



Board Report

File #: 2018-0241, File Type: Contract

Agenda Number: 9.

FINANCE, BUDGET AND AUDIT COMMITTEE JULY 18, 2018

SUBJECT: GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

AUTHORIZE the Chief Executive Officer to execute Modification No. 5 to Contract No. PS05312717, with Carl Warren & Company (CWC), for general liability claims administration services, to exercise the second, three-year option in the amount of \$7,867,714 increasing the total contract value from \$18,028,927 to \$25,896,641 and extending the contract term from November 1, 2018 to October 31, 2021.

ISSUE

Contract No. PS05312717 currently provides for public liability and property damage third-party claims administration services. The contract consists of a four-year base period and two, three-year options for a combined total of \$25,896,641.

On August 4, 2011, the Board authorized the CEO to award the ten years and two months fixed-price contract to CWC in the amount of \$25,896,641 for all ten years inclusive of two, three-year options. CWC was awarded the Contract with a base term from September 1, 2011 to October 31, 2015. Based on our assessment of current industry conditions and regional economic growth occurring since the contract award in 2011, pricing has not improved in the interim.

We are returning to the Board for authorization to exercise the second, three-year option. Staff has determined that the previously negotiated option prices with CWC are fair, reasonable and will result in cost savings to Metro. The approval of this action is required to continue processing public liability claims timely and seamlessly.

BACKGROUND

Consistent with practice of many other public agencies including the County of Los Angeles, the Los Angeles Unified School District and others, staff uses the services of a Third Party Administrator (TPA) to investigate, evaluate and resolve all general liability claims, primarily bus accidents, valued at \$50,000 or less. More than 95% of claims received are valued at less than \$50,000, including

minor property damage and bodily injury claims. In 1998, Metro assumed responsibility for claims administration in-house for claims valued at \$50,000 and greater; thereby, reducing contract costs and allowing for better control of high value claims by Metro executive management and improved coordination with counsel.

Subrogation of losses against a responsible third party is also part of the services provided by the TPA. Over the last seven years, Metro received gross recoveries of more than \$1 million annually from subrogation or cross complaints and the TPA receives an incentive fee on subrogated cash receipts. Contract incentives for subrogation recoveries are consistent with industry best practice since they encourage the TPA to recover as much as possible from third parties.

Metro received 2,706 claims in fiscal year 2016, 2,548 claims in fiscal year 2017 and estimated 2,620 claims in fiscal year 2018. The open general liability claim inventory on May 31, 2018 was 1,901 claims. Processing claims with an inventory of this size requires the issuance of approximately 700 payments monthly to claimants, attorneys, experts and others along with processing approximately 2,000 incoming and 1,000 outgoing pieces of mail. The expertise and infrastructure of a professional TPA in resolving these claims and litigation is essential for structuring a competitive and cost-effective program.

DISCUSSION

Our current TPA, CWC, provides staff and management of 24 individuals to support claims administration in-house. CWC staff provides claims adjusting, 1099 and W-9 processing, initial claim data entry as well as investigation services. They receive a 20% incentive fee on subrogated cash receipts which is less than the 25% considered middle of the industry practice range. CWC subrogation recoveries exceeded \$1.3 million in each of the prior three years of the Contract.

Metro engaged an independent auditor to review 200 claim files for administration performance and best practices. The auditor randomly selected open, closed, litigated, non-litigated, and subrogated claims. The audit completed in June 2018, concluded CWC is providing satisfactory claims administration and subrogation services.

CWC was by far the lowest price proposer out of seven proposers in the competitive procurement process. CWC was also the highest scoring proposer using the weighted values defined in the original RFP document. Attachment A summarizes the procurement activity. Under the current contract, CWC meets their 21.8% commitment to small business participation through the use of subcontractor Sam Hooper and Associates. Although not a requirement at the time, the small business subcontractor is also a qualified DBE.

CWC has been in the claims industry for over 70 years and has handled claims for such clients as Long Beach Transit, Gardena Transit, County of Los Angeles, California Joint Powers Insurance Authority, Santa Clara Valley Transportation Authority and San Mateo County Transit District.

DETERMINATION OF SAFETY IMPACT

Approval of this recommendation will not impact the safety of Metro's patrons or employees.

FINANCIAL IMPACT

The funding for eight months of \$1,748,381 for this action is included in the FY19 budget in cost center 0531, Non-Departmental - Risk Management, under project 100018 (PRMA-PLPD).

Since this is a multi-year contract, the Chief Risk, Safety, and Asset Management Officer will be accountable for budgeting the cost in future years. In FY18, an estimated \$2.8 million was expensed on this Contract.

Impact to Budget

Approval of this action is included in the FY19 budget. The sources of funds for this action are bus and rail operations eligible and include fares and sales tax revenues. No other sources of funds were considered for this activity because TPA services almost exclusively support bus and rail operations.

ALTERNATIVES CONSIDERED

Staff considered a new procurement action for TPA services; however, this alternative is not recommended. On-boarding a new contractor requires significant staff resources, lead time and opportunity costs. Once the new contractor is issued the notice-to-proceed, a transition period of six to twelve months could be expected. New staff will need to be trained on the RiskMaster claims administration system, learn the internal claims administration process and then develop valuable internal contacts to facilitate adjusting the claims timely and efficiently. Staff does not consider a new procurement as a viable option, at this time, given the availability of option years.

Staff also considered providing the service through Metro in-house staff. This alternative would require the hiring of up to 30 additional qualified full-time staff to administer the general liability claims currently administered by CWC. CWC currently provides 24 dedicated claims staff as well as additional off-site non-dedicated staff for field investigations. Hiring and retaining full-time staff would be very challenging for Metro because we would need to attract, train and retain a sufficient number of qualified employees in this industry's highly competitive market. Staff's assessment indicates this is not a cost effective option for Metro since the cost to self-administer would be similar, if not more, than the costs of contracting for this service.

NEXT STEPS

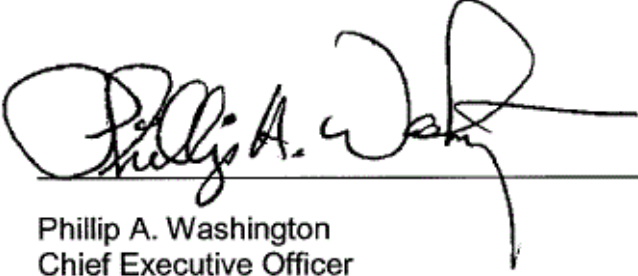
Upon approval by the Board, staff will execute Contract Modification No. 5 with CWC for general liability claims administration services, to exercise the second, three-year option and extend the period of performance through October 31, 2021.

ATTACHMENTS

Attachment A - Procurement Summary
Attachment B - Contract Modification/Change Order Log
Attachment C - DEOD Summary

Prepared by: Tim Rosevear, Manager, Risk Financing, (213) 922-6354

Reviewed by: Greg Kildare, Chief Risk, Safety and Asset Management Officer (213) 922-4971
Debra Avila, Chief Vendor/Contract Management Officer (213) 418-3051



Phillip A. Washington
Chief Executive Officer

PROCUREMENT SUMMARY

GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES / PS05312717

1.	Contract Number: PS05312717		
2.	Contractor: Carl Warren & Company		
3.	Mod. Work Description: Exercise second, three-year option		
4.	Contract Work Description: Provide public liability/property damage third party claims administration services.		
5.	The following data is current as of: 06/04/18		
6.	Contract Completion Status		Financial Status
	Contract Awarded:	7/20/11	Contract Award Amount: \$ 10,307,876
	Notice to Proceed (NTP):	N/A	Total of Modifications Approved: \$ 7,721,051
	Original Complete Date:	10/31/18	Pending Modifications (including this action): \$ 7,867,714
	Current Est. Complete Date:	10/31/21	Current Contract Value (with this action): \$ 25,896,641
7.	Contract Administrator: Marc Margoni		Telephone Number: (213) 922-1304
8.	Project Manager: Tim Rosevear		Telephone Number: (213) 922-6354

A. Procurement Background

This Board Action is to approve Contract Modification No. 5 issued to continue the public liability/property damage third party claims administration services with Carl Warren & Company (CWC) by exercising the second, three-year option.

This Contract Modification will be processed in accordance with Metro's Acquisition Policy and the contract type is a fixed price.

On July 20, 2011, the Board awarded a fixed price contract to CWC for general liability claims administration services in an amount of \$25,896,641 for a total of ten years and two months, inclusive of two, three-year options, effective September 1, 2011. The original contract award amount is \$10,307,876 for the four-year base period, \$7,721,051 for the first, three-year option (November 1, 2015 through October 31, 2018), and \$7,867,714 for the second, three-year option (November 1, 2018 through October 31, 2021).

(Refer to Attachment B – Contract Modification/Change Order Log)

B. Cost/Price Analysis

The recommended price for the option years has been determined to be fair and reasonable based upon the monthly rates that were established and evaluated as part of the original competitive contract award. The negotiated rates for the option years increased by an average of 1.9%, which is lower than 3.1% reported by U.S. Bureau of Labor Statistics for total compensation, and wage and salaries for private industry workers – western area for the 12-month period ending March 2018. Therefore, exercising the options is in the best interest of Metro. The Contract was a result of a competitive RFP in which the option years pricing was evaluated and deemed to be fair and reasonable.

Proposal Amount	Metro ICE	Modification Amount
\$7,867,714	\$10,800,000	\$7,867,714

CONTRACT MODIFICATION/CHANGE ORDER LOG
GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES

CONTRACT NO. PS05312717

Mod. No.	Description	Date	Amount
1	Revise Section SP 11, Subrogation Recoveries to clarify requirements (workers' compensation)	10/28/14	\$0
2	Revise Section SP 11, Subrogation Recoveries to clarify requirements (pursue restitution)	10/28/14	\$0
3	Approve Subcontractor Substitution	11/21/14	\$0
4	Exercise First, Three-Year Option extending period of performance through October 31, 2018	10/13/15	\$7,721,051
5	Exercise Second, Three-Year Option	Pending	\$7,867,714
	Modification Total:		\$15,588,765
	Original Contract:	7/20/2011	\$10,307,876
	Total:		\$25,896,641

DEOD SUMMARY

GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES / PS05312717

A. Small Business Participation

Carl Warren & Company (CWC) made a 21.8% Disadvantaged Business Enterprise (DBE) commitment. The project is 90% complete and CWC is exceeding their DBE commitment with a current DBE participation of 22.34%. DBE subcontractor Fu-Gen, Inc. ceased operations in 2014. Subsequently, Carl Warren added Sam Hooper & Associates to meet their DBE commitment.

Small Business Commitment	21.8% DBE	Small Business Participation	22.34% DBE
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	DBE Subcontractors	% Committed	Current Participation¹
1.	Fu-Gen, Inc.	21.8%	10.08%
2.	Sam Hooper & Associates	Added	12.26%
	Total	21.8%	22.34%

¹Current Participation = Total Actual amount Paid-to-Date to DBE firms ÷ Total Actual Amount Paid-to-date to Prime.

B. Living Wage and Service Contract Worker Retention Policy Applicability

The Living Wage and Service Contract Worker Retention Policy (LW/SCWRP) is not applicable to this Contract.

C. Prevailing Wage Applicability

Prevailing wage is not applicable to this Contract.

D. Project Labor Agreement/Construction Careers Policy

Project Labor Agreement/Construction Careers Policy is not applicable to this Contract.