

# REQUEST FOR PROPOSALS

FOR ASSISTANT COUNSEL TO THE ATTORNEY GENERAL OF  
MARYLAND, PURSUANT TO STATE GOVERNMENT ARTICLE,  
§6-105(b)

EXPERTISE IN PUBLIC-PRIVATE PARTNERSHIPS AND OTHER  
ALTERNATIVE DELIVERY METHODS FOR MAJOR  
INFRASTRUCTURE PROJECTS REQUIRED

Responses due no later than  
5:00 pm on May 22, 2024

Procurement Officer:  
Peter V. Berns  
General Counsel - Executive Division  
Office of the Attorney General  
200 St. Paul Pl., 20<sup>th</sup> Fl.  
Baltimore, Maryland 21202  
Tel: 410-576-6974  
Email: [pberns@oag.state.md.us](mailto:pberns@oag.state.md.us)

*Minority Business Enterprises are  
encouraged to respond to this solicitation notice.*

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### **Attachments:**

- Exhibit A     Bid/Proposal Affidavit  
(complete and return with Technical Proposal)**
  
- Exhibit B     Conflict of Interest Affidavit  
(complete and return with Technical Proposal)**
  
- Exhibit C     Conflict of Interest Provisions**
  
- Exhibit D     Price Proposal Form  
(to be completed and returned as a separate PDF file)**
  
- Exhibit E     Sample Contract, Contract Affidavit, & Task Order**

## KEY INFORMATION SHEET

<b>Request for Proposals</b>	Assistant Counsel with Expertise in Public-Private Partnerships and Other Alternative Delivery Methods for Major Infrastructure Projects
<b>Solicitation Number:</b>	OAG-24.04.15
<b>RFP Issue Date:</b>	April 15, 2024
<b>Procurement Officer:</b>	Peter V. Berns General Counsel – Executive Division 200 St Paul Place, 20 <sup>th</sup> Floor Baltimore, MD 21202
<b>e-mail:</b>	<a href="mailto:pberns@oag.state.md.us">pberns@oag.state.md.us</a>
<b>Office Phone:</b>	410-576-6974
<b>Questions Due Date and Time</b>	4/24/2024, 5:00 pm
<b>Proposal Due (Closing) Date and Time:</b>	5/22/2024, 5:00 pm
<b>Contract Duration:</b>	3 years, option for two 1-year extensions, or conclusion of any single open matter <sup>1</sup>

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<sup>1</sup> If a firm is selected to assist advising the ongoing Purple Line Light Rail Project, further described below, the contract duration will extend at least through the completion of the construction phase of the project.

**OFFICE OF THE ATTORNEY GENERAL  
OF THE STATE OF MARYLAND**

**Request for Proposals to Serve as Assistant Counsel to the  
Attorney General of Maryland**

**Responses are due May 22, 2024 by 5:00 p.m.**

**I. Introduction**

The Office of the Attorney General of the State of Maryland (the “OAG” or “Attorney General”) issues this Request for Proposals (“RFP”) to engage Assistant Counsel (“Assistant Counsel”), pursuant to the State Government Article of the Annotated Code of Maryland, §6-105(b), with expertise in public-private partnerships (“P3s”) and other alternative delivery methods for major infrastructure projects. The Assistant Counsel will support the OAG’s representation of the **Maryland Department of Transportation (“MDOT”)(including its five modal administrations, e.g., the Maryland Transit Administration (“MTA”)), and additional State Units** of the State of Maryland (hereinafter collectively “the State”).

The OAG is soliciting proposals from qualified law firms experienced in transactional and related matters pertaining to P3s and other alternative project delivery methods, which may include advising on project models at project inception; assisting with solicitations of concessionaires, project partners, and other primary project actors; negotiating and drafting agreements; implementing agreements; and all other aspects of delivering major public infrastructure projects. It is also anticipated that the selected attorney(s) or firm(s) may support the OAG in related litigation and provide other related services as directed. While it is anticipated that the majority of the advice and representation described in this RFP will be provided to MDOT (and particularly to MTA), Offerors should be aware that other State Units may require similar advice and assistance on major infrastructure projects.

The Attorney General plans to retain one or more Assistant Counsel to provide the assistance more fully outlined below. Requests for assistance will be evidenced by issuance of a Task Order following completion of a conflicts check. Task orders will be issued by the Procurement Officer and/or by other authorized Assistant Attorneys General, and with the concurrence of the State entity in need of legal assistance which will be responsible for payment.

**II. Background and Purpose**

MDOT, a principal department of the State government, is organized pursuant to Title 2 of the Transportation Article of the Annotated Code of Maryland. Within MDOT, there are five modal administrations: MTA, State Highway Administration, Maryland Aviation Administration, Maryland Port Administration, and Motor Vehicle Administration. The Maryland Transportation Authority (“MDTA”), which finances and operates the State’s toll facilities, is a separate but related entity chaired by the Secretary of Transportation. For purposes of this RFP, the term “MDOT” shall be deemed to include MDOT Headquarters, its five administrations, and MDTA.

MTA is one of the largest multi-modal transit systems in the United States, operating Local Buses (CityLink and LocalLink), Commuter Buses, Light Rail, Metro Subway, Maryland Area Regional Commuter (MARC) Train Service, and a comprehensive Paratransit system (MobilityLink). MDOT and MTA are parties to a P3 agreement to design and build the Purple Line Light Rail, a 16-mile line extending from Bethesda in Montgomery County, Maryland to New Carrollton, Prince George's County, Maryland. The construction of the light rail is approximately 65 percent complete. Under the existing P3 agreement, construction will be followed by a 30-year operations and maintenance phase. In addition to the Purple Line, MDOT and MTA are in various stages of planning for new projects, including a high-capacity transit line for the Baltimore Region called the Red Line and a rapid transit system along MD 5(Branch Avenue)/US 301 (Crain Highway) from Prince George's County, Maryland to Charles County, Maryland called Southern Maryland Rapid Transit. The State may consider alternatives to traditional State procurement models to deliver these and other new projects, for example Contract Management at Risk, Construction Manager-General Contract, Progressive Design Build, Predevelopment Agreements, Progressive Public-Private Partnership, Delivery Partner, Integrated Project Delivery, and Alliances.

This RFP solicits one or more Assistant Counsel with extensive experience with major public infrastructure projects and alternative project delivery methods to provide expert advice and other transactional assistance for the Purple Line to apply the existing P3 agreement, evaluate claims and potential change orders, and draft complex amendments and related documents. As new projects progress, MDOT and MTA may also require Assistant Counsel to evaluate alternative project delivery methods for major infrastructure projects and assist drafting solicitations, contracts, finance documents and disclosures, and other necessary documents. Services for new projects may be needed from inception (including any processes required by the National Environmental Policy Act ("NEPA")) through construction and other implementation. The successful Offeror should be familiar with the Federal Transit Administration ("FTA") New Starts and other similar federal transportation programs.

As used in this RFP, "major infrastructure project" will ordinarily refer to capital projects that involve design and construction of transportation or other public infrastructure that are large in scale and greater complexity relative to the typical government project in the State of Maryland. These projects may also include an operations or maintenance component spanning several years following completion of the construction phase. The total project costs of a "major infrastructure project" may exceed \$1 billion and entail heightened risks for the parties beyond ordinary government construction projects. The services of any Assistant Counsel contracting with the State pursuant to this RFP may, however, be required on projects of a smaller scale or complexity than the type of project described in this paragraph.

### **III. Scope of Work**

1. The Attorney General is seeking to retain the services of one or more Assistant Counsel (the "Contractor") to assist and advise MDOT (and any additional State Units as needed) on the following matters related to major infrastructure projects:
  - A. Interpreting P3, alternative delivery, and other complex agreements, including implementation and claims analysis.

- B. Evaluating and potentially developing alternative approaches to and structuring of major public infrastructure and transportation initiatives.
- C. All phases of the solicitation process for major agreements from pre-solicitation through contract execution.
- D. Negotiating, drafting, and reviewing agreements, amendments, and related documents.
- E. Real estate matters, including property acquisition and shifting acquisition responsibility.
- F. Financing arrangements, including public and private financing, federal loan programs and requirements, and other financing methods.
- G. Federal funding issues and the regulatory requirements (e.g., Davis-Bacon Act, Build America Buy America/Buy American acts, Disadvantaged Business Enterprise (“DBE”) participation) of various federal agencies, including but not limited to the United States Department of Transportation (“USDOT”), including the FTA, Federal Railroad Administration (“FRA”), and Federal Highway Administration (“FHWA”).
- H. Federal and State environmental matters, including compliance with NEPA, Clean Water Act, Clean Air Act, Resource Conservation and Recovery Act, and any related processes and requirements.
- I. Title VI of the Civil Rights Act of 1964 (“Title VI”) and other anti-discrimination concerns and issues, including environmental justice.
- J. Insurance, including appropriate insurance requirements and reviewing policy documents.
- K. Labor considerations.
- L. Current State law or relevant proposed changes to statutes, regulations, policies or procedures.
- M. Other related matters.

The Contractor may also be asked to provide litigation support services in connection with challenges to contract solicitation processes, allegations of contract breach, claims, and other matters related to specific major infrastructure projects.

2. On matters for which Assistant Counsel services have been sought, the Contractor may be asked to represent MDOT or other State Units in discussions and communications with government officials, regulators, and administrative agencies at all levels, including USDOT, FRA, FTA, and FHWA and local government representatives; railroads; financial service providers; insurance providers; and contractors/proposers with or seeking State contracts; and other parties affected by infrastructure projects and their counsel.

3. The Contractor will only be responsible for matters assigned to it. Some assignments will require coordination with the other Assistant Counsel representing MDOT or other State Units in litigation or Assistant Counsel providing other specialty services.

4. All legal services are to be provided only at the request of the Procurement Officer or his/her designee. All advice is to be provided directly to the Procurement Officer or his/her designee. The Contractor is not authorized to enter into discussions with a State Unit’s staff, customers, clients, or other advisors without the knowledge and direction of the Procurement Officer or his/her designee.

#### **IV. General Conditions**

1. **Payment.** Contractor will be paid an hourly fee for services rendered under the Contract to be agreed upon plus permitted reimbursable expenses. Contractor will be paid from funds that may be appropriated or otherwise be made available for such payment by the State Unit identified in the applicable Task Order(s). The Attorney General reserves the right to select more than one firm to handle this representation. In addition, Assistant Attorneys General may handle all or portions of the work. The Attorney General does not promise or guarantee any minimum level of hours of work or compensation during the term of the Contract and the Attorney General does not have funding to pay fees to Assistant Counsel.
2. **Disclosure.** This RFP, all proposals, and the resulting contracts and task orders are subject to the Maryland Public Information Act. Offerors must specifically identify those portions of their proposals, if any, which they deem to include confidential, proprietary information or trade secrets and must provide justification why such material should not, upon request, be disclosed by the State under the Maryland Public Information Act, General Provisions Article, Title 4 of the Annotated Code of Maryland.
3. **Procurement Law Inapplicable.** This RFP and any Contract entered into as a result hereof is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or the State procurement regulations as set forth in COMAR Title 21 (collectively, the “**Procurement Laws**”). Nonetheless, the procedures set forth in the Procurement Laws will be applied to this RFP and the Contract to the extent practicable and consistent with obtaining the best legal counsel for the State, all as determined in the sole discretion of the Procurement Officer (defined above). The dispute resolution and appeal procedures contained in the Procurement Laws will not apply to this solicitation.
4. **Proposal Expenses Nonreimbursable.** The State is not responsible for any expenses Offeror may incur in connection with developing and submitting a proposal or gaining familiarity yourself with State and federal statutes, regulations, programs, and financings.
5. **Email Updates.** Interested persons who would like to be notified of any amendments or updates relating to this RFP are encouraged to send written notice to the Procurement Officer of their name and e-mail address.
6. **Questions and Answers.** The Procurement Officer is the sole point of contact for this RFP. **Questions about this RFP may be submitted by email, no later than 5:00 p.m. on April 24, 2024 to [pberns@oag.state.md.us](mailto:pberns@oag.state.md.us).** Answers to questions will be provided to all interested parties. Answers will be provided, if possible, without disclosure of the identity of the person or party asking the question. There will be no pre-proposal conference.
7. **Amendments and Cancellation.** The OAG reserves the right to amend this RFP and any amendments will be e-mailed to all interested persons. The OAG also reserves the right to cancel this RFP and notice of cancellation will be e-mailed to all interested persons.

8. Joint Responses. The OAG will entertain proposals submitted by joint ventures of not more than two parties (a party, for this purpose meaning a law firm or a lawyer). A Joint Venture is an "Offeror" and, except when otherwise expressly provided or when the context indicates otherwise, will be treated as one entity. If two persons or firms respond to the solicitation jointly, the specific services to be provided by each firm should be identified, and the proposal should indicate how the firms expect to coordinate their work. Duplication of work by joint venturers will not be permitted.

9. Terms and Conditions. By submitting a proposal, you accept all the terms and conditions of this RFP. If selected, you will be expected to enter into the Contract, the form of which is attached as Exhibit E. The terms and conditions of the Contract are not subject to negotiation. By submitting a response, you will be deemed to represent that your firm is not in arrears in the payment of any obligation due and owing the State, including the payment of taxes and employee benefits.

## **VI. Commitment to Diversity, Equity and Inclusion**

The Office of the Attorney General views equity, diversity, inclusion, and belonging as the pathway to achieving professional excellence and fostering and maintaining a culture where everyone can thrive. We, therefore, strive to solicit law firms that draw upon the best pool of talent to achieve excellence and diversity while fully embracing individuals from varied backgrounds, cultures, races, identities, life experiences, perspectives, beliefs, and values. We honor, respect, and celebrate all differences, both visible and invisible, and are committed to soliciting firms that recruit, retain, and promote individuals who have historically been underrepresented in the practice of law and the legal profession.

Consistent with this commitment, the OAG desires that individuals from communities underrepresented in the practice of law,<sup>2</sup> minority business enterprises ("MBEs") as defined in §14-301 of the State Finance and Procurement Article of the Annotated Code of Maryland (the "Procurement Article"), veteran-owned small business enterprises ("VSBES") as defined in §14-601 of the Procurement Article, and small businesses ("SBs") as defined below, have the maximum practicable opportunity to participate in contracts and subcontracts.

The OAG encourages the use of individuals from underrepresented communities, MBEs, VSBES, and SBs, either independently or as part of a joint venture, for contracting and subcontracting opportunities.

Additional weight may be given to law firms that partner with a small business. For purpose of this solicitation, a small business is defined as a business with 50 or fewer employees.

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<sup>2</sup> See e.g., [Demographics | American Bar Association Profile of the Legal Profession \(abalegalprofile.com\)](https://www.abalegalprofile.com/).



## VII. Technical Proposal

The Technical Proposal shall include the following information and shall be presented in the following order:

1. Legal name and principal place of business of the law firm making the proposal.
2. A statement as to whether the firm is an MBE, VSBE, or SB.
3. Name and address of the person designated as the contact person for purposes of this RFP and any resulting Contract. Please provide name, mailing address, e-mail address, telephone number and fax number of the contact person.
4. General information on the areas of law in which the law firm specializes.
5. Name, mailing address, e-mail address, telephone number, and fax number of the individual who will head the team of attorneys and other paraprofessionals (paralegals, legal assistants, and law clerks) participating in this engagement (collectively, the “**Legal Team**”).
6. Information demonstrating compliance with the following Minimum Qualifications:

Maryland Bar Required: One or more attorneys on the Legal Team must be admitted to practice in Maryland and such person must also be a partner or equivalent in the firm advising on procurement and contracting related to major construction projects. In addition, at least one attorney with knowledge of real estate admitted to practice in Maryland is preferred.

Federal Experience: One or more attorneys on the Legal Team must have at least five years of experience applying and advising on federal statutes, regulations, and guidance in connection with grant implementation, financing, procurement, and other requirements of implementing a major infrastructure project with federal funding.

Office. The Offeror maintains an office in the State of Maryland or within 75 miles of the MTA headquarters in Baltimore, Maryland.

Technology. The firm must have the capacity to transmit and receive complex documents and data electronically; create complex financial and disclosure documents, including charts and tables; and share documents in a format compatible with the State (including Outlook, Excel, Word, ProjectWise and Adobe). The firm must be willing to add hardware and software capacity according to reasonable industry standards as required by the State.

### Insurance

- (i) The Contractor must maintain in full force and effect (during both the term of the Contract and thereafter for the entire period in which the Contractor may incur professional liability in connection with performance or failure to perform under

the Contract) professional liability insurance in an aggregate amount of not less than Five Million Dollars (\$5,000,000), which liability insurance shall include coverage for practice in the fields of law related to the Contract.

- (ii) If the Contractor is a joint venture, and one party to the joint venture does not have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence satisfactory to the Procurement Officer, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual policies or the equivalent.
- (iii) Prior to executing the Contract, the Offeror shall provide a certificate of insurance or other proof of insurance meeting these requirements.

Public Ethics and Conflict of Interest. The negotiation of or entering into the Contract must not give rise to a violation of the Public Ethics Law or Conflict of Interest.

7. Specific Legal Experience. Technical Proposals should contain a detailed description of the Offeror's experience advising government agencies and other parties in connection with major infrastructure projects, especially public transit and transportation projects, in Maryland and other jurisdictions during the last five years. Offerors should also include the following information:

(i). P3s and Alternative Project Delivery Methods. A detailed description of the Offeror's experience with P3s and other alternative project delivery methods, including identifying and mitigating risks, drafting and negotiating agreements and amendments, and interpreting complex agreements and documents governing major infrastructure projects. The Offeror should list examples of any projects the Offeror is currently or has been involved, and describe the types of services the Offeror provided for those projects.

(ii) Federal Experience: A detailed description of the Offeror's experience advising public agencies or other entities on compliance with federal statutes, regulations, and guidance in connection with implementing a major infrastructure project with federal grants or other funds from federal sources. Please include any applicable experience with the Build America Buy America/Buy American acts, labor rules (e.g., Davis-Bacon Act, hiring preferences), DBE participation, Title VI, Sensitive Security Information ("SSI"), or other requirements imposed as a condition of federal funding.

(ii). Financing Experience. A description of the nature and depth of the Offeror's experience with public and private financing arrangements, including creative financing and review of federal financing programs (especially in connection with transportation projects). Please include specific examples of Offeror's involvement with financially structuring P3s and other public infrastructure projects.

(iii). Insurance Experience. A description of the nature and depth of the Offeror's experience with advising clients on appropriate insurance requirements and the effect of actions on insurance policies and insurability, representing clients in discussions with insurers, and negotiating contract provisions related to insurance for infrastructure projects.

Please include specific examples of Offeror's involvement with insurance issues related to P3s and other major infrastructure projects.

(iv). Real Estate and Real Estate Development Experience. A detailed description of the Offeror's experience in real estate and real estate development in Maryland with an emphasis on projects for transportation agencies or transportation facilities, including experience in bringing a project from its initial stage to a completed project.

(v). Environmental Experience. A detailed description of Offeror experience with identifying and mitigating environmental conditions associated with major infrastructure projects and reviewing and responding to environmental assessments and reports. Please include any experience participating in NEPA reviews and studies, NEPA coordination activities, and obtaining NEPA approvals for major infrastructure projects. Please also include any specific examples of how Offeror has addressed environmental issues associated with P3s and infrastructure projects.

(vi.) Related Legal Experience. A brief description of the Offeror's experience in other areas of the law related to P3s, alternative project delivery methods, or major infrastructure projects. In addition to the information provided for members of the Legal team pursuant to paragraph 8 below, you may attach brief resumes of other attorneys who work in the areas described in this paragraph, but only if they will be available to consult with and give advice to MDOT and the OAG during the term of the Contract.

If the Offeror is a joint venture, all information in this paragraph 7 should be provided for both joint venturers.

8. Legal Team Attorneys - Name and address of each attorney who will be a member of the Legal Team and his or her respective position in the law firm. For each attorney, provide a detailed description including the following information:
- (i) The identity of the individuals, the area of law in which each specializes, and the extent to which he or she participated in the matters described in paragraph 7 above.
  - (ii) The jurisdictions in which the attorney is admitted to practice, their year of admission and the location of their principal place or places of business.
  - (iii) Their availability during the term of the Contract. Note that the Contract does not permit substitutions of team members without the prior written consent of the Procurement Officer or their designee.
  - (iv) The proposed role and planned division of responsibilities among the members of the Legal Team, including an approximate percentage of the time each individual is expected to devote to performing services under the Contract. (The total of the percentages shall equal 100%).

- (v) For a joint venture, specify the division of responsibilities between the venturing entities, including the type and approximate amount of work to be performed by each party, the approximate percentage of time each party expects to devote to performing services for the State. Please discuss the safeguards the Offeror will employ to avoid duplication of effort by the joint venturers.
- (vi) Resumes of any individuals named, but only if they will be available to consult with and give advice to MDOT or additional State Units for which Assistant Counsel services are being provided during the term of the Contract.
- (vii) For each attorney, please indicate whether the person is a member of a group defined in the State Finance and Procurement Article of the Annotated Code of Maryland, §§14-301(k) or (l) or 14-601(b). This demographic information will not affect eligibility for this Contract.
9. Legal Team - Paraprofessionals: The Technical Proposal should detail how the Offeror will use paraprofessionals, law clerks, and law graduates not admitted to practice to promote economy and efficiency in the performance of the Contract and to assure the lowest possible costs under the Contract. Brief resumes of the paraprofessionals expected to assist the team should be attached to the Offeror's Technical Proposal.
10. Client References: Names and telephone numbers of three clients (and respective contact persons for those clients) for whom you have provided services similar to those described in this RFP, with a brief description of the work performed. These persons will be considered as references and may be contacted by the OAG in its evaluation of the proposal.
11. State of Maryland Contacts: Names and telephone numbers of contact persons at any Units of the State for whom you have provided legal counsel in the last three years. These persons will be considered references and may be contacted by the OAG in its evaluation of the proposal.
12. Conflict Check Process: A detailed description of the firm's procedure for checking conflicts of interest and whether there are any potential conflicts in representing MDOT, the State or the OAG in this matter. **(See Exhibit C for more detail)**.
13. Public Ethics Law Affirmation: Written affirmation that neither the submission of this proposal, nor any further negotiation under this RFP, nor entering into a Contract will result in a violation of the Maryland Public Ethics Law, found at General Provisions Article, Title 5, of the Annotated Code of Maryland. If such a violation may result, please discuss your plan for resolving the violation in a timely manner.
14. Required Affidavits: Completion of the enclosed bid/proposal affidavit (**Exhibit A**) and the conflict of interest affidavit. (**Exhibit B**).

15. Proposal Authorization: Written affirmation that the person(s) submitting the proposal is/are authorized to do so on behalf of the Offeror and certification that, to the best of his or her knowledge, the information submitted in the technical proposal is accurate, complete, and correct as of the date of the proposal.
16. DEI in Leadership: A statement indicating whether the firm has representation of underrepresented communities in its executive leadership.
17. DEI Commitment and Practices: Indicate and provide documentation of the firm's commitment to diversity, equity, and inclusion ("DEI") and support of underrepresented communities in the firm's mission. For example, please describe whether the firm engages in any of the following activities:
  - (a) Maintains written workforce DEI policies;
  - (b) Offers DEI training to its workforce;
  - (c) Assigns a senior-level employee as responsible for oversight and direction of the entity's DEI efforts;
  - (d) Reports performance of workforce DEI programs on the entity's website;
  - (e) Includes DEI objectives in performance plans of its managers;
  - (f) Publishes information about DEI commitments and efforts on the entity's website;
  - (g) Provides career advancement training and opportunities for its employees, which include members of underrepresented communities;
  - (h) Collaborates with educational institution, serving significant or predominant student populations or affinity groups from underrepresented communities (e.g., career fairs, scholarships, internships, apprenticeships);
  - (i) Provides charitable donations, pro bono legal services, or other support to underrepresented communities or organizations that represent underrepresented communities; and
  - (j) Assesses DEI progress against external diversity benchmarks or certification standards, (e.g. [ABA](#), [Bloomberg Law](#), [Mansfield Rule](#), [Chambers](#), [MCCA](#), [NALP](#)), actively promotes supplier diversity, or engages in other initiatives to eliminate bias in the legal profession and the justice system.

Evaluation of the proposals will be as described below.

## **VIII. Price Proposal**

The Price Proposal shall be submitted as a separately labelled PDF file and shall contain blended fixed hourly rates that will be charged for the initial three (3) year term of the Contract and for any renewal term that is authorized. It shall include the following information:

1. The blended fixed hourly rate for all attorneys rendering services under the Contract; and
2. The blended fixed hourly rate for paraprofessionals (paralegals, legal assistants, law clerks and attorneys not admitted to practice) rendering services under the Contract.

The Price Proposal shall be submitted using the form attached as **Exhibit D**.

Price will be an important factor in the selection process but not necessarily the determining factor.

## **IX. Evaluation and Selection**

1. **Review of Proposals**. Technical proposals (and oral presentations, if any) will be evaluated before price proposals are opened. Please note that Offerors whose technical proposals do not meet the Minimum Requirements described in paragraph VII-6, above, may be deemed not reasonably susceptible for award and that Offeror's technical and price proposals may not be evaluated. Technical merit will be given more weight than price in determining the Evaluation Committee's final ranking. After reviewing the price proposals, one or more Offerors may be invited to participate in an interview and further discussion, and may be requested to provide a best and final offer. For the technical evaluation, the Evaluation Committee will take into consideration the following factors (listed in descending order of importance):

- (i) the proposed Legal Team's demonstrated experience and expertise in representing clients in P3s, alternative project delivery methods, major infrastructure projects, and associated matters as described in this RFP (as reflected in the written technical proposal and the oral presentation, if any);
- (ii) the price proposals;
- (iii) the Offeror's conflict of interest policy;
- (iv) the firm's demonstrated commitment to DEI and the support of underrepresented communities; and
- (v) any joint venture partnership with a small business.

2. **Basis of Award**. Contract award will be made to the Offeror, or Offerors, whose proposal contains the combination of those criteria offering the best overall value to the Attorney General and the State. Selection of Assistant Counsel will be solely the decision of the Attorney General. We reserve the right to reject any and all proposals, to waive informalities and minor irregularities in proposals, and to negotiate with any and all Offerors who submit them. The successful Offeror may be selected on the basis of initial written proposals, without discussions with Offerors and without requesting a best and final offer, so please take care in submitting your technical and price proposals. The Attorney General may select more than one Offeror to provide services under this RFP.

## **X. Proposal Submission**

**Proposals should be emailed to Peter V. Berns, General Counsel, at [pberns@oag.state.md.us](mailto:pberns@oag.state.md.us) no later than 5:00 p.m. on May 22, 2024. The Technical Proposal and the Price Proposal should be in PDF format and must be submitted as separately labeled files.**

In the event we choose to meet with qualified Offerors to discuss this RFP and the Offeror's proposal and ability to perform the proposed contract, such interviews are likely to be scheduled between 6/3 and 6/7, 2024.

### **Attachments:**

- Exhibit A Bid/Proposal Affidavit (complete and return with Technical Proposal)
- Exhibit B Conflict of Interest Affidavit (complete and return with Technical Proposal)
- Exhibit C Conflict of Interest Provisions
- Exhibit D Price Proposal Form (to be completed and returned in separate sealed envelope)
- Exhibit E Form Contract, Contract Affidavit, and Form Task Order

**EXHIBIT A**  
**BID/PROPOSAL AFFIDAVIT**

A copy of the Bid/Proposal Affidavit may be downloaded here:

[https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid\\_Proposal-Affidavit.pdf](https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/AttachmentC-Bid_Proposal-Affidavit.pdf)



**EXHIBIT B**  
**CONFLICT OF INTEREST AFFIDAVIT**

A copy of the Conflict of Interest Affidavit may be downloaded here:

<https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/05/AttachmentH-Conflict-of-InterestAffidavit.pdf>

**EXHIBIT C**  
**CONFLICT OF INTEREST PROVISIONS**

1. General. If a conflict of interest arises, the Offeror must be willing to continue to represent MDOT and the OAG and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General reserves the right, in his sole discretion, to determine if a conflict of interest has arisen pursuant to the Maryland Lawyers' Rules of Professional Conduct and to select another contractor or firm to represent MDOT and the OAG if a conflict is not resolved to her satisfaction. See paragraph 4. below in this Exhibit.
  2. Conflict Check System. The Offeror shall describe in detail its existing system for identifying conflicts of interest in undertaking new representation. The description shall include information about who maintains the central records, how often information is updated, and at what stage of representation the check is made.
  3. Potential Conflicts. In your response, please identify any existing relationships or representation that would or might result in a conflict of interest if the Contract is awarded to the Offeror and your proposal for resolving such conflicts. Once a contract is awarded, the Attorney General may require that any conflict be resolved in favor of representing MDOT. Prior to entering into a contract, the Contractor shall provide assurances that potential conflicts have been discussed with other existing clients of the Contractor who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.
- 60 Resolving Conflicts. The Offeror shall identify any conflicts of interest which may arise if the Offeror serves as counsel to MDOT and shall describe how it proposes to avoid such conflicts. The Contract will require the Contractor to notify the Procurement Officer immediately of any potential conflicts of interest and to undertake immediate action to eliminate the source of the potential conflict. The Procurement Officer, MDOT and the OAG reserve the right to make the Contractor aware of situations which may present a conflict of interest and require the Contractor to promptly remedy the situation to the satisfaction of the Procurement Officer. Any request by a Contractor to waive a conflict of interest shall be in writing and shall be submitted to the Procurement Officer. Upon the request of the Procurement Officer, the Offeror, to the extent permitted by the Maryland Lawyers' Rules of Professional Conduct, shall withdraw from the representation of parties whose interests are adverse to the interest of MDOT.
- The Maryland Lawyers' Rules of Professional Conduct govern what is and is not a conflict of interest. In applying those rules and deciding whether to waive any conflicts, the OAG is conscious that an aggressive approach of asserting conflicts may have a chilling effect on the ability of OAG to retain outside counsel. While the OAG decides these issues based upon the specific facts and circumstances on a case-by-case basis, as a general matter, the Office probably will not assert that a conflict exists, or will waive a conflict, if the subject matter of the other matter is completely unrelated to the subject matter on which the lawyer has been retained by the State.

**EXHIBIT D**  
**PRICE SUBMISSION**

**Name of Offeror:** \_\_\_\_\_

**Address of Offeror:** \_\_\_\_\_

In response to the Request for Proposals for Assistant Counsel to the Maryland Department of Transportation, Offeror submits the following Price Submission:

I) The following are the fixed blended hourly rates offered during the initial term of the Contract:

- a) All Attorneys rendering services \$ \_\_\_\_\_
- b) Paraprofessionals (paralegals, legal assistants, law clerks and attorneys not admitted to practice) rendering services \$ \_\_\_\_\_

II) The following are the fixed blended hourly rates offered during any extensions of the term of the Contract:

- a) All Attorneys rendering services \$ \_\_\_\_\_
- b) Paraprofessionals (paralegals, legal assistants, law clerks and attorneys not admitted to practice) rendering services \$ \_\_\_\_\_

(In the event fixed blended hourly rates are offered only for the initial term of the Contract, those rates shall apply for the entire term of the Contract, including any extensions.)

The undersigned certifies for the Offeror that he or she is authorized to submit this pricing on behalf of Offeror, and to the best of his or her knowledge, the information submitted in this Price Submission is accurate, complete and correct as of the date set forth below.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT E**  
**FORM OF CONTRACT**

**OFFICE OF THE ATTORNEY GENERAL OF MARYLAND**

**ASSISTANT COUNSEL CONTRACT**

This Assistant Counsel Contract (“**Contract**”) is made by and between the **Office of the Attorney General of Maryland (“OAG”)**, with headquarters located at 200 St Paul Pl, Baltimore, MD and **[NAME OF FIRM], (“FIRM”)**, a Maryland [professional corporation/limited liability company/limited liability partnership], with an office located at [address, city, zip], pursuant to the terms of MD State Govt. Code, §6-105(b), on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**1. Contract Documents, Term and Key Contacts.**

1.1. Contract. This Contract consists of the matters identified in this Section 1.1 (the “**Contract Documents**”), all of which are part of this Contract as if fully set forth herein:

- A. This Contract consisting of pages 1 through 12 and all Exhibits thereto (the “**Standard Contract**”)
- B. Exhibit I: Request for Proposals for Assistant Counsel (dated \_\_\_\_\_) including all Exhibits, (the “**RFP**”)
- C. Exhibit II: FIRM’s Technical and Price Proposals dated \_\_\_\_\_, 202\_ (collectively, the “**Proposal**”; the RFP and the Proposal being referred to as the “**Solicitation Documents**”)
- D. Exhibit III: Required Affidavits (the “**Affidavits**”)
  - IIIa: Executed Proposal Affidavit
  - IIIb: Executed Contract Affidavit
  - IIIc: Executed Conflicts Affidavit
- E. Written task orders issued under the Contract (each a “Task Order), in the form substantially as appears in Exhibit IV.

1.1.1. The obligations, representations, terms and conditions set forth in the Solicitation Documents and the Affidavit are provisions of this Contract and are supplemental to the provisions set forth in the Standard Contract.

1.1.2. If there are any inconsistencies between or among the documents listed in subparagraph 1.1, above, , the Contract Documents shall control in the following order of priority: Standard Contract, then Task Order(s), then Exhibit I, then Exhibit II, then Exhibit III.

1.2. Contract Term. This Contract shall commence on \_\_\_\_\_, 202\_ (the “**Commencement Date**”) and shall expire on the later of (a) three years after the Commencement Date (the “**Expiration Date**”), or (b) upon completion of all work authorized on or before the Expiration Date, whichever comes later, unless renewed or sooner terminated in accordance with this Contract. At the option of the OAG, this Contract may be renewed for one or more additional years not to exceed two years in the aggregate. The FIRM shall be notified prior to the end of the initial term whether the Contract will be renewed and what the length of the renewal term (if any) will be.

ALTERNATE LANGUAGE FOR 1.2. CONTRACT TERM - This Contract shall commence on \_\_\_\_\_, \_\_\_\_\_ (the “**Commencement Date**”) and shall terminate upon completion of all work authorized, unless sooner terminated in accordance with this Agreement.

1.3. Key Contacts and Notices

1.3.1. Procurement Officer. The General Counsel, Executive Division, of the Office of the OAG is the Procurement Officer responsible for the management and administration of this contract. The Procurement Officer or their designee(s) may issue Task Orders under this Contract. Any official notices pertaining to this contract should be sent to:

Peter V. Berns  
General Counsel  
Office of the OAG, Executive Division  
200 St Paul Place 20<sup>th</sup> Floor  
Baltimore, MD 21202  
[pberns@oag.state.md.us](mailto:pberns@oag.state.md.us)  
410-576-6974

Invoices for services should be submitted to the Lead AAG Attorney designated in the applicable Task Order.

1.3.2. Lead OAG Attorney. Each Task Order issued pursuant to this Contract will identify the Assistant Attorney General responsible for the matter(s) for which the FIRM’s legal services are needed (“Lead AAG”). The Lead AAG, if authorized by the Procurement Officer, may issue additional Task Orders as needed for a particular matter.

1.3.3. Law Firm Lead(s). The FIRM designates the following person to serve as the primary contact with the Procurement Officer for purposes of management and administration of this contract (“Firm Lead”)

Name  
Title  
Firm Name  
Street Address  
City, State ZIP  
Email address  
Telephone

For each Task Order issued under this Contract, the Firm Lead will designate an attorney in the firm to serve as the primary point of contact with the Lead AAG responsible for the matter.

1.3.4. Notices. Service of any notice under this Contract shall be complete upon receipt of such notice, mailed through the United States mail, postage prepaid, or hand delivered to the contacts listed in paragraphs 1.3.1 to 1.3.3, above, as applicable.

## **2. Scope of Services.**

2.1. General Scope. The general scope of work for this Contract is set forth in the Contract Documents. The FIRM may be required to perform services for [STATE AGENCY] and other State units. ([STATE AGENCY], and other State units are collectively referred to as “OAG CLIENT”) The FIRM shall provide these services in accordance with the terms and conditions of this Contract. The OAG shall have the unilateral right to require changes in the scope of services, provided such changes are within the general scope of the work to be performed.

2.2. Law Firm Role as Assistant Counsel. The FIRM shall serve as Assistant Counsel to the Attorney General of Maryland, pursuant to State Govt Code, §6-105(b), and assist the OAG in representing the OAG CLIENT subject to the terms and conditions of this Contract. In written communications on behalf of the OAG CLIENT, including court filings, FIRM shall identify itself as “Assistant Counsel to the Attorney General of Maryland” by reference in a signature block, or use of a footnote, or other method of annotation, appropriate under the circumstances.

2.3. Task Orders. The FIRM shall perform services for a specific OAG CLIENT upon receipt of a written Task Order from the Lead AAG for that matter, substantially in the form of Exhibit IV. All services are to be provided only at the request of the Lead AAG named in the Task Order, or their designee. The FIRM may not devote time to any or all of the services to be performed, or incur expenses, absent the prior authorization of the Lead AAG or their designee(s). All advice is to be provided directly to the Lead AAG or individuals identified by the Lead AAG. The FIRM is not authorized to enter into discussions with the OAG CLIENT, other State units, or their customers, clients, or other advisors except as permitted by the Lead AAG in advance.

2.4. Law Firm Responsibilities. Subject to the provisions of Paragraph 2.2., the FIRM shall assume sole responsibility for all work to be performed under this Contract, including any Task Order issued under the Contract. The FIRM shall perform the services with the standard of care, skill, and diligence normally provided by nationally recognized legal counsel in the performance of services similar to the services to be performed hereunder. The FIRM shall not make any changes in the composition of the Legal Team specified by the FIRM in its Proposal without the prior written consent of the Lead AAG or their designee. Any change to the composition of the Legal Team without the prior written consent of the Lead AAG or their designee may be deemed an event of default by the FIRM under this Contract. The FIRM represents that it is thoroughly qualified and familiar with all required duties and responsibilities

and will discharge the same diligently, fully, and properly, on an independent contractor basis, and in accordance with all ethical and professional duties and obligations.

2.5. Orientation. The FIRM shall familiarize itself with the OAG CLIENT programs related to the matters to which it is assigned, without cost to the OAG CLIENT.

2.6. No Assurance of Work. The FIRM acknowledges that the OAG may award additional contracts for Assistant Counsel for the Attorney General of Maryland. The FIRM agrees that it will cooperate with other Assistant Counsel. The FIRM further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract. The Procurement Officer, Lead AAG, or their designee(s), shall have the discretion to determine which FIRM shall be assigned to handle a particular matter and shall have the further right to assign a particular matter to another FIRM if determined to be in the best interest of the State.

### **3. Compensation and Method of Payment.**

3.1. Fees for Services. The FIRM will be paid for services rendered under this Contract as follows:

3.1.1. Payments to the FIRM will be based upon a reasonable number of actual hours worked by the FIRM's attorneys and paraprofessionals in the performance of the services, as approved by the Lead AAG or designee. The approved number of hours will be multiplied by the blended fixed hourly rates of compensation listed in Section 3.1.3 and 3.1.4, below, as applicable.

3.1.2. At the end of each month, the FIRM shall prepare an invoice setting forth the amount to be paid thereunder and bearing the following statement: "Certified just and correct and payment not received." Said invoice must be prepared and signed by the FIRM and delivered or mailed to the Lead AAG or designee.

3.1.2.1. The invoice will indicate the date of services rendered, a full description of the services rendered and complete time records, (and any coding symbols necessary to interpret the records), indicating the name and position of the attorney or para-professional, the billing rate being charged, and the hours of time (or fraction of hours) spent by each such individual performing such work under this Contract.

3.1.2.2. Each monthly invoice shall be subdivided by Task Order, with the previously described information supplied for each specific matter. The invoice shall be submitted in such detail as to permit easy corroboration with the FIRM'S office records, such records to be made available for inspection by representatives of the State, and any auditors acting on their behalf upon reasonable notice. All invoices for services rendered shall be subject to the review and approval of the Lead AAG. Each invoice shall indicate the FIRM'S Federal Tax Identification Number.

3.1.3. The blended fixed hourly rates of compensation for each attorney performing services under the initial term of this Contract shall be \$\_\_\_\_\_ per hour and the blended fixed

hourly rate of compensation for each para-professional performing services under the initial term of this Contract shall be \$ \_\_\_\_ per hour.

3.1.4. The blended fixed hourly rate of compensation for each attorney performing services under any renewal term of this Contract shall be \$ \_\_\_\_ per hour and the blended fixed hourly rate of compensation for each para-professional performing services under any renewal of this Contract shall be \$ \_\_\_\_ per hour.

3.1.5. No compensation will be provided for law clerks.

3.2. Expenses. During the term of the Contract, the FIRM shall be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the FIRM in the performance of this Contract and approved by the Lead AAG.

3.2.1. The following categories of expenses are reimbursable:

3.2.1.1. Travel expenses allowable under the State's standard travel policies

3.2.1.2. Postage, messenger, or overnight delivery services

3.2.1.3. Extraordinary photocopying costs, with prior approval of the Lead AAG

3.2.1.4. Other special costs approved in advance by the Lead AAG

3.2.2. The following categories of expenses are not reimbursable, even if allocable,

3.2.2.1. Secretarial or administrative assistant services,

3.2.2.2. Preparation, review, or auditing of invoices and billing records

3.2.2.3. In-house messenger services

3.2.2.4. Para-professional overtime costs

3.2.2.5. Long-distance telephone, internet, or other communications charges

3.2.2.6. Electronic legal research

3.2.3. Non-reimbursable expenses may not be recovered indirectly by billing additional hours that were not worked.

3.2.4. The FIRM shall submit invoices to the Lead AAG or his/her designee at the times or for the periods required by the Lead AAG or his/her designee, for costs and expenses incurred, itemized in a manner satisfactory to the Lead AAG or his/her designee and in accordance with Sections 3.2. Each invoice shall indicate the FIRM's Federal Tax Identification Number.



3.3. Tax Withholding. The OAG CLIENT shall not withhold federal, State, and local taxes and FICA taxes, if any, from payments made pursuant to this Contract.

3.4. Retention of Records. The FIRM shall retain and maintain all records and documents relating to this Contract for three years after final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the OAG CLIENT, including the Procurement Officer or designee(s), at all reasonable times.

3.5. OAG CLIENT RESPONSIBLE FOR PAYMENT. The FIRM acknowledges and understands that the OAG CLIENT is responsible for payment of any compensation due under this paragraph 3. The OAG does not have funding, nor does it assume responsibility for payment under this Contract.

#### **4. Conflicts of Interest.**

4.1. Conflicts Disclosure. The FIRM represents and warrants that it has no conflict of interest arising from the performance of the services under this Contract.

ALTERNATIVE 4.1 - The FIRM represents and warrants that it has no conflict of interest arising from the performance of the services under this Contract, except as specifically described in Exhibit \_\_\_\_ (attached). The FIRM believes that it can accept this representation of the OAG CLIENT and of each of the parties identified in Exhibit \_\_ and the OAG CLIENT consents. The FIRM believes that its representation of the OAG CLIENT will not be compromised by its relationship with the parties identified in Exhibit \_\_ and that it will be able to provide competent and diligent representation to the OAG CLIENT in this matter(s) that are the subject of this Contract. By signing the Contract, the OAG CLIENT is expressly waiving the conflicts of interest represented by the FIRM'S engagement in the matters identified in Exhibit \_\_.

4.2. Periodic Conflict Review and Response. To avoid potential conflicts of interest which may arise from the FIRM's simultaneous representation of the OAG CLIENT and parties participating in transactions or engaged in litigation with the State, the FIRM agrees to examine its client/matter listings on a periodic basis and to notify the Procurement Officer and applicable Lead AAG or their designee(s) immediately of any potential conflict of interest. If it appears to the OAG that the FIRM is undertaking work that may present a conflict of interest, the OAG may request that the FIRM promptly remedy the situation.

4.3. Notice of Conflicts. The OAG reserves the right to make the FIRM aware of situations in which they believe the FIRM is involved which may present an actual or potential conflict of interest or violation of the Public Ethics Law and to request that the FIRM promptly remedy the situation.

4.4. Resolution of Conflicts. The OAG and the FIRM agree to use their best efforts to resolve any actual or potential conflicts by agreement, which may include one or more of the following actions:

4.4.1. If requested, and to the extent permitted by the applicable rules of professional conduct, the FIRM will withdraw from representation of parties whose interests are adverse to the interests of the State.

4.4.2. Alternatively with the consent of the State, the FIRM may continue the representation conditioned on the use of conflict walls and other appropriate prophylactic measures.

4.4.3. The FIRM, at the request of the OAG in its sole discretion, may be asked to subcontract or assign the Task Order to other legal counsel, with approval of the OAG.

4.4.4. The OAG reserves the right, in its sole discretion, to select another law firm to serve as Assistant Counsel for the matter that is the subject of the Task Order if the conflict of interest is not resolved to the satisfaction of the OAG.

4.4.5. Nothing in this paragraph 4 is intended to limit the right of the State to seek disqualification of the FIRM in the event it continues, without the State's consent, to represent a party with interests adverse to the State.

4.5. Maryland Public Ethics Law. The FIRM shall not permit the occurrence or continuance of a violation of Title 5 of the General Provisions Article of the Annotated Code of Maryland (the "Public Ethics Law") in connection with this Contract.

## **5. Ownership and Control of Documents and Information**

5.1. Ownership of Documents and Materials. The FIRM agrees that all documents and materials in the FIRM's possession in any format or medium, and drafts of and forms for such documents, prepared by or for the FIRM under the terms of this Contract and/or any issued Task Order (the "Files") shall at any time during the performance of the services be made available to the OAG upon request and shall become and remain the property of the OAG upon termination or completion of the services. The OAG shall have the right to use the same without restriction or limitation and without compensation to the Firm other than that provided in this Contract.

5.2. Delivery of Files. Immediately upon termination or expiration of an issued Task Order and/or this Contract, the Firm shall deliver the Files to a location within the State designated by the Procurement Officer or the appropriate Lead AAG(s). The Firm shall have the right to retain copies of those portions of the Files that the FIRM reasonably requires for professional liability purposes.

5.3. Dissemination of Information. During the term of this Contract, the FIRM, without the prior written consent of the Procurement Officer or the applicable Lead AAG, (a) shall not (and shall not permit its agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever any information, data, document or materials related to the

services or performance of the services under this Contract or to this Contract, and (b) shall not publish any final reports or documents.

## **6. Insurance and Indemnification**

6.1. Professional Liability and Insurance. The FIRM shall maintain in full force and effect during the term of this Contract professional liability insurance in an aggregate amount of not less than \$5,000,000, which liability insurance shall include coverage for the services to be performed hereunder. The FIRM agrees that thereafter it shall maintain for the entire period in which it and each of the attorneys on the Legal Team (subject to any applicable statute of limitations) may incur professional liability in connection with the performance or failure to perform services under this Contract, professional liability insurance in the aggregate amount of not less than \$5,000,000, which liability shall include coverage for the services to be performed under this Contract. However, if the FIRM is a joint venture, and provided that one venturing entity maintains the required insurance policy, the requirement of the FIRM to maintain insurance shall be satisfied if both joint venturers submit evidence to the Procurement Officer (for prior written approval in the Procurement Officer's sole discretion) that all members of the joint venture will have such coverage either through actual insurance policies or the equivalent.

6.2. Indemnification. The FIRM, within the limitations of the Maryland Attorneys' Rules of Professional Conduct, shall indemnify, hold harmless and, upon request, defend, the State, and their respective officers, members, agents and employees from and against any and all third-party claims, suits, judgments, expenses, actions, damages, and costs (including reasonable attorney's fees) of every name and description, arising out of or resulting from the fault or negligence of the FIRM in performance of or failure to perform the services of the FIRM under this Contract or a breach of any or all of the FIRM's obligations under this Contract.

6.2.1. The State, including the OAG, has no obligation to provide legal counsel or defense to the FIRM or its subcontractors in the event that a suit, claim, or action of any character is brought by any person not party to this Contract against the FIRM or its subcontractors as a result of or relating to the FIRM's obligations under this Contract.

6.2.2. The State, including the OAG, has no obligation for the payment of any judgments or the settlement of any claims against the FIRM or its subcontractors as a result of or relating to the FIRM's obligations under this Contract.

6.2.3. The State, including the OAG, shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this Contract.

6.2.4. The FIRM shall immediately notify the Procurement Officer and the applicable Lead AAG or his/her designee of any claim or suit made or filed against the FIRM or its subcontractors resulting from or relating to the FIRM's obligations under the Contract, and will cooperate, assist, and consult with the indemnitees in the defense or investigation of any claim, suit, or action made or filed against the State, including the OAG, as a result of or relating to the FIRM's performance under this Contract.

## **7. Suspension and Termination**

7.1. Suspension of Work. The Procurement Officer or the applicable Lead AAG unilaterally may order the FIRM in writing to suspend, delay, or interrupt all or any part of the work for such period of time as they may determine to be appropriate for the convenience of the State.

7.2. Termination of Contract for Default. If the FIRM fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provisions of this Contract, the OAG may terminate this Contract by written notice to the FIRM. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the FIRM, shall, at the OAG's option, become the property of the OAG provided the State has paid the sums, if any, due to the FIRM pursuant to this subparagraph. In the event of termination pursuant to this subparagraph, the FIRM shall be entitled to (a) fair and equitable compensation based upon the rates of compensation described in paragraph 3.1, above, for satisfactory performance prior to receipt of notice of termination, and (b) all expenses reimbursable under paragraph 3.2, above, incurred by the FIRM prior to receipt of such notice, less the amount of damages caused by the FIRM's breach. If the damages are more than the compensation payable to the FIRM, the OAG and OAG CLIENT retain whatever causes of action they may have for damages resulting from the FIRM's default.

7.3. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the OAG in accordance with this clause in whole, or from time to time in part, whenever the OAG shall determine that such termination is in the best interest of the State. In the event of termination pursuant to this subparagraph, the FIRM shall be entitled to (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in paragraph 3.1 hereof, and (b) all reasonable expenses, as described in paragraph 3.2, incurred by the FIRM prior to such date of termination.

7.4. Termination of Multi-Year Contract. If funds are not appropriated or if funds are not otherwise made available for the continued performance of this Contract at any time during the Contract term, this Contract shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect the OAG CLIENT's rights under any other termination clause of this Contract. The effect of termination of this Contract pursuant to this subparagraph will be to discharge the FIRM, the OAG, and the State from future performance of this Contract, but not from their obligations existing at the time of termination. In the event of termination pursuant to this subparagraph, the FIRM shall be entitled to (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in paragraph 3.1 hereof, and (b) all reasonable expenses, as described in paragraph 3.2, incurred by the FIRM prior to such date of termination. The OAG shall notify the FIRM within thirty days prior to the termination of this Contract pursuant to this subparagraph.

## **8. Exclusive Agreement.**

This Contract, components of which are described in paragraph 1, constitutes the entire agreement between the parties and any other communications between the parties before the execution of this Contract, whether written or oral, with reference to the subject matter of this Contract, are superseded by the agreements contained herein.

#### **9. Contract Modification**

This Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto and approved by the Procurement Officer.

#### **10. Subcontracting.**

The FIRM shall not subcontract, in whole or in part, for any of the services to be performed under this Contract, without the prior written consent of the Procurement Officer or his designee.

#### **11. Assignment of Contract.**

The FIRM shall not assign, transfer, convey or otherwise dispose of this Contract or any rights created hereunder to any person, FIRM, partnership, company, corporation or other entity without the prior written consent of the OAG.

#### **12. Governing Law.**

This Contract shall be governed by the laws of the State of Maryland.

#### **13. Additional Terms and Conditions**

13.1. Procurement Regulations. This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or State procurement regulations as set forth in COMAR Title 21 (collectively the “**Procurement Laws**”). Nonetheless, the requirements of the Procurement Laws will be applied to this Contract to the extent practicable and consistent with obtaining the best legal counsel for the OAG CLIENT, all as determined in the OAG’S sole discretion. The dispute resolution and appeal procedures contained in the Procurement Laws will not apply to this Contract.

13.2. Compliance with Law. The FIRM hereby represents and warrants that:

13.2.1. It is qualified to do business in the State and it will take such action as, from time to time, may be necessary to remain so qualified.

13.2.2. It is not in arrears with respect to the payment of any moneys due and owing the State, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.

13.2.3. It shall comply with all federal, State and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this Contract.

13.2.4. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

13.3. Nondiscrimination. The FIRM shall comply with all applicable federal and State laws, rules and regulations, and policies and procedures involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, age, gender, ancestry, disability of a qualified individual with a disability, or any other protected category under the law.

13.4. Non-Hiring of Employees. No official or employee of the State (as defined under Section 5-501 of the General Provisions Article, Annotated Code of Maryland), whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the party or parties hereby contracting with the State, or any entity that is a subcontractor under this Contract.

13.5. Mandatory Disclosure. The FIRM shall comply with § 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State of Maryland or its agencies and receives in the aggregate \$200,000 or more during the calendar year shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$200,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

13.6. Waiver. The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either party.

13.7. Severability. If any provision of the Contract is held to be invalid, void or unenforceable, such provision shall be deemed to be restated to reflect as nearly as possible the original intention of the parties in accordance with applicable law, and the remaining provisions of this Contract shall remain in full force and effect.

**REMAINDER OF PAGE IS BLANK**

13.8. Counterparts/Delivery of Signatures. This Contract may be executed and delivered by facsimile or electronically transmitted signature and in two or more counterparts, all of which together shall constitute one and the same instrument. The parties agree that upon being signed by the parties, this Contract shall become effective and binding and that such signed copies will constitute evidence of the existence of this Contract.

**IN WITNESS WHEREOF, the parties hereto have entered into this Agreement by their duly authorized representatives as of the Effective Date.**

[LAW FIRM NAME]

By: \_\_\_\_\_ Date \_\_\_\_\_  
[Name]  
[Title]

\_\_\_\_\_  
(Taxpayer Identification Number)

ADD ADDITIONAL SIGNATURE BLOCK FOR JOINT VENTURE FIRM  
OR DELETE THIS NOTE

**THE OFFICE OF THE ATTORNEY GENERAL  
OF MARYLAND**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Peter V. Berns  
General Counsel

Approved for form and legal sufficiency:

\_\_\_\_\_  
Assistant Attorney General of Maryland

\_\_\_\_\_  
(Date)

## CONTRACT EXHIBITS

Exhibit I: Request for Proposals for Assistant Counsel

Exhibit II: FIRM's Technical and Price Proposals

Exhibit III: Required Affidavits

IIIa: Executed [Proposal Affidavit](#)

IIIb: Executed [Contract Affidavit](#)

IIIc: Executed [Conflicts Affidavit](#)

Exhibit IV: Sample Task Order



**EXHIBIT IIIb to SAMPLE CONTRACT**  
**CONTRACT AFFIDAVIT**

A copy of the Contract Affidavit may be downloaded here:

<https://procurement.maryland.gov/wp-content/uploads/sites/12/2018/04/Attachment-N-ContractAffidavit.pdf>

**EXHIBIT IV to SAMPLE CONTRACT**  
**SAMPLE TASK ORDER**

**ON OAG Letterhead**

Date

Name

Title

Firm

Street Address

City, State Zip

Dear Name,

This Task Order is issued pursuant to paragraph 2.3 of the Assistant Counsel Contract, dated [INSERT DATE], between the Office of the Attorney General (“OAG”) and [INSERT FIRM NAME]. (“Contract”) The terms of this Task Order are as follows.

1. You are hereby assigned to work on the following matter for [INSERT OAG CLIENT NAME]:

[INSERT DETAIL HERE]

2. The Lead Assistant Attorney General responsible for this matter and to whom you will report is [INSERT NAME, EMAIL, AND TELEPHONE]

3. For the purposes of this matter, you are authorized to provide the following services and tasks:

[INSERT DETAIL HERE]

You are also authorized to perform such other or additional services as are customarily associated with the above-described services and tasks.

4. Your firm will be compensated for your services in strict accordance with paragraph 3 of the Contract. Funding for this Task Order will be through [State Unit].

[INSERT DETAIL HERE]

5. The following costs and expenses, in addition to those listed in paragraph 3.2, will be reimbursed.

[INSERT DETAIL HERE, IF APPLICABLE]

6. Invoices must be submitted to the Lead AAG at the email address listed above. No deviations from the rates specified in the Contract will be permitted. The [not to exceed] amount for this Task Order is \$ [XXXXXXX].

This Task Order shall not be deemed a modification of the Contract. By acceptance of this Task Order your firm acknowledges that it has performed an examination of its client list as required under paragraph 4.2 of the Contract, and there are no conflicts of interest in its representation of the OAG Client in this matter.

Please confirm your acceptance of this Task Order by having the appropriate authorized person within your firm sign this letter. You may return the signed letter via electronic mail to [Procurement Officer or designee], and retain a fully executed copy for your file.

Thank you, in advance, for your work on this matter. Please don't hesitate to contact me if you have any questions.

Sincerely,

Name  
Title

Reviewed and acknowledged  
for funding availability:

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Name  
Title  
Agency

Acknowledgment of Task Order acceptance:

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[Contractor]