SUMMARY STATEMENT

ITEM NO.: DRPA-19-098

SUBJECT: Renewal of DRPA/PATCO Network Security and Privacy Liability Policy

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 Network Security and Privacy Liability, including Media Liability coverage, commonly referred to as “Cyber Liability”. 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 of not-to-exceed $160,380.00 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.

This was a new policy placement effective December 31, 2018 for a one-year term. In 2018, TSIB performed extensive marketing to six (6) companies to secure the most competitive premium. It should be noted that in 2018, we budgeted $175,000 for this policy. The policy was placed at the total annual premium of $128,438.00, representing a savings of $46,562.00.

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 or network security or privacy breach or other unauthorized cyber events.

BACKGROUND: Pursuant to DRPA-18-132, the Board approved a new 12-month policy term from December 31, 2018 to December 31, 2019 with Allied World National Assurance Company. The current Network Security and Privacy Liability policy, including Media Liability will expire December 31, 2019.

The expiring premium for the $10 million primary limit is $78,438, for the policy term December 31, 2018 to December 31, 2019, including the NJ PLIGA tax.
The primary Cyber Liability policy has a $10 million aggregate limit written on a claims-made policy form. The policy insures for First Party and Third Party, losses and costs as follows:

**First Party**

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**

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).
Allied World National Assurance Company proposed the following renewal quotation:

- 12-month policy, with the same policy terms and conditions at the same expiring premium of $78,438; including NJ PLIGA tax.

The claims-made retroactive date will remain as the original policy inception date of 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 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):

<table>
<thead>
<tr>
<th>Sublimit</th>
<th>Amount</th>
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<tbody>
<tr>
<td>Breach consultation</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Data Forensics</td>
<td>$2,000,000</td>
</tr>
<tr>
<td>Breach Response</td>
<td>$500,000 (total sublimit)</td>
</tr>
<tr>
<td>Public Relations</td>
<td>$2,000,000</td>
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</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Sublimit</th>
<th>Amount</th>
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</thead>
<tbody>
<tr>
<td>PCI Expenses</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Network Extortion</td>
<td>$10,000,000</td>
</tr>
<tr>
<td>Data Restoration</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

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 Expenses $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 Allied World policy includes a pre-approved counsel endorsement, which schedules 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, (including the approved hourly rates) to provide defense for any claims filed against DRPA/PATCO. The qualified law firms must agree to be in compliance with Allied World’s Litigation Management Guidelines.

When needed, Allied World will consider the approval of additional panels as recommended from Legal.
The choice of counsel endorsement includes:

- Archer & Greiner (NJ)
- Cooper Levenson (NJ)
- Duane Morris (PA)
- Stradley Ronon Stevens & Young, LLP (PA)

The renewal of the excess $10 million limit policy with Indian Harbor (a company of AXA XL) is proposed on the same “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.

Indian Harbor proposed the following renewal quotation:

- 12-month policy, with the same policy terms and conditions at the same expiring premium of $50,000.

TSIB recommends that staff accept the proposed primary Cyber Liability renewal quote from the incumbent, Allied World National Assurance Company, including a $10 million primary limit, written on a claims-made policy form for the 12-month policy term from December 31, 2019 to December 31, 2020 at the estimated premium of $78,438.00, including NJ PLIGA tax; and net of commission. Staff agrees with TSIB’s recommendation.

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 (AXA XL company), for the policy term December 31, 2019 to December 31, 2020 at the estimated premium of $50,000 (not subject to the NJ PLIGA tax); and net of commission.

Staff concurs with this recommendation.
<table>
<thead>
<tr>
<th>SUMMARY</th>
<th>Amount:</th>
<th>Total: $128,438 Annual estimated premium (Including the NJ PLIGA tax); net of commission</th>
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<tbody>
<tr>
<td>Source of Funds:</td>
<td>Revenue Fund and General Fund (PATCO portion)</td>
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<tr>
<td>Capital Project #:</td>
<td>N/A</td>
<td></td>
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<tr>
<td>Operating Budget:</td>
<td>DRPA Risk Mgt. Commitment #770215, PATCO Risk Mgt. Commitment #770215</td>
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<td>Master Plan Status:</td>
<td>N/A</td>
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<td>Other Fund Sources:</td>
<td>N/A</td>
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<tr>
<td>Duration of Contract:</td>
<td>December 31, 2019 to December 31, 2020</td>
<td></td>
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<tr>
<td>Other Parties Involved:</td>
<td>Turner Surety &amp; Insurance Brokerage, Inc. (TSIB), Allied World National Assurance Company, and Indian Harbor Ins. Company</td>
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</tbody>
</table>
RESOLUTION

RESOLVED: That the Board of Commissioners authorizes staff to accept the proposed 12-month renewal quote from incumbent, Allied World National Assurance Company, for the $10 million primary limit, claims-made Cyber Liability policy, for the policy term December 31, 2019 to December 31, 2020, at an annual estimated premium of $78,438.00 (including the NJ PLIGA tax); net of commission; and be it further

RESOLVED: That the Board of Commissioners authorizes staff to accept the proposed 12-month renewal quote from incumbent, Indian Harbor Insurance, for the $10 million excess limit claims made Cyber Liability policy, for the policy term December 31, 2019 to December 31, 2020, at an 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. Commitment #770215 PATCO Risk Mgt. Commitment #770215 |
| 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, Inc. (TSIB), Allied World National Assurance Company, and Indian Harbor Insurance Company |