Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

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FINANCE, BUDGET, AND AUDIT COMMITTEE
JUNE 14, 2023

SUBJECT: EXCESS LIABILITY INSURANCE PROGRAM

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

AUTHORIZE the Chief Executive Officer to negotiate and purchase Public Entity excess liability policies with up to $300 million in limits at a not-to-exceed premium of $27 million for the 12-month period effective August 1, 2023, to August 1, 2024.

ISSUE

Metro's Public Entity excess liability insurance policies (which includes transit rail and bus operations) expire August 1, 2023. Insurance underwriters will not commit to final pricing until three weeks before the current program expires on August 1st. Consequently, we are requesting a not-to-exceed amount for this renewal pending final pricing and carrier selection. Without this insurance, Metro would be subject to unlimited liability for bodily injury and property damage claims resulting from, primarily, bus and rail operations.

BACKGROUND

Metro's insurance broker, USI Insurance Services ("USI") is responsible for marketing the excess liability insurance program to qualified insurance carriers. Quotes are currently being received from carriers with A.M. Best ratings indicative of acceptable financial soundness and ability to pay claims. The premium indication below is based on current market expectations. Final pricing, however, is not available until approximately 21 days prior to binding coverage.

Metro established a program of excess liability insurance to protect against insured losses. Each year, Risk Management meets with USI to prepare for the upcoming marketing process.

Initial discussions begin in the third quarter of the fiscal year through an evaluation of market conditions to determine the availability of coverages and at what levels of premium. The annual stewardship meeting is conducted in January to identify what data will be required including loss development, ridership projections, mileage, and revenue hour estimates. Risk Management obtains the data including targeted completion dates of various projects to provide an accurate account of the present and future liability exposures within the agency.

The data is then forwarded to USI to present to the domestic insurance marketplace as well as international markets in London and Bermuda. Due to timing requirements, USI approaches underwriters in March and April to ensure that data is deemed current. Initial indications of interests and costs become apparent in late April or early May.

USI provides a not-to-exceed number that serves two functions. First, the number provides an amount Risk Management may approach the CEO and Board to obtain approval for binding of the new program, which mitigates a potential gap in insurance coverage. Second, the number allows USI ample time to continue to negotiate with underwriters to ensure that Metro obtains the most competitive pricing available.

DISCUSSION

For the 2023-2024 excess liability insurance renewal, staff and USI highlighted three main objectives. First, to mitigate insurer's concerns with increased operating exposures, the marketing presentation emphasized the lower risk of light rail and subway services, in addition to the safety enhancements and pilot programs added to bus operations over the past years. Second, we desired to continue a diversified mix of international and domestic insurers to maintain competition and reduce dependence on any single insurance carrier. Third, we desired to obtain total limits of $300 million while maintaining an $8 million self-insured retention for rail claims and up to $20 million for all other claims but were open to increasing the self-insured retention structure if needed to retain reasonable premium pricing.

USI presented Metro's submission to all potential insurers in the U.S., London, European, and Bermuda markets representing over 25 carriers to create interest in all layers of Metro's insurance program. Insurance executives both nationally and internationally, articulated continuing increased underwriting discipline for transportation and public entity risks. Insurers reviewed detailed loss information on Metro claims and performed detailed actuarial valuations on Metro's claims.

In addition, this year, Deputy Chief Risk, Safety, and Asset Management Officer accompanied USI to London, Bermuda, and New York to meet with current and potential excess liability program underwriters. USI arranged meetings with 35 individuals in 25 meetings over the course of 5 days. Although the Metro submissions are very comprehensive, in person meetings provided the underwriters with the opportunity to ask questions and obtain more specific information about operations, safety, and risk management programs. Most importantly, these meetings foster the relationships between Metro and its underwriters.

Last year, we obtained $300 million in excess liability coverage with an $8 million retention for rail claims and $12.5 million retention for all other claims with selected additional retentions up to $7.5 million. The relatively calm market enjoyed for over 20 years has changed drastically over the last four years. Extensive loss development related to auto liability, caused the market to "harden" significantly over the last several years, resulting in less carrier capacity and higher premiums. The trend continues this year.

USI faces many challenges in marketing Metro's liability insurance renewal. Carrier results from public agencies in California have been significantly worse than in other states. A very limited pool of carriers is willing to consider writing public entity policies. Metro is no exception primarily due to its size and its plaintiff-friendly jurisdiction of Los Angeles County. The loss development carriers are experiencing on accounts, including Metro's, has resulted in many ceasing operations entirely in California, with some of them pulling out of the U.S. entirely. Replacing retreating carriers has proved challenging and Metro's recent loss history has not been stellar. Consequently, another rate increase is anticipated in the excess liability program premiums.

Metro's August 1st insurance placement will reflect higher insurance premiums necessitated by tightened underwriting guidelines and negative developments in auto liability losses. USI recommends maintaining the bifurcated program where Metro will keep an $8 million self-insured retention (SIR) on rail related risks and up to $20 million for bus and other non-rail related risks. Carriers are not willing to insure Metro's bus operations risk for less retention. Negotiations with carriers are ongoing and this action seeks authority to bind Public Entity excess liability coverage with minimum limits of $300 million and a not-to-exceed SIR of $25 million. A higher SIR may provide Metro with additional flexibility to contain premium costs. USI will continue to seek options (including alternate retentions and quota share options) and more favorable premiums until the renewal date.

Attachment A provides an overview of the proposed 2023-2024 Public Entity Excess Liability Program, which mirrors the current 2022-2023 program structure. Due to a challenging hard market, additional limits are not being offered. Risk Management recommends proceeding with renewal at a minimum coverage limit of $300 million and a not-to-exceed SIR of $25 million.

DETERMINATION OF SAFETY IMPACT

Approval of this recommendation will not impact the safety of Metro's patrons or employees.

FINANCIAL IMPACT

Funding for eleven months, or $24,750,000, of this action is included in the FY24 Proposed Budget in cost center 0531, Risk Management - Non Departmental Costs, under projects 300022 - Rail Operations - Blue Line, 300033 - Rail Operations - Green Line, 300044 - Rail Operations - Red Line, 300066 - Rail Operations - Expo Line, 300077 - Crenshaw Line, 301012 - Metro Orange Line, 306001 - Operations Transportation, and 320011 - Union Station in account 50602 (Ins Prem For Gen Liability). Additional funding required to cover premium costs beyond FY24 budgeted amounts will be addressed by fund reallocations during the year.

The remaining month of premiums, $2,250,000, will be requested in the FY25 Budget development, cost center 0531, Risk Management - Non Departmental Costs, under projects under projects 300022 - Rail Operations - Blue Line, 300033 - Rail Operations - Green Line, 300044 - Rail Operations - Red Line, 300066 - Rail Operations - Expo Line, 300077 - Crenshaw Line, 301012 - Metro Orange Line, 306001 - Operations Transportation, 320011 - Union Station in account 50602 (Ins Prem for Gen Liability).

Impact to Budget

The current fiscal year funding for this action will come from the Enterprise, General and Internal Service funds paralleling funding for the actual benefiting projects charged. These funds are eligible for bus/rail operating expenses. No other sources of funds were considered because these are the activities that benefit from the insurance coverage.

EQUITY PLATFORM

Metro's insurance portfolio provides liability coverage and coverage for Metro-owned property, stations, tunnels, bridges, rolling stock fleet, right of ways, facilities, and buildings that provide transportation service and benefits. Metro's insurance portfolio ensures liability coverage and that its facilities, rolling stock fleet, and infrastructure, which serve these groups, are covered by insurance policies in the event of a major loss or damage. Valuation of these assets conforms to the insurance industry's replacement cost methodology. The proposed action supports Metro's ability to safely serve the communities and customers who rely on Metro's transportation services and assets, a majority of whom are lower income, Black, Indigenous and other People of Color (BIPOC), people with disabilities, and/or do not own a private vehicle.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendation supports strategic plan goal # 5, "Provide responsive, accountable and trustworthy governance within the LA Metro organization." The responsible administration of Metro's risk management programs includes the use of insurance to mitigate large financial risks resulting from unlimited liability for bodily injury and property damage claims resulting from, primarily, bus and rail operations.

ALTERNATIVES CONSIDERED

Due to the continued hard market, there are no additional limits in coverage for consideration. SIRs above the current structure levels are being proposed and considered, and negotiations are ongoing. Attachment A reflects the proposed program structure, which mirrors the current 2022-2023 policy term. The only variation will be to the SIR, which may end up being higher than the current program structure.

NEXT STEPS

Upon Board approval of this action, we will advise USI to proceed with the placement of the excess liability insurance program outlined herein effective August 1, 2023.

ATTACHMENTS

Attachment A - Public Entity Liability Proposed Carriers and Program Structure

Attachment B - Proposed Renewal and Premiums History

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