SUMMARY STATEMENT

ITEM NO.: DRPA-19-096


COMMITTEE: Finance

COMMITTEE MEETING DATE: October 2, 2019

BOARD ACTION DATE: October 16, 2019

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 would be placed on a direct basis 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) - *Indication, pending signed application*, $149,541 (incl. TRIPRA and NJ PLIGA tax) $10 million limit.

- ACE American - quoted, $191,323 (incl. TRIPRA & NJ PLIGA tax) - $15 million limit.

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

- Markel American (incumbent) - quoted $44,767 (incl. TRIPRA & PLIGA tax)

- AIG - declined, could not provide limits Above $10 million

Pursuant to DRPA 18-105, the Board authorized TSIB to work with AmWINS, a wholesaler, to place the Markel American Excess $5 million policy.
Consistent with the current placement, AmWINS would 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.

BACKGROUND: The premium for the 12-month term from December 31, 2018 to December 31, 2019 for the National Union Fire (AIG) primary $10 million limit policy is $149,540 including the Terrorism Risk Insurance Program Act (TRIPRA) and the NJ Property-Liability Insurance Guaranty Association (NJ PLIGA) tax.

The premium for the 12-month term from December 31, 2018 to December 31, 2019 for the Markel American excess $5 million limit policy, (sits over the National Union $10 million limit policy) is $44,767 (including TRIPRA and the NJ PLIGA tax). The total limits available for the Authority’s Public Officials and Employment Practices Liability is $15 million.

Both policies will expire on December 31, 2019.

The current National Union Fire policy has unlimited defense costs outside of the limit of liability and an annual policy aggregate limit of $10 million, subject to the following sub-limits:

- $10 million for Public Officials Liability (“POL”); and
- $10 million for Employment Practices Liability (“EPL”); and
- $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-19-030, 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 2020 are expected to increase from $301.4 Million to $304.9 Million.

The proposed National Union 12-month primary renewal indication includes a flat renewal, (no premium increase) for the same terms and conditions as the current policy. The 12-month proposed renewal indication from 12/31/2019-12/31/2020 is $149,541 (including TRIPRA and the NJ PLIGA tax).

Markel American proposed a 12-month flat renewal premium, (no increase in premium), for the additional $5 million in limits with the same terms and conditions as the current Excess policy. The 12-month proposed renewal premium from December 31, 2019 to December 31, 2020 is $44,767 (including TRIPRA and the NJ PLIGA tax) for the additional $5 million in limits, (which would be excess of the primary $10 million limits with National Union) for a total limit of $15 million.

ACE American Insurance Company has proposed a $15 million limit of liability and an annual aggregate limit of $15 million for the Authority’s Public Officials and Employment Practices Liability with defense costs outside the limit of liability but capped at $15 million.

As respects to ACE American’s fourteen (14) year loss history from their Public Officials/Employment Practices book of business, the following list includes the eleven (11) largest claims, (rounded to the nearest $1000 dollars, as of January 2019) and includes both defense and indemnity costs:

- $1,397,000 (*largest claim)
- $ 986,000
- $ 942,000
- $ 750,000
- $ 704,000
- $ 670,000
- $ 604,000
- $ 566,000
- $ 544,000
- $ 513,000
- $ 504,000

*The largest claim is still well below the $15 million cap on defense costs.
Considering the Authority’s loss history below from the past five (5) years, TSIB agrees that the proposed ACE American $15 million limit and aggregate, subject to a defense cap of $15 million, represents an adequate limit for both claims and defense costs under the proposed quote.

- a total of 27 claims;
- 23 of which were EPL; and
- 4 were Public Officials Liability.

Employment Practice Liability (EPL) claims, are the majority of claims filed under Public Officials Liability policies, often resulting in front & back payments awards. The current National Union policy contains a 50% coinsurance clause which means DRPA pays 50% of the award. In contrast, the ACE American proposed quote has no coinsurance requirement for front & back pay.

ACE American has proposed the following sublimits for the policy:

- $15 million for Public Officials Liability ("POL"); and
- $15 million for Employment Practices Liability ("EPL");
- $5 million sublimit for bond coverage

The $15 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 ACE American proposed policy form has the following advantages over the current National Union Fire policy:

- $15 million total limit of liability vs. National Union’s $10 million limit of liability. (elimination of the $5mil excess limits policy with Markel American);

- ACE American’s settlement provision (hammer clause) is 70% insurer’s obligation and 30% Authority’s obligation. National Union’s settlement provision is 50% and 50%

- ACE American offers a $50,000 Crisis Management Coverage National Union does not provide this coverage;

- ACE American’s policy form does not contain a coinsurance clause for front/back pay damages vs. National Union’s 50% coinsurance for front/back pay damages;

- ACE American’s extended reporting period is 90 days vs. National Union’s 60 days;
ACE American has agreed to add an endorsement stating that there will be no increase in the renewal rate contingent upon DRPA’s revenues not exceeding a 10%, increase and;

TSIB represents ACE American on a direct basis; (wholesaler, AmWINS of NJ would no longer be required for the $5 million Excess placement with Markel American)

ACE American has agreed to approve the same panel of attorneys listed on the National Union’s Choice of Scheduled Counsel Endorsement, including the three firms already on AIG’s panel; Cooper Levenson (NJ), Elliott Greenleaf (all offices), and Jackson Lewis (PA). The qualified law firms must agree to be in compliance with ACE American’s Litigation Management Guidelines.

Although the terms and conditions of the ACE American quotation are favorable, due to the ACE $15 million cap on defense costs versus National Union’s unlimited defense costs outside of the limit of liability, staff agrees that the renewal policy should be placed with National Union Fire (the incumbent).

Staff recommends that we accept the proposed 12-month primary renewal indication premium from incumbent, National Union Fire, which includes a flat renewal, (no premium increase) for the same expiring terms and conditions, for the policy term December 31, 2019 to December 31, 2020 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, which includes a flat renewal, (no premium increase) for the same expiring terms and conditions, for the policy term of December 31, 2019 to December 31, 2020 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. Both policies will include coverage for the volunteer members of the CAC.

Prior to binding coverage, National Union has the following subjectivities:

- The previously submitted National Union application is to be dated and signed by the CEO. The proposed indication is strictly conditional upon no material changes in the previously submitted application (and attachments) occurring between July 19, 2019 (the date of the quote) and December 31, 2019, the inception date of the renewal policy. In the event of any change in risk, National Union may in its sole discretion, whether or not this quote has been already accepted by the Authority, modify and/or withdraw this quote. The quote will remain open until December 31, 2019.
| **SUMMARY:** | **Amount:** | Approximately $194,308.00 (Including TRIPRA and the NJ PLIGA tax; net of commission) |
|-----------|------------|---------------------------------------------------------------------------------
| | **Primary Policy:** | $149,541.00 |
| | **Excess Policy:** | $44,767.00 |
| | **Total:** | $194,308.00 |
| **Source of Funds:** | Revenue and General Funds |
| **Capital Project #:** | N/A |
| **Operating Budget:** | DRPA Risk Mgt. Commitment 770200 |
| | PATCO Commitment 770200 |
| **Master Plan Status:** | N/A |
| **Other Fund Sources:** | N/A |
| **Duration of Contract:** | December 31, 2019 to December 31, 2020 |
| **Other Parties Involved:** | Turner Surety & Insurance Brokerage (TSIB), and National Union Fire Insurance Company 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 *indication* premium quote from incumbent, National Union, for the DRPA/PATCO Public Officials & Employment Practices Liability Insurance Policy, including a $10 million limit per occurrence and in the aggregate with defense costs outside the limit of liability; including coverage for the volunteer members of the CAC, for the policy term of December 31, 2019 – December 31, 2020, 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, 2019 – December 31, 2020, at an estimated premium of $44,767 including NJ PLIGA tax and TRIPRA, 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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