

## **Award of Ariba Document Number 4287042123 for the Future Eligibility to Provide Legal Services for Insurance Claim Defence**

**Date:** January 30, 2024  
**To:** General Government Committee  
**From:** Chief Financial Officer and Treasurer, Chief Procurement Officer, City Solicitor  
**Wards:** All

### **SUMMARY**

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The purpose of this report is to advise on the results of the Request for Supplier Qualifications (RFSQ) Number Doc4287042123 for the future eligibility to provide legal services for insurance claim defence to supplement City Legal Services for the contract term of April 1, 2024 to March 31, 2029, and to recommend entering into retainer agreements with the eight (8) qualified law firms.

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

### **RECOMMENDATIONS**

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The Chief Financial Officer and Treasurer, the Chief Procurement Officer and the City Solicitor recommend that:

1. City Council authorize the Chief Financial Officer and Treasurer to execute a retainer agreement for a term of five (5) years from April 1, 2024 to March 31, 2029 with each of the following eight (8) law firms on terms and conditions satisfactory to the Chief Financial Officer and Treasurer, in a form satisfactory to the City Solicitor:
  - i. Boghosian + Allen LLP
  - ii. Borden Ladner Gervais LLP
  - iii. Forbes Chochla LLP
  - iv. Gowlings WLG
  - v. Hicks Morley Hamilton Stewart Storie LLP

- vi. Lerners LLP
- vii. Loopstra Nixon LLP
- viii. Shibley Righton LLP

2. City Council authorize the Chief Financial Officer and Treasurer to enter into an amending retainer agreement with Clyde & Co. LLP to increase the term of the existing retainer agreement for five (5) years, from April 1, 2024 to March 31, 2029.

## FINANCIAL IMPACT

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As a result of the variable and unpredictable/unforeseen nature of insurance litigation, the volume and expense of legal fees is difficult to forecast. Consequently, the below financial information is projected based on the best estimate taking into consideration the annual cost escalation of fees over the five-year term, and prevailing trend of below-budget actuals over the past six years 2018-2023 (with spending rate of 91% budget on average).

The total combined external legal fees for five-year retainer agreements for the nine law firms identified in this report is expected to be \$70,796,477 net of all applicable taxes and charges, \$80,000,019 including all applicable taxes and charges. The total combined cost to the City is expected to be \$72,042,495 net of HST recoveries, as detailed in Table 1.

Funding for 2024 external legal fees in the amount of \$13,200,000 net of HST recoveries, of which the 2024 component of this contract is expected to be \$9,900,000 net of HST recoveries, has been included in the 2024 Staff Prepared Non-Program Operating Budget under cost centre NP 2530, cost element 4010. Funding to cover each remaining year of all nine retainer agreements will be requested in the Non-Program Operating Budget Submissions for years 2025 through 2029 as required.

**Table 1 - Estimated External Legal Fees for 9 Retainer Agreements**

Cost Centre NP 2530 C/E 4010	Apr. 1, 2024 to Dec. 31, 2024	Jan. 1, 2025 to Dec. 31, 2025	Jan. 1, 2026 to Dec. 31, 2026	Jan. 1, 2027 to Dec. 31, 2027	Jan. 1, 2028 to Dec. 31, 2028	Jan. 1, 2029 to Mar. 31, 2029	Total
Estimated external legal fees net of HST recoveries	9,900,000	13,967,991	14,444,647	14,830,889	15,107,671	3,791,297	72,042,495

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

## DECISION HISTORY

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City Council on March 27, 2019 adopted General Government and Licensing Committee item GL2.10 thereby approving the results of the Request for Supplier Qualifications Number 9134-18-7160 for the Prequalification of Vendors to provide Supplementary Legal Services for Insurance Defence, including the terms and conditions and recommended successful law firms. The City entered into retainer agreements with nine (9) law firms for a period of five (5) years which expire on March 31, 2024.

<https://secure.toronto.ca/council/agenda-item.do?item=2019.GL2.10>

## COMMENTS

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Generally, the City's insurance policies issued by insurers annually contain \$5 million deductibles. The City's Insurance and Risk Management group manages 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.

The 2019 Approved Operating Budget for Legal Services proposed the addition of lawyers, to be phased over 2019-2021, to enhance its capacity for providing insurance claims defence, thereby reducing contracted legal service expenses. As a result, increased resources of three solicitors were phased in. The additional capacity has allowed Legal Services' current pending file count to increase to 42% of insurance claim defence files and in 2023, Legal Services received 48% of new work assigned. The current resourcing level is expected to allow Legal Services to maintain that level of service going forward. At the same time, it should be recognized that the volume of non-insurance litigation work handled by Legal Services can be unpredictable and the impact this has on their capacity for insurance work may fluctuate.

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 retainer agreements with the eight highest scoring qualified respondents.

Clyde & Co. LLP, a current supplier, did not respond to the RSFQ. To conclude insurance litigation files that are not resolved prior to the March 31, 2024 expiry date, it is necessary to amend the firm's existing retainer agreement and increase the term by a further five-year period. Clyde & Co. LLP will not be granted net new assignments under this amendment.

## **Request for Supplier Qualifications Number Doc4287042123 – Procurement Process**

Request for Supplier Qualifications (RFSQ) for the future eligibility to provide Legal Services for Insurance Claim Defence was issued by the Purchasing and Materials Management Division (PMMD), advertised and available for download on the Ariba Discovery website from November 27, 2023 with a closing date of December 18, 2023. Fifty-five (55) external firms viewed Ariba Discovery posting for this RFSQ, and forty-six (46) firms entered Ariba Event to check solicitation documents. This resulted in a total of eleven (11) submissions being received by the closing date.

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 and 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 the mandatory requirements to move forward to Stage 2. All eleven (11) 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 **60 points (75% of the 80 available points)** in Stage 2 to be further evaluated for pricing. Eight (8) firms met this minimum threshold in Stage 2 and were further evaluated for pricing at Stage 3.

### **Stage 3: Evaluation of Pricing**

Evaluation and scoring of pricing considered the hourly rates of the various levels of resources provided by the firms, including senior level, intermediate level, junior level, student level and law clerk level. The scoring of the hourly rates provided by the individual service providers was determined by the formula provided in the RFSQ. The technical scores along with the pricing scores were combined, resulting in overall scores ranging from 80.02 to 93.32.

The eight (8) 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 claim 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.

## CONTACT

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## SIGNATURE

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Geneviève Sharkey  
Chief Procurement Officer

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Stephen Conforti  
Chief Financial Officer and Treasurer

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Wendy Walberg  
City Solicitor