



## Board Report

File #: 2019-0156, File Type: Contract

Agenda Number: 28.

### CONSTRUCTION COMMITTEE MAY 16, 2019

**SUBJECT: SMALL BUSINESS BONDING ASSISTANCE PROGRAM**

**ACTION: APPROVE RECOMMENDATIONS**

#### **RECOMMENDATION**

CONSIDER:

- A. AUTHORIZING the Chief Executive Officer to award a Contract to Merriwether & Williams Insurance Services (MWIS) for a not to exceed amount of \$2,197,870 for a three-year Bonding Assistance Program, effective June 1, 2019 to May 31, 2022;
- B. ADOPTING a resolution, Attachment A, authorizing the Chief Executive Officer and other Authorized Officers to continue the \$4,000,000 line of credit with Bank of America at a cost of \$18,000 per year, for three years and to execute as needed, individual standby letters of credit at a cost of \$2,000 each or 2% of the value of each letter of credit executed, whichever is greater, for a not-to-exceed amount of \$294,000; and

(REQUIRES SEPARATE, SIMPLE MAJORITY VOTE OF THE FULL BOARD)

- C. AUTHORIZING the Chief Executive Officer to approve a no cost Memorandum of Understanding (MOU) with the City of Los Angeles (City) for participation in the City's Contractor Development and Bonding Assistance Program.

#### **ISSUE**

Metro responded to the small business community's request to implement a bonding assistance program that would provide support in obtaining the required bonding for construction companies seeking to participate on Metro construction contracts. The City of Los Angeles also identified bonding as a barrier for small contractors and implemented a citywide bonding assistance program. Metro piggy-backed on the City's contract to implement a Contractor Development and Bonding Assistance Program (CDBAP) for 1-year which was scheduled to end February 28, 2019.

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Metro staff again participated in the City's RFP process in November 2018, and is seeking to renew its memorandum of understanding (MOU) with the City, and issue a new contract with Merriwether and Williams (MWIS) to administer Metro's Contractor Development and Bonding Assistance program (CDBAP) for a total of 3 years. As part of this contract, MWIS will subcontract with a certified Small Business Enterprise (SBE) and a Disabled Veteran Business Enterprise (DVBE). MWIS has committed to a 19.06% SBE and 4.33% DVBE commitment.

## **BACKGROUND**

Previously, Metro staff participated in the City's request for proposal (RFP) process in November of 2017 for its Citywide Bonding Assistance Program, and partnered with the City via an MOU to provide contractor development and bonding assistance to contractors interested in construction contracts. The RFP panel selected Merriwether & Williams Insurance Services as the broker for this process, with whom Metro entered into a separate contract to implement its program. The CDBAP Pilot program, which Metro implemented for one year, provided training, business development, education and bonding assistance to many small businesses from March 1, 2018 to February 28, 2019. The contract was extended through April 2019 to allow for renegotiation and renewal of the CDBAP.

Government agencies are required to obtain, from their prime contractors, performance and payment bonds on public works contracts over \$25,000. Payment bonds are required by Public Contracts Code Section 7103 and shall be equal to 100% of the contract price. Public Contract Code Section 6825 requires a design-build entity to provide payment and performance bonds for the project and in no case shall the payment bond be less than the amount of the performance bond. FTA Circular 4220.1f states the Common Grant Rules require performance and payment bonds in the amount of 100% of the contract price for construction contracts. Therefore, Metro construction contracts require its prime contractors to provide Payment and Performance bonds in the amount of 100% of the contract price in the form and format provided by Metro.

Public Contract Code section 4108 states it is the responsibility of each subcontractor submitting bids to a prime contractor to be prepared to submit a faithful performance and payment bond, if so requested by the prime contractor. It should be noted that this same Section requires the prime contractor to state in its written or published request for bids if the expense of the bond(s) is to be borne by the subcontractor.

## **METRO'S PILOT PROGRAM SUMMARY**

Metro established a \$4,000,000 program line of credit with Bank of America, and a \$250,000 maximum or 40% (whichever is lower) per bond transaction cap dollar amount for contractors needing bonding assistance. The City of Los Angeles' program has the same established limits. Metro assembled a bonding Task Force consisting of the Diversity & Economic Opportunity Department, Risk Management, Treasury, Vendor/Contract Management and Project Construction Management.

Merriwether and Williams Insurance Services (MWIS) administered Metro's one-year pilot CDBAP

program from March 1, 2018 through April 30, 2019. MWIS provided bonding education and business development services to contractors through classes held at Metro and at MWIS offices. MWIS participated in outreach events throughout the county to engage with and educate small businesses on Metro’s contractor development and bonding program, and provided technical assistance on preparing businesses to become bondable. A business’ ability to secure a bond demonstrates the financial stability of the business. Therefore, training and business development is a critical component of Metro’s CDBAP program. Some of the services provided by MWIS during the pilot program period are listed below.

<b>Tasks Performed by Merriwether &amp; Williams</b>	<b>Number of times</b>
Conducted assessments or completed work plans for small businesses	123
Conducted enrollment meetings or contractor consultations	57
Referred contractors to resource providers or prime contractors for contracting opportunities	108
Attended or participated in Metro pre-bid conferences	46
Consulted small business owners on bonding/contractor development services	99
Process bond requests	4
Bonds issued	1
Referred small businesses to Metro certification, pre-qualification or vendor portal	59
Provided contract monitoring, project support or contract review for small businesses	22
Completed profiles for small businesses	114
Participated in sponsored events to promote or present Metro’s contractor development and bonding assistance program	318
Participated in Council District workshops to promote the program	11
Referred or encouraged small businesses to pursue contracting opportunities	1549

Over the past year, MWIS met with Metro staff bi-weekly to discuss outreach activities, ensuring small businesses were aware of Metro’s CDBAP program and providing staff with updates on the training and resources that were provided to small businesses. MWIS presented “Bonding101” workshops in several Metro Board Supervisorial districts, at small business events, and other construction outreach events where businesses could potentially require bonding assistance. MWIS presented or hosted informational tables about the CDBAP program at Metro pre-bid meetings, Transportation Business Advisory Council meetings, Meet the Primes, Meet the Buyers and other outreach events.

Although Metro processed 4 bond requests and issued one bond during the pilot period, in comparison, the City implemented their program for three years before issuing their first bond. Metro

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staff is encouraged that a bond was issued in the first year and anticipates more bonds will be issued as the CDBAP program gains exposure.

There were five agencies participating in this bonding program during the pilot period. The participating agencies include Los Angeles World Airports, Department of Water and Power, the Port of Los Angeles, SCM Public Works and Metro. It should be noted that the County of Los Angeles has joined this new consortium and is committed to participate in this new agreement.

## **DISCUSSION**

### **Findings**

The bonding program is a definite benefit to DBE, SBE, DVBE and minority owned businesses. In addition to providing bond support, the CDBAP program provides business assessment, business development planning, marketing, financial and proposal writing support for businesses seeking construction contracts. MWIS has worked with 114 businesses during the pilot year at Metro and learned that there are barriers to issuing bonds other than financial resources.

Contract opportunities: Businesses only need assistance with bonding after they have already secured a construction contract opportunity. If a contractor does not have a construction contract opportunity, they have no need for bonding, thus there is no need for Metro's CDBAP program. Staff has worked to ensure MWIS is present at every event possible where potential contracting opportunities are available to increase the exposure of the CDBAP program. Staff and MWIS have worked to present the CDBAP program to prime contractors so they may provide this resource to their subcontractors.

Program Exposure: The bonding assistance outreach events conducted by MWIS and Metro staff revealed that many businesses are not yet aware of Metro's CDBAP program. Staff is working on promoting the CDBAP program to ensure small businesses are aware that the program exists so more businesses may take advantage of the program. Staff recently launched its revamped Metro CDBAP website which includes links to contractors who are attending or who have completed MWIS' contractor development and bonding assistance training program. The website also includes highlights of the bond that was issued to G&F Concrete Cutting, Inc., and the groundbreaking ceremony of the Rosa Parks Station project. The prime contractor who provided the contracting opportunity to G&F Concrete Cutting, Inc. is also spotlighted, and staff intends to highlight other success stories on the CDBAP website.

Set-Aside Program: Metro's successful small business Set-Aside Program was recently revised which may create a greater need for the CDBAP program. Previously, three responsible bids were required to execute an award to a small business on a set-aside solicitation. The revised requirements will allow a contract award to be executed if one responsible bid is received from a small business responding to a set aside solicitation. The set-aside program may generate more construction contracting opportunities that may require bonding assistance.

Staff also believes that more time is needed to promote and implement Metro's CDBAP program. Staff will continue to work with MWIS and the small business community to identify barriers to

securing bonding and developing remedies to eliminate any hindrances.

Metro staff is requesting to continue the bonding program for 3 years. Metro staff is also considering conducting more outreach with internal staff for this program compared to the pilot year.

### **IMPLEMENTATION OF STRATEGIC PLAN GOALS**

Approval of this item supports Metro's Strategic Goal 5.5: Metro will expand opportunities for businesses and external organizations to work with us. The CDBAP program expands Metro's capability to contract with construction companies on our projects, and also expands small businesses' ability to qualify for larger construction contract opportunities that have increased bonding requirements.

### **FINANCIAL IMPACT**

Staff is requesting to renew the CDBAP program at a not-to-exceed cost of \$2,491,870 for three years. This includes \$2,197,870 for the MWIS contract and \$294,000 for Bank of America services. This cost represents nearly a 40% annual reduction compared to the budget approved for Metro's CDBAP pilot program.

The funding amount is based on the anticipated level of services. Funding for these services is included in the proposed FY20 budget for the various Metro projects. Costs of the program will be paid by the projects for which the contractors are providing services. The project managers and Chief Vendor/Contract Management Officer will be accountable for budgeting the costs in future years.

### **Impact to Budget**

The projects utilizing this program are funded with multiple sources of funds: federal and state grants, federal loans, bonds and local sales taxes, some of which are eligible for bus and rail operations and capital improvements.

### **ALTERNATIVES CONSIDERED**

The Metro Board could choose to not renew the CDBAP program, however, that would not provide small businesses the bonding support they might need to perform on Metro construction projects.

### **NEXT STEPS**

- Upon Board approval, staff will execute a Contract with MWIS for a 3 year term for bonding assistance services.
- Execute a no cost Memorandum of Understanding with the City of Los Angeles for a 3 year term.

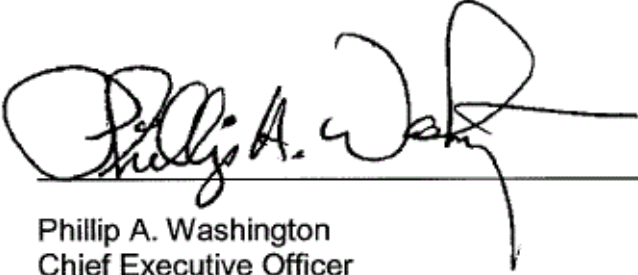
- Report program activity and performance to the Board after 12 months

**ATTACHMENTS**

Attachment A - Board Resolution to Authorize Line of Credit

Prepared by: Keith A. Compton, Director DEOD, (213) 922-2406  
Tashai Smith, DEO DEOD, (213) 922-2128

Reviewed by: Debra Avila, Chief Vendor/Contract Management Officer,  
(213) 418-3051



Phillip A. Washington  
Chief Executive Officer