

*BALTIMORE COUNTY COUNCIL
NOTES TO THE AGENDA
LEGISLATIVE SESSION 2024*

*Issued: July 15, 2024
Work Session: None
Legislative Day No. 13: July 16, 2024*

*The accompanying notes are
compiled from unaudited
information provided by
the Administration and
other sources.*



OFFICE OF THE COUNTY AUDITOR

**BALTIMORE COUNTY COUNCIL AGENDA
LEGISLATIVE SESSION 2024, LEGISLATIVE DAY NO. 13
JULY 16, 2024 10:00 A.M.**

EMERGENCY LEGISLATIVE SESSION

**CEB = CURRENT EXPENSE BUDGET
BY REQ. = AT REQUEST OF COUNTY EXECUTIVE**

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A. APPROVAL OF FISCAL MATTERS/CONTRACTS

1. 3rd Amendment to Contract - Nelson Mullins Riley & Scarborough LLP

FM-1 (Contract Amendment #3)

Council District(s) All

Office of Law

Legal Services

The Administration is requesting approval of a third amendment to a contract with Nelson Mullins Riley & Scarborough LLP to continue to provide outside legal counsel with respect to class action litigation filed against the County. The proposed amendment, which commences upon Council approval, increases the maximum compensation by \$100,000, from \$1,250,000 to \$1,350,000, for the entire contract term. The contract commenced November 1, 2021. See Exhibit A.

Fiscal Summary

Funding Source	Contract Amendment	Current Maximum Compensation	Amended Maximum Compensation
County ⁽¹⁾	\$ 100,000	\$ 1,250,000	\$ 1,350,000
State	--	--	--
Federal	--	--	--
Other	--	--	--
Total	<u>\$ 100,000</u>	<u>\$ 1,250,000</u>	<u>\$ 1,350,000</u> ⁽²⁾

⁽¹⁾ Self Insurance Fund.

⁽²⁾ For the entire contract term.

Analysis

The contractor serves as co-lead counsel for the County with respect to Fair Labor Standards Act (FLSA) class action litigation. Representation includes all matters preparatory to and including litigation. The contract provides that the County will work cooperatively with the contractor to provide the necessary information and materials, and the County will make business and technical decisions as it deems appropriate. The Office advised that the U.S. Court of Appeals for the Fourth Circuit recently ruled in favor of the plaintiffs, and the County is seeking to appeal the decision to the U.S. Supreme Court.

The Office advised that due to the complex and time-intensive nature of the litigation, the volume and nature of the services exceeded the reasonable expectations of the parties at the time of entering into the agreement, including a number of factors beyond the parties' control. The Office further advised that discovery in this matter has caused the litigation to be far more extensive in scope and cost than initially contemplated, requiring an increase in the value of the contract. The Office also advised that the contractor anticipates that legal fees and expenses could increase by up to an additional \$100,000 for the contractor to prepare and file a Petition for Writ of Certiorari for review and consideration by the U.S. Supreme Court. The Office advised that if the U.S. Supreme Court grants the Writ and places the case on its docket for briefing and oral argument, additional expenses and a fourth contract amendment may be necessary.

On November 1, 2021, the Council approved the original contract not to exceed \$450,000, which continues through the completion of the litigation, including any and all appeals. On June 6, 2022, the Council approved the first amendment to the contract, increasing the maximum compensation by \$750,000 to \$1,200,000 for the entire contract term. On March 4, 2024, the Council approved the second amendment to the contract, increasing the maximum compensation by \$50,000 to \$1,250,000 for the entire contract term. The proposed third amendment, which commences upon Council approval, increases the maximum compensation by \$100,000 to \$1,350,000 for the entire contract term. The amendment also updates the contract language to specify that the contractor serves as co-lead counsel in the litigation filed in the U.S. District Court for the District of Maryland, the appeal filed in the Fourth Circuit Court of Appeals, and any additional appeals, including any filed in the U.S. Supreme Court, and that representation includes all matters preparatory to and including litigation in the aforementioned courts. All other terms and conditions remain the same. The County may terminate the agreement by providing 30 days prior written notice. The Office advised that as of July 15, 2024, approximately \$1,220,932 has been expended/incurred for services.

The Office advised that the County awarded the original contract as a noncompetitive 902(f) award secured in the best interest of the County because it does not have available in-house attorneys with the requisite subject matter expertise. The Office further advised that due to the need to conduct extensive discovery and prepare motions, there was insufficient time to initiate a competitive procurement process.

County Charter, Section 902(f), states that “when... [competitive] bidding is not appropriate, a contract shall be awarded only by competitive negotiations, unless such negotiations are not feasible. When neither competitive bidding nor competitive negotiations are feasible, contracts may be awarded by noncompetitive negotiations.”

County Charter, Section 510, states “nothing in this article shall be construed as preventing the county executive, with the approval of the county council, from engaging the services for a temporary period of any attorney or attorneys for legal work of an extraordinary nature when the work to be done is of such character or magnitude as to require legal services in addition to those provided by the regular staff of the Office of Law.”

County Charter, Section 715, requires that “any contract must be approved by the County Council before it is executed if the contract is...for services for a term in excess of two years or involving the expenditure of more than \$25,000 per year....”

Executive Summary

The Administration is requesting approval of a third amendment to a contract with Nelson Mullins Riley & Scarborough, LLP who is currently serving as co-lead counsel for the County with respect to Fair Labor Standards Act (FLSA) class action litigation in federal court. The contract commenced on November 1, 2021 and continues through the completion of the litigation, including any and all appeals. Compensation currently may not exceed \$1,250,000 for the entire contract term.

Due to the complex and time-intensive nature of the litigation, the volume and nature of the services exceeded the reasonable expectations of the parties at the time of entering into the agreement, including a number of factors beyond the parties' control such as difficulties arising during discovery.

This matter was appealed to the Fourth Circuit, and now, as part of the appeals process, a Petition for Writ of Certiorari is necessary to be prepared and submitted to the U.S. Supreme Court requesting review of the case.

The Contractor anticipates that legal fees and expenses could increase by up to an additional \$100,000. As a result, the amendment would increase the not to exceed sum to \$1,350,000.

Prepared by: Office of Law