

AGENDA REPORT

Resolution Authority to Place the Port of Oakland's Contractor's Pollution Liability Insurance Policy Arranged and Paid Through Prime Insurance Brokers Described Herein in an Amount Not to Exceed \$240,000. **Finance & Administration**

MEETING DATE: 6/22/2017

AMOUNT: \$240,000 Capital Expenditure

PARTIES INVOLVED: California State Association of Counties – Excess Insurance Authority (CSAC-EIA)
Folsom, CA
Alliant Insurance Services (Prime Broker)
Los Angeles, CA
Navigators Specialty Insurance Company
New York, NY
American Specialty Insurance Co.
New York, NY

SUBMITTED BY: Sara Lee, Chief Financial Officer

APPROVED BY: J. Christopher Lytle, Executive Director

ACTION TYPE: Resolution

EXECUTIVE SUMMARY

Port of Oakland ("Port") staff is requesting approval from the Board of Port Commissioners ("Board") to place a contractor's pollution liability ("CPL") insurance policy for the policy term July 14, 2017, through July 14, 2020. The CPL is part of the Port's Owner Controlled Insurance Program ("OCIP") and provides protection to the Port and the enrolled contractors in the event they release pollutants or exacerbate existing pollution conditions during the construction phase of Port capital improvement projects and cause bodily injury, property damage, or environmental damage. The proposed CPL insurance policy is expected to cost approximately \$181,174 but not to exceed \$240,000 (as further described below).

BACKGROUND

The Port's existing CPL insurance, placed by American Specialty Insurance Co. ("AIG"), is due to expire on July 14, 2017; accordingly, Port staff is seeking approval to place CPL insurance with Navigators Specialty Insurance Company ("Navigators") as further described below. The CPL is part of the Port's Owner Controlled Insurance Program ("OCIP") and provides protection to the Port and the enrolled contractors in the event they release pollutants or exacerbate existing pollution conditions during the construction phase of Port capital improvement projects and cause bodily injury, property damage, or environmental damage. The Port's currently executed public works contracts require the Port to provide CPL coverage.

The Port's Owner Controlled Insurance Program ("OCIP") provides workers' compensation, general liability and excess liability insurance protection for enrolled contractors and sub-contractors involved in Port public works projects. The Port has had an OCIP since 1999. The current OCIP expires February 2020.

CSAC-EIA

The California State Association of Counties ("CSAC") was established in 1895 and is a nonprofit corporation dedicated to meeting specific needs of its membership through advocacy and specialized programs and services. CSAC is governed by elected county supervisors. In 1979, CSAC-EIA, a joint powers authority was formed, for the sole purpose of finding cost effective insurance solutions and risk management services for CSAC members. CSAC-EIA's innovative and successful approach to insurance as well as its ability to combine and leverage the purchasing powers of many public entities has significantly reduced insurance costs and administrative burden for its members. Membership has expanded to include 54 (out of 58) counties in California as well as numerous other public entities including cities, school districts, special districts, and housing authorities. The Port became a member of CSAC-EIA in March 2013; this has allowed the Port to participate in CSAC-EIA's OCIP, professional liability insurance program for capital projects, and dental program at significantly reduced costs and administrative burden. CSAC-EIA selected Alliant Insurance Services ("Alliant") as the broker and administrator of the OCIP program.

ANALYSIS

Port staff asked CSAC-EIA's insurance broker, Alliant, to explore options for renewing the CPL coverage effective July 14, 2017. While the insurance market for CPL coverage continues to be favorable in general, the higher premium quoted for this renewal cycle is reflective of changes in appetite from some key insurers in this specialized market and additional anticipated construction volume. The policy is again offered for a 3-year term.

The table below compares the costs associated with the proposed CPL policy to the current CPL policy. In addition to the proposed renewal with Navigators shown in the table, Alliant also received quotes from two other insurance carriers: AIG (who placed the CPL policy that is set to expire on July 14, 2017) and Indian Harbor Insurance Company (also known as “XL”). Neither of these carriers offered terms as competitive as Navigators so the options they offered are not included in the table.

	Current CPL Policy (3 Year Policy Term)	Proposed CPL Policy (3 Year Policy Term)
Broker	CSAC-EIA/Alliant	CSAC-EIA/Alliant
Primary Insurance Carrier	AIG	Navigators
Expiration Date	July 14, 2017	July 14, 2020
Limit	\$20 million	\$20 million
Term	3 Years	3 Years
Deductible per Occurrence	\$100,000	\$100,000
Construction Spend	\$224,282,476	\$235,132,000
Average Rate/\$1000	\$0.724	\$0.771
Premium incl. Fees/Taxes	\$162,485	\$181,174

On-Going Work to Finalize CPL Renewal

As is customary in the insurance market, terms, conditions, and pricing are not locked-in until very close to the insurance policy effective date. As a result, it is important to note that through the insurance carrier’s on-going review or changes to the global insurance market, pricing and scope of coverage may become more or less favorable than summarized here.

Further, while it is expected that the Navigators CPL policy will cover all capital improvement construction projects going forward to policy expiration, Alliant has identified some reluctance by Navigators to cover those projects continuing from the AIG program and Alliant is still working on this issue. Navigators’ concern centers on picking up coverage for projects that are underway and nearing completion. If Navigators is unwilling to cover such work, arrangements will need to be made with AIG to extend coverage for any projects not acceptable to Navigators. If this is needed, it is likely to be done through endorsement to the expiring policy at an estimated premium to AIG of \$25,000. The Port also expects some reduction in Navigators’ premium for any values they do not cover; however this will need to be negotiated with both Navigators and AIG. A not to exceed amount of \$240,000 is requested to cover both potential changes in market conditions up until very close to the policy effective date, as well as the possibility that AIG may need to extend coverage for some projects.

Insurance Broker Compensation

Alliant will be compensated solely by commission paid by the insurance company. Such commission is retained from premiums paid through CSAC-EIA and is expected to be 12.5% of the premium cost (net of taxes/fees) or about \$22,601.51.

STRATEGIC PLAN

The action described herein would help the Port achieve the following goals and objectives in the Port's Strategic Plan (<http://www.portofoakland.com/pdf/about/strategicPlan2011-2015.pdf>)

- Goal A: Objective 1: Maximize the use of existing assets.
- Goal B: Objective 1: Retain existing customers and tenants.

BUDGET & STAFFING

The costs associated with the proposed Navigators CPL insurance policy as described in this Agenda Report are included in the FY 2017-18 Capital Budget, as part of project-specific budgets. There will be no impact on current staffing associated with this action.

MARITIME AVIATION PROJECT LABOR AGREEMENT (MAPLA)

The matters contained in this Agenda Report do not fall within the scope of the Port of Oakland Maritime and Aviation Project Labor Agreement (MAPLA) and the provisions of the MAPLA do not apply.

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LIVING WAGE

Living wage requirements, in accordance with the Port's Rules and Regulations for the Implementation and Enforcement of the Port of Oakland Living Wage Requirements (the "Living Wage Regulations"), do not apply because the requested action is not an agreement, contract, lease, or request to provide financial assistance within the meaning of the Living Wage Regulations.

ENVIRONMENTAL

CEQA Determination: The proposal to place Port insurance policies was reviewed in accordance with the requirements of the California Environmental Quality Act (CEQA), and the Port CEQA Guidelines. The general rule in Section 15061(b)(3) of the CEQA Guidelines states that CEQA applies only to activities that have a potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that taking those actions related to the Port's insurance program will result in a physical change in the environment, and therefore they are not subject to CEQA and no further environmental review is required.

GENERAL PLAN

This action does not change the use of any existing facility, make alterations to an existing facility, or create a new facility; therefore, a General Plan conformity determination pursuant to Section 727 of the City of Oakland Charter is not required.

OWNER-CONTROLLED INSURANCE PROGRAM (OCIP)

This action is not subject to the Port's Owner Controlled Insurance Program (OCIP) as it is not a capital improvement construction.

OPTIONS

Option 1 (Recommended Option). Place the Navigators CPL policy through CSAC-EIA as described in this Agenda Report for the term July 14, 2017, to July 14, 2020, and extend coverage with AIG (the incumbent insurer) as needed for any projects not accepted under the Navigators CPL policy at a total cost not to exceed \$240,000.

Option 2. Do not place the Navigators CPL policy and allow the current AIG CPL policy to expire effective July 14, 2017. This option is not recommended as the Port's currently executed public works contracts require the Port to provide CPL coverage. In addition, the Port would need to amend current and future public works bid documents and contracts to require contractors to carry separate insurance which would likely result in additional cost to the projects which would be passed on to the Port. If the construction contractors are required to carry the insurance, smaller businesses may not be able to carry limits high enough to adequately cover certain types of work. Further, applicable claims would be more complicated since multiple insurance carriers would be involved.

RECOMMENDATION

Port staff recommends that the Board authorize the Executive Director and other relevant staff, where appropriate, to:

- 1) Place the Navigators CPL insurance policy, to be placed and paid through CSAC-EIA and its insurance broker, Alliant, for a 3-year term, effective July 14, 2017, to July 14, 2020, as described in this agenda report and extend coverage with the incumbent insurer (AIG) as needed for any projects not accepted under the new Navigators CPL policy at a total cost not to exceed \$240,000; and
- 2) Execute any incidental documents necessary to implement the CSAC-EIA administration of the Navigators CPL policy.

All insurance policies and related documents shall be subject to the Port Attorney's review as to form and legality.