

# REQUEST FOR QUALIFICATIONS

**For Legal Services  
Port Attorney's Office  
Port of Oakland  
530 Water Street  
Oakland, California 94607**

## **I. INVITATION**

The Port Attorney of the Port of Oakland ("Port") is soliciting qualified law firms to provide to the Port Attorney legal services beginning July 1, 2019, in the various practice areas set forth below. The Port Attorney is the sole legal advisor to the Board of Port Commissioners of the City of Oakland. All communications by the law firms shall be to the Port Attorney or his designee. While the Port of Oakland is a department of the City of Oakland, the law firm's client would be the Port of Oakland, not the City of Oakland. This request for qualifications ("RFQ") describes the required scope of services and certain of the Port's terms and conditions, and prescribes the form and contents of responses from interested firms.

This RFQ is posted at <https://www.portofoakland.com/business/bids-rfps/> under "RFPs/RFQs".

The Port Attorney anticipates choosing qualified firms in each practice area to be placed on a short list ("Short List") for on-call legal services as matters arise that require outside legal services. No assurances can be made that firms placed on the Short List will be retained for any particular matter or at all. However, when matters do arise that the Port Attorney determines require outside legal support, the selected short-listed firms will be expected to sign the Port's Retention Agreement, an example of which is included as an attachment in Section VIII below. Please note that you or your firm must submit a response to this RFQ even if you are currently retained by the Port or have represented the Port in the past.

### **A. Qualifications Submittal**

Submittals shall be received by Lilibeth Trinidad, Executive Legal Secretary, Port Attorney's Office, 530 Water Street, Oakland, CA 94607 no later than 5:00 PM on **March 29, 2019**. Postmarks will not be accepted. Facsimile and/or electronic submittal will not be accepted. Submittals not received by this date and time will be rejected; provided, however, that the Port Attorney may extend the deadline or reopen the submittal period for all potential proposers, at his discretion. Two (2) bound copies of the submittal shall be sent or hand delivered in a sealed parcel to:

**Lilibeth Trinidad, Executive Legal Secretary  
Port Attorney's Office  
530 Water Street  
Oakland, CA 94607**

**Submittals will be time and date stamped upon receipt.**

All costs incurred in the preparation and presentation of a submittal shall be completely absorbed by the proposer.

Questions regarding this RFQ should be addressed in writing via email to Lilibeth Trinidad, ltrinidad@portoakland.com, by **March 8, 2019**. Any response to proposers' questions will be posted on the above-mentioned hosting website by **March 15, 2019**. Proposers are advised that questions received after **March 8, 2019**, will not be answered. If an addendum is issued or if the deadline is extended, notification will be sent to all parties who downloaded the RFQ from the website or by mail to those who requested a copy of the RFQ by mail. Said notification will be sent to the address, or the fax number or the e-mail address provided to the Port. Only questions answered by formal written addenda will be binding. Oral and other interpretations and clarifications will be without legal effect.

The Port Attorney reserves the right to contact any number of proposers at his discretion for telephonic and/or in-person interviews for the purpose of the RFQ, or for the purpose of discussing qualifications for certain matters for retention of services.

#### **B. Port's Right to Modify**

Proposers are advised that the Port has not incurred any obligations or duties in soliciting this RFQ. The Port Attorney reserves the right, at his sole discretion, to reject any or all submittals in response to this RFQ; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFQ; to request new RFQs or pursue any other means for obtaining the desired services; to waive any informalities or minor irregularities in the submittals, and inconsequential deviations from the RFQ requirements; to select or retain the firms of his choice; to decide to undertake the services described or to terminate the RFQ process; and to cancel the Short-List or to remove any firm or attorney from the Short List at any time prior to or after the entering into of a Retention Agreement.

#### **C. Evaluation Criteria**

Qualifications will be evaluated by the Port Attorney and designated staff in the Port Attorney's Office, which may vary depending on the particular practice area for which each proposer wishes to be considered. Submittals of qualifications will first be evaluated as to responsiveness to the requirements of the RFQ. A firm will be considered responsive only if it complies in all material respects to the requirements of the RFQ. Submittals with substantial exceptions to the Retention Agreement (See Section VIII) may be determined to be non-responsive. If a submittal is determined to be non-responsive, the submittal will not be considered for placement on the Short List or for a retention.

Greater consideration will be placed on the proposer's ability to add value to, or supplement the considerable legal knowledge and capacity of, the in-house legal staff (which consists of 8 attorneys, 3 experienced legal assistants, 2 experienced legal secretaries, and a law clerk). Important factors in this regard include, but are not limited to, (a) the proposed attorney(s)' capacity to draw on professional and life experience to advise the Port Attorney not just on the requirements of law but on legal and business strategies to accomplish the Port's objectives, (b) the availability of the proposed attorney(s) (in both time and physical proximity) when his/her service is requested, (c) additional support resources (such as attorney resources in related fields

of law, junior attorneys or affiliations with other law firms or consulting resources), and (d) the firm's reputation and distinction in the practice area(s) you are proposing to serve, as evidenced by publications, lead counsel role in seminal court decisions, professional awards, or favorable results for an agency client similar to the Port.

Experience in advising public sector enterprise agencies, maritime ports/airports and/or the shipping or airline industry businesses would demonstrate familiarity with the environments in which the Port operates and the ability to bring relevant strategies and resources to servicing the Port. The ability to provide public-sector and industry-relevant knowledge and resources is an important factor.

Your firm's cost/price submittal will be an important factor in determining award.

Your firm's or the proposed attorney(s') record on ethical conduct and commitment to diversity in your workplace and community service are also considerations.

The Port Attorney reserves the discretion to select or reject any proposer based on any one criteria listed above or any other criteria.

## **II. SCOPE OF SERVICES**

The Port Attorney's Office is seeking outside counsel to provide legal services in the following practice areas:

1. **Litigation:** provide strategic and technical advice and represent the Port in lawsuits in every stage of litigation, starting with risk management (litigation holds, discovery, records retention, etc.) to claims response and investigation (under the Government Claims Act), to pre-litigation strategy, and finally, actual litigation; requires experience in either or both: (1) government claims procedures and defenses; and (2) complex business/real estate litigation strategic planning and execution.
2. **Leasing/Real Estate:** serve as primary advisor to the Port Attorney on complex real estate transactions, including real property leasing and tenancy and use agreements in the Aviation, Maritime, and Commercial Real Estate operations of the Port, unlawful detainer actions, and real property sale/purchase negotiations including secured transactions.
3. **Tidelands Trust:** supplement in-house expertise on obligations of the Port as a grantee of State trust of tidelands; requires counsel with sophisticated knowledge of the State Lands Commission procedures and decisions, as well as intimate knowledge of land grant histories specific to the Port of Oakland.
4. **Municipal Law:** provide resource to all in-house attorneys on ethics laws, Brown Act, Public Records Act, taxes and fees, and other state law regulations of municipal governments; requires law firms with extensive experience representing public enterprise agencies.
5. **Aviation/Maritime/Rail Transportation:** provide counsel to in-house attorneys in compliance with federal regulations and grant funding requirements relating to airport, shipping and transportation; requires experienced counselor in one or more

areas of FAA Authorization Act, the Shipping Act, railway regulations, including regulatory matters, rates and charges, PFCs, grant assurances, CFCs, and security matters.

6. **Labor and Employment:** support in house employment/labor attorney on complex and multi-faceted public-agency employment and labor practice, including labor negotiations, employment-related litigation and arbitrations, harassment, discrimination and retaliation laws; requires firm with specialized knowledge of public-sector labor law, employment practices and benefits programs.
7. **Workers' Compensation Defense:** provide counsel and represent the Port in the defense of litigated worker's compensation claims before the Workers' Compensation Appeals Board; provide legal review and advice in connection with workers' compensation claims; provide appropriate reports as requested by the Port; provide oral and/or written reports of settlement demands; propose settlement offers/counteroffers subject to approval/authorization by the Board of Port Commissioners prior to communicating any such offer/counteroffer to other parties; defend the Port in Labor Code Section 132a claims; when requested, litigate subrogation matters on the Port's behalf.
8. **Construction:** assist in-house construction and procurement attorney in public works bidding process, bid protests, consultant and contractor contract drafting and negotiations, delay and extra work claims and related litigation.
9. **Power Utility:** provide advice for the operation of the Port's electric utility, including rates and charges, power purchase, interconnection agreements and renewable energy.
10. **Environmental:** support in-house environmental attorney in regulatory compliance, environmental claims and litigation, environmental support on real estate projects, health and safety compliance, remediation, asbestos compliance, storm water compliance, and mold.
11. **Insurance/Cost Recovery:** support in-house attorney and risk manager on insurance placement and coverage, insurance claims and litigation and cost recovery support.
12. **Land Use:** work with in-house attorney to provide expert advice in land use, including land use permitting, CEQA/NEPA and environmental planning.
13. **Intellectual Property:** provide counsel on intellectual property matters, including trademark, copyright and patent.
14. **Bankruptcy:** provide counsel to the Port Attorney on bankruptcy matters.
15. **Finance/Tax:** provide counsel to in-house attorney on various finance, tax, bond, fees, infrastructure financing, and other matters.
16. **Administrative Hearing Officer Services:** provide all work necessary for the effective handling of administrative hearings at the Port for a variety of matters; conduct evidentiary hearings (audio recorded hearings with sworn testimony/exhibits), make findings of fact, make determinations regarding

violations of a particular Port Code, issue written decisions; conduct non-evidentiary hearings and issue written reports.

**You may submit submittals for one or more of these practice areas. However, you are encouraged to identify the practice areas for which you are most qualified.**

### **III. FIRM INFORMATION, ASSIGNED PROFESSIONALS**

Keyed to the “Selection Criteria” outlined in Section I.C. above and to the practice area(s) you are proposing to serve the Port, please provide the following information. Failure to provide any of the following requested information may render the submittal non-responsive. Please be concise and directly address each of the following requests and limit your total response to no more than 10 pages (you may make references to website or other internet materials to supplement your response). Any false information, misrepresentation or failure to reveal potential adverse client interest will be grounds for automatic disqualification and may result in your forfeiture of fees for any work completed.

1. Name of the firm’s partner designated as the contact person for the purpose of the RFQ, and that individual’s address, telephone number, and e-mail address.

2. Include a brief description of the law firm, including its location(s) and number of attorneys. Also identify the location(s) of the office(s) which will be responsible for your firm’s work for the Port on the proposed practice areas.

3. For each practice area for which you are submitting qualifications, please clearly indicate the primary attorney who will be providing the legal counsel to the Port Attorney and relevant experience and credentials. Description of each attorney’s general qualifications and experience can be provided by reference to the firm’s website, provided, however that the response submitted should describe how the attorney’s experience is *particularly relevant* to the Port’s needs as described in Section II of the RFQ. If there is more than one attorney, include a staffing plan identifying each attorney.

4. Provide three references, at least two of which should be from public entities, or alternatively, if you have represented or advised the Port in the last three (3) years, please briefly describe the matter or case that you worked on for the Port.

5. Describe at least one transaction, case or matter that best represents your firm’s success in the practice area, preferably for a client that is similar to the Port. Please limit your response to a total of three (3) examples.

6. Indicate whether your firm or individual attorneys within the proposer’s firm represent any clients or interests in lawsuits or other legal actions against the Port or the City of Oakland, and/or potentially pose a conflict of interest in the proposer’s representation of, or association with, the Port or the City of Oakland. Please indicate if your firm or individual attorneys within your firm represents or have represented the City of Oakland (as opposed to the the Port) as such representation may present potential conflict of interest. (To understand the governing structure and relative authorities of the City Council of the City of Oakland and the

Board of Port Commissioners, please refer to Article VII of the City of Oakland City Charter. [https://library.municode.com/ca/oakland/codes/code\\_of\\_ordinances?nodeId=THCHOA](https://library.municode.com/ca/oakland/codes/code_of_ordinances?nodeId=THCHOA)).

7. Describe your firm's commitment to diversity at the workplace and any diversity program that it has implemented. Also, describe the firm's commitment to contributions to the community, particularly in the City of Oakland, or in the cities of Alameda, Emeryville, or San Leandro.

8. Disclose any instance of discipline or charges brought by the California Bar Association against your firm or any attorney in your firm in the last five years. Please discuss any recent (within the last year) publicity in national or San Francisco Bay Area media about any illegal conduct or conduct that violates the California Rules of Professional Conduct by your firm or any attorney in your firm.

9. Identify and explain any exception you may request from any of the requirements or terms of the sample Retention Agreement attached under Section VIII of this RFQ.

The proposer must immediately advise the Port in writing of any real or possible conflicts that arise after the submission of the submittal, and the proposer must agree that it shall promptly notify and seek the approval of the Port Attorney before undertaking any future employment which may be adverse to the interest of the Port.

#### **IV. INSURANCE REQUIREMENTS/COMPLIANCE WITH INSURANCE CARRIER REQUIREMENTS**

As provided in the Retention Agreement, firms are required to provide evidence of the following insurance:

- Commercial General Liability (CGL) in the amount of at least \$1,000,000 per occurrence and aggregate for bodily injury and property damage;
- Automobile Liability in the amount of \$1,000,000 each claim for bodily injury and property damage;
- Workers' Compensation as provided by law and Employers' Liability in the amount of \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease;
- Professional "Errors and Omissions" Liability in the amount of \$5,000,000 per claim and the aggregate.

For those matters which are or may be covered claims under the Port's insurance policies, the firm must comply with any applicable litigation or claims handling requirements of the insurance carrier. If you are not able to meet these requirements, please explain. In limited circumstances, the Port may waive certain of these requirements or lower the amounts required.

#### **V. NONDISCRIMINATION**

Port policy prohibits discrimination or preferential treatment because of race, color, religion, sex, national origin, ancestry, age (over 40), physical or mental disability, cancer-related medical condition, a known genetic pre-disposition to a disease or disorder, veteran status, marital

status, or sexual orientation. The successful respondent shall comply with the Port's non-discrimination policy.

#### **VI. COST/PRICE SUBMITTAL**

For each practice area that your firm is proposing to provide legal services, please provide the applicable attorneys' standard hourly rate, whether you have a governmental rate (and if yes, what that rate is), any discount rate being offered to the Port and any proposed blended rates and the duration for which these rates are guaranteed. The proposed rates shall remain firm through at least June 30, 2020. Please also indicate whether your firm is willing to negotiate project-based flat rate.

#### **VII. PUBLIC RECORDS ACT, CITY OF OAKLAND TAXES**

1. Responses to this RFQ including, but not limited to, all supporting documentation submitted with submittals will become the exclusive property of the Port of Oakland, a public entity, subject to the California Public Records Act (Gov. Code § 6250 *et seq.*) ("CPRA"). The Port shall not in any way be liable or responsible for the disclosure of any such records including, without limitation, if disclosure is deemed to be required by law or by an order of a court, or other entity having jurisdiction. The Port will disclose all material related to the RFQ in response to a CPRA request, including, without limitation, the submittal and all correspondence and written questions submitted during the RFQ. Any material submitted that is to be considered trade secrets, proprietary financial information, or confidential information exempt from disclosure should be clearly marked "CONFIDENTIAL" on each page containing such confidential information on all applicable material. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The Port retains the sole discretion to determine which material may or may not be disclosed in response to a CPRA request.

2. The proposer shall be responsible for and pay all taxes including but not limited to any applicable City of Oakland business tax. All businesses transacting business in Oakland must maintain a current business tax registration number.

#### **VIII. ATTACHMENT**

1. Retention Agreement (Sample)

## Attachment 1



# PORT OF OAKLAND

**DANNY WAN**

*Port Attorney*

Sender's Tel. No.: (510) 627-1340

Sender's Fax No.: (510) 444-2093

Sender's E-Mail: [dwan@portoakland.com](mailto:dwan@portoakland.com)

«Date»

«First\_Name» «Last\_Name»

«Company\_Name»

Address

«City», «State» «ZIP\_Code»

**Re: Retention as Special Counsel;  
«Matter\_Name»**

Dear «Title» «Last\_Name»:

This letter confirms that «**Company\_Name**» is hereby retained to provide legal services to the Port of Oakland (hereinafter the “Port”, “Port of Oakland”, or “Port Department”), acting through the Board of Port Commissioners (“Board”) for the retention term commencing \_\_\_\_\_, through \_\_\_\_\_. You are retained as special counsel to provide legal advice and, when directed, to represent the Port in the matter of «**Matter\_Name**».

Under the Charter of the City of Oakland, the Port is a Department of the City of Oakland governed by the Board. Your client is the Port of Oakland and not the City of Oakland. Therefore, the attorney-client privilege applicable to this retention will cover your communications with the Port Department, acting through its Board, and authorized Port staff, but does not include other City officials, departments, agencies or commissions.

The Board has delegated to the Port Attorney and charged me with the power and responsibility to provide legal advice to the Board and the Port, and to direct the legal affairs of the Port. Therefore, you will report directly to me or other attorneys I designate in the Port Attorney’s Office and provide legal advice and representation as I direct. You shall not provide legal advice directly to any Board member or Port employee without explicit approval from my Office.

Because the subject matter of your advice and representation may be covered by insurance policies or reimbursed by third parties, the scope of your work and services includes complying with the applicable insurance carrier requirements and guidelines, if any.



You will be the primary attorney providing legal services under this retention agreement and other attorneys in your firm listed in Appendix A, if attached (as well as other attorneys in your firm as approved in writing by my Office during the term of the retention) may provide support or additional legal services. Retention of experts, independent consultants, or other legal counsel to assist in this matter will require my prior written consent. Your firm will submit monthly billing statements by electronic mail to «Assigned\_Atty», containing a reasonably detailed breakdown showing the time spent by date by each member of your firm, associate or paralegal on particular activities and all items of out-of-pocket expenses for which reimbursement is sought.

**YOUR FINAL INVOICE (INCLUDING ANY APPROVED CONSULTANTS) FOR SERVICES RENDERED THROUGH \_\_\_\_\_, MUST BE SUBMITTED TO THE PORT NO LATER THAN \_\_\_\_\_.**

The Port shall reimburse reasonable costs and expenses if they are supported by back-up documentation attached to your invoice; such costs and expenses include, but are not limited to, court costs (including filing fees, or other costs imposed by a California or federal court for use of court services; however, the Port is generally exempt from court filing fees); local, state, or federal regulatory agency fees; messenger and other delivery fees; postage exceeding \$20 per package; copy costs at the rate of \$0.10 per page for copying exceeding \$20 per job; and other reproduction costs. Costs of travel, if necessary, may be reimbursed only for travel more than 50 miles from your office with my prior approval, including airplane fare or automobile usage which shall be reimbursed at the actual cost or at the rate of \$0.50 per mile, whichever is less, and meals and hotel costs if approved in advance by my Office. The Port shall not pay for travel costs less than 50 miles from your office, for costs of subscription or usage of online legal research services, for telephone charges, conference call services, general/supplies such as binders (except as specifically authorized by me), fax charges, bridge tolls, public transportation costs, postage costing \$20 or less per package, or copying jobs costing \$20 or less.

Out-of-pocket expenses shall be reimbursed at cost, without markup. To the extent feasible, you should arrange for copying to be done by the Port. There will be no charges for routine secretarial or clerical time, and no overtime shall be charged except with my prior written consent.

Your firm will be expected to work cooperatively with members of the Port Attorney's legal staff, and any other Special Counsel working on the matter.

Your firm's retention is subject to termination upon notice from the Port. Your firm may withdraw with the Port Attorney's consent or for good cause or as otherwise allowed or required by law. Good cause includes the Port's breach of the terms of this retention, or the Port's refusal to cooperate or to follow your advice on a material matter or any fact or circumstance that would render your continuing representation unlawful or unethical. When your services conclude, all unpaid charges will immediately become due and payable.

After services conclude, you will deliver to me all your file(s) related to the services rendered under this retention, any other Port property, and all work-product produced under or related to this retention, in your possession, whether or not we have paid for all services.

Total fees and reimbursable costs under this retention may not exceed «Retention\_Amount» for the term of this retention without my written authorization in advance and any necessary approval by the Board. Payment of fees or costs incurred in excess of the authorized amount is subject to further discretionary approval by me (as documented in a written amendment to this agreement) and, if necessary, by the Board, and may be disapproved at the Port's discretion. Hourly billing rates for this matter can be no higher than «Billing\_Rates» (or as shown in Appendix A, if attached), with no rate increases.

The time charged will include the time your firm spends on telephone calls relating to the above-described matter, including calls with attorneys in my Office and other parties and attorneys. The legal personnel assigned to the above-described matter may confer among themselves about the matter, as required and appropriate. However, you have agreed to limit occasions for which we are billed for more than one professional's time in an internal conference to those occasions when you believe such a conference is absolutely necessary for your firm to provide the representation the Port Attorney has requested. Otherwise, only the most senior attorney involved in the conference may charge for time he/she expended, provided, if more than one of the assigned legal personnel attends an external meeting or other proceeding, each may charge for the time spent, as long as the attendance at such meeting or proceeding is reasonably necessary and not duplicative. You may charge for waiting time and for local travel time.

Time is charged in maximum increments of one-tenth (.1) of an hour, block billing is prohibited unless my office specifically allows it.

We should remain in close and constant communication so that your work may be monitored to ensure its maximum utility to the Port. «Assigned\_Atty» will be your primary point of contact with the Port and will keep the Port Attorney fully informed of the status of this matter. You will keep «Assigned\_Atty» regularly informed of estimates of your firm's total costs and expenses to allow effective tracking of the status of the budget and reasonable advance knowledge of potential over-budget billings. If the underlying matter on which you are working is potentially covered by the Port's insurance, part of your scope of work includes complying with any applicable litigation or claims handling guidelines issued by the applicable insurance carrier.

You agree to provide evidence of the following insurance: Commercial General Liability (CGL) in the amount of at least \$1,000,000 per occurrence and aggregate for bodily injury and property damage; Automobile Liability in the amount of \$1,000,000 each claim for bodily injury and property damage; Workers' Compensation as provided by law and Employers' Liability in the amount of \$1,000,000 per accident, \$1,000,000 bodily injury each employee, and \$1,000,000 policy limit for bodily injury by disease; Professional "Errors and Omissions" Liability in the amount of \$5,000,000 per claim and the aggregate. The CGL and Automobile Liability shall waive subrogation rights in favor of the Port and include Port as Additional Insured, stated as follows: City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners, Port of Oakland, its Commissioners, officers, agents and employees. The waiver of subrogation shall also be extended on the Workers' Compensation and Employers' Liability coverage. Please send the insurance certificate to:

Port of Oakland  
Attn: Risk Management Dept.  
530 Water Street  
Oakland, CA 94607  
Fax: (510) 627-1626  
Email: risktransfer@portoakland.com

This letter contains the entire agreement of the parties with respect to this matter. No other agreement, statement, or promise with respect to this matter made on or before the commencement date of services, set forth above, is binding. All prior retentions are hereby terminated.

By entering into this retainer agreement, you agree to perform legal services in a manner that complies with the California Rules of Professional Conduct and state laws relating to conflict of interest and self-dealing, including the California Political Reform Act (Government Code Section 81000 et seq.) and Government Code Section 1099 et. seq. Violation of the professional conduct and ethics laws is cause

for termination of this retainer and recovery by the Port of fees paid for services performed in violation of said rules and laws.

As part of this retention, you agree and will be expected to provide (at no cost to the Port) at least one MCLE-eligible training per year to the Port Attorney's Office and/or Port employees in your field of specialty.

If any provision in this agreement is held in whole or in part to be unenforceable for any reason, the remainder of that provision and of the entire agreement will be severable and remain in effect.

The agreement for the retention of your services set forth in this letter may be modified by subsequent written agreement.

We look forward to working with you on this very important Port project. Please feel free to call me if you have any questions. If the foregoing is acceptable, please sign and return to our office a copy of this letter.

Very truly yours,

DANNY WAN  
Port Attorney

Attachment(s):

cc: «Assigned\_Atty»

I ACKNOWLEDGE RECEIPT OF THE  
ATTACHED LETTER, AND AGREE TO  
THE TERMS CONTAINED THEREIN.

\_\_\_\_\_  
«First\_Name» «Last\_Name»  
«Company\_Name»

Dated: \_\_\_\_\_

Appendix A

Attorney	Hourly Rate