



## Board Report

File #: 2022-0786, File Type: Contract

Agenda Number: 18.

### CONSTRUCTION COMMITTEE FEBRUARY 16, 2023

**SUBJECT: SMALL BUSINESS BONDING ASSISTANCE PROGRAM**

**ACTION: APPROVE RECOMMENDATIONS**

#### **RECOMMENDATION**

CONSIDER:

- A. 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;
- B. AUTHORIZING the Chief Executive Officer to award a Contract to Merriwether & Williams Insurance Services (MWIS) for a not to exceed amount of \$2,650,780 for a three-year Bonding Assistance Program, effective March 1, 2023 to February 28, 2026, which piggy-backs on the City of Los Angeles' contract; and

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

- C. 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.

#### **ISSUE**

Metro is seeking to award a new three-year contract with Merriwether & Williams Insurance services, Inc. (MWIS) to administer its Contractor Development and Bonding Assistance Program (CDBAP). The current contract was awarded in June 2019 for three years and extended in April 2022 by the Metro Board for an additional 12 months. The contract is scheduled to expire on May 31, 2023. Metro is piggy-backing on the City of Los Angeles' CDBAP contract, and the City has awarded a new three year contract with MWIS which will expire on August 30, 2025, to administer their CDBAP program. Metro is also partnering with the City to share resources and reduce certain costs for consultant services. With the exception of the Contractor Finance Assistance Program (CFAP)

budget approved by the Metro Board in April 2022, the adoption of this contract will supersede the previous contract extension scheduled to terminate on May 31, 2023.

Recommendation “C” requires a separate majority vote of the Board since debt is being incurred to support the CDBAP program.

## **BACKGROUND**

Metro participated in a pilot bonding assistance program and piggy-backed on the City of Los Angeles’ contract in 2018 and renewed the program with a three-year contract with MWIS that became effective June 1, 2019, and was scheduled to expire on May 31, 2022. The City of Los Angeles was not able to complete its procurement process to award a new contract to provide CDBAP services and approved two, as-needed six-month contract extensions until a new contract could be awarded. To align with the City’s contract extension, the Metro Board approved two, as-needed six-month contract extensions in April of 2022 until a new contract could be awarded.

Metro established a \$4,000,000 CDBAP line of credit for the program with Bank of America. The program provides bonding assistance to small businesses for a maximum amount of \$250,000 or 40% of the bond (whichever is lower) per bond transaction cap dollar amount. Other agencies partnering in the CDABP program include the Los Angeles World Airports, the Department of Water and Power, the Port of Los Angeles, SCM Public Works, and the County of Los Angeles.

Metro has issued five bonds to date for an aggregate amount of \$1.25 million to assist certified small businesses to bond and perform on over \$15 million in Metro contract awards on construction projects. Of the five bonds, two have been completed and are shown below.

Small Business Name	Assistance Amount	Metro Project	Cert. Type	Small Business Contract Award	Status
G&F Concrete	\$250,000	Rosa Parks Willowbrook Station	DBE SBE	\$1,253,850	Completed
SJN Builders, Inc.	\$250,000	Rosa Parks Willowbrook Station	SBE	\$5,091,101	Completed
KPA Constructors, Inc.	\$250,000	Regional Connector Transit Corridor	DBE SBE	\$3,691,555	Active
Global Electric	\$250,000	Westside Purple Line Section 1	DBE SBE	\$3,192,000	Active
KPA Constructors, Inc.	\$250,000	Westside Purple Line Section 1	DBE SBE	\$1,850,000	Active
Total				\$15,078,506	

Additionally, approximately 251 small business owners have graduated from the training academies provided by the consultant. Of these, 130 small business owners graduated from Metro sponsored training academies. MWIS provides staff with three specific program metrics that are used as key

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performance indicators that are reported to Metro on a monthly basis. The key performance indicators below reflect activity from June 1, 2019 through October 31, 2022.

- MWIS has completed over 727 assessments of small businesses and completed workplans in an effort to increase their capacity.
- MWIS has referred over 556 small businesses to Metro's Vendor Portal, Certification or Pre-Qualification resources.
- MWIS has completed or enhanced over 592 contractor profiles to assist small businesses in strengthening their marketing plans.

## **DISCUSSION**

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.

Staff also explored the feasibility of increasing the CDBAP program limit above \$250,000. Staff learned that the sureties that guarantee these bonds are comfortable with \$250,000 limit considering the potential risks involved. The CDBAP program consultant also reported that the current level of support adequately meets the needs of the small business community. However, future bond support may be available but only on a case-by-case basis.

Metro staff has also implemented the Contractor Finance Assistance Program (CFAP) which is part of the CDBAP program. The CFAP allows the certified small business to access up to 25% of their contract to help with a financial crisis such as delayed invoice payments or other Metro contract related costs the may present a financial barrier.

## **DETERMINATION OF SAFETY IMPACT**

No safety impact

## **FINANCIAL IMPACT**

The Board's approval of this contract includes the cost to continue the \$4 million line of credit with Bank of America at \$18,000 per year for a three-year total of \$54,000; the cost to execute individual stand-by letters of credit at 2,000 each up to \$80,000 per year depending on the number requested by certified small businesses at a cost not to exceed \$240,000 for three years, and the three-year

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contract with MWIS in the amount of \$2,650,780.

The budget for the remainder of fiscal year 2023 is already included in the adopted budget. Since this is a multiyear contract, Bonding Program Manager and Cost Center manager are responsible for future year budgets through the Annual Budget Development process.

### Impact to Budget

Current fiscal year costs for the MWIS contract and the Line of Credit fees are in Cost Center 2130. Funding will be from eligible and available funding sources which include General Funds. This fund is eligible for Metro Bus and Rail operations and capital expenses. Costs for individual letters of credit will be paid by the projects for which the contractors are providing services.

### EQUITY PLATFORM

Staff recommendations will facilitate the implementation of programs that support local small, disadvantaged, minority, women and veteran owned businesses to become more sustainable, financially stable, and have access to capital like larger competing companies. The CDABP has assisted certified small businesses in capturing over \$15 million dollars in Metro contracts. These SBE and DBE contract dollars were reflected in the appropriate fiscal years towards Metro's annual percentage goals. Metro has set aspirational targets to achieve 48% small business participation in its' contracting by 2028. As staff administers programs such as the CDABP, it will assist in meeting Metro's 48 by 28 aspirational targets and strengthen efforts to grow small and disadvantaged business enterprises.

Staff supports continuing this program to provide financial, capacity building and bonding services to small businesses in this region. This was an open procurement by the City of Los Angeles and Merriwether & Williams was the only respondent to the request for proposal. Merriwether & Williams Insurance Services made a 19.5% SBE and 4.5% DVBE commitment to subcontractors performing on Metro's contract. On Metro's current contract, Merriwether & Williams made a 23.33% commitment and has attained 34.02% participation to date.

### IMPLEMENTATION OF STRATEGIC PLAN GOALS

The recommendation supports strategic plan goal 5.5: Metro will expand opportunities for businesses and external organizations to work with us. The CDABP 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.

### ALTERNATIVES CONSIDERED

The Metro Board could choose not to renew the CDABP program which would negatively impact small businesses by not providing the development, bonding and financial support that might be needed to perform on Metro contracts.

### NEXT STEPS

- Upon Board approval, staff will execute a renewal Contract with MWIS for a three-year term.
- Extend the line of credit with Bank of America for a three-year term.
- Execute a no cost Memorandum of Understanding with the City of Los Angeles for a three-year term.

## ATTACHMENTS

Attachment A - Contractor Development and Bonding Program MOU

Attachment B - Board Resolution

Attachment C - DEOD Summary


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Stephanie N. Wiggins  
Chief Executive Officer

**ATTACHMENT - A**

**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 February, 2023 to be effective immediately for a three year 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.



## **ATTACHMENT - A**

- 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.

- 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 twelve months 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.

## **ATTACHMENT - A**

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 1<sup>st</sup> day of February, 2023

By   
\_\_\_\_\_  
Matthew W. Szabo  
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

DAWYN R. HARRISON  
Acting County Counsel

\_\_\_\_\_  
By: RICHARD P. CHASTANG  
Assistant 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.

## **ATTACHMENT - A**

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.

BOARD RESOLUTION

RESOLUTION OF THE LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY  
AUTHORIZING ENTERING A LINE OF CREDIT FACILITY TO SUPPORT THE BONDING ASSISTANCE PROGRAM

WHEREAS, this Board of Directors deems it desirable and in the best interest of the agency to enter into a Line of Credit with a financial institution to support the Bonding Assistance Program, and

WHEREAS, this Board of Directors has broad authority to establish such Line of Credit indebtedness, and

WHEREAS, the Line of Credit to support the Bonding Assistance Program has a strong transportation and public purpose

NOW, THEREFORE, BE IT RESOLVED, that this agency establish an annually renewable Line of Credit (LOC) up to \$4,000,000.

RESOLVED FURTHER that the Chief Executive Officer, Chief Financial Officer, or Treasurer of this agency are hereby authorized, directed and empowered to execute, for and on behalf of this agency and in its name, any and all documents required in connection with the Line of Credit, including but not limited to any agreements and notes with such changes, thereto as the person executing same shall approve, such approval to be conclusively evidenced by the execution and delivery thereof.

RESOLVED, that the officers of this agency are, and each acting alone is, hereby authorized to do and perform any and all such acts, including execution of any and all documents and certificates, as such officers shall deem necessary or advisable, to carry out the purposes and intent of the foregoing resolutions.

RESOLVED FURTHER, that any actions taken by such officers prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby are hereby ratified, confirmed and approved as the acts and deeds of this agency.

**DEOD SUMMARY****SMALL BUSINESS BONDING ASSISTANCE PROGRAM****A. Small Business Participation**

The Diversity & Economic Opportunity Department (DEOD) did not establish an SBE/DVBE goal for this procurement. Merriwether & Williams Insurance Services made a 19.5% SBE and 4.5% DVBE commitment.

<b>SBE Subcontractor</b>		<b>% Committed</b>
1.	3D Networks	19.5%
<b>Total SBE Commitment</b>		<b>19.5%</b>

<b>DVBE Subcontractor</b>		<b>% Committed</b>
1.	G&C Equipment Corporation	4.5%
<b>Total DVBE Commitment</b>		<b>4.5%</b>

**B. Living Wage and Service Contract Worker Retention Policy Applicability**

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

**C. Prevailing Wage Applicability**

Prevailing wage is not applicable to this contract.

**D. Project Labor Agreement/Construction Careers Policy**

Project Labor Agreement/Construction Careers Policy is not applicable to this Contract. PLA/CCP is applicable only to construction contracts that have a construction related value in excess of \$2.5 million.