SUMMARY STATEMENT

ITEM NO.: DRPA-18-105


COMMITTEE: Finance

COMMITTEE MEETING DATE: October 3, 2018

BOARD ACTION DATE: October 17, 2018

PROPOSAL: That the Board authorizes staff to bind the renewal of the Authority’s Public Officials and Employment Practices Liability policy with National Union Fire Insurance Company of Pittsburgh PA (an AIG company). This policy is placed by our Broker/Consultant, Turner Surety & Insurance Brokerage (TSIB).

Pursuant to DRPA-18-054, TSIB is paid a fixed annual service fee not-to-exceed $160,380, payable in quarterly installments of $40,095. In accordance with 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 the following carriers to secure the most competitive premium:

• National Union Fire (incumbent) - quoted, $149,541 (incl. TRIPRA and NJ PLIGA tax)
• RSUI - declined to quote *

*Although RSUI had offered a quote in the past, their efforts did not result in an order to bind; therefore, RSUI declined to offer a quote for the 2018/2019 policy term.

TSIB also marketed the Authority’s $5 million of excess limits with the following carriers to secure the most competitive premium available:

• Markel American - quoted $44,767 (incumbent, incl. TRIPRA & tax)
• AIG - declined, could not provide limits above $10 million
• Chubb - declined, but requested another opportunity in 2019
Pursuant to DRPA 17-081, the Board authorized TSIB to work with AmWINS, a wholesaler, on behalf of the Authority to place the Markel American Excess $5 million policy. Consistent with the previous placement, AmWINS will receive a commission from Markel American, but will not pay TSIB any 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: The premium for the 12-month term from 12/31/2017 to 12/31/2018 is $149,541 including Terrorism Risk Insurance Program Act (TRIPRA) and the NJ Property-Liability Insurance Guaranty Association (NJ PLIGA) tax. The policy will expire on December 31, 2018.

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:

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

National Union does not provide a separate limit for EPL claims. The sub-limits are subject to the annual policy aggregate of $10 million. National Union will not offer a reinstatement of aggregate endorsement.

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

- $50,000 SIR for Public Officials; and
- a separate $250,000 SIR for Employment Practices claims; and
- a separate $100,000 SIR for bond-related claims
The National Union policy includes the Choice of Scheduled Counsel Endorsement, which lists the panel of Pennsylvania and New Jersey attorneys selected by the Legal department from the list of qualified law firms pursuant to DRPA-17-086, to provide defense for any claims filed against DRPA/PATCO. Three of the firms are already on AIG’s panel. AIG has rate agreements in place with those firms; Cooper Levenson (NJ), Elliott Greenleaf (all offices), and Jackson Lewis (PA). The qualified law firms must agree to be in compliance with AIG’s Litigation Management Guidelines.

National Union uses estimated expenditures, among other factors, as a key indicator used in the rating process in developing the premium for the Public Official Liability policies. DRPA’s estimated expenditures for 2019 are expected to decrease from $310 million to $307.8 million.

The proposed National Union 12-month primary policy renewal includes the same terms and conditions as the current policy for a flat renewal, (no premium increase). The 12-month proposed renewal premium from 12/31/2018-12/31/2019 is $149,541 (including TRIPRA and the NJ PLIGA tax).

Markel American proposed a 12-month renewal premium including the same terms and conditions as the current excess policy for a flat renewal, (no increase in premium). The 12-month proposed renewal premium from 12/31/2018 to 12/31/2019 is $44,767 (including TRIPRA and the NJ PLIGA tax) for the additional $5 million in limits, that would be excess of the current $10 million in policy limits with National Union.

TSIB recommends that staff accept the proposed 12-month primary renewal premium from incumbent, National Union Fire, for the policy term 12/31/2018-12/31/2019 at the estimated premium of $149,541 (including TRIPRA and the NJ PLIGA tax); and the proposed 12-month $5 million in excess limits renewal premium from incumbent, Markel Insurance Company, for the policy term of 12/31/2018 -12/31/2019 at the estimated premium of $44,767 (including TRIPRA and the NJ PLIGA tax).

The total policy limits will be $15 million for a total 12-month premium of $194,308. Staff agrees with TSIB’s recommendation. Both policies will include coverage for the volunteer members of the CAC.
Prior to binding the coverage, National Union 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 7/2/18 (the date of the quote) and 12/31/2018, the inception date of the proposed renewal policy. In the event of any change in risk, National Union 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 12/31/2018.

SUMMARY:

Amount: Approximately $194,308 (Including TRIPRA and the NJ PLIGA tax; net of commission)

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: 12/31/2018-12/31/2019

Other Parties Involved: Turner Surety & Insurance Brokerage, National Union Fire Ins. Co. of Pittsburgh, AmWINS of Edison, New Jersey and Markel American
RESOLUTION

RESOLVED: That the Board of Commissioners authorizes staff to accept the 12-month primary renewal policy quote from incumbent, National Union, for the DRPA/PATCO Public Officials & Employment Practices Liability Policy, including coverage for the volunteer members of the CAC, for the policy term of December 31, 2018 – December 31, 2019, at an estimated premium of $149,541 including NJ PLIGA tax and TRIPRA, and net of commission; and be it further

RESOLVED: That the Board of Commissioners authorizes staff to accept the 12-month excess renewal policy quote from incumbent, Markel American, for $5 million in excess limits of the National Union policy 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, 2018 – December 31, 2019, at an estimated premium of $44,767 including NJ PLIGA tax and TRIA, and net of commission; and be it further

RESOLVED: That the Board of Commissioners authorizes AmWINS, Raritan Plaza I, 110 Fieldcrest Avenue, Edison, New Jersey, 08837, as the Wholesale Broker for TSIB’s placement of this policy. AmWINS will receive commission from Markel American, but will not pay TSIB any additional income, including commission, or any contingent, supplemental or other forms of additional compensation; 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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