

DATE: MARCH 29, 2013

FROM: CONTRACTS AND PURCHASING

SUBJECT: RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND MERRIWETHER & WILLIAMS INSURANCE SERVICES AND MEMORANDUM OF UNDERSTANDING AMONG THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND THE OFFICE OF THE CITY ADMINISTRATIVE OFFICER, THE LOS ANGELES WORLD AIRPORTS, AND THE DEPARTMENT OF WATER AND POWER FOR THE CITYWIDE BOND ASSISTANCE PROGRAM

SUMMARY:

The Contracts and Purchasing Division (CPD) is requesting approval to award an Agreement to Merriwether & Williams Insurance Services (Los Angeles, CA), and enter into a Memorandum of Understanding (MOU) among the City of Los Angeles Harbor Department (Harbor Department) and the Office of the City Administrative Officer (CAO), the Los Angeles World Airports (LAWA), and the Department of Water and Power (DWP) for the Citywide Bond Assistance Program. The proposed agreement is for a three-year term at an amount not-to-exceed \$717,505.

RECOMMENDATION:

It is recommended that the Board of Harbor Commissioners (Board):

1. Find that in accordance with the City Charter Section 1022, City employees do not have the expertise to perform the work covered under this Agreement;
2. Approve the Agreement with Merriwether & Williams Insurance Services at an amount not-to-exceed \$715,505 for a term of three years;
3. Approve the Memorandum of Understanding among the City of Los Angeles Harbor Department, the Office of the City Administrative Officer, the Los Angeles World Airports, and the Department of Water and Power;
4. Authorize the Executive Director or designee to execute the Agreement and the Memorandum of Understanding and the Board Secretary to attest to the Agreement; and
5. Adopt Resolution No. _____.

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DISCUSSION:

Background and Context – Federal, State and City laws require contractors to provide bid and performance bonds on public works construction contracts. Pursuant to Los Angeles City Charter Section 371 (d) and Los Angeles Administrative Code (LAAC) Section 10.15 (d), bidders must submit a bid bond at the time of bid in an amount not less than ten percent of the bid amount. Pursuant to LAAC Section 10.15 (g), the contractor must post a performance bond guaranteeing the satisfactory completion of the project within thirty days of contract execution. If the selected bidder fails to enter into a contract or to supply the necessary performance bond, the bid bond is forfeited to the City.

In recognizing the difficulty that smaller contractors and subcontractors have with obtaining bid and performance bonds, the Mayor and City Council created the Bond Assistance Program (BAP) in Fiscal Year (FY) 2004/05. The BAP aims to increase the participation of Small and Local, Minority-owned, Women-owned, and Disadvantaged Business Enterprises (SBE/LBE/MBE/WBE/DBE) in the bidding process for construction projects by providing assistance with obtaining bid and performance bonds. The CAO administers the BAP which is funded by the Public Works Sewer Construction and Maintenance (PWSCM) Fund, LAWA, DWP, and the Harbor Department. The General Fund allocates \$100,000 per FY to the Insurance and Bond Special Fund. These funds are used to pay sureties for contractor bond defaults under the BAP. It should be noted that there have not been any contractor defaults since the BAP's inception in FY 2004/05.

On March 1, 2008, the CAO entered into a five-year agreement with Merriwether & Williams Insurance Services (MWIS) to manage the BAP and provide broker services. The five-year, Citywide BAP costs shared by the above-mentioned Departments totaled \$9,540,787. At the request of the Mayor and the CAO, each of the participating Departments subsequently entered into separate agreements with MWIS to support the BAP. On May 13, 2008, the Harbor Department entered into a five-year agreement at an amount not-to-exceed \$1,162,562 with MWIS. The annual amount that each participating Department allocates to support the BAP is based on actual departmental construction costs per FY as a percent of Citywide construction costs. For example, in FY 2011/12, the Harbor Department's capital improvement expenditures were 20% of all Citywide capital expenditures; therefore, in FY 2012/13, the Harbor Department was responsible for 20% or \$166,825 of the annual Citywide BAP costs.

Throughout the five-year term of the agreement, MWIS provided bond assistance in the amount of \$134,853,748 for 147 contract opportunities throughout the City. Of this amount, 80 contracts were awarded to BAP clients in the amount of \$53,964,078. Throughout the five-year term of the agreement, MWIS provided bond assistance on

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five Harbor Department contract opportunities in the amount of \$3,658,390. In all five cases, the contractors and subcontractors were the successful bidders. The five-year BAP agreement expired on February 28, 2013.

Selection Process – On October 22, 2012, the CAO released a Request for Proposals (RFP) seeking the services of a qualified broker to administer the BAP. The CAO received one proposal in response to the RFP which was submitted by MWIS. Representatives from the CAO and the Proprietary Departments reviewed the proposal and recommended that MWIS be selected to administer the BAP. On February 25, 2013, the Office of the Mayor authorized the CAO to enter into an Agreement with MWIS (Transmittal 1).

The three-year, Citywide BAP costs are as follows:

Department/Fund	Amount	Cost Share
PWSCM	\$922,507	18%
LAWA*	\$2,837,510	43%
DWP	\$1,281,260	25%
Harbor Department	\$717,505	14%
General Fund**	\$300,000	N/A
Total	\$6,058,782	100%

Of the total amount, MWIS will have dedicated staff specifically assigned to LAWA at an amount of \$633,744*, and \$300,000 will be placed into the Insurance and Bond Special Fund to cover contractor bond defaults**. Excluding these two expenses totaling \$933,744, the remaining amount of \$5,125,038 will be funded by the PWSCM Fund, LAWA, DWP and the Harbor Department.

As previously stated, the cost share of each participating Department is based on actual departmental construction costs per FY as a percent of Citywide construction costs. In the previous five FYs, the Harbor Department's actual construction costs averaged 14% of Citywide construction costs; therefore, the Harbor Department's cost share of the proposed agreement will be 14% of \$5,125,038, or \$717,505.

Summary – Per the direction of the Mayor and in coordination with the CAO, LAWA, and DWP, CPD is requesting approval to award a new Agreement to MWIS to administer the BAP (Transmittal 2). The proposed Agreement with MWIS is for a three-year term at an amount not-to-exceed \$717,505. Under the terms of the Agreement, MWIS will (1) assist contractors and subcontractors in qualifying for surety bonds; (2) conduct Citywide outreach designed to encourage BAP participation from SBE/LBE/MBE/WBE/DBE contractors and subcontractors; (3) analyze prior denied

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bonding requests and assist contractors and subcontractors with establishing a strategy for addressing and overcoming factors that led to denials; (4) select qualified, financially sound surety underwriting facilities to assist in the process of bonding contractors and subcontractors; (5) establish a network of financial advisors and service providers to assist contractors and subcontractors in the qualification process; (6) provide technical and financial guidance to contractors and subcontractors with the preparation of financial reports and business plans, insurance placements, bonding applications and establishment of assets or credit resources for operating capital; (7) provide conflict resolution between BAP contractors, subcontractors, service providers, and surety underwriting facilities; (8) verify the accuracy and validity of all premiums and fees charged; and (9) monitor contractor and subcontractor activities to ensure continued financial and organizational stability during the contractual phase.

MWIS will provide a monthly activity report which tracks program activity and includes outreach, program marketing, contractor and subcontractor enrollments, technical/consultative assistance as well as transactional activity. BAP costs are defined as either direct transactional activity costs or indirect costs. Direct transactional activity costs occur after a contractor or subcontractor wins a City bid which requires the contractor or subcontractor to post a performance bond. Indirect costs are general outreach, contractor and subcontractor consultations, contract monitoring, and general program expenses and fees, such as broker fees and financial statements.

In addition to approving the Agreement with MWIS, CPD is requesting the authority to enter into a MOU with the CAO, LAWA, and DWP which outlines the responsibilities of each Department as it pertains to the administration of the BAP (Transmittal 3).

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of an Agreement with MWIS and a MOU among the Harbor Department, CAO, LAWA, and DWP related to the Citywide BAP. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of the California Environmental Quality Act (CEQA) in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

ECONOMIC IMPACT:

Approval of the proposed Agreement will support five direct and five secondary one-year equivalent jobs for the five-county region.

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FINANCIAL IMPACT:


The proposed three-year Agreement is for a not-to-exceed amount of \$717,505. During FY 2012/13, \$246,825 was available for expenses associated with the Citywide BAP. Of this amount, \$166,825 has been expended for costs under the recently expired agreement, and \$80,000 is available for anticipated expenses under the proposed Agreement. CPD has requested that \$210,000 be included in the FY 2013/14 budget as part of the annual budget adoption process. The remaining contract amount of \$427,505 will be requested to be budgeted as part of the annual budget adoption process in FY 2014/15 and FY 2015/16. The proposed Agreement may be terminated if funds are not appropriated in future FYs.

CITY ATTORNEY:

The Office of the City Attorney has prepared the Agreement and it is acceptable as to form and legality.

TRANSMITTALS:

1. CAO Agreement with Merriwether & Williams Insurance Services
2. Agreement with Merriwether & Williams Insurance Services
3. Memorandum of Understanding among the Harbor Department and the Office of the City Administrative Officer, the Los Angeles World Airports, and the Department of Water and Power

FIS Approval:  (initials)

CA Approval:  (initials)


GLENN R. ROBISON
Director of Contracts and Purchasing


MOLLY CAMPBELL
Deputy Executive Director

APPROVED:


GERALDINE KNATZ, Ph.D.
Executive Director

GR/tc
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