

Clause 14 in Report No. 7 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on April 19, 2018.

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Extension of Retainers for External Legal Services (2019-2021)

Committee of the Whole recommends adoption of the following recommendations contained in the report dated March 29, 2018 from the Regional Solicitor:

1. Council authorize the Regional Solicitor to negotiate extensions of existing retainer agreements for legal services with the law firms of Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP for an additional three years, from January 1, 2019 to December 31, 2021.
2. The Regional Solicitor be authorized to execute the retainer agreement extensions and related documents with each firm.

Report dated March 29, 2018 from the Regional Solicitor now follows:

1. Recommendations

It is recommended that:

1. Council authorize the Regional Solicitor to negotiate extensions of existing retainer agreements for legal services with the law firms of Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP for an additional three years, from January 1, 2019 to December 31, 2021.
2. The Regional Solicitor be authorized to execute the retainer agreement extensions and related documents with each firm.

2. Purpose

This report seeks Council's authorization to extend the respective retainers of three law firms to provide advice and representation on a fee for service basis for the period January 1, 2019 to December 31, 2021. The Purchasing Bylaw requires Council approval to procure additional services where the original contract does not contain a right of renewal and where a contract is extended beyond a term of five years.

3. Background

The Legal Services Branch is comprised of a team of lawyers and law clerks with expertise in a variety of areas including litigation, environmental law, construction law, labour and employment, real estate, corporate/commercial law, planning and development, and municipal law. Legal Services advises and represents Council, all internal departments as well as Housing York Inc., York Region Rapid Transit Corporation (“YRRTC”) and the Regional Municipality of York Police Services Board on all aspects of the Region’s mandate. YRRTC and York Regional Police also have in-house lawyers. The Region and its boards and agencies require assistance from external counsel to complement the internal teams either due to resource constraints or the need for additional or specialized expertise. External counsel may be required to work alongside in-house counsel or assume complete carriage of matters.

External legal services were procured in 2013 through a Request for Proposal

In late 2012, following a Request for Pre-Qualification (RFPQ), the Region issued a Request for Proposals (RFP) for legal services for 2013-2015. The external legal services model employed by the Region as reflected in the RFP was developed in association with an external consultant, Catalyst Consulting, and was designed to secure legal services at rates significantly below market levels. Pursuant to the RFP, retainer agreements were approved with three successful proponent firms, namely: Borden Ladner Gervais LLP (“BLG”), WeirFoulds LLP (“WeirFoulds”) and Rueter Scargall Bennett LLP, now Scargall Owen-King LLP (“Scargall Owen-King”).

A three year extension was approved in 2015

In October, 2015, Council approved the extension of the retainers for three years (2016-2018), and the current retainer agreements will expire on December 31, 2018. Staff are seeking approval to negotiate the renewal of the retainers with all three firms for a further period of three years to ensure the Region continues to receive high quality legal service at a significant saving compared to market rates.

4. Analysis and Implications

The Legal Services retainer agreements are based on a cost effective model of blended or discounted hourly rates and pre-approved staffing

The existing retainer agreements with Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP are based on “blended” hourly rates for matters that require more than one lawyer or a combination of lawyers and paralegals, as well as discounted hourly rates for individual lawyers. These rates are discounted below market rates, and apply throughout the term of the retainer with no annual increase. The retainer agreements also provide for a roster of pre-approved staff within each firm who may be assigned, as required, to work on the Region’s matters. This model has resulted in cost-effective and timely access to external legal resources.

The Region’s external legal services model has resulted in significant cost savings

In an open market setting, current average rates for external legal services from experienced top-tier law firms in the GTA are in the range of approximately \$590-\$750 per hour, depending on a number of factors including seniority and degree of specialization. The trend over recent years shows that these rates can be expected to increase at the rate of approximately 2 percent per year.

However, unlike fees in the open market, the rates secured by the Region through the external retainer are discounted based on volume of hours, and are guaranteed for the duration of the retainer. Combined with carefully ensuring that less complex or clerical matters are assigned to less senior lawyers or law clerks, this results in significant savings. For example, in 2017, the Region’s total external legal fees were \$4,799,911. In comparison, if the Region had retained external legal services at market rate in 2017, the associated cost would have been between \$7.9 million and \$10.1million. Therefore, the retainer agreements have provided a cost-savings to the Region in the range of \$3.2 million to \$5.4 million. Similar cost savings would be expected in the future, using the same model.

Renewal of the current external retainers will provide for continuity of service for ongoing legal matters

BLG, WeirFoulds and Scargall Owen-King offer a full range of legal services to the Region and its corporations particularly in the areas of critical infrastructure projects, Rapid Transit, OMB/planning and development, environmental, complex litigation, corporate/commercial, municipal law, land acquisition and real estate matters. In addition to the cost savings described above, the extension of the

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current retainer agreements with BLG, WeirFoulds and Scargall Owen-King will ensure seamless, continued management of the Region's external legal matters. The lawyers assigned to work on these matters have developed a thorough knowledge of the files and the associated Regional staff and processes, and are accordingly able to provide superior service at a significant cost savings with no "learning curve".

A large number of complex legal matters are currently in progress and are expected to conclude in the next few years. Extending the existing retainer agreements is the most prudent and cost effective way to meet the Region's need for external legal services as the ongoing matters are concluded. The majority of matters currently being handled by external legal counsel relate to the rapid transit projects and many of these matters are expected to conclude in 2021. The extension of the current retainers will also give staff time to assess the Region's need for external legal beyond 2021 and to prepare a Request for Proposal to obtain those services through a competitive process.

The renewal process is structured to provide competitive pricing

The Region obtains proposals through a competitive process by projecting total hours over the three year retainer agreement and requires that each firm submit a formal competitive proposal, essentially competing for the allocation of work. As part of the proposal evaluation, staff will also assess the proposed distribution of work between blended hourly rates and individual discounted rates to ensure that the more cost effective blended rate is maximized.

It should also be noted that only a limited number of firms, most of whom are now on the Region's legal services roster, responded to the original request for proposals which stipulated the "blended" rate described in this report.

If approved by Council, the Regional Solicitor will negotiate extensions of the external counsel retainer agreements for a further three years

By extending the current retainer agreements, the Region will be able to maintain hourly external legal fees well below market levels and maintain continuity of service. As well, annual increases throughout the life of the extended retainer agreements will be avoided.

The Regional Solicitor will then execute the respective retainers which will ensure pricing and service delivery through to December 31, 2021.

Link to key Council-approved plans

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This report is consistent with the 2015 to 2019 Strategic Plan's priority of good government. It supports the Plan's objective of ensuring a fiscally prudent and efficient Region.

5. Financial Implications

The overall blended rates from Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP will provide significant cost savings to the Region. Projected volumes and costs are based on estimates of the Region's needs for external services over the period of 2019-2021.

6. Local Municipal Impact

There is no local municipal impact arising from this report.

7. Conclusion

By renewing the retainer agreements with Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP, the Region will continue to enjoy a significant cost savings in external legal services while receiving exceptional continued service from our external partners. These firms are able to provide the service required by the Region and its corporations at favourable hourly rates guaranteed over the three year retainer agreement. The extension of the agreements with these firms will provide for the best possible service and cost savings to the Region.

For more information on this report, please contact Dan Kuzmyk, Deputy Regional Solicitor, 1-877-464-9675 ext. 71401.

The Senior Management Group has reviewed this report.

March 29, 2018

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