; and
- ration.

This report recommends that the City enter into retention agreements with the nine (9) highest scoring respondents which includes six (6) existing law firms and includes insurance litigation files not resolved prior to March 31, 2019.

Request for Supplier Qualifications 9134-18-7160 (Ariba ID WS1572156297) – Procurement Process

Request for Supplier Qualifications (RFSQ) was issued by the Purchasing and Materials Management Division (PMMD) on December 13, 2018 for the prequalification of vendors to provide supplementary legal services for insurance claim defence and was available for download through ARIBA via the City's internet website. In addition, forty

three (43) external law firms were invited through Ariba Discovery Supplier to participate in this RFSQ. This resulted in a total of 18 submissions being received on the closing date of January 11, 2019.

The intent of the RFSQ was to pre-qualify up to ten (10) top scoring Respondents for any subsequent work assignments. The RFSQ included the selection criteria to be used for evaluation. Insurance & Risk Management and representatives from City Legal Services formed a selection committee and proceeded with the evaluation stages of the RFSQ as required.

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

Stage 1: Mandatory Requirements

Respondents were required to meet all of the mandatory requirements in order to move forward to Stage 2. All 18 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 law 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 RFSQ. The following lists the key criteria against which each response was evaluated:

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

Respondents were required to meet a minimum threshold of **75% (60 points out of 80)** in Stage 2 to be further evaluated for cost. The nine (9) 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 senior level of individual service providers calculated by the formula provided in the RFSQ. The technical scores along with the cost of services scores were combined, resulting in overall scores ranging from 87 to 73.5.

The nine (9) recommended firms met the requirements of the RFSQ 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 fairly among the prequalified vendors however, work assignments will not necessarily be awarded simply on a rotational basis. Particular expertise, familiarity with City operations/Divisions, experience with a previous similar matter, experience with plaintiff's counsel, quality, reputation, past service levels, and conflict will be taken into consideration when assigning work.

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 Social Procurement Program requirements and have agreed to comply fully.

SAP Ariba – City's New Source-To-Pay Technology

Insurance and Risk Management were fortunate to be the first Client Division to use the City's SAP Ariba system. It was clear that after using Ariba there are benefits,

- Initial sourcing request was easy to complete and buyer was assigned automatically.
- All tasks were visible and it was easy to understand both the order and the request;
- When a task was completed an email notification was sent with instructions and a link as to the next steps;
- All Vendors' responses were online and easy to review – eliminating paper and binders. Considering 18 submissions and 22 questions for each Vendor, reading and marking was simplified.
- As a result of the SAP system we were able to reach more firms and received 18 responses, up from the 14 responses in 2014.
- All documents are stored online in Ariba and easily accessible for future RFPs.

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