



# **REQUEST FOR PROPOSALS**

## **VENDOR OF RECORD FOR LEGAL SERVICES**

**RFP# 2016-310-04**

**ISSUE DATE: 2016-SEP-28 2:00 PM EST**

**DUE DATE: 2016-OCT-28 2:00 PM EST**

# TABLE OF CONTENTS

---

- 1. INTRODUCTION** ..... 3
  - 1.1 PortsToronto ..... 3
  - 1.2 Request for Proposals ..... 3
  - 1.3 Use of the VOR List ..... 3
- 2. THE RFP PROCESS** ..... 5
  - 2.1 RFP Documents ..... 5
  - 2.2 RFP Process Timetable ..... 5
  - 2.3 Questions and Communications related to the RFP Documents ..... 6
  - 2.4 Prohibited Contacts ..... 6
  - 2.5 Addenda/Changes to the RFP Documents or RFP Process ..... 7
  - 2.6 Respondent Confidentiality and Disclosure ..... 7
  - 2.7 Respondent Costs ..... 7
  - 2.8 Clarification and Verification of Respondent Proposals ..... 8
- 3. THE SERVICES** ..... 9
  - 3.1 Corporate and Commercial Law ..... 9
  - 3.2 Commercial and Civil Litigation and Dispute Resolution ..... 9
  - 3.3 Labour and Employment ..... 9
  - 3.4 Real Estate ..... 10
  - 3.5 Environmental ..... 10
  - 3.6 Property Taxes and Payments-in-Lieu of Taxes ..... 10
  - 3.7 Transactions and Special Projects ..... 10
- 4. PROPOSAL SUBMISSION, AMENDMENT, WITHDRAWAL** ..... 11
  - 4.1 General Format of Proposals ..... 11
  - 4.2 Submission of Proposals ..... 11
  - 4.3 Late Proposals ..... 11
  - 4.4 Amendment of Proposals ..... 11
  - 4.5 Withdrawal of Proposals ..... 12

<b>5. PROPOSAL EVALUATION</b> .....	13
5.1 Evaluation Team .....	13
5.2 Evaluation Process .....	13
5.3 Response Requirements.....	13
5.4 Conflict of Interest .....	16
5.5 References and Past Performance .....	16
5.6 Interviews .....	17
5.7 PortsToronto’s Discretion.....	17
5.8 Disqualification .....	17
<b>6. AGREEMENT NEGOTIATION AND DEBRIEFING</b> .....	18
6.1 Negotiation of Assignment to Deliver Services.....	18
6.2 Notification of Success/Failure .....	18
<b>7. LEGAL MATTERS AND RIGHTS OF PORTSTORONTO</b> .....	19
7.1 RFP not a “Bidding Contract” or Tender .....	19
7.2 No Liability.....	20

# 1. INTRODUCTION

## 1.1 PortsToronto

### About

The Toronto Port Authority is a government business enterprise that proudly owns and operates Billy Bishop Toronto City Airport, which welcomes more than two million passengers each year; the Outer Harbour Marina, one of Canada's largest freshwater marinas; and Terminals 51 & 52, which provide marine transportation, distribution, storage and container services to businesses at the Port of Toronto. Since January 2015, the Toronto Port Authority has been conducting business under the name "PortsToronto". The Toronto Port Authority is hereinafter referred to as PortsToronto in this document.

### Mission

PortsToronto's mission is to effectively manage the Billy Bishop Toronto City Airport, the Port of Toronto, and the Outer Harbour Marina on a self-sustaining basis, allowing it to reinvest funds in transportation infrastructure, marine safety, environmental protection and community programs. Through the successful pursuit of this mission, PortsToronto plays an important role in the economic growth and sustainable future of Toronto.

### Vision

As guardian and steward of Toronto's waterfront resources, PortsToronto works closely with the broader waterfront community to ensure these assets will provide prosperity and enjoyment for future generations.

## 1.2 Request for Proposals

(1) This Request for Proposals ("**RFP**") is issued by PortsToronto, for the purpose of qualifying prospective vendors and establishing a Vendor of Record List ("**VOR List**") for the categories of Legal Services described within this RFP document (the "**Services**").

(2) In this RFP, individuals or firms that submit documents in response to this RFP are referred to as "**Respondents**", and the entities qualified in accordance with this RFP, to be added to the VOR List for the required Legal Services, are referred to as "**Vendors of Record**" or "**VORs**". The Respondents' submissions to this RFP are referred to as "**Proposals**".

(3) The process to select VORs shall begin with the issuance of this RFP and will end when PortsToronto identifies the vendors it wishes to qualify as VORs (the "**RFP Process**").

## 1.3 Use of the VOR List

(1) PortsToronto may from time to time select VORs from the VOR List for specific assignments, and will do so in accordance with the requirements set out in PortsToronto's Purchasing Policy.

(2) The PortsToronto Purchasing Policy provides for the expedited engagement of VORs when the projected expenditure for Legal Services on any particular matter is not expected to exceed the prescribed threshold, which is currently \$75,000.

(3) There is no guarantee that, as a result of being selected as a VOR, work will be assigned to that VOR.

(4) It is the intention of PortsToronto to retain VORs to provide Services through the VOR List. However, PortsToronto is not prohibited from retaining a firm or individual that is not on the VOR List to provide any one or more of the Services from time to time.

(5) Respondents selected to be on the VOR List for one or more Legal Services categories will sign a Retainer Letter with PortsToronto ("**VOR Retainer Letter**"). The VOR Retainer Letter will govern the overarching terms and conditions to which the VOR shall adhere while performing services for PortsToronto.

(6) If a VOR is selected to provide required Legal Services to PortsToronto on a given matter, further documentation specifying the negotiated terms of the engagement may be required.

(7) The term ("**Term**") for which the successful Respondents will be accorded Vendor of Record status is **three (3) years** commencing on **January 23, 2017**. However, the VOR List may, in the sole discretion of PortsToronto, be refreshed at any time.

## 2. THE RFP PROCESS

### 2.1 RFP Documents

(1) The Request for Proposals documents (the “**RFP Documents**”) are:

- The RFP
- Any addenda to the RFP (“**Addenda**”)

(2) The RFP Documents are to be read as a whole. The Addenda, if any, constitute an integral part of this RFP and are incorporated by reference. The Respondent is solely responsible for ensuring that it has received all Addenda issued by PortsToronto. Respondents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person or the Contact Person’s designate.

(3) Each Respondent is responsible for conducting independent investigation and due diligence, as well as seeking any other independent advice required for the preparation of its Proposal. Nothing within the RFP Documents is intended to relieve Respondents from forming their own conclusions with respect to the matters addressed in this RFP.

(4) No guarantee, representation or warranty, explicit or implied, is made, and no responsibility of any kind is accepted by PortsToronto or its representatives for the completeness or accuracy of any information presented in the RFP Documents, or during the RFP Process. PortsToronto and its representatives shall not be liable to any person or entity as a result of the use of any information contained in the RFP Documents, or provided during the RFP Process.

### 2.2 RFP Process Timetable

(1) The deadline for the submission of Proposals (“**Submission Deadline**”) and the general timetable for the RFP Process (“**Timetable**”) are set out below.

- Issue Date: **September 28, 2016 2:00 PM EST**
- Deadline for Questions by Vendors: **October 7, 2016 2:00 PM EST**
- Deadline for Answers by PortsToronto: **October 14, 2016 2:00 PM EST**
- Submission Deadline: **October 28, 2016 2:00 PM EST**
- Potential Interviews (if required): **Early – Mid November 2016**
- Expected Award Communication: **December 2016**

(2) PortsToronto may, without liability or penalty and in its sole discretion, amend the Timetable:

- At any time prior to the Submission Deadline, for events that are to occur prior to or on the Submission Deadline, including the Submission Deadline itself; and
- At any time in the RFP Process, for events to occur after the Submission Deadline.

(3) If PortsToronto extends the Submission Deadline, all of the requirements that are applicable to Respondents will thereafter be subject to the extended deadline.

## 2.3 Questions and Communications related to the RFP Documents

(1) Respondents will submit questions and other communication regarding the RFP Documents or RFP Process electronically, to the RFP Contact Person (“**Contact Person**”) indicated below, no later than the deadline for questions set out within the Timetable.

- Contact Person: **Tanja Stojanovski**
- Contact Designation: **Corporate Services Manager – Ports Toronto**
- Contact Email Address: [tstojanovski@portstoronto.com](mailto:tstojanovski@portstoronto.com)
- Subject Line: “RFP# 2016-310-04: Question from <Respondent Company Name>”

(2) PortsToronto will provide written responses to the questions submitted no later than the deadline for answers by PortsToronto set out within the Timetable. Responses to questions posed will be made available as Addenda through MERX ([www.merx.com](http://www.merx.com)), as well as on the PortsToronto website ([www.portstoronto.com](http://www.portstoronto.com)).

(3) PortsToronto will respond to all questions submitted in accordance with this RFP Section 2.3 in the manner specified in RFP Section 2.3 (2) above, but will not attribute the questions to any person or entity. PortsToronto may, in its sole discretion:

- Answer similar questions from various Respondents only once;
- Edit the language of the questions for the purpose of clarity;
- Respond to questions submitted after the questions submission deadline, if PortsToronto believes that such responses would be of assistance to the Respondents generally; and
- Exclude submitted questions if they are ambiguous or incomprehensible.

(4) It is each Respondent’s responsibility to seek clarification from PortsToronto on any matter that it considers to be unclear within the RFP Documents. PortsToronto shall not be responsible for a misunderstanding by a Respondent of any part of the RFP Documents, the RFP Process, or description of the Services.

## 2.4 Prohibited Contacts

(1) Neither Respondents, nor any of their representatives, will either directly or indirectly contact or attempt to contact any member of PortsToronto’s Board of Directors or any of PortsToronto’s employees other than the Contact Person, at any time during the RFP Process, on matters related to the RFP Process, RFP Documents, or their Proposals.

(2) For clarity, Respondents who are providing legal or other services to PortsToronto on the date of the issuance of this RFP, or who subsequent to the date of the issuance of this RFP are retained to provide legal or other services for PortsToronto, are permitted to communicate with the employees of PortsToronto other than the Contact Person in relation to the services which are being provided, but are prohibited from contacting or attempting to contact other employees of PortsToronto on matters related to the RFP Process, RFP Documents or their Proposals.

(3) If in the opinion of PortsToronto, a Respondent or any of its representatives contravenes the RFP Section 2.4 (1) or 2.4 (2), PortsToronto may, in its sole discretion:

- Take any action in accordance with RFP Section 5.8 (Disqualification); or
- Impose certain conditions on the Respondent’s participation in the RFP Process which PortsToronto, in its sole discretion, considers to be appropriate.

For clarity, PortsToronto is not obliged to take the actions set out in this RFP Section 2.4 (3).

## 2.5 Addenda/Changes to the RFP Documents or RFP Process

- (1) PortsToronto may, in its sole discretion, amend or supplement the RFP Documents and/or the RFP Process.
- (2) PortsToronto will issue any changes to RFP Documents and/or changes to the RFP Process through Addenda only. Subject to the RFP Section 2.3, PortsToronto may issue Addenda at any time during the RFP Process.
- (3) No other statements made by PortsToronto, including, for clarity, the named Contact Person, shall amend the RFP Documents. Respondents are solely responsible to ensure that they have received all Addenda issued by PortsToronto. Respondents may, in writing, seek confirmation of the number of Addenda issued under this RFP from the Contact Person.
- (4) All Addenda will be made available on MERX ([www.merx.com](http://www.merx.com)), as well as the PortsToronto website ([www.portstoronto.com](http://www.portstoronto.com)).

## 2.6 Respondent Confidentiality and Disclosure

- (1) PortsToronto may share Respondent Proposals with any person involved in their review and evaluation on behalf of PortsToronto, and may also make copies of and retain Proposals.
- (2) PortsToronto shall treat Respondent Proposals as confidential, except where disclosure is required by law.
- (3) Respondents shall not require PortsToronto or its representatives to sign a non-disclosure agreement with regard to any step taken or information provided as part of this RFP Process.

## 2.7 Respondent Costs

- (1) The Respondent shall bear all costs and expenses incurred by the Respondent relating to any aspect of its participation in this RFP Process, including, without limitation, all costs related to the Respondent's involvement in:
  - The preparation, presentation and submission of its Proposal;
  - Due diligence and information gathering processes;
  - Attendance at any interviews or "**Respondents' Meeting(s)**";
  - Preparation of responses to questions or requests for clarification from PortsToronto;
  - Preparation of the Respondent's own questions during the clarification process; and
  - Any discussions with PortsToronto regarding an agreement to provide the Services.
- (2) In no event shall PortsToronto be liable to pay any costs or expenses, or to compensate or reimburse a Respondent under any circumstances, regardless of the conduct or outcome of the RFP Process.
- (3) The Respondent shall not hold PortsToronto liable for any error or omission in any part of the RFP information or RFP Documents, or for any delays, or costs associated with the delays, in the RFP Process.

## 2.8 Clarification and Verification of Respondent Proposals

(1) PortsToronto may:

- Require a Respondent to clarify the contents of its Proposal;
- Require that a Respondent submit supplementary documentation clarifying any matter contained in its Proposal; and
- Seek a Respondent's acknowledgement of PortsToronto's interpretation of its Proposal.

(2) However, PortsToronto is not obliged to seek out clarification or verification pertaining to any aspect of a Proposal or related statement made by a Respondent, including any ambiguity in a Respondent's Proposal or a statement made by the Respondent.

(3) Any written information received by PortsToronto from a Respondent pursuant to a request for clarification/verification from PortsToronto as part of the RFP Process may, in PortsToronto's sole discretion, be considered an integral part of the Respondent's Proposal.

(4) PortsToronto may, in its sole discretion, verify or clarify any statement or claim contained in any Proposal or made subsequently in any Respondent interview, presentation, or discussion. That clarification/verification may be made by whatever means PortsToronto deems appropriate and may include contacting individuals or entities identified in the contact information provided by a Respondent and, in addition, contacting individuals or entities other than those identified by a Respondent.

(5) In submitting a Proposal, a Respondent is deemed to consent to PortsToronto verifying or clarifying any information that it has submitted, and requesting additional information from third parties regarding the Respondent, including any other person associated with the Respondent whom PortsToronto warrants necessary.

(6) PortsToronto may, in its sole discretion, convene one or more Respondents' Meetings to clarify / verify the contents of one or more Proposals. Any information received by PortsToronto from a Respondent during a Respondents' Meeting may, in PortsToronto's sole discretion, be considered an integral part of the Respondent's Proposal, even if such information should have been submitted as part of the original Respondent Proposal. Information received during a clarification / verification meeting may, in PortsToronto's sole discretion, be taken into account in the evaluation of the Respondent's Proposal.

## 3. THE SERVICES

PortsToronto is looking to qualify the most suitable providers of the following Legal Services on a VOR List. A brief description of each listed category of Legal Services follows below.

### 3.1 Corporate and Commercial Law

1. Advise and represent PortsToronto as outside corporate counsel
2. Advise PortsToronto on applicable corporate undertakings, activities and requirements, including those affecting PortsToronto by virtue of it being constituted by Letters Patent issued pursuant to the *Canada Marine Act*
3. Advise PortsToronto on agreements and contracts, and assist in the negotiation, drafting and interpretation of those documents
4. Advise on corporate governance issues, including conflict of interest and ethics issues
5. Advise on access to information, privacy and anti-spam legislation
6. Advise on intellectual property issues

### 3.2 Commercial and Civil Litigation and Dispute Resolution

1. Represent PortsToronto in any claims, demands, or causes of action by or against it in any court or other tribunals
2. Advise PortsToronto on alternative dispute resolution options, and participate in such dispute resolution procedures

### 3.3 Labour and Employment

Advise and represent PortsToronto in labour, employment and employment-related issues with respect to both union and non-union staff, including matters pertaining to the following:

- Collective Bargaining
- Grievances
- Employment Standards
- Human Rights
- Employment Contracts
- Independent Contractor Agreements
- Termination Proceedings
- Occupational Health and Safety
- Workplace Safety and Insurance

### **3.4 Real Estate**

1. Negotiate, draft and interpret real estate leases, licences, easements, rights-of-way, access agreements and related real property agreements
2. Search title to property and related encumbrances
3. Draft and interpret real property agreements relating to Billy Bishop Toronto City Airport in the context of the Tripartite Agreement

### **3.5 Environmental**

1. Provide advice and representation on matters related to environmental protection and applicable legislation that impact PortsToronto
2. Formulate risk management strategies and techniques to eliminate or minimize the environmental risk to PortsToronto and its officers and directors
3. Provide support and advice in relation to the environmental assessments conducted by PortsToronto

### **3.6 Property Taxes and Payments-in-Lieu of Taxes**

Advise and represent PortsToronto on matters related to municipal property tax assessments and payments-in-lieu of taxes, including providing representation as necessary before the federal Payments-in-Lieu of Taxes Dispute Advisory Panel and the Ontario Assessment Review Board.

### **3.7 Transactions and Special Projects**

Assist PortsToronto in negotiating, drafting and interpreting agreements and contracts in relation to special projects and transactions. Recent examples include Pedestrian Tunnel as well as the 30 Bay Development project.

## 4. PROPOSAL SUBMISSION, AMENDMENT, WITHDRAWAL

### 4.1 General Format of Proposals

(1) Each Respondent must submit **four (4) printed copies** of its Proposal:

- Securely bound, with numbered pages, and a font no less than 12 point;
- With Title Page and complete Table of Contents at the front of the Proposal.

(2) In addition each Respondent must submit an electronic copy of its response in **.PDF format**, in a searchable, unlocked USB data stick. In the event of a conflict or inconsistency between the printed copy and the electronic copy of the Proposal, the printed copy version shall prevail.

(3) Each Respondent will examine all of the information, terms and conditions contained in the RFP Documents, and responses to prospective Respondent questions, and in a **clear, legible, and succinct** manner, complete and submit all required documentation and information.

### 4.2 Submission of Proposals

(1) Respondents must submit their Proposals by pre-paid courier or hand-delivery, in a sealed envelope or package, at the location for submission set out in Section 4.2(2) below, on or before the Submission Deadline.

(2) Respondents must label the outside of their sealed Proposals with the following information:

#### **PORTSTORONTO**

2ND Floor, 60 Harbour Street  
Toronto, Ontario M5J 1B7  
Canada

ATTENTION: Tanja Stojanovski

PortsToronto RFP# 2016-310-04: Vendor of Record – Legal Services

<Respondent Company Name>

### 4.3 Late Proposals

PortsToronto may, in its sole discretion, accept or reject Proposals that are submitted after the Submission Deadline.

### 4.4 Amendment of Proposals

Respondents may amend their Proposals after submission, but only if the Proposal is amended and resubmitted before the Submission Deadline, in accordance with the following:

- Respondent withdraws original Proposal by notifying the Contact Person in writing; and
- Respondent submits replacement Proposal no later than the Submission Deadline.

## 4.5 Withdrawal of Proposals

A Respondent may withdraw its Proposal at any time during the RFP Process by notifying the Contact Person in writing.

## 5. PROPOSAL EVALUATION

### 5.1 Evaluation Team

PortsToronto will establish a team for evaluating Proposals (“**Evaluation Team**”).

### 5.2 Evaluation Process

Proposals will be evaluated per the following Evaluation Process (“**Evaluation Process**”).

#### **Stage I: Review Submission Requirements**

The Evaluation Team will determine which Proposals comply with the submission requirements. Proposals shall be deemed compliant as long as they:

- Are complete responses providing all the information requested for evaluation; and
- Were received by PortsToronto before the Submission Deadline.

#### **Stage II: Evaluate Response Requirements**

PortsToronto will assess each Proposal by taking into account information submitted as outlined in the response requirements and PortsToronto’s own business objectives. PortsToronto may, in its sole discretion, require clarification regarding a Respondent’s Proposal.

#### **Stage III: Interviews (Optional)**

PortsToronto may, in its sole discretion, interview some or all the Respondents, in accordance Section 5.6 of this RFP Document.

#### **Stage IV: Vendor of Record Selection**

The top Respondents in a Legal Services category will be put on the VOR List for that category. PortsToronto, in its sole discretion, reserves the right to limit the number of Respondents who qualify within each Legal Services category.

### 5.3 Response Requirements

(1) Respondents are requested to provide the information outlined in sections **5.3.1 – 5.3.4** in their Proposals.

(2) While putting together their responses, PortsToronto encourages Respondents to address the following considerations:

1. The Respondent’s reputation in the industry, including the reputation of key practitioners who will be providing the Services to PortsToronto.
2. The Respondent’s ability to provide the Services to PortsToronto efficiently, on time and within budget.

3. The overall value proposition put forward by the Respondent.
4. The Respondent's understanding of the business, operating and political environment within which PortsToronto operates.
5. Evidence of the Respondent having previously successfully provided Legal Services to PortsToronto, other Canadian Port Authorities, or other comparable entities.

### 5.3.1 Corporate Profile

**Note:** You must **provide the following information once**, regardless of the number of Legal Services categories you are applying to.

Please provide the following information pertaining to your Corporate Profile:

- Organization name, mailing address, and website
- Contact name, contact title, email, phone number, alternate contact
- Organization profile, including history, number of employees, head office and branches
- Description of key services provided, areas of expertise, approach to customer service, and demonstrated ability to meet deadlines.
- A list of the Legal Services categories to which your organization is applying. Note that we may deem those organizations that are able to successfully demonstrate an ability to provide services across multiple Legal Services categories specified within this RFP to be more advantageous to retain.

### 5.3.2 Demonstrated Expertise

**Note:** You must provide this information **for each Legal Services category** you are applying to e.g. If you are applying to the categories Corporate & Commercial Law, Labour & Employment, and Real Estate, you must provide the information requested below three times.

Please provide the following information pertaining to your organization's demonstrated expertise. Note that prior successfully completed work with PortsToronto, other Canadian Port Authorities, and/or other comparable entities, demonstrating a solid grasp of our business, operating and political environment, and an ability to navigate its challenges, is strongly preferred.

- Brief description of your organization's specific expertise in the Legal Services category for which you are applying.
- **Reference 1:** Category-specific client reference for work done by your organization in the past **three (3) years** that is similar in nature, complexity and size to the requirements specified in this RFP.
  - Reference contact name, company and organizational title
  - Email and phone number
  - Period of work
  - Detailed description of services provided, including project size, overall results, quality of work, adherence to deadlines, and client satisfaction

- **Reference 2:** Category-specific client reference for work done by your organization in the past **three (3) years** that is similar in nature, complexity and size to the requirements specified in this RFP.
  - Reference contact name, company and organizational title
  - Email and phone number
  - Period of work
  - Detailed description of services provided, including project size, overall results, quality of work, adherence to deadlines, and client satisfaction

### 5.3.3 Practitioner Profiles and Pricing

**Note:** You must provide this information **for each Legal Services category** you are applying to.

While we appreciate that the composition of the engagement team will vary based on the nature of each engagement, for each Legal Services category you are applying for, please provide the information requested for each of the primary practitioners you propose to make available to us as required. Through this section, we are looking to gauge the experience and the qualifications of team members who will service the PortsToronto account for each Legal Services category.

- Practitioner Level (e.g. Partner, Associate, Clerk, Paralegal, Technical/Other)
- Brief Biography (2–3 paragraph overview of experience and qualifications)
- Relevant Experience in the past **three (3) years**
- Academic Qualifications and Certifications
- Hourly Rate

Additional Guidelines:

1. To facilitate ease of evaluation, for each Legal Services category to which you apply, please do not profile more than **seven (7) practitioners across levels**.
2. If practitioners have the experience and the qualifications to be suitable for more than one Legal Services category, they may be profiled across multiple categories. That said, each time a practitioner is profiled, in the *Relevant Experience* sub-section of the profile we will look for the experience and qualifications specific to the particular Legal Services category for which they are being profiled.
3. Depending on the engagement in question, one may require a mix of senior, mid-level and junior practitioners. We therefore recommend profiling a balanced practitioner panel across levels.
4. Each practitioner profile should not exceed **one (1) page**, using the same font employed throughout the rest of the document i.e. no less than 12 point font, as specified earlier. Profiles can, however, be shorter than one page.
5. For each Legal Services category, we encourage you to put forward the strongest panel of practitioners you can make available to us, bearing in mind a suitable balance of level, category-specific skill set, and hourly rates.

### 5.3.4 Retainer Letter

**Note:** You must **provide the following information once**, regardless of the number of Legal Services categories you are applying to.

Proponents are requested to include with their Proposal their standard form Retainer Letter with such changes that may be necessary to reflect the value proposition set forth in their Proposal. In particular, we ask that the Retainer Letter reflect the following:

- Proposed pricing arrangement
- Overall value proposition to PortsToronto
- Any other benefits the Respondent proposes to offer PortsToronto to stand out from the competitive field

If a Respondent is selected to be on the VOR List for one of more Legal Services categories, the VOR Retainer Letter which shall govern the overarching terms and conditions to which the selected VOR will adhere while performing services for PortsToronto will be based on the inputs provided here. However, PortsToronto reserves the right to negotiate the terms and conditions of the final VOR Retainer Letter as required.

### 5.4 Conflict of Interest

(1) Each Respondent will disclose any potential, perceived or actual business or legal conflict of interest of the Respondent ("**Conflict of Interest**") to the RFP Contact Person through email in accordance with this RFP Section 5.4 by the Submission Deadline. PortsToronto may, in its sole discretion, waive a Conflict of Interest, or impose conditions on a Respondent which require the management, mitigation and/or minimization of the Conflict of Interest.

(2) If a Respondent is determined to have a Conflict of Interest which, in the sole discretion of PortsToronto cannot be managed, mitigated or minimized, PortsToronto may disqualify the Proposal.

(3) If PortsToronto discovers a Respondent's failure to disclose a Conflict of Interest, it may disqualify the Respondent, or it may terminate any agreement entered into with the Respondent pursuant to this RFP Process.

### 5.5 References and Past Performance

(1) PortsToronto reserves the right to:

- Reject a Proposal on the basis of information provided by the Respondent's references
- Check references other than those provided by Respondents in their Proposal

(2) PortsToronto may, in its sole discretion, confirm the Respondent's experience and ability to provide the Services by contacting the Respondent's references. However, PortsToronto is not obliged to contact the references of any Respondent, and may determine, in its sole discretion, how, and whether, the reference responses (if any) will be taken into account in the evaluation process.

(3) If PortsToronto has reliable information with respect to a Respondent's poor performance in carrying out services similar to those solicited through this RFP Document (or other services), it may take such past performance into account in its evaluation of the Respondent's Proposal.

## 5.6 Interviews

(1) PortsToronto may, in its sole discretion, interview some or all of the Respondents, based on Respondent scores after its initial evaluation of the response requirements, and may also, in its sole discretion:

- Determine the number of Respondents to be interviewed;
- Determine the content and length of the interviews; and
- Request that specific individuals from the Respondent's organization be present at the interview.

Respondents will not be permitted to add to/alter their Proposals through the interview process.

(2) If a Respondent is selected for an interview, PortsToronto may share specific questions and instructions pertaining to the interview with that Respondent ahead of the interview.

## 5.7 PortsToronto's Discretion

PortsToronto may determine any of the following in its sole discretion:

- The membership of the Evaluation Team;
- Whether a Proposal or a Respondent
  - Is disqualified; or
  - Will cease to be considered in the evaluation process;
- If PortsToronto determines that it will conduct interviews, which Respondent(s), and how many Respondents, based on the Evaluation Process, will be invited to an interview; and
- The evaluation results for each Respondent.

## 5.8 Disqualification

PortsToronto may, in its sole discretion, disqualify a Proposal, or cancel its decision to identify a Respondent as a Vendor of Record at any time before execution of the VOR Retainer Letter, if:

- The Respondent fails to comply with the law;
- The Proposal contains false or misleading information or the Respondent provides false or misleading information in its interview (if an interview is conducted);
- The Proposal, in the sole discretion of PortsToronto, reveals a Conflict of Interest that cannot be managed, mitigated or minimized;
- There is any evidence that the Respondent, or any of the Respondent's representatives, have colluded with one or more of the other Respondents or any of their representatives, in the preparation or submission of their Proposals; or
- The Respondent or Respondent team members fail to cooperate with PortsToronto to clarify or verify any information provided by the Respondent in its Proposal.

## **6. AGREEMENT NEGOTIATION AND DEBRIEFING**

### **6.1 Negotiation of Assignment to Deliver Services**

(1) Respondents selected to be on the VOR List for one or more Legal Services categories will sign a VOR Retainer Letter with PortsToronto. The VOR Retainer Letter will govern overarching terms and conditions to which the VOR will adhere while performing services for PortsToronto.

(2) If a VOR is selected to provide required Legal Services to PortsToronto on a given matter, further documentation specifying the negotiated terms of the engagement may be required.

### **6.2 Notification of Success/Failure**

Vendors of Record and unsuccessful Respondents will be notified by PortsToronto in writing as to their success or failure in this RFP Process.

## 7. LEGAL MATTERS AND RIGHTS OF PORTSTORONTO

### 7.1 RFP not a “Bidding Contract” or Tender

(1) Notwithstanding any other provisions of this RFP, this RFP is not a tender and is not an offer to enter into a contract. Neither this RFP nor the submission of a Proposal by a Respondent will create any contractual/legal obligations/rights whatsoever on the Respondents or PortsToronto. No legal relationship or obligation of any kind shall be created between the Respondent and PortsToronto until the successful negotiation and execution of a written agreement to provide the Services.

(2) Without limiting the generality of the RFP Section 7.1(1), the following principles apply to this RFP Process:

- PortsToronto, may, in its sole discretion, change or discontinue this RFP Process at any time whatsoever;
- PortsToronto may, in its sole discretion, decline to evaluate any Proposal that, in its sole discretion, is incomplete, obscure, or does not contain sufficient information to carry out a reasonable evaluation;
- PortsToronto may, in its sole discretion, request any supplementary information from a Respondent after the Submission Deadline, including information that the Respondent could or should have submitted prior to the Submission Deadline (Note, however, that PortsToronto is not obliged in any way whatsoever to request supplementary information from a Respondent);
- PortsToronto may, in its sole discretion, enter negotiations with any Respondent, person or persons with respect to the Services that are outlined in this RFP; and
- PortsToronto may, in its sole discretion and at any time during the RFP Process:
  - Elect not to proceed with this RFP;
  - Cancel this RFP Process and subsequently conduct another competitive process for the Services, or subsequently enter negotiations with any person or persons with respect to the Services;
  - Alter the Timetable;
  - Change the RFP Process or any other aspect of the RFP Documents;
  - Verify with any Respondent or with a third party any information in a Proposal;
  - Check references other than those provided by any Respondent;
  - Disqualify a Respondent who submits a Proposal containing misrepresentations or any other inaccurate or misleading information;
  - Disqualify any Respondent or the Proposal of any Respondent who has engaged in conduct prohibited by this RFP;
  - Reject any or all of the Proposals;
  - Accept any Proposal; and
  - If only one Proposal is received, either elect to accept or reject it, or enter into negotiations with the applicable Respondent.

(3) For clarity, RFP Section 7.1 (2) is not in any way whatsoever intended to limit the rights of PortsToronto or of the Respondents to conduct themselves in accordance with Governing Law with respect to direct commercial negotiations.

## 7.2 No Liability

The Respondent and all other entities participating in this RFP Process agree that PortsToronto shall not be liable, in any way whatsoever, for any act of omission or negligence with respect to this RFP Process.