

# **Bermuda Airport Authority**

## **Request for Proposals (RFP)**

### **Legal Advisory Services**

**November 20, 2017**

**RFP #003/2017**

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## 1. Authority Description and Overview

The Bermuda Airport Authority was legislatively established on the 2<sup>nd</sup> March, 2017 through the Bermuda Airport Authority Act 2017, as a Quasi Autonomous Non-Government Organisation (QUANGO). Its mandate, as outlined in the legislation, is to be the oversight body acting on behalf of the Government of Bermuda during the redevelopment of the L.F. Wade International Airport, the 30-year concession agreement and to manage the retained government services. The BAA is governed by a seven-member Board of Directors. A CEO manages the day to day operations of the BAA including managing a staff compliment of up to ten.

As a QUANGO of the Bermuda Government, the Bermuda Airport Authority is required by law to comply with the Bribery Act 2016 and the Public Access to Information (PATI) Act 2010. Its PATI statement can be found on its website.

For more information on the Bermuda Airport Authority, please visit [www.airportauthority.bm](http://www.airportauthority.bm)

## 2. Company address and contact information

Address:

Bermuda Airport Authority (BAA)  
Building 332, East Side  
Waller's Point Road  
St. Georges, DD 03

Contact:

Chairman, Bermuda Airport Authority Board  
C/O Sherrita Steede, Executive Assistant to the CEO  
441 747 0233

## 3. Procurement of Services

The Bermuda Airport Authority ('BAA') will retain qualified legal counsel on an as-needed basis for each of the practice areas listed below. The BAA is willing to retain multiple law firms to fulfill these practice areas, and encourages law firms who specialize in one or these areas to apply for the areas outlined in this RFP.

1. Human Resources,
2. Real Property, and,
3. General contract law.

At the direction of the Bermuda Airport Authority Board of Directors, the CEO has been instructed, to issue an RFP using an open and transparent procurement process. The scope of services outlined to provide general legal services on a retainer basis, as outlined in section 4 of the RFP.

The legal services RFP was posted on the Bermuda Government's Office of Procurement and Project Management website as well as an ad was placed in the Royal Gazette.

The procurement of the services under this RFP, follow the Bermuda Airport Authority's financial instruction guidelines, which has been approved by the Board of Directors.

#### **4. Project description**

The Bermuda Airport Authority is seeking a Bermudian legal firm(s) to provide legal review for the following services:

1. Legal review of commercial contracts excluding the Bermuda Airport Authority Project Agreement,
2. Legal review of employment matters, including but not limited to, providing advice and representation on labour and employment matters, including employment standards, human rights, termination proceedings, occupational health and safety, and workplace safety and insurance matters, the Bermuda Employment Act, and,
3. Legal review of real property matters.

##### **4.1 Contract Term**

The term of this contract will be for three (3) years commencing 30th January, 2018 and remain in effect until 30th January, 2021.

##### **4.2 Turn-around time**

The BAA requires that simple or routine matters be dealt with over the telephone or within twenty-four (24) hours. More complicated matters should be dealt with within forty-eight (48) hours.

Indicate concurrence or alternative time frame proposals and how the firm would provide appropriate coverage during vacation/illness for the member handling a file. Indicate the availability of services on a request basis for attendance at meetings with the CEO and/or Board.

##### **4.3 Electronic Services**

E-mail will be used extensively for the review of documents and the transmitting of information. It is expected that the successful firm must have the appropriate technology in place and be fully conversant with electronic document editing/tracking and e-mail capabilities. Microsoft Word must be used for all documents. Please provide a description of how your firm will meet this requirement.

##### **4.4 Board of Directors and/or Board Committee Meetings**

The successful proponent must be available to attend evening meetings and come before the Board or attend Board Committee meetings, as required from time to time.

##### **4.5 Retainer Work**

The following legal work shall be covered by the retainer and annual retainer fee, to be paid in monthly installments, shall be included in the proposal response (Fees and Disbursements):

- general legal advice and legal opinions (including telephone advice and written opinions), but no complex legal opinions requiring research of jurisprudence,
- monthly or bi-monthly solicitors' meetings to provide general legal advice, receive instructions and information, report on files,

- Review contracts, leases, and other documents relating to the general business of BAA, *excluding the Airport Redevelopment project agreement*,
- drafting simple letters, memos, or other simple correspondence,
- drafting simple documents and reviewing contracts, and
- general advice on legal procedure.

Legal matters where external counsel is currently engaged in will continue to be dealt with by such external counsel notwithstanding the creation of the practice area arising from this RFP process.

#### **4.6 Public Access to Information**

Any information collected or used by or on behalf of the (Bermuda Airport Authority) under this solicitation document is subject to the Public Access to Information Act 2010 (“Act”). The information belongs to a class of information that might be made available to the public unless it is contained in a record that is exempt from disclosure under the Act. Any questions regarding the collection, use, or disclosure of the information should be directed to the public authority that issued this solicitation document.

The Public Access to Information Act 2010 can be found on Bermuda Laws at [www.bermudalaws.bm](http://www.bermudalaws.bm)

#### **4.7 Bribery Act 2016**

By law, the Bermuda Airport Authority must comply with the Bribery Act 2016 and will take all necessary measures to ensure compliance is adhered to.

The Bribery Act 2016 can be found on Bermuda Laws at [www.bermudalaws.bm](http://www.bermudalaws.bm)

#### **4.8 Conflict of Interest**

In addition to complying with the rules of professional responsibility and conduct, as established by the Bermuda Bar Association, the Proponent shall declare any actual or potential conflict of interest that exists now or may exist in the future with respect to the Proponent’s participation in this RFP process, and if selected, the performance of the Proponent’s responsibilities pursuant to the retainer.

As part of the RFP process, the Proponent must declare in their RFP submission, if they provided legal services during the development, negotiations, financial closing of the Airport Redevelopment project or in the past or currently provides legal services to the Department of Airport Operations or the Bermuda Skyport Corporation.

The Proponent shall describe in the proposal their process of identifying, disclosing, reporting and dealing with conflicts of interests should they arise in the future.

BAA reserves the sole right and discretion to determine whether any situation constitutes an actual or potential conflict of interest and may disqualify any Proponent on such basis.

#### **4.9 Reporting**

External counsel shall provide the BAA with copies of all pleadings, motion records, research, draft agreements, correspondences and other documentation when received.

External counsel shall provide same day updates of all significant developments in a file to the BAA, such as meetings with opposing counsel or other parties, results of settlement negotiations, agreement negotiations, court or tribunal appearances etc.

#### **4.10 Delegation**

It is understood that work may be delegated to appropriate and qualified staff (e.g. articling students, law clerks) during rendering legal services to BAA. The successful Proponent shall ensure that legal services are provided in a cost-effective way without reducing quality.

The designated counsel may delegate requests for legal services to another member of the counsel team submitted in the Proponent's proposal, subject to prior agreement with the BAA. The BAA may also request that a member of the counsel team, other than the designated counsel, to provide legal services for reasons of cost-effectiveness or other considerations. The successful Proponent shall use its best efforts to accommodate such requests.

In more complex matters where the designated counsel wishes to retain other experts or have more than one counsel to work on a file, the designated counsel shall seek the approval of the BAA before engaging such services.

#### **4.11 Qualification of Assigned Personnel**

The successful Proponent will demonstrate that the Proponent or the individual lawyer performing the engagement has the relevant subject matter expertise, and that the Proponent or the individual lawyer is currently recognised as a leading practitioner in the relevant area of law. All personnel (including consultants and experts retained) assigned to work on any of the BAA's files shall have and maintain appropriate qualifications for the work they are performing. Appropriate professional certification, licensing, development and training is expected and in keeping with the highest industry standards. The BAA reserves the right to withhold its approval of any personnel proposed by the successful Proponent at any time who do not hold the requisite combination of skills, certification and education.

In addition, the Proponent represents and warrants the following:

- a) That all legal counsel proposed by the Proponent to provide legal services to the BAA are members in good standing with the Bermuda Bar Association;
- b) That if awarded, all legal counsel proposed by the Proponent to provide legal services to the BAA will not represent any party adverse in interest to the BAA during the retainer;
- c) That the Proponent and all legal counsel proposed by the Proponent will carry out the practice of law professionally and with integrity, and in accordance with the Rules of Professional Conduct as established by the Bermuda Bar Association;

d) That all legal counsel proposed by the Proponent to provide legal services to the BAA has obtained and maintained adequate insurance.

The Proponent shall advise the BAA of any changes to any of the representations and warranties stated above. Any changes may be a cause of termination of the retainer agreement with the Proponent.

#### **4.12 Personnel Changes/Turnover**

One of the critical success factors in any project is building and keeping together a project team with a good knowledge base and strong team dynamics. This can be ensured by keeping turnover on the team to a minimum.

During the retainer, the Proponent may submit changes that it wishes to make to the designated counsel or the composition of a counsel team for the BAA's approval, which approval shall not be unreasonably withheld.

The successful Proponent shall ensure that any proposed replacement to any counsel team members will be replaced by individuals of equivalent expertise to minimize any negative impact on the work. The terms and conditions of the retainer agreement and this RFP, including the requisite qualifications of the legal counsel shall apply to any new counsel approved. Notwithstanding the above, the BAA maintains the discretion to terminate the retainer if there is a significant change in the counsel team, as deemed by the BAA.

The successful Proponent shall be responsible for any impact on any matter assigned to the successful Proponent during the retainer sustained by the removal and/or changes to the successful Proponent's counsel team, including all costs incurred, unless such changes are requested by the BAA and not because of a performance issue with the counsel team member(s). No changes to the amount of legal fee rates as set forth in the retainer agreement shall be permitted without the approval of the BAA which approval may not be unreasonably withheld.

#### **4.13 File Management**

The successful Proponent (through its designated counsel) shall take all necessary steps to streamline file management and avoid incurring unnecessary expenses, including but not limited to:

- a) Overstaffing a matter;
- b) Delegating tasks to overqualified personnel (e.g. administrative tasks conducted by a legal counsel);
- c) Educating legal counsel in the practice, procedural or substantive law which should be known or readily available to a lawyer due to his/her expertise;
- d) Redrafting work of associates or clerks or other staff;
- e) Rotating personnel assigned to a matter;
- f) Authorizing premature or peripheral legal and/or factual research;



- g) Letter writing when a quick email will do;
- h) Holding unnecessary internal meetings about a matter.

The BAA will not be responsible for any unnecessary expenses incurred because of ineffective file management.

#### **4.14 Disbursements**

The BAA will not pay for the following fees and disbursements:

- a) Expenses arising from ineffective file management;
- b) Any increase in rates not in accordance with the retainer agreement;
- c) Any premium amount on disbursements – the BAA will only pay disbursements at its actual cost;
- d) Staffing inefficiencies caused by the unavailability of firm personnel;
- e) Routine administrative tasks such as scheduling meetings or attendances, preparations of accounts, file organizations, form letter etc.;
- f) Hourly rates of legal counsel in transit, except for mileage charges to be reimbursed in accordance with the BAA established rates or other transportation charges as agreed upon in advance by the Instructing Lawyer.

#### **4.15 Accounts**

Every account submitted to the BAA shall be submitted to the CEO and shall contain the following information:

- a) Name of the matter;
- b) The personnel who performed the matter;
- c) The date the task was performed;
- d) The hourly rate or other rate structure applicable to the matter at hand;
- e) The time (by tenths of an hour) spent for each task (unless exact time spent is not an issue in determining costs based on the rates structure proposed and applied in the instance);
- f) Detailed description of the work performed (for example, stating only “research” is not sufficient but should specify the type and subject matter of the research);
- g) Detailed itemization of disbursements;
- h) Any adjustment to fees and disbursements based on the fee structure in the retainer agreement;
- i) The cumulative total of all fees and disbursements on the file to date;

- j) The Proponent's Tax number; and
- k) The signature of the Designated Counsel.

The BAA reserves the right to demand clarification of any of the accounts submitted and unless the CEO determines that the account rendered is appropriate and reflective of the work conducted, no payment will be made.

Payment will be paid net thirty (30) days upon approval of the accounts rendered. The BAA will not pay interest on late payments.

#### **4.16 Additional items or Services**

Additional items or tasks not included in this RFP but which are identified and deemed necessary by the Proponent to complete the work in an appropriate fashion must be communicated to the BAA, with a description of the item(s) prior to the close of this RFP.

#### **4.17 No Assignment**

The successful Proponents may not assign or transfer in whole or in part the retainer agreement or rights and obligations under this RFP to any other firm or individual, without the prior written consent of the BAA, which will not reasonably be withheld.

#### **4.18 Confidentiality**

In addition to complying with the Rules of Professional Conduct as established by the Bermuda Bar Association and any applicable laws with respect to confidentiality, the successful Proponent and its counsel and staff shall not comment publicly on the nature of the legal services provided to the BAA or the retainer without the prior written consent of the BAA.

Confidential information obtained during the retainer shall not be disclosed in any manner without the approval of the BAA. All documentation containing confidential information of the BAA shall be returned to the BAA upon completion or early termination of services.

#### **4.19 Return of Materials**

In addition to any materials containing BAA confidential information, upon completion or early termination of services for any reason, all material, information, studies, reports, designs, drawings, plans etc., including the copyright of such material etc., shall become the sole property of the BAA, subject to the requirements of the Rules of Professional Conduct of the Bermuda Bar Association. The Proponent shall deliver all such materials etc. to the BAA at such time at the Proponent's own costs.

#### **14.20 Default**

If a Proponent or an external counsel commits a default of the obligations provided in this RFP and the retainer agreement, the BAA may:

- a) Remove the external counsel from the file and request that a different external counsel in the same firm be assigned to the matter, or transfer the file to another firm to continue carrying on the matter on behalf of the BAA; and/or

- b) Reduce payment on the accounts rendered to an amount that the BAA Solicitor deems appropriate for the quality and amount of work conducted professionally by the external counsel; and/or
- c) Terminate the retainer agreement with the Proponent.

#### **4.21 Insurance**

The firm shall indemnify and hold harmless the Bermuda Airport Authority, its officers and employees from and against any and all liabilities, claims, demands, loss, cost, damages, actions, suits or other proceedings by whomsoever made, directly or indirectly arising out of the project attributable to bodily injury, sickness, disease or death or to damage to or destruction of tangible property caused by acts or omissions of the Contractor, its officers, agents, servants, employees, customers, invitees or licensees, or occurring in or on the premises or any part thereof and, as a result of activities under this contract.

The firm shall demonstrate that it is insured against professional liability, the dishonesty and/or lack of fidelity of its employees and that it has cyber insurance.

A certificate of professional service insurance must be included in the RFP submission.

#### **4.22 Indemnification**

The Proponent shall indemnify the BAA, its elected officials, officers, employees and/or agents against all claims, actions, demands and expenses arising out of any matter in relation to the Proponent or its counsel or staff's performance or non-performance of the retainer, including but not limited to any such claims, actions, demands and expenses resulting from the failure to exercise the reasonable care, skill and diligence expected of legal counsel in the performance of services. The Proponent shall also be responsible for any costs or damages arising from actions, errors and omissions of any expert professionals or consultants retained by the Proponent, or its agents or employees in the course of providing services to the BAA.

#### **4.23 Rights Reserved by the BAA**

The BAA reserves the right to accept or reject any or all proposals and/or to reissue the RFP in its original or revised form. The lowest cost proposal will not necessarily be accepted and the BAA reserves the right to determine in its own mind the proponent(s) best qualified to undertake this project. The BAA further reserves the right to cancel this RFP at any time, without any penalty or cost to the BAA.

The BAA is not liable for any costs incurred by interested parties in the preparation of their response to this request or selection of interviews. Furthermore, the BAA shall not be responsible for any liabilities, costs, express loss or damage incurred, sustained or suffered by any interested party, prior or after, or by reason of the acceptance, or nonacceptance by the BAA of any response, or by reason of any delay in the acceptance of the response.

The BAA reserves the right to request interested parties to:

- Address specific requirements not adequately covered in their initial submission
- Clarify information in the response

In the event of any disagreement between the BAA and the proponent regarding the interpretation of the provisions of the RFP, the Chairman of the Board or an individual acting in that capacity, shall make the final determination as to interpretation.

## **5. Internal Evaluation Team**

The internal evaluation team will consist of the Board Chairman, the Deputy Chairman, and one or two voting Members of the Board.

A fairness monitor may be assigned to oversee the RFP evaluation and selection process.

## **6. Questions during RFP process**

Questions are welcomed during the development of the RFP submission. All questions should be submitted via email to [RFP@airportauthority.bm](mailto:RFP@airportauthority.bm) and will be responded to via email within 2 working days of submission.

General questions will be shared with the RFP respondents.

The question period will close at 5:00 pm on Monday, November 27<sup>th</sup>, 2017. Once the Question period is closed, no further questions regarding the RFP criteria will be permitted.

## **7. Amendments to the RFP**

The BAA reserves the right to modify all requirements stated in the RFP at any time prior to the possible awarding of the contract.

RFP invitees will be notified of any amendments made.

## **8. Preferred method of contact**

All contact must be via email to [RFP@airportauthority.bm](mailto:RFP@airportauthority.bm)

## **9. Budget and Fee Structure**

One component for consideration of the responses to this RFP will be the fee structure proposed. Proponents are encouraged to provide any alternative fee structure as may be available to the BAA, such as block billing, annual caps on fees etc., in addition to hourly rates.

As such, the Proponent's response shall consist of:

1. The proposed fee structure and billing methods, including the proposed billing rate for the Designated Counsel and any other legal counsel proposed, and other pertinent staff members;
2. Any alternative fee structures and proposed disbursement rates;
3. An undertaking that the rates proposed in the fee structure will be guaranteed for the duration of the retainer. All prices must be net and firm.

The Proponent will be solely responsible for any and all payments and/or deductions required.

## **10. RFP submission requirements and deadline**

A complete RFP package covering all the components outlined in this RFP is required for your submission to be considered.

### **10.1 Company information must include:**

1. Company Name
2. Business Address
3. Contact person - name, telephone, fax, email, helpdesk
4. Business hours
5. Size of organization
6. Number of clients
7. Brief resumes of staff, to include qualifications and experience

### **10.2 Government taxes in good standing**

Before awarding the RFP, the Bermuda Airport Authority reserves the right to confirm the selected company is in good standing with the Tax Commissioner and the Department of Social Insurance.

### **10.3 References**

The Proponent's response must consist of a minimum of three references, one of which must be from the public sector, including boards, commissions and agencies.

Each reference should include the identity of the client organization, a contact name, address and phone number, and a brief description of the work that the Designated Counsel or other legal counsel in the proposed counsel team have done.

The BAA may contact any or all the references provided in its evaluation of the Proponent's proposal.

### **10.4 Additional submission requirements**

Three (3) hard copies of your proposal are required and one (1) electronic version must be sent to [RFP@airportauthority.bm](mailto:RFP@airportauthority.bm) on or before the deadline for submissions, as indicated below.

Your RFP package is to be delivered to the attention of:

Ms. Sherrita Steede, Executive Assistant to the CEO  
Bermuda Airport Authority, Bldg 332 'East', 11 Waller's Point Road  
St. George's DD 03

### **10.5 RFP submission deadline**

Deadline for submissions is 4:30 pm, Friday, December 8, 2017.

***Late submissions, in either hard or electronic copies, will not be accepted.***

### **10.6 Open for Acceptance**

The proposal submission is to remain firm for acceptance for a period of one hundred and twenty (120) days from date of closing.

### **10.7 Governing Law**

The contract will be governed by the laws of the country of Bermuda.

## 10.8 Compliance with Laws

The successful Proponent will be required to comply with all laws and regulations in performing its obligations under any contract including, without limitation.

## 10.9 Records, Inspection, Audits

The BAA will have the right, upon reasonable notice, to full access to the accounts and records of the successful Proponent in respect of the work done by it. Such records will be kept during the term of the retainer and for at least five (5) years following its termination or expiry.

## 11. RFP award process

### 11.1 Timeline

The tentative schedule for this RFP is provided below. Although every attempt will be made to meet all dates, the BAA reserves the right to modify any or all dates at its sole discretion.

Event	Anticipated Date
Request for Proposal issued	November 20, 2017
Final date for submitting email enquires about RFP	December 1, 2017
Final date for responding to proponent enquires	December 5, 2017
Final addendum, if required	December 6, 2017
Proposals due/closing date and time	December 8, 2017
Evaluations	December 14-15, 2017
If required: oral presentation to the Evaluation Committee	December 19, 2017
Recommendation presented to the Board	December 21, 2017
Award of Contract – Board meeting	December 28, 2017
Notification to the successful Bidder	January 8, 2017

### 11.2 BAA reserves the right:

1. To adjust the RFP award timeline,
2. To award to the contract to the company that best meets the needs of the BAA, and,
3. Not to award the contract if submissions are deemed unsuitable.

## 12. Errors and Omissions

BAA shall not be held liable for any errors or omissions in any part of this RFP. While BAA has used considerable effort to ensure an accurate representation of information in this RFP, the information contained in the RFP is supplied solely as a guideline for proponents. The information is not guaranteed or warranted to be accurate by the BAA, nor is it necessarily comprehensive or exhaustive. Nothing in the RFP is intended to relieve the proponents from forming their own opinions and conclusions with respect to the matters addressed in the RFP.