

REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
7	05/23/16	Open	Action	05/17/16

Subject: Approving the Second Amendment to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 with Merriwether & Williams Insurance Services

ISSUE

Whether or not to approve the Second Amendment to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 with Merriwether & Williams Insurance Services.

RECOMMENDED ACTION

Adopt Resolution No. 16-05-____, Approving the Second Amendment to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 with Merriwether & Williams Insurance Services.

FISCAL IMPACT

Budgeted:	Yes	This FY:	\$	60,239
Budget Source:	Capital	Next FY:	\$	n/a
Funding Source:	New Starts, Prop 1B, Revenue Bonds, Measure A, Developer Fees	Annualized:	\$	60,239
Cost Cntr/GL Acct(s) or Capital Project #:	WBS 410.08.07.03 South Sacramento Corridor Phase 2	Total Amount:	\$	60,239
Original Contract	\$ 265,340			
Amendment 2	\$ 60,239			
Total Budget	\$ 325,579			

DISCUSSION

On November 19, 2012, RT entered into a contract with Merriwether & Williams Insurance Services (“M&W”) for Brokerage Services for Owner Controlled Insurance Program (OCIP) for South Sacramento Corridor Phase 2 (SSCP2).

An OCIP is an insurance program purchased by the owner of the project (“Project Owner”) that consolidates the workers’ compensation and general liability insurance coverages for most participants in a construction project with a high engineer’s cost estimate. The Project Owner buys the insurance coverage for qualified parties and offsets the cost of insurance through removal of contractor and subcontractor insurance costs that are typically included in the bid price of a construction project with traditional contractor-provided insurance. This consolidated insurance program increases the volume of insurance premium for a single insurer or insurance group and can generate discounts on premium costs. If losses are kept low through the

Approved:

Presented:

Final 05/18/16

General Manager/CEO

Chief Counsel

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administration of an aggressive safety program, which is an element of an OCIP, additional savings can accrue to the Project Owner, through the return of any funds remaining in the prefunded Loss Fund. As a result of the focus on safety and the low level of losses on the SSCP2 project, the program is trending toward a favorable financial outcome.

The contract with M&W set out two phases of work. Phase 1 required M&W to determine the cost of an OCIP and make recommendations. Phase 2 requires M&W to implement and administer the OCIP. A first amendment to the contract was executed on March 29, 2013, to initiate Phase 2 of the agreement.

In spite of an aggressive safety program in place on the SSCP2 project, some “near misses” occurred on the construction site in the Fall 2013. The Occupational Safety and Health Administration (OSHA) and the National Safety Council (NSC) define a near miss as an “unplanned event that did not result in injury, illness or damage, but, had the potential to do so.” OSHA and NSC stress that although near misses cause no immediate harm, they can precede events in which a loss or injury could occur. Because of the occurrence of the near misses, RT Project Managers determined it prudent to amend the OCIP Contract with M&W to provide additional safety services, specifically a comprehensive safety audit. Federal Transit Administration (FTA) Project Management Oversight (PMO) representatives were cognizant of the issues and concurred with the intended corrective actions.

Since the proposed comprehensive safety audit was not contemplated by the contract, a contract amendment was required to capture the added scope and cost. However, given the urgency surrounding the issue, staff inadvertently failed to follow the appropriate procurement procedures and M&W failed to follow the contract terms. Specifically, a formal amendment document was not prepared and executed by an RT representative with the authority to approve the contract modification prior to the order given to the Consultant to proceed with the work. The order given to proceed with the work was therefore an unauthorized procurement. Nevertheless, pursuant to RT staff direction, M&W performed the comprehensive safety audit, submitted a bill, and was paid for the work out of the Contract Total Consideration.

The work performed was necessary for the continued successful implementation of the OCIP. Neither RT staff, nor M&W staff intended to circumvent RT’s procurement requirements. The cost of additional work has been analyzed and found to be fair and reasonable. Absent ratification of the staff actions through approval of a Second Amendment, the contract will run out of funds before the overall work on the project is completed.

Additionally, the original contract not to exceed amount was based on a price requested by RT and proposed by M&W for a three year period which was the schedule for completing the South Sacramento Corridor Phase 2 construction contract and the start of revenue services and for M&W consultant services to close out the OCIP. The three year period ended in January 2016. Although start of revenue services began August 2015, there is still construction continuing on the project site. All construction is scheduled to be completed in mid-July 2016. The OCIP insurance

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policies expire on August 1, 2016. M&W claimed entitlement for additional consideration resulting from the time extension of construction and requested an amendment for an equitable adjustment to the contract price for their services performed between January 2016 and closeout of the OCIP program. RT staff have thoroughly evaluated the M&W claim for an amendment for a time extension and agreed that the claim is justified.

Staff recommends the Board adopt the attached resolution ratifying staff actions and approving the Second Amendment to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 with Merriwether & Williams Insurance Services to account for the safety audit in the amount of \$18,579 and for an extension to the Contract schedule and compensation for the time extension in the amount of \$41,660 for an increase in the total consideration of \$60,239.

RESOLUTION NO. 16-05-_____

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

May 23, 2016

APPROVING THE SECOND AMENDMENT TO THE CONTRACT FOR BROKERAGE SERVICES FOR OWNER CONTROLLED INSURANCE PROGRAM FOR SOUTH SACRAMENTO CORRIDOR PHASE 2 WITH MERRIWETHER & WILLIAMS INSURANCE SERVICES.

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the Board hereby ratifies the actions of staff in directing the performance of an on-site safety audit in January-February 2014 and in paying the invoice in the amount of \$18,579 for such work.

THAT, the modification to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 by and between the Sacramento Regional Transit District (therein "RT") and Merriwether & Williams Insurance Services (therein "Consultant"), whereby the parties formally incorporate a time extension and an equitable adjustment to the Contract in the amount of \$41,660, is hereby approved.

THAT, the Second Amendment to the Contract for Brokerage Services for Owner Controlled Insurance Program for South Sacramento Corridor Phase 2 by and between the Sacramento Regional Transit District (therein "RT") and Merriwether & Williams Insurance Services (therein "Consultant"), whereby the parties formally incorporate the safety audit work previously performed by Consultant and a time extension, for an increase in the Total Consideration by \$60,239, is hereby approved.

THAT, the Board Chair and General Manager are hereby authorized in directed to execute the Second Amendment.

JAY SCHENIRER, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: _____
Cindy Brooks, Assistant Secretary