SUMMARY STATEMENT

ITEM NO.: DRPA-18-132
SUBJECT: New DRPA/PATCO Network Security and Privacy Liability Policy

COMMITTEE:
Finance

COMMITTEE MEETING DATE: November 28, 2018

BOARD ACTION DATE: December 5, 2018

PROPOSAL: That the Board authorizes staff to bind the Authority’s New Network Security and Privacy Liability, including Media Liability coverage, commonly referred to as “Cyber Liability”. This policy would be placed by our Broker/Consultant, Turner Surety & Insurance Brokerage (TSIB). This would be a direct placement by TSIB.

Pursuant to DRPA-18-054, TSIB is paid a fixed annual service fee of not-to-exceed $160,380 payable in quarterly installments of $40,095. 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.

TSIB marketed the Authority’s Cyber Liability applications to the following carriers to secure the most competitive premium:

- Allied World – quoted, $78,438 (recommended, $10 mil limits)
- AIG – quoted, $71,677
- Chubb – quoted, $78,471
- Indian Harbor (XL Catlin) – quoted, $50,000 (recommended for $10 mil excess of $10 mil limits)
- Everest Insurance – declined, not within risk appetite
- Zurich – declined, not within risk appetite
PURPOSE: To reduce the Authority’s financial exposure to loss by insuring against the following costs that may result or arise out of a cyber breach or other unauthorized cyber event:

First Party losses and costs for:
1) Forensic investigation (i.e., costs for determining the cause and or impact of the cyber event);
2) Legal advice (i.e., costs to determine notification and regulatory obligations);
3) Business interruption (i.e., losses of profit and extra expense due to network downtime);
4) Post data breach notification (i.e., costs for notifying potentially affected parties);
5) Credit monitoring (i.e., costs for providing credit monitoring to potentially affected parties);
6) Crisis management (i.e., costs for educating potentially affected parties);
7) Reputational harm (i.e., costs for public relations expenses to address potential or actual reputational harm from cyber event);
8) Cyber extortion (i.e., costs related to ransomware and other similar cyber events);
9) Cyber theft (i.e., computer fraud) funds transfer fraud, and social engineering fraud);
10) Data loss or destruction (i.e., costs related to the expense of repairing or replacing software damaged or rendered inaccessible by cyber event)

Third Party losses and costs for:
1) Privacy liability: (i.e., defense costs, judgments, and or settlements associated with claims brought by customers or employees suffering a breach of privacy due to cyber event)
2) Data breach liability (i.e., defense costs, judgments and or settlements arising out of claims related to data breach incidents, such as claims for statutory violations or common-law breach of contract or negligence claims);
3) Electronic media content liability (i.e., defense costs, judgments, and/or settlements arising out of trademark and copyright claims related to the dissemination of electronic materials arising out of the cyber event or Web site media content); and;
4) Regulatory response costs (i.e., costs for responding to regulatory inquiries relating to cyber event, including costs associated with investigations, fines, and penalties).
BACKGROUND: A Request for Qualifications was issued on February 13, 2017 for a consultant to conduct a security risk analysis and assessment for Cyber Liability exposures. DRPA-17-030 authorized staff to enter into a contract with Reclamere Data Security Experts (“Reclamere”), a firm located in Tyrone, PA to a security risk analysis. Agreement GN-007-17 was executed on July 25, 2017 for a one-year term.

On August 23, 2017, Reclamere kicked off the risk assessment. The engagement lasted seven (7) months. During that time, Reclamere reviewed many documents and interviewed numerous staff members. On December 18, 2017, Reclamere presented an Executive Presentation and Remediation Strategy to staff. At the end of the engagement, on February 14, 2018, Reclamere delivered the four (4) reports, (Compliance Management, On-Site Physical Survey, Policy Gap Analysis, Risk Management) totaling 356 pages. The other deliverables included assistance with the completion of the cyber liability insurance applications.

Our broker used Reclamere’s Assessment Report as part of the marketing process to secure Cyber Liability proposals that meet the specific needs of the Authority.

An attorney from Stradley Ronon attended the staff interviews and conference calls with the consultants. Stradley Ronon attorneys reviewed the applications with DRPA’s Director of Risk Management prior to the applications being submitted to our broker.
In early May, the final Cyber Liability applications were submitted to our broker (TSIB). In September, TSIB released four (4) quotes on a “claims made” policy form, which means the claim must occur and be reported during the policy term in order for coverage to be triggered. By contrast, an “occurrence form” policy permits you to report a claim whenever it becomes known and coverage will be triggered as long as the policy was in effect at the time of the loss. Currently, the marketplace is not quoting “occurrence” policy forms for this type of coverage.

TSIB, attorneys from Stradley Ronon, and staff reviewed the quotes. The group carefully reviewed the terms and conditions of each of the policy forms. Our broker presented our concerns with the underwriters.

After extensive reviews, both Stradley Ronon and TSIB agreed that only two of the four quotes meet the Authority’s needs. Those two quotes were from: (1) Allied World, and (2) Indian Harbor. All proposals offer a “claims-made” policy form and a “duty to defend form.

In determining the appropriate limit for the Cyber Liability, both Stradley Ronon and TSIB recommend a total limit of $20 million. In making its recommendation, Stradley Ronon asked the Authority to consider the following:

“If there is a cyber event, the statistical likelihood is that it will be a large, complex, and expensive one. Thus, the greater amount of coverage provides a similarly greater amount of peace of mind in the event of a breach. So I would agree that an Agency with the DRPA’s scope of operations and risk profile should have the higher limits of cyber coverage. The DRPA’s efforts to close the gaps identified in the Reclamere report also reduce the risk of DRPA having a cyber event. I definitely agree that the identified gaps are far from remediated and that we should not be assuming that they are complete.”
TSIB provided the following comment:

“As similarly stated above, a total of $20 million in limits will provide more sufficient protection for the Authority. Currently, cyber policies do not typically allow for the reinstatement of policy limits during the policy term. Since both the defense costs and claim payments erode the policy limits, should a large cyber claim occur, the Authority could find itself without coverage for the remainder of the policy term. It is therefore, recommended that a primary $10 million limit be purchased along with an additional $10 million in excess limits to make up for the potential shortfall due to the possible first large claim. This, and the fact that defense costs will erode the limit available to pay claims, make the higher limits all the more necessary.”

The proposed primary $10 million aggregate limit quote with Allied World is written on a claims-made policy form. Prior acts coverage is available for certain coverage parts due to the discovery trigger including:

- Incident Response Coverage;
- PCI Expenses Coverage;
- Network Extortion Coverage;
- Limited Cyber Crime Coverage;
- Data Restoration Coverage; and,
- Supplemental Expenses Coverage.

The coverage parts for which prior acts coverage is not available are:

- Media Liability Coverage;

The claims made retroactive date will be the policy inception date, December 31, 2018. The policy contains a sixty (60) day extended reporting provision.
The defense costs are within the $10 million limit and erode the policy limit available to pay claims. The policy generally is subject to a $100,000 self-insured retention for each coverage type, except for the Business Interruption which is subject to a ten (10) hour waiting period. Should the Authority not agree to settle any claim, the policy contains a settlement provision clause, typically referred to as the “Hammer Clause”. This clause states that if the Insured does not consent to a settlement acceptable to the claimant and the Insurer, then the Insurer’s liability moving forward will only be the amount of the proposed but rejected settlement, and 80% of any additional loss otherwise covered by the policy, with the Insured paying the 20% balance (co-insurance clause).

The third-party liability insuring agreements include:

- Network Security and Privacy Liability
- Media Liability Coverage (website media content liability)

Network Security and Privacy Liability Coverage includes but is not limited to:

- Information security and privacy liability; for an unauthorized release of protected information and any covered breach of the Authority’s computer network. Refer back to Third Party coverage descriptions in PURPOSE.
- Payment Card Industry (PCI) fines and assessments;
- Regulatory defense and penalties
The first-party insuring agreements include, Incident Response Coverage (in addition to the $10 million aggregate limit of insurance), which includes the following sublimits (in addition to the total aggregate $10 million limit):

- Breach consultation: $2,000,000
- Data Forensics: $2,000,000
- Breach Response: $500,000 (total sublimit)
- Public Relations: $2,000,000

Additional Incident Response coverage sublimits included, (but NOT in addition to the $10 million aggregate limit of insurance) are:

- PCI Expenses: $10,000,000
- Network Extortion: $10,000,000
- Data Restoration: $10,000,000

**Business Interruption (BI) and Extra Expense (EE) coverage**

$10 million limit, subject to a waiting period of ten (10) hours, (part of the same $10 million aggregate limit of the policy).

The following sublimits are also part of the same $10 million aggregate limit of the policy:

- System Failure BI: $2,000,000 – 10 hour waiting period deductible
- Contingent BI: $2,000,000 – 10 hour waiting period deductible
- Supplemental Exps.: $25,000 - Zero (0) retention for this coverage

The covered persons includes employees, both former and future, directors and officers, both former and future, partners, spouses, domestic partners, heirs, administrators, trustees, personal representative and Additional Insureds as required by hold harmless agreements. Covered persons also include “Commissioners” who are not past, current, or future employees, officers, directors, or trustees but, “only while acting under the direction and control of the Insured and within the scope of their duties and exclusively on behalf of the Insured.”
Listed below are some of the typical exclusions:

- Criminal and fraudulent acts (covered under the Crime policy)
- Laptop/notebook computers and other mobile devices with the exception if the data is encrypted
- BI/PD exception mental anguish/emotional distress
- Employment-related claim; exception privacy claims by employees
- Insured vs Insured; exception information security and privacy liability
- Contractual; exception agreements to maintain confidentiality of PII (personal identifiable information)
- Antitrust
- Unfair trade practices
- ERISA
- Patent, software, copyright infringement
- Mechanical/Electrical failure; exception if caused by insured’s wrongful act or by denial of services attack
- Broadcasting/publishing; exception for dissemination of company privacy policy
- Professional Services
- War, insurrection, nationalization, confiscation (terrorism removed from exclusion)
- Failure to maintain minimum required security practices

The proposed excess $10 million limit policy with Indian Harbor (a company of XL Catlin) will be written on a “follow form excess basis” of the Allied World policy. The defense costs are within the $10 million policy limits and erode the policy limit available to pay claims. The excess policy will follow the terms, conditions, and policy definitions of the primary policy with Allied World.
Staff will request from the Legal Department, a list of firms from the qualified Pennsylvania and New Jersey panel to submit to Allied World for their approval to endorse onto the policy. In addition, the Legal Department will provide a list of recommended crisis management/reputational harm firms and forensic investigators.

Stradley Ronon and TSIB recommend that staff accept the proposed 12-month primary Cyber Liability policy, including a $10 million aggregate limit, written on a claims made policy form with Allied World National Assurance Company, for the policy term 12/31/2018-12/31/2019 at the estimated annual premium of $78,438 (including the NJ PLIGA tax); to be placed by TSIB on a direct basis.

Furthermore, these same parties recommend that staff accept the proposed 12-month excess Cyber Liability policy, including a $10 million excess limit, written on a claims made policy form with Indian Harbor Insurance Company (XL Catlin company), for the policy term 12/31/2018-12/31/2019 at the estimated premium of $50,000 (not subject to the NJ PLIGA tax); to be placed by TSIB on a direct basis.

The A.M. Best ratings for both Allied World National Assurance Company and Indian Harbor are A-15.

TSIB will not receive any commission, or any contingent, supplemental or other forms of additional compensation. Therefore, the proposed policy premium is net of commission. Staff concurs with this recommendation. It should be noted that we budgeted $175,000 for this policy. We received a quote for $128,438, which represents a savings of $46,562.

SUMMARY:

Amount: $128,438. Annual estimated premium (including the NJ PLIGA tax); net of commission

Source of Funds: Revenue Fund and General Fund (PATCO portion)

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: December 31, 2018 to December 31, 2019

Other Parties Involved: Turner Surety & Insurance Brokerage, Inc. (TSIB), Allied World National Assurance Company, and Indian Harbor Ins. Company
RESOLUTION

RESOLVED: That the Board authorizes staff to accept the proposed 12-month primary $10 million limit claims made Cyber Liability policy with Allied World National Assurance Company, for the policy term December 31, 2018 – December 31, 2019, at the annual estimated premium of $78,438 (including the NJ PLIGA tax); net of commission; and be it further

RESOLVED: That the Board authorizes staff to accept the proposed 12-month excess $10 million limit claims made Cyber Liability policy with Indian Harbor Insurance, for the policy term December 31, 2018 – December 31, 2019, at the annual estimated premium of $50,000; net of commission; and be it further

RESOLVED: The Chair, Vice Chair 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 Chair, Vice Chair and Chief Executive Officer and if thereafter either the Chair or Vice Chair 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 Chair and Vice Chair 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: Amount: Total: $128,438. Annual estimated premium (Including the NJ PLIGA tax); net of commission
Source of Funds: Revenue Fund and General Fund (PATCO portion)
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: December 31, 2018 to December 31, 2019
Other Parties Involved: Turner Surety & Insurance Brokerage, Inc. (TSIB), Allied World National Assurance Company, and Indian Harbor Insurance Company