

DATE: April 24, 2008

FROM: RISK MANAGEMENT

SUBJECT: RESOLUTION NO. _____ - APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN POLA AND THE OFFICE OF THE CITY ADMINISTRATIVE OFFICER AND THE AGREEMENT BETWEEN THE PORT OF LOS ANGELES AND MERRIWETHER & WILLIAMS INSURANCE SERVICES, INC. FOR THE LOS ANGELES BOND ASSISTANCE PROGRAM

SUMMARY:

This program provides assistance to contractors in obtaining payment and performance bonds. Such assistance looks to enable greater participation of small local contractors, including M/W/OBEs, in bidding on Department as well as City projects. Los Angeles City Charter Section 371(d) requires that bids and proposals include bid and performance bonds as specified by ordinance. The Los Angeles City Administrative Code sets forth the requirement for bid bonds at Section 10.15 (d) and the requirement for performance bonds at Section 10.15 (g). Payment bonds are required by Public Contract Code Section 7100 et seq. Per the Mayor's direction, the Bond Assistance Program (BAP LA or Program) is established Citywide at all departments. The Department is requesting authority to continue its partnership with the City Administrative Officer (CAO) and other City proprietary departments to continue our participation in the current program, which was previously approved by the Board on September 20, 2007. The Memorandum of Understanding (MOU) with the CAO and the agreement with Merriwether & Williams Insurance Services, Inc., 523 W. Sixth Street, Suite 815, Los Angeles, CA 90014, provides for professional services for BAP LA at the Port of Los Angeles. The MOU and Agreement is for a not-to-exceed amount of \$1,162,562 for a five-year period representing the Department's pro-rata share of total costs.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners:

1. Find that the nature of the services needed to support the BAP LA requires the utilization of the City's contracted broker who possesses the specialized knowledge and expertise required to expand the existing program to all City proprietary departments, including the Harbor.

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2. Authorize the Executive Director, to execute the MOU with the Office of the City Administrative Officer (CAO) and to continue its partnership with the other City departments in the implementation of the Program. The MOU is valid until March 1, 2013.
3. Authorize the Executive Director to execute the agreement with Merriwether & Williams Insurance Services, Inc., which will expire March 1, 2013.
4. Resolution No. _____ approving the proposed MOU and Agreement at a not-to-exceed amount of \$1,162,562 for the contract period.
5. Authorize the Executive Director, or her designee, to approve project specific surety requests for contractor bond guarantees.

DISCUSSION:

1. Performance and payment bonds on public works construction contracts over \$100,000 are required under Los Angeles City Charter Section 371(d). The City Charter requires that bids and proposals include bid and performance bonds as specified by ordinance. The Los Angeles City Administrative Code sets forth the requirement for bid bonds at Section 10.15 (d) and the requirement for performance bonds at Section 10.15 (g). Payment bonds are required by Public Contract Code Section 7100 et seq. In recognizing the difficulty of smaller contractors in obtaining surety bonds, the Program was proposed by the Mayor and approved by the City Council in the 2004/2005 fiscal year budget. The purpose of the Harbor Department's participation in the BAP LA is to enhance small business opportunities and increase competition. By partnering in BAP LA, the costs of the overall Program are spread to various City Departments and contracting opportunities Citywide for smaller businesses are improved.
2. The CAO Risk Management team administers the Program; and through a competitive bid process, contracted with Merriwether & Williams Insurance Services, Inc. (Broker) for day-to-day administration of the Program. The Harbor Department's Risk Manager participated on the CAO's panel for this contract.

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3. The Program assists contractors in removing the barrier of surety bonding. The Program enables greater participation of small local contractors, including M/W/OBE contractors, wanting to bid on City projects.
4. The Program is modeled after the Citywide Bonding and Finance Assistance Program in San Francisco, which was launched in 1995. The San Francisco bond assistance program is also administered by Merriwether and Williams Insurance Services, Inc. In the thirteen years the San Francisco program has been in place, participating contractors have secured over \$146 million in bid, performance and payment bonds. San Francisco's bond assistance program has generated over \$4.3 million in estimated savings to the city as a result of contracts awarded to low bidders who utilized the program. Moreover, in its thirteen years of operation, the San Francisco program has not had a single contractor bond default.

The City's Bond Assistance Program Los Angeles currently has over 92 contractors that are either enrolled in the program or are in the process of enrolling. The Program has been actively bonding contractors for the past year and has secured over \$24.2 million in bid, performance and payment bonds and has saved the City approximately \$375,000 in direct contract savings to the City as a result of contracts awarded to low bidders who utilized the program. There have been no contractor defaults in the Program to date.

5. A monthly activity report is provided by the Broker, which tracks program activity and includes outreach, program marketing, contractor enrollments, technical/consultative assistance as well as transactional activity. Costs are defined as either direct transactional activity costs or indirect costs. Direct transactional activity costs typically occur after a contractor wins a City bid requiring the posting of collateral and/or Third Party Funds Administration. Direct costs will also include specific Port outreach events. Indirect costs are general outreach, contractor consultations, contract monitoring and general program expenses and fees, such as broker fees and financial statements. Broker fees will decrease as the number of participating departments increases.

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6. There is a mandatory implementation fee for Program start-up cost recovery of approximately \$223,075 to be paid over an approximate three year period. When the Port or any other proprietary department joined the first MOU, it immediately received the benefit of all program implementation costs and outreach efforts since March 1, 2005. In an effort to be fair to all existing Program members, all new members will be required to pay their proportionate share (based on each party's capital construction budget) of all accrued indirect costs incurred up to the date of their signing the MOU. The Port's share of accrued indirect costs is based upon the Port's portion of the Citywide capital construction budget.
7. Based upon estimates by the Broker and CAO Risk Management, the Port's estimated annual costs for Year 1 will not exceed \$266,280 or \$22,190 per month. Therefore, costs for FY 07/08 will not exceed \$88,760 which covers the remaining four months of FY 08. The annual cost of the program to the Port includes the Port's proportionate share of the indirect costs plus the actual direct transactional costs, including bank fees and Third Party Funds Administrator fees incurred for each Port transaction and the implementation fee for Program start-up cost recovery.

ENVIRONMENTAL ASSESSMENT:

The Proposed action is a MOA between the Port of Los Angeles and Merriwether & Williams Insurance Services Inc. for bond assistance for contractors. As an administrative action, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) under Article II, Section 2(f) of the Los Angeles City CEQA guidelines.

ECONOMIC IMPACT:

The Bond Assistance Program will enable greater participation of small local contractors in bidding on Department projects, although it is not anticipated to increase overall direct employment.

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FINANCIAL IMPACT:

Approval of this Board item would authorize the Port to re-enter into an MOU with the CAO's Office to continue BAP LA at the Port and concurrently enter into an Agreement with Merriwether & Williams Insurance Services, Inc. (MWIS) to administer the Program. The term for both the MOU and Agreement is until 3/1/13. It is anticipated that the Port's share of the Citywide Bond Assistance Program costs of \$1,162,562 will be expended as follows:

<u>Fiscal Year</u>	<u>Implementation Costs</u>	<u>Program Costs</u>	<u>Totals</u>
2007/08	\$ 32,968	\$ 55,792	\$ 88,760
2008/09	\$100,826	\$170,629	\$ 271,456
2009/10	\$ 76,281	\$180,552	\$ 256,834
2010/11	\$ 13,000	\$190,972	\$ 203,972
2011/12	\$ 0	\$201,911	\$ 201,911
2012/13	\$ 0	\$139,629	\$ 139,629
Totals	\$223,075	\$939,486	\$1,162,562*

(*Figures obtained from CAO's Risk Management staff.)

In the event of contractor defaults the Port will reimburse the Program up to \$250,000 per occurrence from the Port's emergency fund. Based on the thirteen years the San Francisco Program has been in operation (also administered by MWIS) and current operations, no defaults have yet occurred.

Funds in the amount requested of \$88,760 for the current fiscal year are budgeted in Risk Management Division, Account No. 54490, Center No. 0550. Funding for future fiscal years will be requested to be budgeted as part of the annual budget process. The agreement has a funding out provision.

CITY ATTORNEY:

The agreement between the City of Los Angeles and Merriwether & Williams Insurance Services is acceptable as to form and legality.

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TRANSMITTALS:

1. Memorandum of Understanding (MOU)
2. Agreement with Merriwether & Williams Insurance Services, Inc.
3. Mayor's Memo dated May 5, 2006/Ordinance #177249
4. Background Information from the Office of the CAO Risk Management
5. Line of Credit (Council File #03-600-S11) adopted April 26, 2006
6. BAP LA Analysis for Allocation of Program Costs

KATHY MERKOVSKY
Risk Manager II

KARL PAN
Chief Financial Officer

MOLLY CAMPBELL
Deputy Executive Director

APPROVED:

GERALDINE KNATZ, Ph.D.
Executive Director

MC:KP:KAM
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