13
RFP FOR LEGAL SERVICES

The Finance and Administration Committee recommends the adoption of the recommendations contained in the following report, December 21, 2006, from the Commissioner of Corporate Services:

1. RECOMMENDATIONS

It is recommended that:

1. The firms of Borden Ladner Gervais LLP and Weir Foulds LLP be approved to provide legal services on a fee for service basis through a retainer agreement for the period January 1, 2007 to December 31, 2009.

2. The Regional Solicitor be authorized to execute retainer agreements and related documents necessary to implement the retainer.

2. PURPOSE

The purpose of this report is to seek approval from Regional Council for the retainer of two law firms to provide external legal services for the period January 1, 2007 to December 31, 2009.

3. BACKGROUND

The Region's Legal Services Branch is comprised of a team of lawyers with expertise in a variety of areas including litigation, environmental law, construction law, labour and employment, corporate/commercial law, planning and development, and municipal law. The Legal Services Branch advises and represents Regional Council, all internal departments as well Housing York Inc. and the Police Services Board on all aspects of the Region's mandate. On occasion, the Region requires assistance from external legal counsel to compliment the internal team either due to resource constraints or the need for particular expertise. External counsel may be required to work alongside Regional legal staff or assume carriage of entire matters.

4. ANALYSIS AND OPTIONS

In 2004, the Region issued an RFP to establish a list of pre-qualified law firms for a period of two years. Twenty firms qualified for the list and their rates were pre-approved for period October 2004 to November 2006.

Legal Services undertook a review of external legal services for the period 2004 to 2006 to determine the effectiveness and efficiency of the pre-qualified list arrangement. While the list was comprised of twenty firms, the nature and volume of external work required resulted in the use of only 5-6 firms during this period. The volume of external legal work declined over the past three years, despite increases in activity requiring legal representation, due to the growth of internal legal staff, particularly in areas relating to the Region's infrastructure projects. While the Region enjoyed some benefits from the pre-qualified list of firms, the Region was not able to obtain any significant cost savings in the hourly billing rates of external legal firms due to the relatively low volume of outsourced work.

In the absence of volume discounts, the Region faces increases in hourly rates for external legal services of 8-10% per year. Hourly rates for senior lawyers in large law firms are currently $500 to $600.00 per hour. It is anticipated that the Region will require approximately 2,700 hours of external legal services in each of the next three years. The average hourly rate without any reduction is $447 per hour for a total potential cost of $3.6 million over three years.

4.1 Evaluation of RFP

Based on an analysis of the anticipated needs for external legal services over the next three to five years as well as review of best practices amongst in-house legal departments, the Regional Solicitor issued an RFQ inviting firms to submit proposals to provide a full range of legal services. Sixteen firms responded to the RFQ. Six firms were pre-qualified as full service firms and they were invited to submit an RFP

The RFP required firms to submit a proposal based on blended hourly rate for a team of legal professionals in four areas: litigation; municipal; planning and development; corporate, commercial and other. The RFP applied an efficiency model, developed by Catalyst Consulting, a firm specializing in management of legal services, to derive a single blended rate for the retainer period. This model encourages firms to distribute work over a team of legal professionals, and to provide discounted hourly rates for volumes of work.

All six pre-qualified firms submitted a proposal. The proposals were evaluated using a two envelope system. Proponents were required to achieve a minimum technical score of 45 points out of a possible 60 points in order to qualify their financial proposal. The lowest financial proposal was awarded 40 points out of 40, and the other proposals were scored proportionately comparing them to the lost proposal. Of the six pre-qualified firms only three qualified for financial review. The technical proposals were evaluated by an Evaluation Team based on the following criteria: qualifications and experience; quality assurance and client service programs; ability and willingness to meets the terms of the Region's retainer agreement; case management methodology; and suggestions for working relationship with the Region.

The two firms recommended for approval scored as follows:

Name of Firm	Technical Score (%)	Overall Score (%)
Weir Foulds LLP	49.0	89.0
Borden Ladner Gervais LLP	48.9	83.8

These firms offer the expertise required by the Region based on its mandate and program areas. The proposals submitted by these firms demonstrate their willingness and ability to meet our requirements for efficiency and effectiveness in case management along with opportunities to enhance the working relationship between the firm and the Region to maximize the benefits of external resources. However, neither firm is able to fully meet the Region's requirements for external legal services in the areas of environmental litigation and environmental assessment. Consequently, this work will be the subject of further review with external legal firms and a subsequent report to Regional Council regarding the award of a retainer.

5. FINANCIAL IMPLICATIONS

The overall blended hourly rates for Borden Ladner Gervais LLP and Weir Foulds is $273 per hour based on an estimate of 2,700 hours per year. Based on these hourly rates the anticipated overall cost of external legal costs for the period 2007 to 2009 is $2.19 million. This represents a savings of $1.4 million (38%) over the anticipated costs if the Region retained a variety of firms from a pre-qualified list at their standard hourly rate. However, the projected volumes and costs are estimates as unanticipated events (lawsuits, provincial or federal charges, etc) could result in additional costs. However, any such unanticipated volumes of work would be provided by the two successful firms at the hourly rates negotiated within the RFP.

External legal services required for environmental litigation and/or environmental assessment will likely be outsourced through a separate retainer to firms meeting the Region's requirements for specialized expertise. While every effort will be made to secure hourly rates similar to those outlined in this report, the volume of work will likely dictate the degree to which reductions from standard rates can be negotiated. This will be the subject of a subsequent report.

6. LOCAL MUNICIPAL IMPACT

There is no local municipal impact arising from this report.

7. CONCLUSION

By entering into a retainer agreement with two firms based on a blended hourly rate, the Region will achieve savings in its external legal costs while enjoying a superior level of client-based service. This arrangement will compliment internal legal resources.

The Senior Management Group has reviewed this report.