SUMMARY STATEMENT

ITEM NO. DRPA-13-075  SUBJECT:  Renewal of DRPA/PATCO Public Officials and Employment Practices Liability Policy

COMMITTEE:  Finance

COMMITTEE MEETING DATE:  June 5, 2013

BOARD ACTION DATE:  June 19, 2013

PROPOSAL:  Staff seeks Board authorization to bind the DRPA Public Officials and Employment Practices Liability policy with AIG. If approved, this policy would be placed by our Broker/Consultant, Aon Risk Services (“Aon”).

Aon marketed this coverage for the 2013-2014 policy period to 17 insurance companies in order to secure the most competitive premium. On May 28, 2013, Aon provided its latest marketing summary to staff to review, which included the renewal quote from incumbent, RSUI. A copy of the marketing summary has been provided to the Finance Committee, and is also available for the Board.

PURPOSE:  To protect the DRPA and PATCO and its appointed public officials, including directors, officers and employees, from third-party claims against these insured persons/organization from wrongful acts of errors, omissions, misstatements, neglect or breach of duty.

The policy also provides coverage to the DRPA and PATCO against claims brought by employees for alleged wrongful employment practices. Accordingly, staff seeks to renew the DRPA Public Officials and Employment Practices Liability Policy.

BACKGROUND:  The last policy was placed on DRPA’s behalf on August 1, 2011, and that policy was for a two-year term, expiring August 1, 2013. At that time, the Board authorized staff to bind a two-year pre-paid premium, with an aggregate reinstatement endorsement. The two-year policy term included a 5% discount if the two-year premium was pre-paid. The expiring two-year premium for this policy is $144,502.93 (approximately $72,251 per year).

The expiring policy has an annual aggregate limit of $3 million for Public Officials claims, and a separate annual aggregate limit of $3 million for Employment Practices Liability claims, for a total annual policy aggregate limit of $6 million. The Public Officials coverage is subject to a $500,000 self-insured retention (SIR), and the Employment Practices Liability is subject to a separate $500,000 SIR. The defense expenses are outside of the policy limits. Under the policy, the DRPA is responsible for defense expenses and
Beginning in March 2013, Aon solicited quotes from 17 carriers. Due to the recent open claim, Aon advised that RSUI was unable to provide a renewal indication as they had done in the past, but agreed to release a renewal quote 120 days prior to expiration, August 1, 2013. On May 28, 2013, Aon released RSUI’s renewal quote. A summary of Aon’s marketing efforts, including the incumbent’s renewal quote, follows:

- Axis - Declined to quote – class of business/size of organization
- Hiscox - Declined to quote – size of organization
- Travelers - Declined to quote – class of business
- Zurich - Declined to quote – class of business/can’t offer terms/conditions
- Chubb - Declined to quote – class of business
- XL - Declined to quote – Cannot be competitive on terms/conditions
- AWAC - Declined to quote – size of organization
- Argo - Declined to quote – can’t offer terms/conditions, doesn’t have policy form
- HCC - Declined to quote – class of business
- RLI - Declined to quote – class of business/can’t offer terms/conditions
- Phila Insurance - Declined to quote – class of business
- Arch - No response to date
- C.V. Starr - Quoted – $88,263 - Defense Costs are included w/in the limits of liability
- Ironshore - Quoted - $70,060 - Defense Costs are included w/in the limits of liability
- ACE - Quoted - $134,761 - Defense Costs are included w/in the limits of liability
- AIG - Quoted - $70,159 - Defense Costs are included w/in the limits of liability
- RSUI - Incumbent carrier – estimated annual premium $71,808. RSUI is unable to quote a higher limit option. Although defense expenses remain in addition to the limits of liability, defense expenses will be capped at $1 million, which is a significant change from the current policy terms. Once the $1 million defense expense limit is exhausted, defense expenses will be covered but will erode the $3 million limit of liability. RSUI defines “defense expenses” as the reasonable and necessary legal fees and expenses incurred, with the Insurer’s consent, in the defense of a claim, including any appeal. Defense Expenses however, shall not include:

1. Remuneration, overhead or benefit expenses associated with any Insured Person; or
2. Any obligation to apply for or furnish any appellate or similar bond.

- All of the above quotes include TRIA (Terrorism Risk Insurance Act), but do not include the New Jersey PLIGA (Property-Liability Insurance Guaranty Association) surcharges. All quotes are net of commission.

On May 28, 2013, Aon sent a summary of the RSUI renewal quote. RSUI is unable to offer either a higher limit quote or a two-year policy term. RSUI continues to offer an annual aggregate limit of $3 million for Public Officials claims, and a separate annual aggregate limit of $3 million for Employment Practices Liability, for a total annual policy aggregate limit of $6 million. The Public Officials coverage continues to be subject to a $500,000 self-insured retention (SIR), and the Employment Practices Liability continues to be subject to a separate $500,000 SIR. Under the proposed policy renewal quote, the DRPA
remains responsible for defense expenses and claim payments up to the $500,000 SIR per claim. Once the $500,000 SIR has been exhausted, RSUI will assume the cost of the defense (e.g. attorney fees and claim payments). Although the defense costs remain in addition to the policy limits, RSUI proposes to cap defense expenses at $1 million, which is a significant change from the current policy terms. Once the $1 million defense expense limit is exhausted, RSUI will provide defense expenses but the defense expenses will erode the $3 million limit of liability. The estimated annual renewal premium for a one-year policy term (8/1/2013-8/1/2014) is $71,808, net of commission (an approximate premium decrease of $443).

AIG was the only quoting carrier willing to offer defense costs in addition to the limit of liability. AIG offered the following four (4) options for our consideration:

Option #1: $6 million aggregate limit/$500,000 SIR for PO claims/$500,000 SIR for EPL claims. Under this option, the DRPA would have a $6 million policy aggregate limit, with a sub limit of $6 million for Public Officials claims and a sub limit of $6 million for Employment Practices Liability claims. (AIG is not providing a separate limit for EPL claims.) The sub limits are subject to the annual policy aggregate of $6 million. The $6 million aggregate quote option is subject to a $500,000 SIR for Public Officials and a separate $500,000 SIR for Employment Practices claims. The annual estimated premium for a one-year option is $70,159, net of commission. The 18-month estimated pre-paid premium for this option is $105,519, net of commission. Under the 18-month term option, the aggregate limit remains at $6 million during the entire policy term. AIG will not offer a reinstatement of aggregate endorsement.

Option #2: $6 million aggregate limit/$25,000 SIR for PO claims/$250,000 SIR for EPL claims. Under this option, the DRPA would have a $6 million policy aggregate limit, with a sub limit of $6 million for Public Officials claims and a sub limit of $6 million for Employment Practices Liability claims (AIG is not providing a separate limit for EPL claims.) The sub limits are subject to the annual policy aggregate of $6 million. The $6 million aggregate quote option is subject to a $25,000 SIR for Public Officials and a separate $250,000 SIR for Employment Practices claims. The annual estimated premium for a one-year option is $76,260, net of commission. The 18-month estimated pre-paid premium for this option is $114,695, net of commission. Under the 18-month term option, the aggregate limit remains at $6 million during the entire policy term. AIG will not offer a reinstatement of aggregate endorsement.

Option #3: $10 million aggregate limit/$500,000 SIR for PO claims/$500,000 SIR for EPL claims. Under this option, the DRPA would have a $10 million policy aggregate limit, with a sub limit of $10 million for Public Officials claims and a sub limit of $10 million for Employment Practices Liability claims (AIG is not providing a separate limit for EPL claims.) The sub limits are subject to the annual policy aggregate of $10 million. The $10 million aggregate quote option is subject to a $500,000 SIR for Public Officials and a separate $500,000 SIR for Employment Practices claims. The annual estimated premium for a one-year option is $92,924, net of commission. The 18-month estimated pre-paid premium for this option is $139,758, net of commission. Under the 18-month term option, the aggregate limit remains at $10 million during the entire policy term. AIG will not offer a reinstatement of aggregate endorsement.

Option #4: $10 million aggregate limit/$50,000 SIR for PO claims/$250,000 SIR for EPL claims. Under this option, the DRPA would have a $10 million policy aggregate limit, with a sub limit of $10 million for Public Officials claims and a sub limit of $10 million for Employment Practices Liability claims (AIG is not providing a separate limit for EPL claims.) The sub limits are subject to the annual policy aggregate of $10 million. The $10 million aggregate quote option is subject to a $50,000 SIR for Public Officials and a separate $250,000 SIR for Employment Practices claims. The annual estimated premium for a one-year
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AIG defines “defense expenses” as the reasonable and necessary fees charged by an attorney appointed by the Insurer (unless otherwise provided for by this policy), as well as all other reasonable and necessary fees, costs and expenses consented to by the Insurer incurred in the investigation, adjustment, defense and/or appeal of a claim. Defense costs do not mean compensation of any individual insured or any expenses incurred prior to the time that a claims is first made against the insured.

Aon has indicated that AIG is “more definitive” in writing exclusions into the policy form than RSUI. The AIG policy form has exclusions that are not in the current RSUI policy form. Some of the AIG exclusions include, but are not limited to:

- Transit Authority Exclusion excludes losses in connection with a claim alleging, arising out of, based upon or attributable to any delays, derailments, and/or interruption of transportation services provided by the DRPA and PATCO - currently not excluded in the RSUI policy form (Aon is not sure if RSUI would cover such a claim);
- Wage & Hour Defense Expense – sub limit of $100,000 (Aon reports that the sub limit of the $100,000 currently included in the RSUI policy is above the $500,000 SIR);
- Front Pay/Back Pay Coverage for EPL claims (AIG adds a co-insurance requirement of 50%);
- Bond Exclusion – None under RSUI policy; AIG will consider removing the exclusion subject to additional information;
- Sexual Abuse/Molestation Exclusion – Currently not excluded in the RSUI policy, however, Aon believes any such claim may be denied by RSUI under the “bodily injury exclusion”;
- Trade Secret, Patent Infringement, Copyright Exclusion – Currently not excluded in the RSUI policy form (Aon has stated that the DRPA’s Commercial General Liability policy provides coverage for Personal and Advertising Injury);
- Exclusion relating to the failure of security of any computer system owned, operated, controlled or leased by DRPA or failure to protect any individual’s personal information – Currently not specifically excluded in the RSUI policy form;
- Exclusion related to the return of any taxes, assessments, penalties, fines or fees - Currently not excluded in the RSUI policy form (Aon reports that some policy forms are silent on fines and penalties, etc., but some carriers may deny a claim as being against “public policy”).

In comparing the RSUI and AIG policy forms, Aon has concluded that there are some minor coverages favoring RSUI and some favoring AIG. However, as noted above, there are two major differences: (1) RSUI is unable to provide a higher limit option quote for DRPA’s consideration; and (2) under the RSUI renewal proposal, although defense expenses remain in addition to the limits of liability, defense expenses will be capped at $1 million, which is a significant change from the current policy terms. Once the $1 million defense expense limit is exhausted, defense expenses will be covered but will erode the $3 million limit of liability.

Therefore, for the reasons stated herein, our broker, Aon, recommends that the DRPA considers binding Option #2 or Option #4 for an 18-month policy term effective 8/1/2013-2/1/2015. The 18-month estimated pre-paid premium would be $114,695, net of commission, including TRIA, but not including the NJ PLIGA Surcharges. If option #4 is selected, the 18-
month estimated pre-paid premium would be $153,581, net of commission, including TRIA, but not including the NJ PLIGA Surcharges. Whichever 18-month policy option is selected, the aggregate limit remains the same (either $6 million or $10 million) during the entire policy term. AIG will not offer a reinstatement of aggregate endorsement. AIG also cannot offer a discount for the pre-paid 18-month policy premium. In addition, our two-year Broker Consultant Agreement with Aon will expire on August 16, 2014. Although we have an option to extend the agreement with Aon for another year, with the Board’s approval, in the event we do not exercise that option the extended policy for 18-months with AIG would require a new Broker of Record Letter being issued, effective August 16, 2014.

For the reasons stated herein, staff recommends that the DRPA accept Option #4: $10 million aggregate limit, subject to a $50,000 SIR for Public Officials claims, and a separate $250,000 SIR for Employment Practices Liability claims, for an annual estimated premium of $102,115, net of commission, including TRIA, but not including the NJ PLIGA surcharges. The policy term would be for on-year, effective 8/1/2013-8/1/2014.

Prior to binding the coverage, AIG has the following subjectivities:
- A completed signed and dated AIG application;
- A copy of the DRPA Policy & Procedures Manual; and
- Answers to a list of questions for consideration to remove the Bond Exclusion

SUMMARY:          Annual estimated premium $102,115, net of commission, including TRIA, but not including NJ PLIGA surcharges
Source of Funds:          Revenue and General Funds
Capital Project #:       N/A
Operating Budget:        DRPA Risk Mgt. C/E #8
                         PATCO Admin. C/E Insurance & Claims
Master Plan Status:      N/A
Other Fund Sources:      N/A
Duration of Contract:    8/1/2013-8/1/2014
Other Parties Involved:  Aon Risk Services and AIG
RESOLUTION

RESOLVED: That the Board of Commissioners authorizes staff to bind the DRPA/PATCO Public Officials & Employment Practices Liability Insurance Policy with AIG for a one-year policy term, effective August 1, 2013 to August 1, 2014; and be it further;

RESOLVED: That the policy limit shall include a $10 million aggregate limit, subject to a $50,000 SIR for Public Officials claims, and a separate $250,000 SIR for Employment Practices Liability claims, for an estimated annual premium of $102,115, net of commission, and including TRIA, but not NJ PLIGA Surcharges; and be it further;

RESOLVED: That the policy provides a sublimit of $10 million for Public Officials claims, and a sublimit of $10 million for Employment Practices Liability claims, for a total policy aggregate limit of $10 million; and be it further;

RESOLVED: That the Chairman, Vice Chairman and the Chief Executive Officer must approve and are hereby authorized to approve and execute all necessary agreements, contracts, or other documents on behalf of the DRPA. If such agreements, contracts, or other documents have been approved by the Chairman, Vice Chairman and Chief Executive Officer and if thereafter either the Chairman or Vice Chairman is absent or unavailable, the remaining Officer may execute the said document(s) on behalf of DRPA along with the Chief Executive Officer. If both the Chairman and Vice Chairman are absent or unavailable and if it is necessary to execute the said document(s) while they are absent or unavailable, then the Chief Executive Officer shall execute such documents on behalf of DRPA.

SUMMARY:

Annual estimated premium $102,115, net of commission, including TRIA, but not including NJ PLIGA surcharges

Source of Funds: Revenue and General Funds
Capital Project #: N/A
Operating Budget: DRPA Risk Mgt. C/E #8
               PATCO Admin. C/E Insurance & Claims
Master Plan Status: N/A
Other Fund Sources: N/A
Duration of Contract: 8/1/2013-8/1/2014
Other Parties Involved: Aon Risk Services and AIG