

CONTRACTOR DEVELOPMENT AND BONDING PROGRAM

MEMORANDUM OF UNDERSTANDING

BY AND BETWEEN

CITY OF LOS ANGELES

AND

**LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION
AUTHORITY**

ATTACHMENT - A

**CONTRACTOR DEVELOPMENT AND BONDING PROGRAM
MEMORANDUM OF UNDERSTANDING**

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THIS MEMORANDUM OF UNDERSTANDING (MOU), is made and entered into by and between the CITY OF LOS ANGELES (CITY) and the LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO). Each party joining this MOU will be responsible for its own activities as defined in this MOU.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this MOU on the 1st day of June, 2022 to be effective immediately for a twelve month term.

RECITALS:

- A. METRO is extending an agreement with the CITY to participate and access the CITY's Contractor Development Assistance and Bonding Program (CDABP). METRO will utilize existing CDABP program administration services, as needed provided through the CITY and its contracted broker, Merriwether & Williams Insurance Services (BROKER).
- B. The CITY and METRO require contractors to obtain bid, payment, and performance bonds when working on CITY or METRO projects.
- C. It has come to the attention of CITY and METRO that some small businesses are unable to compete for CITY or METRO work due to their difficulty obtaining the required surety bonds.
- D. The CITY'S RISK MANAGEMENT Office possesses certain requisite knowledge and resources to coordinate and assist in the administration of the CDBP. As such, METRO seeks to continue accessing the CITY's and their Broker/Service Provider's assistance in implementing and administering a comparable program on behalf of METRO.
- E. BROKER competed in a Request for Proposal process, and was selected by the CITY to be the BROKER on the CDABP.

Now, therefore, the parties do agree as follows:

1.0 CITY OF LOS ANGELES

The CITY will:

- 1.1 Assist in the coordination and implementation of the CDABP between BROKER, CITY and METRO to replicate a similar program on behalf of METRO.
- 1.2 Work with BROKER and METRO to design and structure a "shared resource – shared cost" arrangement between the parties.

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- 1.3 Share with METRO, CITY's experience and work product in implementing CDABP for the purpose of METRO's desire to sponsor a comparable program on behalf of METRO.
- 1.4 Assist METRO in developing the Broker/Service Provider's Scope of Services.
- 1.5 Coordinate with METRO in developing the BROKER Request for Proposal and Contract. Advise METRO on the administration of the Broker Contract to confirm Broker activities are in compliance with Contract terms.
- 1.6 Assist in establishing CDABP cost controls.
- 1.7 Conduct periodic reviews to verify compliance with MOU terms and conditions.
- 1.8 Develop rationale to allocate shared CDABP costs for consideration and acceptance by METRO.
- 1.9 Provide administrative services support as necessary.
- 1.10 Provide additional services as deemed necessary.
- 1.11 Administer the CDABP through the Office of the City Administrative Officer, Risk Management (RISK MANAGEMENT).

2.0 LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY

METRO will:

- 2.1 Implement contract with BROKER and administer CDABP for METRO contracting activities.
- 2.2 Review and pay monthly invoices directly to BROKER. Invoices will reflect costs for monthly BROKER services, third-party funds administration, financial analysis, etc.
- 2.3 Provide timely and accurate information to CITY when requested.
- 2.4 Attend meetings with CITY and BROKER, as necessary.

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- 2.5 Participate in the Request For Proposal (RFP) selection process with the CITY for BROKER.
 - 2.6 Establish and maintain a line of credit or other collateral instrument which allows for the issuance of program bond guarantees.
- 3.0 CDABP PROVISIONS:**
- 3.1 At METRO, the program will only be available to Small Business Enterprises (SBE), Disadvantaged Business Enterprises (DBE) and Disabled Veteran Business Enterprises (DVBE) contractors and subcontractors interested in bidding on METRO contracts.
 - 3.2 The program will provide for the use of financial guarantees to obtain bid, payment and performance bonds.
 - 3.3 BROKER invoicing will be submitted monthly to METRO and will only reflect actual services rendered.
 - 3.4 METRO must notify CITY prior to making any material changes to the CDBP components.
 - 3.5 The allocated percentages used to calculate the indirect CDABP costs for the next three fiscal years are included in the contract. This allocation percentage will be based upon each program agency's contract value as proportionately compared to the total of all program members' contract values combined. An alternative allocation methodology may be utilized if agreed upon by all CDABP members. Indirect percentages will be fixed for the term of the contract unless a member(s) contract amount changes during the course of the contract.
 - 3.6 Prior to the CDABP, program members must complete the following:
 - 1. Establish and/or identify account(s) to cover the costs for monthly BROKER invoices (amounts based on annual contract limits) and any future CDABP contractor defaults within that program members construction program (amount may need to be increased based upon higher levels of outstanding letters of credit or collateral).
 - 2. Assign a primary staff authority and a designee (in case of absence of the primary staff authority) to authorize letters of credit or collateral issuance in an expeditious manner.
 - 3. Sign and date the CDABP MOU.

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4. Assign staff to assist RISK MANAGEMENT in coordinating the CDABP.
5. Receive METRO Board approval of CDABP, including the use of Letters of Credit or other collateral instruments to serve as guarantees to program sureties.

4.0 INDEMNIFICATION

- 4.1 All parties to this agreement agree to hold each other harmless for all causes of actions, claims, charges or other demands of any nature, arising from the acts or omissions of the indemnifying party in regard to services provided under and during the term of this MOU, in accordance with California Government Code 895.4 and 895.6.

5.0 TERMINATION

- 5.1 This agreement may be canceled by any member of this MOU with or without cause on thirty (30) days written notice and payment in full of all proportioned CDABP fees, costs and expenses for services already rendered. Said notice, on the CITY's behalf, will be given by the City Administrative Officer or the Director of Risk Management as designee.

6.0 TERM OF MEMORANDUM OR UNDERSTANDING

- 6.1 The term of this MOU is coterminous with the CDABP Member's contract with the BROKER.

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Memorandum Of Understanding to be effective on the 1st day of June, 2022

By _____
RICHARD LLEWELLYN, JR
City of Los Angeles Administration Officer

By _____
DEBRA AVILA
Deputy Chief Vendor/Contract Management Officer METRO

APPROVED AS TO FORM:

MICHAEL N. FEUER, City Attorney

By: _____
DANIEL KREINBRING
Deputy City Attorney

MARY C. WICKHAM
County Counsel

By _____
MARY REYNA
Principal Deputy County Counsel

GLOSSARY OF TERMS

1. Broker – The person or company who works on behalf of the Program Members to assist small, MBE/WBE/OBE contractors in obtaining the required surety bonding. Must have a Broker's license to be a Broker.
2. Surety Bonds – The financial instrument, required by the CDABP to bid on projects, that is written for a specific amount and for a specific project. The dollar amount of the bond is the amount which the surety is willing to pay in case a CDABP contractor defaults on the project.
 - a. Bid Bond – A guarantee that, if awarded, the contractor will enter into a contract under the same terms and conditions as bid.
 - b. Performance Bond – A bond issued by a surety company guaranteeing to complete a construction contract if the contractor defaults.
 - c. Payment Bond - Guarantees that subcontractors of the prime contractor will be paid for labor and materials. These are often required in conjunction with performance bonds.
3. Surety – The bond company or guarantor that provides the bond on a specific project.
4. CDABP Contractor – The contractor or subcontractor who uses the CDABP to establish or increase their bonding capacity.
5. Third Party Funds Administrator – Manages progress payments from the CITY or METRO to a CDABP prime contractor or the CITY's or METRO 's prime contractor payments to a CDABP subcontractor, ensuring all subcontractors and material suppliers are appropriately paid.
6. Irrevocable Letter of Credit – A financial instrument that is used by a surety to drawdown from the Line of Credit as a form of a guarantee. It is irrevocable because the letter of credit cannot be modified unless all parties agree.
7. Line of Credit –A source of credit provided by a financial institution that is used for financial guarantees.
8. Underwriting Data – Data gathered by the BROKER and Surety to help assess the risks and make a determination on whether to provide a bond. Usually requires bank statements, tax statements, company financials, application data, etc.

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9. Drawdown – A withdrawal against a specific Letter of Credit or other collateral instrument following a default and surety paid claim to complete the contracted public work.
10. Financial Guarantees – An amount of money stated in dollars, that the CITY or METRO is willing to guarantee to the Surety in case of a default by a CDABP contractor against the bond.
11. Indirect Costs – Those costs of the CDABP that are not directly chargeable to a Department, Agency or project and are shared by each member of this MOU. These costs are typically all costs that occur prior to successfully bonding a contractor for a specific bid or contract. These costs would include CDABP outreach and administration, member consultation and technical assistance, financial statement preparation and review, review of application data, tax statements and company financials, and post award contract monitoring. It includes time spent working with CDABP broker, surety and CPA partners.
12. Direct Costs – Once a CDABP contractor identifies a CITY or METRO contract that they want to bid on, those subsequent third-party costs directly associated with securing the required bonds are considered direct costs. Unlike indirect costs, these costs are not shared by all MOU members but are charged directly to the contracting Department or agency. These costs typically include letter of credit fees for financial guarantees and TPFA fees. These costs are only incurred if the contractor is the successful low bidder.
13. CDABP Contractor Default – A CDABP contractor default occurs when a surety is obligated for payment under the guaranteed bond following a CDABP contractor nonperformance or nonpayment.
14. CDABP Member Agency – Agencies that are members of this MOU. Currently, there are two CDABP Member Agencies, the City of Los Angeles and the Los Angeles County Metropolitan Transportation Authority.