

Clause 19 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on October 15, 2015.

19

## Retainer for External Legal Services (2016-2018)

Committee of the Whole recommends adoption of the following recommendations contained in the report dated September 25, 2015 from the Regional Solicitor:

### 1. Recommendations

It is recommended that:

1. Regional Council approve the renewal of retainer agreements with the law firms of Borden Ladner Gervais LLP, Weir Foulds LLP and Scargall Owen-King LLP (formerly Rueter Scargall Bennett LLP) on the terms set out in this report.
2. The Regional Solicitor be authorized to execute retainer agreements and related documents with each firm.

### 2. Purpose

This report seeks authorization from Regional Council to extend the retainer of three law firms to provide services on a fee for service basis for the period January 1, 2016 to December 31, 2018. The Purchasing Bylaw requires Council approval for a renewal of a contract 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 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

Retainer for External Legal Services

represents Council, all internal departments as well as Housing York Inc., York Region Rapid Transit Corporation and the Police Services Board on all aspects of the Region’s mandate. In addition, the Region requires assistance from external 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.

The Region issued an RFP for legal services in late 2012, resulting in the approval of retainer agreements with three firms, Borden Ladner Gervais LLP, WeirFoulds LLP and Rueter Scargall Bennett LLP (now Scargall Owen-King LLP). The Region utilizes a model developed by Catalyst Consulting to secure legal services at rates below market levels.

The current retainer agreements expire on December 31, 2015. 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 service and significant savings in external legal fees.

4. Analysis and Options

Staff estimate a slight decrease in demand for external legal services

Staff conducted a review of demand for legal services over the next three years and determined that the Region will require approximately 25,000 hours of external legal service during the period 2016-2018. The firms have proposed personnel and billing rates for the next three years in four major practice areas:

<b>Area of Practice</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>
<b>Litigation/Dispute Resolution</b>	625	625	625
<b>Land Acquisition/Real Estate*</b>	5543	5608	5348
<b>OMB Hearings/Development</b>	1000	1000	2000
<b>Corporate/Commercial/Municipal*</b>	800	800	800
<b>Total:</b>	7968	8033	8773

\*Note: this section includes service support to YRRTC

## Retainer for External Legal Services

These estimates represent a decrease of approximately 15% when compared to the estimates set out in the 2013-2015 retainer (28,200 over three years) however the actual use of external legal during that period exceeded those estimates.

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

The 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. The hourly rates 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 has experienced significant cost savings in utilizing external legal fees

Current market rates for external legal services range from \$590-\$710 per hour. The rates secured by the Region through the external retainer are discounted rates based on volume. In 2013, the Region's total external legal fees were \$5,193,089. In comparison, the market rate in 2013 was \$570-\$684 per hour. If the Region had retained external legal services at market rate in 2013, the associated cost would have been between \$7,382,070 and \$8,858,484. Therefore, the retainer agreements have provided a cost-savings to the Region in the range of \$2,188,981 to \$3,665,395.

Renewal of the current external retainers provide for seamless continuation of service

In addition to cost savings, the renewal of the current retainer agreements will ensure seamless, continued management of the Region's external legal matters particularly in the areas of critical infrastructure projects, Rapid Transit matters, planning matters and key litigation matters. The lawyers assigned to work on these matters have developed a thorough knowledge of the files and are able to provide superior service at a significant cost savings.

## Retainer for External Legal Services

Renewal will provide for continuity of service for ongoing matters

Borden Ladner Gervais LLP, WeirFoulds LLP and Scargall Owen-King LLP offer a full range of legal services to the Region and its corporations including litigation and dispute resolution, construction law, environmental, land acquisition and real estate, OMB/development, corporate/commercial and municipal law. The Region is well positioned to negotiate favourable rates with these firms while maintaining seamless management of the current matters. Given that the Region has several ongoing matters with these firms, including land acquisitions for Rapid Transit matters as well as key litigation and planning matters, the continuity of service is of great importance.

Market conditions are favourable for renewal of the existing agreements

The average increase in external legal services hourly market rates is approximately 2% each year. Market rates for experienced lawyers are approximately \$590 to \$710 per hour. Each firm has submitted a discounted rate for each major practice area.

By renewing the current retainer agreements, the Region will be able to maintain hourly external legal fees well below market levels while avoiding annual increases throughout the life of the retainer agreement.

The renewal process is structured to provide for competitive pricing

The Region obtains proposals through a competitive process by projecting total hours over the three year retainer agreement and requiring that each firm submit a formal competitive proposal, essentially competing with one another 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.

Link to key Council-approved plans

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 2016-2018.

## 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 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. Staff are confident that the renewal of the agreements with the firms will provide for the best possible service and cost savings to the Region.

For more information on this report, please contact Joy Hulton at ext.71417.

The Senior Management Group has reviewed this report.

September 25, 2015

Attachments (1)

6325808

Accessible formats or communication supports are available upon request