

# Procedure



## Retainer of Lawyers and Experts for Legal Purposes

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**This Procedure falls under the Procurement Administrative Policy.**

<b>Approved By:</b> Deputy City Manager Financial and Corporate Services	<b>Date of Approval:</b>	04/16/2020
<b>Program:</b> Financial Management <i>The City of Edmonton's resilient financial position enables both current and long-term service delivery and growth.</i>	<b>Next Scheduled Review:</b>	04/16/2023

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### **Purpose**

The purpose of this procedure is to outline how the Legal Services Branch is to retain lawyers and experts for assistance with legal matters.

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### **Definitions**

All definitions contained in the Procurement Administrative Directive apply to this procedure.

### **Principles**

Due to a need for special expertise, the City may need to retain external lawyers or other experts for assistance with legal matters.

Procurements of lawyers and experts for assistance with legal matters are generally the subject of special confidentiality rules and protections, called "privilege". To protect the privilege, care needs to be taken to ensure that the confidentiality of these procurements is protected and only those who absolutely need to know about the procurement should be informed. Because of this, a special process must be followed to hire external lawyers as well as experts required for legal purposes.

The Legal Services Branch will lead any procurements to retain external lawyers for City legal work. Only the City Solicitor (Branch Manager of the Legal Services Branch) or the City Manager may approve retention of lawyers (\$500,000 CAD and under). Procurement of lawyers is exempt from the requirement to publicly tender.

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For best practices, the Legal Services Branch should lead the procurement of experts for legal purposes, including potential or ongoing litigation. Failure to use this process is not intended nor deemed to be a waiver of the City’s right to privilege, and privilege may still attach to procurements of experts through other procurement processes. Retainer of experts for legal purposes are generally exempt under trade agreements, although some may have a certain dollar amount over which a competitive procurement process (in compliance with the Competitive Procurement Procedure) is required unless another exception applies. In addition, Council or Committee of Council approval is required where a non-competitive retainer of legal experts is valued at over \$500,000 or the term is longer than 10 years.. Where a competitive process is used, the Legal Services Branch will work with CPSS to procure the applicable services.

For greater certainty, the Contract Amendments Procedure does not apply to contracts procured under this Procedure. Contracts falling under this Procedure will be amended in accordance with section 3 below.

Payments by the City under the retainer contract may be made by payment requisition process (i.e., cheque).

### **Processes**

- 1 *Preparing and Negotiating the Contract*
- 1.1 The Legal Services Branch lawyer or adjuster must develop a contract scope for the procurement. The contract scope consists of the work the City requires the supplier to perform and will be incorporated into the appropriate City standard contract or retainer later in this process.
- 1.2 The Legal Services Branch lawyer or adjuster will identify a proposed supplier to provide the services outlined in the contract scope.
- 1.3 The Legal Services Branch lawyer or adjuster will request a quotation from the proposed supplier.
- 1.4 The Legal Services Branch lawyer or adjuster will complete the Retainer of Lawyers and Experts for Legal Purposes Approval Form and have the required delegated authority sign it. For retainers where the business area is paying the contract fees and uninsured claims, the Legal Services Branch lawyer or adjuster must also get the approval of the appropriate business area expenditure officer.
- 1.5 In cases where the City is retaining a lawyer, the City and the supplier will agree upon the form of retainer to be used.

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- 1.6 In cases where the City is retaining an expert, the Legal Services Branch lawyer or adjuster will provide the proposed supplier with the appropriate City standard retainer contract for signature. There are three City standard retainer contracts for hiring experts for legal purposes purposes:
- a) Simple expert retainer (primarily for non-commercial entities or small retainers where a simple form agreement is appropriate, e.g., medical doctors);
  - b) Intermediate expert retainer (primarily for commercial entities or modest retainers where a modest form of agreement is appropriate, e.g., small businesses); and
  - c) Complex expert retainer (primarily for sophisticated commercial entities or larger retainers, e.g., national accounting firms).
- 1.7 In cases where the City is retaining an expert, if the proposed supplier proposes amendments to the City standard retainer contract, or proposes an alternative retainer contract, a Legal Services Branch lawyer must review the proposed amendments or alternative retainer contract prior to any acceptance of any such proposed amendments or alternative retainer contract.
- 1.8 Prior to the execution of the retainer contract, the Legal Services Branch lawyer or adjuster must, when a retainer is valued at \$25,000 or greater, complete a contract management plan using the Retainer of Lawyers and Experts for Legal Purposes Contract Management Plan Template, which contract management plan must be approved by the City Solicitor or a Legal Services Branch Director. While not required for retainer contracts below \$25,000, Legal Services Branch lawyers and adjusters are encouraged to complete a contract management plan. Contract management plans for retainer contracts below \$25,000 do not need to be approved by the City Solicitor or a Legal Services Branch Director.
- 2 *Execution of the Contract*
- 2.1 After the City and the proposed supplier have concluded any necessary negotiations, and any necessary legal review, the Legal Services Branch lawyer or adjuster will ensure that the proposed supplier and the City delegated authority sign the retainer contract.
- 2.2 The Legal Services Branch lawyer or adjuster will forward a copy of the signed retainer contract to the Office of the City Clerk to be sealed and kept for safekeeping unless highly confidential or sensitive. The Legal Services Branch lawyer or adjuster must ensure that the copy of the signed retainer contract sent to the Office of the City Clerk is accompanied by a memorandum indicating that the signed retainer contract is privileged.
- 2.3 The Legal Services Branch lawyer or adjuster will manage the contract in accordance with the contract management plan approved in section 1.8 above, if applicable.
- 3 *Amendments to the Contract*

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- 3.1 Contracts procured under this Procedure may be amended by entering into an amending agreement signed by the delegated authority and the supplier.
- 3.2 Prior to executing the amending agreement, the Legal Services Branch lawyer or adjuster must complete the Retainer of Lawyers and Experts for Legal Purposes Approval Form and have the required delegated authority sign it. For retainers where the business area is paying the contract fees and uninsured claims, the Legal Services Branch lawyer or adjuster must also get the approval of the appropriate business area expenditure officer. The contract management plan should be updated, if applicable, but the updated version does not need to be approved.

### **Attachments**

The following attachments are related to this procedure:

- Retainer of Lawyers and Experts for Legal Purposes Approval Form
- Retainer of Lawyers and Experts for Legal Purposes Contract Management Plan Template
- City Standard Retainer Contracts
  - Complex expert retainer
  - Intermediate expert retainer
  - Simple expert retainer

### **Additional Resources**

The City Solicitor may, after review by the Branch Manager, Corporate Procurement and Supply Services, approve standards to support or provide further detail to the above processes; however, any amendments to the processes contained in this procedure must be approved by the City Manager.