



**THE PORT
OF LOS ANGELES**

Executive Director's
Report to the
Board of Harbor Commissioners

DATE: MAY 9, 2017

FROM: CONTRACTS AND PURCHASING

SUBJECT: RESOLUTION NO. _____ - AGREEMENT BETWEEN THE CITY OF LOS ANGELES HARBOR DEPARTMENT AND MERRIWETHER & WILLIAMS INSURANCE SERVICES, INC. FOR THE CITYWIDE BOND ASSISTANCE PROGRAM

SUMMARY:

Staff is requesting approval to award an Agreement to Merriwether & Williams Insurance Services, Inc. (Los Angeles, CA) for the Citywide Bond Assistance Program. The proposed agreement is for a three-year term, commencing March 1, 2016, at an amount not to exceed \$450,000.

This Agreement is the financial responsibility of the Harbor Department.

RECOMMENDATION:

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

1. Find that 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;
2. 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;

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3. Approve the Agreement with Merriwether & Williams Insurance Services, Inc. in an amount not to exceed \$450,000 for a term of three-years commencing March 1, 2016;
4. Authorize the Executive Director or designee to execute and attest to the Agreement; and
5. Adopt Resolution No. _____.

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 within thirty days of contract execution which guarantees the satisfactory completion of the project. 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. If the selected contractor fails to successfully complete the project, the performance bond is forfeited to the City.

In 2004, the Mayor and City Council created the Bond Assistance Program (BAP) in recognition of the difficulty that smaller contractors and subcontractors appeared to have in obtaining bid and performance bonds. 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 City's bidding process for construction projects by providing assistance with obtaining bid and performance bonds. Over the years, the BAP has expanded to include generalized assistance to small companies to compete for business with the City, which include services such as subsidizing the cost to prepare financial documents, assisting contractors and subcontractors in the qualification process, and analyzing prior denied bonding requests. It should be noted that companies seeking the services provided by the BAP are not obligated to bid on any City contracts, nor is there any criteria for companies served by the BAP to show that they intend to compete for City contracting opportunities.

Since Fiscal Year (FY) 2007/08, the City Administrative Officer (CAO) has administered the BAP on behalf of the participating City Departments, while costs for the BAP are funded by the Public Works Sewer Construction and Maintenance (PWSCM) Fund, the Los Angeles World Airports (LAWA), the Department of Water and Power (DWP), and the Harbor Department. In support of the surety program

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under the BAP, the City's General Fund allocates \$100,000 per FY to an Insurance and Bond Special Fund which funds would be used to pay a surety company in the event that a contractor defaults on a bond issued with the protection of a Letter of Credit backed by a City Department. It should be noted that one contractor defaulted on their bond obligation in 2014.

On March 1, 2013, the CAO entered into a three year-agreement with Merriwether & Williams Insurance Services (MWIS) to manage the BAP and provide broker services. The three-year Citywide BAP costs shared by the aforementioned Departments totaled \$6,058,782. 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 April 18, 2013, the Harbor Department entered into a three-year agreement in an amount not-to-exceed \$717,505 with MWIS. The percentage that each participating Department allocates to support the BAP is based on actual departmental construction costs in the prior FY as a percent of Citywide construction costs. For example, in the prior three-year contract, the Harbor Department's capital improvement expenditures in FY 2011/12 were 20% of all Citywide capital expenditures; therefore, the Harbor Department was responsible for 20% of the Citywide BAP costs in subsequent agreement. The most recent agreement expired on April 24, 2016.

From March 1, 2008 through February 28, 2016, the City has paid \$15.6 million to MWIS for their services pursuant to the BAP. During that period, 61 companies enrolled with MWIS in the BAP have bid on 138 contract opportunities throughout the City, and there have been 68 letters of credit issued (Transmittal 1). During this same period, the Harbor Department paid \$1.9 million to MWIS for its share of the BAP costs for which the following four contractors received BAP services and bid on seven contract opportunities:

| Construction Firm | Bid Amount | Credit Enhance Approved | Final Contract or Bond Amount | Credit Enhance Issued | 2nd Bidder Price | Department Savings |
|-----------------------|-------------|-------------------------|-------------------------------|-----------------------|------------------|--------------------|
| Fata Construction | \$6,900,000 | \$250,000 | Not low bidder | N/A | | |
| Granitex Construction | \$1,547,636 | \$250,000 | \$1,547,636 | \$250,000 | Subcontractor | |
| Granitex Construction | \$1,985,500 | \$250,000 | \$1,985,500 | \$250,000 | Subcontractor | |
| LGM Construction | \$1,078,250 | \$250,000 | \$1,078,250 | \$250,000 | Subcontractor | |
| LGM Construction | \$1,549,612 | \$250,000 | \$1,549,612 | \$250,000 | Subcontractor | |
| Rojas Construction | \$75,028 | \$30,012 | \$75,028 | \$30,012 | N/A | |
| Rojas Construction | \$23,330 | \$9,332 | \$23,330 | \$9,332 | | |
| Rojas Construction | \$26,896 | \$10,758 | \$26,896 | \$10,758 | \$35,316.00 | \$8,420.00 |

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Of the three successful companies, two companies were subcontractors and one company was a prime contractor. For the prime contractor, the Harbor Department saved \$8,420. It is assumed that this company would have been unable to bid if they did not obtain surety collateral and the Harbor Department would have awarded the contract to the second lowest bidder whose bid was \$8,420 higher than the BAP participant. Although the Harbor Department only requires bonds from prime contractors, prime contractors may require their subcontractors to obtain bonding. For the two subcontractors, the prime contractor required their subcontractors to obtain bonding and these subcontractors utilized the BAP to obtain such collateral.

Selection Process – On October 22, 2015, the CAO released a Request for Proposals (RFP) seeking the services of a broker to administer the BAP. The CAO received four proposals in response to the RFP. Representatives from the CAO, LAWA, the Harbor Department, and Metropolitan Transportation Authority (MTA) reviewed the proposals and scored them based on the following criteria established by the CAO:

| | |
|-------------------------------------|-----|
| Written proposal | 20% |
| Outreach program | 15% |
| Estimated cost of Program | 15% |
| Interview | 25% |
| Overall qualifications & experience | 20% |
| MBE/WBE participation | 5% |

MWIS was the highest scoring firm and was selected to administer the BAP. To implement the City's BAP and pursuant to each City Department agreement, MWIS will (1) assist contractors and subcontractors in qualifying for surety bonds; (2) conduct outreach to prospective SBE/LBE/MBE/WBE/DBE contractors and subcontractors to participate in the BAP; (3) analyze instances where companies were denied bonding requests and assist contractors and subcontractors with establishing strategies to address and overcome factors that led to denials; (4) select qualified, financially sound surety companies to underwrite bonds for BAP participating contractors and subcontractors; (5) establish a network of financial advisors and service providers to assist contractors and subcontractors in qualifying for bonds; (6) provide technical and financial guidance to contractors and subcontractors with the preparation of financial reports, business plans, and bond applications; and (7) provide conflict resolution between BAP participating contractors, subcontractors, service providers, and surety companies.

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As originally proposed by MWIS and the CAO, the three-year Citywide BAP costs were to be as follows:

| Department/Fund | Amount | Cost Share |
|-------------------|--------------------|-------------|
| PWSCM | \$998,614 | 17% |
| LAWA | \$2,937,101 | 50% |
| DWP | \$1,174,840 | 20% |
| Harbor Department | \$763,646 | 13% |
| General Fund | \$300,000 | N/A |
| Total | \$6,174,201 | 100% |

The \$300,000 from the General Fund shown above is placed into the City's Insurance and Bond Special Fund to pay surety companies in the event of BAP contractor and subcontractor bond defaults. The cost share portion above is calculated based on each Department's Capital Improvement Program expenditures.

Proposed Agreement –Staff 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, commencing March 1, 2016, at an amount not-to-exceed \$450,000. Forecasting the Harbor Department's expected need for the BAP over the next three years, staff negotiated a lower cost share amount of \$450,000 from the proposed amount of \$763,646. Therefore, the approximate annual expenditure for the Department's participation in the BAP will be \$150,000.

Under the BAP, costs charged to each of the participating City Departments are defined as either direct transactional activity costs or indirect costs. Direct transactional activity costs cover the fees for a Department's approval for Wells Fargo to issue Letters of Credit to surety companies, which fees will be incurred after a contractor or subcontractor wins a City bid which requires the contractor post a performance bond. Indirect costs are pro-rata shared costs paid by each BAP participating City Department to MWIS to perform the various services of the BAP which include contractor development, and program administration, marketing, transaction activity, and outreach.

During the next FY, the Harbor Department's Construction Division forecasts posting five contract opportunities that will require payment and performance bonds. Although the Harbor Department only requires bonds from prime contractors, prime contractors may require their subcontractors to obtain bonding. Under the BAP, subcontractors have the capability of seeking bond assistance. Therefore, as a participant in the BAP, the Harbor Department may be requested to pay for and provide a collateral surety for a prime or subcontractor's bond. In the event that the contractor or subcontractor defaults

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on its obligations to the Harbor Department or the prime contractor, and fails to pay the surety for its bond, the surety company will draw down on the Wells Fargo line of credit; Wells Fargo will be reimbursed with funds from the City's Insurance and Bond Special Fund; and the Harbor Department will be obligated to replenish the City's Insurance and Bond Special Fund.

ENVIRONMENTAL ASSESSMENT:

The proposed action is approval of a three-year Agreement to Merriwether & Williams Insurance Services for the Citywide Bond Assistance Program. As an administrative activity, the Director of Environmental Management has determined that the proposed action is exempt from the requirements of CEQA in accordance with Article II Section 2(f) of the Los Angeles City CEQA Guidelines.

FINANCIAL IMPACT:

The proposed three-year Agreement is for a not to exceed amount of \$450,000. The Contracts and Purchasing Division (CPD) has requested that \$150,000 be included in the proposed FY 2017/18 budget as part of the annual budget adoption process in Account 54490, Division 0520 (Contracts and Purchasing), Program 000. Approximately \$205,000 will be needed to pay for services that incurred from March 2016 through May 2017. CPD has funds available in Account 54490, Division 0520, Program 000 to cover these expenses; however, should these invoices carryover into FY 2017/18, staff will need to identify funds in the FY 2017/18 budget to pay for these expenses. The remaining contract amount will be requested to be budgeted as part of the annual budget adoption process in FY 2018/19, upon Board approval. The proposed Agreement may be terminated if funds are not appropriated in future FYs.

CITY ATTORNEY:

The Office of the City Attorney has reviewed and approved the Agreement as to form and legality.

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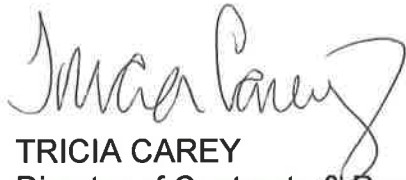
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TRANSMITTALS:

1. Transmittal 1 - Bond Assistance Program Participant Contract Activity and Bond Guarantee Report
2. Transmittal 2 - Agreement with Merriwether & Williams Insurance Services, Inc.

FIS Approval: MB (initials)
CA Approval: QWC (initials)



TRICIA CAREY
Director of Contracts & Purchasing



MARLA BLEAVINS
Deputy Executive Director and
Chief Financial Officer

APPROVED:

 FOR

EUGENE D. SEROKA
Executive Director

EDS/MB/TC
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