

SUMMARY STATEMENT

ITEM NO.: DRPA-16-104

**SUBJECT: Renewal of DRPA/PATCO
Public Officials and Employment Practices
Liability Policy**

COMMITTEE:

Finance

COMMITTEE MEETING DATE:

September 14, 2016

BOARD ACTION DATE:

September 21, 2016

PROPOSAL:

That the Board authorizes staff to bind the renewal of the DRPA/PATCO Public Officials and Employment Practices Liability policy with AIG. This policy is placed by our Broker/Consultant, Turner Surety & Insurance Brokerage (TSIB).

Pursuant to DRPA-15-062, TSIB is paid a fixed annual service fee of not-to-exceed \$141,000 payable in quarterly installments. Pursuant to the terms of the Broker/Consultant Service Agreement, TSIB understands that no commissions shall be paid on any insurance policies placed on DRPA's behalf. Therefore, the proposed policy premium is net of commission.

TSIB marketed the Authority's Public Officials and Employment Practices Liability policy to several insurance companies to secure the most competitive premium.

TSIB marketed the coverage to the incumbent carrier, AIG and to RSUI, the former carrier (2009-2013). Each carrier provided a 12-month premium quotation as follows:

- AIG - quoted \$149,690 (Incumbent)**
- RSUI - quoted \$156,085***

TSIB does not represent RSUI on a direct basis. TSIB can access RSUI via the wholesale broker, AmWins of Satellite Beach, FL.

AM Wins will receive commission from RSUI, but will not pay any additional income to TSIB, including commission, or any contingent, supplemental or other forms of additional compensation. Therefore, the proposed policy premium is net of commission.

PURPOSE:

To protect the DRPA and PATCO and its appointed public officials, including directors, officers and employees, and the Citizens Advisory Committee from third-party claims against these insured persons/organization for 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 Authority's Public Officials and Employment Practices Liability Policy.

BACKGROUND: In order to have a concurrent expiration date with the balance of the Traditional Property & Casualty insurance policies, the board authorized by DRPA-15-139, the renewal of the Public Officials and Employment Practices Liability policy with the incumbent, AIG for the 11-month policy term from 2/1/2016 to 12/31/2016. The premium for the 11-month term 2/1/2016 to 12/31/2016 is \$127,659 including Terrorism Risk Insurance Act (TRIA) and the NJ Property-Liability Insurance Guaranty Association (NJ PLIGA) tax. The policy will expire on December 31, 2016.

The current policy has defense costs outside of the limit of liability and an annual aggregate limit of \$10 million, and the following sub-limits:

- o \$10 million for Public Officials Liability ("POL"); and
- o \$10 million for Employment Practices Liability ("EPL")
- o \$5 million sublimit for bond coverage

AIG does not provide a separate limit for EPL claims.

The sub limits are subject to the annual policy aggregate of \$10 million.

AIG will not offer a reinstatement of aggregate endorsement.

The \$10 million aggregate policy is subject to the following Self-Insured Retention (SIR) levels:

- o \$50,000 SIR for Public Officials; and
- o a separate \$250,000 SIR for Employment Practices claims; and
- o a separate \$100,000 SIR for bond-related claims

AIG has endorsed to the policy the same panel of Pennsylvania and New Jersey attorneys selected by the Legal department from the list of qualified law firms by DRPA-16-28, to provide defense for any claims filed against DRPA/PATCO. Three of the firms were already on AIG's panel and can be used without the need to be endorsed onto the policy. AIG has rate agreements in place with those firms; Cooper Levenson (NJ), Elliott Greenleaf (PA), and Jackson Lewis (PA). The qualified law firms must agree to be in compliance with AIG's Litigation Management Guidelines. AIG was not comfortable recommending the use of the Mattioni Law Firm (PA). AIG stated that they have not previously seen

the firm on a claim or have had a request to use them and is not comfortable with their expertise and depth in relevant practice areas.

The proposed renewal quote includes the same terms and conditions per the current policy.

The current 11 month policy premium of \$126,771 on an annualized basis would translate to \$138,295.

The proposed 12-month renewal premium for the policy term from 12/31/2016-12/31/2017 has increased by \$11,395 or 7.6% of the annualized premium of \$138,295. This premium increase is a result of an increase in DRPA's budget between 2015 and 2016 from \$320 million to \$400 million – a 25% increase. AIG uses budget among other factors to determine an entity's growth as a key factor in the rating process for the premium for Public Official Liability policies.

The 12-month proposed renewal premium from 12/31/2016-12/31/2017 is \$149,690 (including TRIA and the NJ PLIGA tax). This is an increase of 15.3% or \$22,919 over the existing 11 month premium of \$126,771.

RSUI offered a 12-month quote for \$156,085 (including TRIA and the NJ PLIGA taxes.

The following are the similarities between the AIG and RSUI proposals:

- **Both proposed a \$10,000,000 limit, \$50,000 self-insured retention (SIR) for Public Officials but a \$250,000 SIR for Employment Practices**
- **Both included the Named Insured as DRPA, PATCO and the Delaware River Port Authority Foundation**
- **Both provided coverage extensions for Public Officials**
- **Both provide severability of the application and wrongful acts of one insured, will not be imputed to another insured**
- **Both provide punitive damages with most favorable venue wording**

The following are the differences between AIG and RSUI proposals:

- **AIG's policy covers a lawsuit, not any claim. The RSUI policy form is broader and covers any claim**
- **AIG's policy was endorsed to include Errors/Omissions involving bonds at a \$5,000,000 sublimit. The RSUI policy form does not**

submit this coverage, therefore coverage is provided up to the \$10,000,000 policy limit

- AIG's policy form does not provide indemnity payments for Non-monetary damages. The RSUI policy form provides monetary damages of \$250,000 per claim/\$500,000 aggregate
- AIG's defense costs are outside the limit of liability. The RSUI policy form includes defense costs within the limit of liability. The RSUI quote includes defense costs of \$1,000,000 in the policy aggregate. The former RSUI policy that expired in 2013 did include these same terms and conditions.

With the RSUI policy's defense costs being limited to \$1,000,000 on a policy aggregate basis, this may leave DRPA financially impaired should there be a lawsuit that involves a very heavy penalty and excessive legal defense costs.

TSIB recommends that staff accept the proposed 12-month renewal premium from incumbent, AIG, for the policy term 12/31/2016-12/31/2017 for the estimated premium of \$149,690 (including TRIA and the NJ PLIGA tax) for the Public Officials and Employment Practices Liability, which will include coverage for the volunteer members of the CAC.

Prior to binding the coverage, AIG will require the previously submitted application to be dated and signed by the CEO. The proposed renewal indication is strictly conditional upon no material changes in the previously submitted application (and attachments) occurring between 8/09/16 (the date of the quote) and 12/31/2016, the inception date of the proposed renewal policy. In the event of any change in risk, AIG may in its sole discretion, whether or not this indication has been already accepted by the Authority, modify and/or withdraw this renewal indication. The renewal indication will remain open until 12/31/2016.

SUMMARY:	Amount:	Approximately \$149,690, (Including TRIA and the NJ PLIGA tax)
	Source of Funds:	Revenue and General Funds
	Capital Project #:	N/A
	Operating Budget:	DRPA Risk Mgt. Commitment 770000 PATCO Commitment 770000
	Master Plan Status:	N/A
	Other Fund Sources:	N/A
	Duration of Contract:	12/31/2016-12/31/2017
	Other Parties Involved:	Turner Surety & Insurance Brokerage and AIG

DRPA-16-104
Finance Committee: September 14, 2016
Board Date: September 21, 2016
Renewal of DRPA/PATCO Public Officials
and Employment Practices Liability Policy

RESOLUTION

RESOLVED: That the Board of Commissioners authorizes staff to accept the 12-month renewal policy quote from incumbent, AIG, for the DRPA/PATCO Public Officials & Employment Practices Liability Insurance Policy, including coverage for the volunteer members of the CAC, for the policy term of December 31, 2016 – December 31, 2017, at an estimated premium of \$149,690 including NJ PLIGA tax and TRIA, and net of commission; 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.

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