

**Board Report**

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**File #:** 2015-1104, **File Type:** Contract

**Agenda Number:** 8.

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**FINANCE, BUDGET AND AUDIT COMMITTEE  
SEPTEMBER 16, 2015**

**SUBJECT: GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES**

**ACTION: EXERCISE THE FIRST THREE-YEAR OPTION**

**RECOMMENDATION**

AUTHORIZING the Chief Executive Officer to execute Contract Modification No. 4 to Contract No. PS05312717, with **Carl Warren & Company, for general liability claims administration services**, to exercise the first three-year option in the amount of \$7,721,051 increasing the total contract value from \$10,307,876 to \$18,028,927 and extending the contract term from October 31, 2015 to October 31, 2018.

**ISSUE**

Contract No. PS05312717 currently provides public liability and property damage third-party claims administration (TPA) services. The contract consists of a four-year base period and two, three-year options for a combined total of \$25,896,641.

On August 4, 2011, the Board authorized the CEO to award the ten year and two month fixed-price contract to CWC in an amount of \$25,896,641 for all ten years inclusive of two, three-year options. CWC was awarded the contract with a base term from September 1, 2011 to October 31, 2015. CWC was the lowest priced proposer at the time and based on our assessment of industry conditions and regional economic growth occurring since the contract award in 2011, pricing has hardened in the interim. Staff conducted a market price assessment in August 2015 by contacting four of the original proposers. The two proposers who responded to our inquiry have increased their original proposed price of claims administration services by 3-5%.

The Board approved a motion at the June 26, 2014 Board meeting requiring all requests to exercise contract options exceeding \$500,000 annually to be approved by the Board. This motion effectively rescinded the CEO's authority to execute a contract modification to exercise the options under this contract.

We are returning to the Board for authorization to exercise the first three-year option. Staff has determined that the previously negotiated option prices with CWC are fair, reasonable and will result in cost savings to Metro. The approval of this action is required to continue processing public liability claims timely and seamlessly.

## **DISCUSSION**

Consistent with practice of many other public agencies including the County of Los Angeles, the Los Angeles Unified School District and others, we use the services of a TPA to investigate, evaluate and resolve all general liability claims, primarily bus accidents, valued at \$50,000 or less. More than 95% of claims received are valued at less than \$50,000, including minor property damage and bodily injury claims. In 1998, we assumed responsibility for claims administration in-house for claims valued at \$50,000 and greater; thereby, reducing contract costs and allowing for better control of high value claims by our executive management and improved coordination with counsel.

Subrogation of losses against a responsible third party is also part of the services provided by the TPA. Over the last seven years, we received gross recoveries of more than \$1 million annually from subrogation or cross complaints and the TPA receives an incentive fee on subrogated cash receipts. Contract incentives for subrogation recoveries are consistent with industry best practice since they encourage the TPA to recover as much as possible from third parties.

We received 2,848 claims in fiscal year 2013, 2,715 claims in fiscal year 2014 and 2,618 claims in fiscal year 2015. The open general liability claim inventory on July 31, 2015 was 2,183 claims. Processing claims with an inventory of this size requires the issuance of approximately 700 payments monthly to claimants, attorneys, experts and others along with processing approximately 2,000 incoming and 1,000 outgoing pieces of mail. The expertise and infrastructure of a professional TPA in resolving these claims and litigation is essential for structuring a competitive and cost-effective program.

Our current TPA, CWC, provides staff and management of 24 individuals to support claims administration in-house at the Gateway Plaza building on the 10th floor in Risk Management. CWC staff provides claims adjusting, 1099 and W-9 processing, initial claim data entry as well as investigation services. They receive a 20% incentive fee on subrogated cash receipts which is less than the 25% considered middle of the industry practice range. CWC is providing satisfactory claims administration and subrogation services. CWC subrogation recoveries exceeded \$1.1 million in each of the prior four years of the contract.

CWC was by far the lowest price proposer out of seven proposers in the competitive procurement process. CWC was also the highest scoring proposer using the weighted values defined in the original RFP document. Attachment A summarizes the procurement activity. Under the current contract, CWC meets their 21.8% commitment to small business participation through the use of subcontractor Sam Hooper and Associates. Although not a requirement at the time, the small business subcontractor is also a qualified DBE.

CWC has been in the claims industry for over 70 years and has handled claims for such clients as Long Beach Transit, Gardena Transit, County of Los Angeles, California Joint Powers Insurance Authority, Santa Clara Valley Transportation Authority and San Mateo County Transit District.

Attachment B provides the history of contract amendments and modifications.

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## **DETERMINATION OF SAFETY IMPACT**

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

## **FINANCIAL IMPACT**

The funding for eight months of \$1,715,789 for this action is included in the FY16 budget in cost center 0531, Non-Departmental - Risk Management, under project 100018 (PRMA-PLPD).

Since this is a multi-year contract, the Executive Director, Risk, Safety, and Asset Management will be accountable for budgeting the cost in future years. In FY15, \$2,525,595 was expensed on this contract.

### **Impact to Budget**

Approval of this action has no impact on the FY16 budget. The sources of funds for this action are bus and rail operations eligible. No other sources of funds were considered for this activity because TPA services almost exclusively support bus and rail operations.

## **ALTERNATIVES CONSIDERED**

Staff considered a new procurement action for TPA services but prefers to exercise the first of two, three-year options. On-boarding a new contractor requires significant staff resources, lead time and opportunity costs to complete the estimated twelve-month procurement process. Once the new contractor is issued the notice to proceed, a transition period of six to twelve months could be expected. New staff will need to be trained on the RiskMaster claims administration system, learn the internal claims administration process and then develop valuable internal contacts to facilitate adjusting the claims timely and efficiently. We did not consider a new procurement as a viable option given the availability of option years, on-boarding costs and the need to renew the current contract on a month-to-month basis during the transition in the event another contractor prevailed in the solicitation process.

We also considered providing the service through Metro in-house staff. This alternative would require the hiring of up to 30 additional qualified full-time staff to administer the general liability claims currently administered by CWC. CWC currently provides 24 dedicated claims staff as well as additional off-site non-dedicated staff for support activities. Hiring and retaining full-time staff would be very challenging for Metro because we would need to attract, train and retain a sufficient number of qualified employees in this industry's highly competitive market. Staff's assessment indicates this is not a cost effective option for Metro since the cost to self-administer would be similar, if not more, than the costs of contracting for this service.

## **NEXT STEPS**

Upon Board approval of this action, staff will execute a contract modification with CWC under the current Contract No. PS05312717, exercising the first three-year option from November 1, 2015 to October 31, 2018.

**ATTACHMENTS**

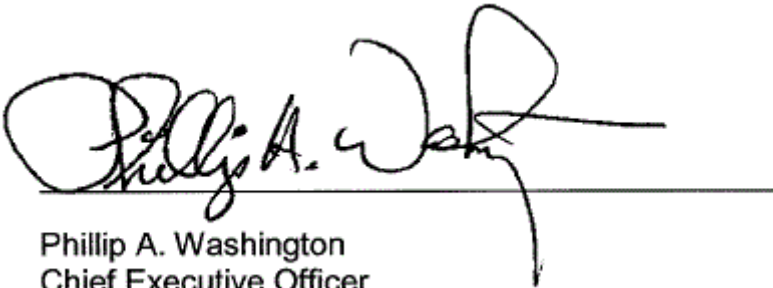
Attachment A - Procurement Summary

Attachment B - Contract Modification/Change Order Log

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Phillip A. Washington  
Chief Executive Officer

## PROCUREMENT SUMMARY

GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES  
PS05312717

1.	<b>Contract Number:</b> PS05312717			
2.	<b>Contractor:</b> Carl Warren & Company			
3.	<b>Mod. Work Description:</b> Exercise first three-year option			
4.	<b>Contract Work Description:</b> Provide public liability/property damage general liability claims third party administrative services.			
5.	<b>The following data is current as of:</b> 08/14/15			
6.	<b>Contract Completion Status</b>		<b>Financial Status</b>	
	<b>Contract Awarded:</b>	August 23, 2011	<b>Contract Award Amount:</b>	\$10,307,876
	<b>Notice to Proceed (NTP):</b>	August 23, 2011	<b>Total of Modifications Approved:</b>	\$0
	<b>Original Complete Date:</b>	October 31, 2015	<b>Pending Modifications (including this action):</b>	\$7,721,051
	<b>Current Est. Complete Date:</b>	October 31, 2018	<b>Current Contract Value (with this action):</b>	\$18,028,927
7.	<b>Contract Administrator:</b> Maria V. Lechuga		<b>Telephone Number:</b> (213) 922-7206	
8.	<b>Project Manager:</b> Juanita Welch		<b>Telephone Number:</b> (213) 922-4956	

**A. Procurement Background**

This Board Action is to approve Modification No. 4 for PS05312717 issued to exercise first three-year option.

This contract modification will be processed in accordance with Metro's Acquisition Policy and the contract type is a firm fixed price.

On August 4, 2011, Contract No. PS05312717, Item #29, was approved by the Metro Board. The contract provides for general liability claims administering services for Metro. The contract was awarded on August 23, 2011, to Carl Warren & Company. The contract firm fixed prices are for a 4-year and two-month base with two, three-year options in the amount \$25,896,641 for all ten years.

(Refer to Attachment B – Contract Modification/Change Order Log)

**B. Cost/Price Analysis**

Option years were fully negotiated at the time of contract award authorization and determined to be fair and reasonable. CWC was the lowest priced proposer at the time and based on our assessment of industry conditions, it is believed that pricing has not decreased. With regional economic growth occurring since the contract award in 2011, it is anticipated that market pricing may have increased.

<b>Proposal Amount</b>	<b>Metro ICE</b>	<b>Negotiated Amount</b>
\$7,721,051	\$7,721,051	\$7,721,051

**C. Small Business Participation**

Carl Warren & Company made a 21.8% Disadvantaged Business Enterprise (DBE) Anticipated Level of Participation (DALP) commitment. Current DBE participation is 22.25%. In October 2014, the Diversity & Economic Opportunity Department (DEOD) approved Carl Warren’s request to substitute Fu-Gen, Inc., a DBE firm that is no longer in business. Carl Warren added Sam Hooper & Associates, a DBE. Carl Warren is currently exceeding their DALP commitment.

<b>SMALL BUSINESS COMMITMENT</b>	<b>21.8% DALP</b>	<b>SMALL BUSINESS PARTICIPATION</b>	<b>22.25% DALP</b>
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	<b>DBE Subcontractors</b>	<b>Ethnicity</b>	<b>% Committed</b>	<b>Current Participation<sup>1</sup></b>
1.	Fu-Gen, Inc.	African American	21.8%	17.75%
2.	Sam Hooper	African American	Added	4.50%
		<b>Total</b>	<b>21.8%</b>	<b>22.25%</b>

**D. Living Wage Service Contract Worker Policy**

The Living Wage and Service Contract Worker Retention Policy is not applicable to this modification.

**E. Prevailing Wage Applicability**

Prevailing wage is not applicable to this modification.

**CONTRACT MODIFICATION/CHANGE ORDER LOG**  
**GENERAL LIABILITY CLAIMS ADMINISTRATION SERVICES**  
**PS05312717**

<b>Mod. No.</b>	<b>Description</b>	<b>Date</b>	<b>Amount</b>
1	Additional scope for Workers' Compensation Subrogation and related services	October 28, 2014	\$0
2	Amend Special Provision 11, Subrogation, for additional requirements to task	October 28, 2014	\$0
3	Revise Special Provision 04, Approved Subcontractors & Suppliers, to replace subcontractor	November 20, 2014	\$0
4	<b>Pending Board Approval</b>		<b>\$7,721,051</b>
	<b>Total:</b>		<b>\$7,721,051</b>