

Province of New Brunswick

REQUEST FOR PROPOSALS

FOR

EXTERNAL LEGAL SERVICES

Relating to
Tobacco Damages
and Health Care Costs Recovery

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RFP121506

The Attorney General is the Chief Law Officer of the Province of New Brunswick and is responsible, *inter alia*, for providing a full range of legal advice and legal representation to government departments and agencies.

1.0 Introduction and Scope:

The Attorney General of New Brunswick is seeking proposals from qualified law firms or consortiums of law firms in New Brunswick and elsewhere in North America to provide legal representation and advice to the Crown in right of the Province of New Brunswick on a contingency fee basis (including payment of necessary disbursements) in relation to an intended legal action in the courts of New Brunswick against tobacco manufacturers to recover the cost of health care benefits caused or contributed to by a tobacco-related wrong, pursuant to the terms of the ***Tobacco Damages and Health Care Costs Recovery Act***, Statutes of New Brunswick, Ch. T-7.5, enacted June 22, 2006.

The deadline for submission of proposals is January 31, 2007. Questions regarding the RFP process and requirements may be submitted by email to clyde.spinney@gnb.ca until but not after January 26, 2007.

2.0 RFP process and Procedures for Evaluation:

This Request for Proposals (“RFP”) will contain rating criteria and mandatory requirements. Proposals not meeting all mandatory requirements will be rejected for that reason without further consideration.

2.1 Evaluation Committee:

The proposals will be evaluated by an evaluation committee comprised *inter alia*, of representatives of the Office of the Attorney General, of the Departments of Health and Finance. The evaluation committee will employ the rating criteria provided herein to determine a short list of proposals. Proposals that do not qualify for the short list will receive no further consideration, and no duty shall exist to advise proponents why their proposals did not qualify for the short list.

Those proponents selected to the short list may be required to deliver a presentation to the evaluation committee or to a committee of Ministers or to both.

All qualifying proposals must meet all mandatory requirements set out in this RFP and contain all required content specified. The evaluation committee will disqualify and reject those proposals that do not specifically address such mandatory requirements, or contain all required content or that are judged not to sufficiently demonstrate an understanding of the requirements of this RFP and the rating criteria set forth herein.

2.2 Overriding Principles:

Notwithstanding anything herein to the contrary, the Province of New Brunswick reserves the right to reject any and all proposals, to select a proposal that may not necessarily represent the lowest cost to the Province in any given scenario, and to refuse any proposal that does not meet the information or timing requirement of this RFP. The evaluation ranking of any proposal shall be determined solely at the discretion of the Province of New Brunswick and shall not be questioned, appealed or reviewed in any manner.

2.3 Negotiation Delay:

If a mutually acceptable retainer agreement cannot be negotiated with the most highly rated, qualifying proponent within thirty (30) days the Province may, at its sole discretion exercised at any time thereafter, terminate negotiations with that proponent and reject the proposal for that reason. The Province may then negotiate with successive proponents in the order of evaluation ranking.

Where no qualifying proposals are received in the judgment of the evaluation committee, the Province shall be free to seek to negotiate a retainer arrangement with any law firm judged to have the legal and financial capability to provide the required services.

3.0 Rating Criteria:

3.1 Selection Criteria: Proposals should clearly identify how your firm will meet each of the following rating or selection criteria:

3.1.1 Resources and Expertise - The proposal must indicate how the required financial and human resources and legal expertise to finance and conduct litigation of this magnitude exists within the firm. Clear evidence of the availability of such resources and legal expertise shall be one of the primary selection criteria. The successful law firm or consortium of law firms will demonstrate that it is of sufficient size to handle all of the possible demands of the proposed litigation on a timely basis.

3.1.2 Key Individuals – Each proposal should identify those lead lawyers within the law firm or consortium of law firms who will be responsible for playing key roles in the litigation team. A *curriculum vitae* or personal profile must be provided for each lead lawyer outlining their relevant background experience. At least one lead lawyer must be an experienced litigator who is resident in and actively practicing law in the Province of New Brunswick.

3.1.3 Contingency Percentage, Disbursements - The proposed contingency arrangement and the proposed method for payment and interest accrual if any on necessary litigation disbursements will also be one of the primary criteria for evaluation.

3.1.4 Accessibility, Local Representation – Law firms submitting proposals who do not have a permanent office within New Brunswick will be required to partner with a qualified New Brunswick law firm so that an experienced, competent and knowledgeable litigator is available locally on short notice, for meetings and consultations in person. The extent to which New Brunswick legal counsel will be directly involved in the trial and pre-trial procedures will be one of the primary criteria of evaluation.

3.1.5 Quality of Proposal – The extent to which the proposal demonstrates an intimate familiarity with the issues and challenges involved in bringing legal action against tobacco manufacturers will also be a primary criteria of evaluation

Proponents may include any additional submissions or documentation related to the proposal that may enhance or clarify the proposal.

4.0 Mandatory Requirements:

4.1 Mandatory requirements: The following mandatory requirements must be provided as part of each proposal:

- A) A signed statement confirming that the proponent is free from any conflicts of interest in pursuing this litigation;
- B) The designation of two or more lead lawyers, one of who must be resident in and actively practising law in the Province of New Brunswick; and
- C) A signed statement confirming that the prices quoted for the provision of legal services in the proposal shall remain valid for a period of ninety (90) days after the deadline for submission of proposals on January 31, 2007.

4.2 Additional Required Content: The following additional information must also be included in each proposal:

- A) A letter of introduction identifying the proponent or proponents and signed by the person(s) authorized to sign on behalf of and to bind the proponent;
- B) An executive summary outlining the key features of the proposal;
- C) The body of the proposal, which shall include:
 - a. The *curriculum vitae* or personal profiles of the lead lawyers who will be directing and conducting the litigation,

- b. A listing of other lawyers who would form part of the litigation team, together with a brief summary of their respective education and experience,
- c. A projected timetable for the pursuit of the legal action from initiation of proceedings to trial;
- d. A summary of the type of expert research and evidence which would be required to prove the case against the tobacco manufacturers together with an estimated budget for the same,
- e. A listing of previous cases in which the proponent has been involved which demonstrate their ability to manage and direct a case of this magnitude, and
- f. Evidence confirming the financial ability of the proponent(s) to support a course of protracted litigation against the tobacco manufacturers.

D) The financial component of the proposal, which shall contain a specific proposal by which the proponent offers to provide the legal services reference herein based on a stated contingency fee which shall apply for each of the following litigation milestones:

- Issuance of Statement of Claim
- Completion of examinations for discovery and all pre-trial proceedings.
- Completion of trial in Court of Queen's Bench.
- Completion of all available levels of appeal.

The financial component shall also identify how interest shall accrue if at all, on necessary expert and other litigation disbursements incurred by the proponents.

4.3 Closing date:

Each proposal must be received in a sealed envelope clearly marked "Proposal for Legal Services - RFP121506", containing five (5) original signed copies by 4:00 p.m. Atlantic Standard Time, on or before the deadline for submission of proposals, namely January 31, 2007 at the following address:

The Office of the Attorney General
P.O. Box 6000
Room 412, Centennial Building,
670 King Street,
Fredericton, N.B. E3B 5H1

Attention: Chair, Proposal Evaluation Committee

Proposals sent by facsimile or electronic mail or other electronic means will not be accepted. Proposals and their envelopes must be clearly marked with the name and address of the proponent.

4.4 Late Proposals:

Proposals received after the deadline will not be considered and will be returned unopened.

4.5 Changes to Proposals:

The proponent may not change the wording of its proposal after closing and no additional words or comments may be added to clarify the language of the same unless specifically requested by the Province of New Brunswick for clarification purposes.

4.6 Alternate proposals:

Alternate proposals may be enclosed in the same or separate envelopes. Proponents who choose to include alternate proposals in the same envelope must ensure that each alternate proposal is separate, self contained and responds to all rating criteria and mandatory requirements. Language from one alternate proposal may not be employed to modify or supplement an alternate proposal, nor may any proposal adopt language from another proposal by reference.

5.0 General Conditions:

The following general conditions shall also apply to this RFP, including all proposals developed or submitted in response to the same.

5.1 Modification of Terms:

The Province of New Brunswick reserves the right at its sole discretion, to modify the terms of the RFP at any time or to cancel the same at any time, whether before or after the closing date for any reason, without notice to any person. Any Addenda to the RFP will only be published on the website of the Office of the Attorney General located at: <http://www.gnb.ca/0227/index-e.asp> .

5.2 Proponents' Expenses:

Proponents are solely responsible for their own expenses in preparing, delivering or submitting a proposal, and for all expenses subsequently incurred in the course of seeking to negotiate a retainer, regardless of the outcome of any such proposal or negotiation, or of the reasons for such outcome.

5.3 Ownership of Proposals:

All documents submitted to the Province of New Brunswick as the result of this RFP become the property of the Province.

5.4 Confidentiality of Proposals:

Proposals will be circulated only to the members of the evaluation committee and to the Ministers and senior executives of government involved in choosing a law firm or consortium of law firms for retainer. The Province of New Brunswick will make all reasonable efforts to keep confidential any personal and financial information specifically identified in the proposal as being confidential, subject to the ***Right to Information Act***, and the ***Protection of Personal Information Act*** of the Province of New Brunswick.

5.5 Governing Law:

This RFP shall be construed solely in accordance with the laws in effect in the Province of New Brunswick, as shall any dispute arising from this RFP or in the course of preparing or submitting a proposal or of seeking to negotiate a retainer, regardless of the outcome of any such proposal or negotiation, or of the reasons for such outcome.

5.6 No Obligation:

The Province of New Brunswick is under no obligation under any circumstances, to accept or respond to any proposal or to any part thereof, or to negotiate with any proponent. Without limiting the foregoing, the Province is not bound to accept the lowest priced or any proposal based on any method of evaluation, or to negotiate with the proponent who submitted the same.

The Province will not be obligated in any manner to any proponent whatsoever unless and until a written contract has been duly executed with a proponent in relation to a qualifying proposal.

5.7 Confidentiality of Negotiations:

All negotiations conducted by the Province of New Brunswick with any proponent or with any agent or representative thereof shall be subject to solicitor and client privilege and shall remain confidential, even where no retainer agreement is achieved as a result of such negotiations.

5.8 Withdrawal:

A proponent may withdraw its proposal at any time by delivery of a signed written notice to the Province of New Brunswick. No other form of notice will be sufficient to withdraw a proposal.