

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 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 <http://portofoakland.com/business/rfpsrfqs.asp> under "RFP's/RFQ's".

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.

A. Qualifications Submittal

Submittals shall be received by Althea Roberts-Griffin, Paralegal, Port Attorney's Office, 530 Water Street, Oakland, CA 94607 no later than 5:00 PM on May 3, 2013. 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:

**Althea Roberts-Griffin, Paralegal
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 to Althea Roberts-Griffin, (510) 627-1573, by April 19, 2013. Any response to proposers' questions will be posted on the above-mentioned hosting website by April 26, 2013. **Proposers are advised that questions received after April 19, 2013, 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 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 its 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 anytime 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 persons 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 7 attorneys each with at least 12 years of law practice, 2 experienced legal assistants and 4 experienced legal secretaries). Important factors in this regard include, but is 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 (discovery, records retention etc.) to claims response and investigation (under the Tort 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. **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.
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 fee, and other state law regulations of municipal governments; requires law firms with extensive experience representing public enterprise agencies.

5. **Aviation/Maritime/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, rail way regulations, including regulatory matters, rates and charges, PFCs, grant assurances, CFCs, 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. **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.
8. **Power Utility:** provide advice for the operation of the Port's electric utility, including power purchase, interconnection agreements, renewable energy.
9. **Environmental/Cost Recovery:** 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, mold.
10. **Insurance/Cost Recovery:** support to in-house expert attorney and risk manager on insurance placement and coverage, insurance claims and litigation and cost recovery support.
11. **Land use:** work with in house attorney to provide expert advice in land use, including land use permitting, CEQA and environmental planning.
12. **Intellectual Property:** provide counsel on intellectual property matters, including trademark, copyright and patent.
13. **Bankruptcy:** provide counsel to the Port on bankruptcy matters.
14. **Finance/Tax:** provide counsel on various finance, tax, bond and other matters.

You may submit submittals for one or more of these practice areas.

III. FIRM INFORMATION, ASSIGNED PROFESSIONALS

Keyed to the "Selection Criteria" outlined in Section I.C. above and to the practice areas 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. Although there is no required format or page limit, please be concise and directly address each of the following requests. 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, e-mail address and facsimile number.

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 you are submitting qualifications for, please clearly indicate the primary attorney who will be providing the legal counsel to the Port Attorney and describe in some detail 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, and each attorney's experience. Please include any accomplishments or distinction, including publications, published court decisions listing you as the lead counsel for a party, or awards.

4. Provide three references, at least two of which should be from public entities.

5. Describe at least one transaction, case or matter that best represent your firm's success in the practice area, preferable for a client that is similar to the Port. Please limit your response to a total of three (3). In addition, please describe one (1) example in the practice area where the result of your representation of a client offers an useful lesson for the Port, in terms of the Port's operational procedures, legal strategies, or substantive law.

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.

7. Describe your firm's commitment to diversity at the workplace and its commitment to contributions to the community, particularly in the City of Oakland.

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 is violative of the California Rules of Professional Conduct by your firm or any attorney in your firm.

9. Describe your firm's prior work history for the Port.

10. 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 rate. These rates shall remain firm for the term of the services provided, unless approved by the Port Attorney.

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.*) 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 make available to the public the submittal and all

correspondence and written questions submitted during the RFQ. Except as otherwise required by law, the Port will not disclose trade secrets or proprietary financial information submitted in response to the RFQ. Any material submitted that is to be considered trade secrets, proprietary financial information or confidential should be clearly marked as such. Blanket-type identification by designating whole pages or sections shall not be permitted and shall be invalid. The specific information must be clearly identified as such.

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
Sample Retention Letter (Attached)

Attachment 1

DANNY WAN
Port Attorney)

Sender's Tel. No.: (510) 627-1340
Sender's Fax No.: (510) 444-2093
Sender's E-Mail: dw@portoakland.com

[DATE]

[NAME]
[COMPANY]
[STREET ADDRESS]
[CITY, STATE, ZIP CODE]

Re: Retention as Special Counsel; [MATTER'S NAME]

Dear _____ :

This letter confirms that the Port Department (hereinafter the "Port" or "Port of Oakland"), acting through its Port Attorney, who is duly authorized by the Board of Port Commissioners ("Board"), has retained [firm's name] to provide legal assistance to the Port as Special Counsel in connection with [description of work], as more fully described below. The Port retained [firm's name], commencing [commencement date], to provide such services in accordance with this letter. Your client will be the Port of Oakland; however, given that the Board has appointed me as the Port Attorney, and that I, therefore, am the legal advisor to the Board in accordance with the City Charter, you will communicate solely with me and take all of your instructions from me, unless I direct you otherwise. This will also confirm that you are not being retained to represent the City of Oakland itself, but rather just the Port Department. Therefore, the attorney-client privilege applicable to this engagement will cover your communications with the Port Department, acting through its authorized Board, and Legal Office, but does not include other City officials, departments, agencies or commissions.

Services by your firm will be provided to represent the Port and to provide legal advice as requested by the Port Attorney in connection with [matter's name]. It is understood that this matter may be covered by insurance and that part of the scope of your work includes complying with the Hiscox Casualty Division - Technology, Media, Professional Liability and Management Liability Guidelines for North American Defense Counsel.

It is understood that you will be the primary attorney providing legal services under our retention agreement. Retention of experts, independent consultants, or other legal counsel to assist in this matter will require my prior written consent. As we have discussed, your firm will submit monthly billing statements to the Port Attorney

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.

Costs and expenses commonly reimbursed include fees fixed by law or assessed by public agencies, long distance telephone charges, messenger and other delivery fees, postage, copy costs, which shall be reimbursed at the rate of \$0.10 per page, and other reproduction costs, travel costs including parking, and automobile mileage (for travel, if necessary, only more than 50 miles from your office with my prior approval) which shall be reimbursed at the rate of \$0.50 per mile, meals and hotel costs if approved in advance by the Port Attorney.

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 for the overtime.

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 our breach of the terms of this retention, our 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, upon our request, deliver our file(s), and property in your possession, whether or not we have paid for all services.

Your own hourly billing for professional services is [Outside Counsel's Hourly Rate] per hour, with no rate increases unless approved by the Port Attorney. The rates on this schedule are subject to modification on 30 days prior written notice to me. If I decline to pay increased rates, you will have the right to withdraw as attorney in the matter. Total fees and reimbursable costs on this matter may not exceed [Dollar Amount] without my written authorization in advance.

The time charged will include the time your firm spends on telephone calls relating to the above described matter, including calls with attorneys in the Port Attorney's 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 minimum units of one-tenth (. 1) of an hour.

We should remain in close and constant communication so that your work may be monitored to ensure its maximum utility to the Port. [Assigned Attorney(s)], 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 me 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.

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.

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 me the enclosed copy of this letter.

Very truly yours,

DANNY WAN
Port Attorney

Enclosure

cc: [Attorney Assigned]

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

[NAME]

[COMPANY]

Dated: _____