

**BOARD OF PUBLIC WORKS
SECRETARY'S
ACTION AGENDA
May 15, 2024**



SUPPLEMENTAL

*Contacts: The Honorable Anthony G. Brown, Attorney General of Maryland
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**11. OFFICE OF THE ATTORNEY GENERAL
*Legal Representation with Contingent Fee***

Recommendation: That the Board of Public Works approve the Attorney General’s proposal to include a contingent fee provision in a contract for Assistant Counsel. This contract would compensate an external law firm with a portion of the monetary recovery, if any, that the State receives in litigation for damages resulting from the Francis Scott Key Bridge disaster.

Authority: Section 10-305, State Finance and Procurement Article, Annotated Code of Maryland

Contractors: Kelley Drye & Warren LLP, Houston TX
Liskow & Lewis APLC, Houston TX
Downs Ward Bender Herzog & Kintigh PA, Hunt Valley MD
The Lanier Law Firm, New York NY
Partridge LLC, New Orleans LA

Contract Description: Assistant Counsel – Francis Scott Key Bridge Litigation. The contract is for Assistant Counsel to the Attorney General, pursuant to Section 6-105(b), State Government Article, Annotated Code of Maryland, with approval from Governor Moore, by letter dated 3/28/2024.

Attorney Fees: The Contractor will be paid for services rendered under this Contract on a contingent fee basis. The amount of fees to be paid will be based on the stage of the matter at which any recovery is obtained. The Contractor will receive attorney’s fees for the sums recovered, not including the \$350 million insurance recovery, based on the percentages in the following fee matrix.

	Stage of Litigation at which Recovery is Obtained from any Defendants		
Cumulative Net Recovery	<u>Stage A</u> Vessel owner successfully limits liability	<u>Stage B</u> No Limitation and all other parties; from commencement through close of discovery	<u>Stage C</u> After Discovery closes, through trial
1. Up to \$150,000,000	10%	16%	18%
2. \$150,000,001 to \$500,000,000	8%	14%	16%
3. \$500,000,001 to \$1,000,000,000	6%	10%	12%
4. \$1,000,000,001 and Above	2%	2%	2%

Stage A: Applies to the vessel owner, Grace Ocean and purported owner Synergy, only if each is successful in the limitation of liability action. Otherwise, the columns headed Stage B or Stage C apply, as they do for all other tortfeasors.

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11. **OFFICE OF THE ATTORNEY GENERAL** (cont'd)
Legal Representation with Contingent Fee

Remarks:

Background about the Francis Scott Key Bridge Litigation

On March 26, 2024, a container ship, M/V DALI allided with the Francis Scott Key Bridge (Key Bridge), resulting in its collapse. Eight construction workers were on the Key Bridge at the time, two of whom were injured and six of whom died. The shipping channel was blocked, and all ship traffic was halted to/from that portion of the Port of Baltimore, located northwest of the former Key Bridge and encompassing the majority of marine terminals. The collapse of the bridge, which carried I-695, and the close of the shipping channel caused immediate and ongoing harm to the State of Maryland, county and local jurisdictions, and individuals and businesses in Maryland and nationwide.

The Key Bridge collapse has necessitated a massive response by more than 15 State agencies, all of which are represented by the OAG, including but not limited to:

- Maryland Department of Transportation (MDOT)
- Maryland Transportation Authority (MDTA) – owns/operates the bridge
- Maryland Port Administration (MPA) – owns/operates public marine terminals in the Port
- State Highway Administration (SHA)
- Maryland Department of Labor (MDOL)
- State Treasurer’s Office (STO)
- Board of Public Works (BPW)
- Maryland Department of Emergency Management (MDEM)
- Maryland Insurance Administration (MIA)
- Department of Commerce (COMM)
- Department of Natural Resources (DNR)
- Department of the Environment (MDE)
- Maryland Environmental Service
- Department of Budget and Management
- Maryland State Police (MSP)
- Maryland Lottery and Gaming (MLGCA)
- Department of Human Services (DHS)

Numerous Federal agencies, such as the National Transportation Safety Board (NTSB), the US Army Corps of Engineers (USACE), the US Navy (USN), and the US Coast Guard (USCG), as well as county governments have also been mobilized.

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Legal Representation with Contingent Fee

Remarks (cont'd):

The Attorney General intends to identify and hold accountable the parties responsible for the Key Bridge collapse and to recover compensation for the damages and other harm suffered by the State. The Assistant Counsel will support the OAG's representation of the State of Maryland, its agencies, and instrumentalities in evaluating and pursuing potential litigation. This will include advice and representation in connection with the pending maritime limitation of liability action filed by the ship owner, *In the Matter of the Petition of Grace Ocean Private Limited et al for Exoneration from or Limitation of Liability*, case no. 1:24-cv-00941, United States District Court for the District of Maryland.

Assistant Counsel Contract

The law firms listed above as contractors were selected to serve as Assistant Counsel to the Attorney General pursuant to State Government Code, §6-105(b), for purposes of the Francis Scott Key Bridge Litigation. As required by the statute, the Attorney General sought prior approval from Governor Moore to procure the services of an Assistant Counsel. Governor Moore approved the Attorney General's request by letter dated 3/28/24. Compensation under the contract is by contingent fee.

The Attorney General has long interpreted that a contingent fee contract for legal services requires additional approval from the Board of Public Works under State Finance & Procurement Code, §10-305(a), which governs the disposition of state property. *74 Opinions of the Attorney General* 136, 140-42 (1989). The BPW has approved contingent fee contract provisions requested by the Attorney General in tobacco, environmental and antitrust cases over the years. That approval is being sought again now, this time for litigation relating to the bridge disaster.

Counsel Selection. After receiving the Governor's approval to retain Assistant Counsel on 3/28/24, the Office of the Attorney General (OAG) issued a Request for Proposals (RFP) on 4/5/24, with a deadline of 4/17/24. The RFP was widely distributed by posting on the RFP page of the OAG website, and by email to 23,660 people subscribed to the RFP email list, 27 attorneys/firms that requested to receive notice of bridge-related RFPs, 24 attorneys/firms identified from the MDOT Directory of Certified Firms, and 10 minority bar/legal associations and organizations.

The OAG received 34 proposals, 14 of which proposed joint ventures of multiple firms, involving a total of 63 firms. After narrowing the field, the OAG conducted interviews of six firms/joint ventures on 4/22/24, and now recommends a joint venture composed of the five firms, listed above as contractors, to serve as Assistant Counsel for purposes of this litigation.

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Remarks (cont'd):

Fee Arrangement. The Attorney General seeks to compensate Assistant Counsel on a contingent fee basis, with a percentage of recovery as described above in the ‘Amount’ field. This is a unique legal matter and it is difficult to compare the fee schedule to that used in other litigation. The fee schedule is favorable compared to the arrangements offered by other firms considered for this engagement. It is also similar to the fee schedules in other Assistant Counsel contingent fee contracts that have been approved by the Board. If the State recovers less than \$350 million, the law firm will not be entitled to any compensation from the State.

Fund Source: Litigation Recovery

Resident Business/Tax Compliance Number:

<i>Contractor</i>	<i>Resident Business</i>	<i>Tax Compliance Number</i>
Kelley Drye & Warren LLP	No	13-5335107
Liskow & Lewis APLC	No	72-1134245
Downs Ward Bender Herzog & Kintigh PA	Yes	52-1735015
The Lanier Law Firm	No	76-0515650
Partridge LLC	No	92-0859969

BOARD OF PUBLIC WORKS THIS ITEM WAS:

APPROVED DISAPPROVED DEFERRED WITHDRAWN

WITH DISCUSSION WITHOUT DISCUSSION