



**COMMISSION
AGENDA MEMORANDUM**

Item No. 8g

ACTION ITEM

Date of Meeting November 9, 2021

DATE: November 1, 2021

TO: Stephen P. Metruck, Executive Director

FROM: Jeff Hollingsworth, Director, Risk Management

SUBJECT: **Insurance Broker Services – Liability Insurance Program**

Amount of this request: \$425,000.00

Total estimated project cost: \$425,000.00

ACTION REQUESTED

Request Commission authorization for the Executive Director to execute a contract with an insurance brokerage firm for the purpose of procuring liability insurance for the Port over a three-year period with two one-year extension options. The procurement of liability broker insurance services for the three years plus the two one-year renewal options will utilize a competitive process and is estimated at \$425,000.00.

EXECUTIVE SUMMARY

The Port purchases liability insurance to protect against third party claims and litigation and uses a licensed broker to market, solicit bids, negotiate terms and coverage, and evaluate insurer solvency as part of the Port's liability procurement process. The liability insurance program renews annually on October 1 (insurance contracts are one-year contracts). The current liability broker services agreement expires May 1, 2022.

The broker will be licensed in accordance with RCW 48.17 and authorized to serve as a broker (agent) of the Port in all insurance transactions. The broker will be licensed to transact business with both admitted Washington State insurers as well as those domiciled elsewhere. Premium payments for insurance will be paid directly to the broker who in turn will pay the insurance carriers. The broker will also provide on-going service throughout the policy year in areas such as claims advocacy, issuance of bonds, certificates of insurance, review of certain contracts, and site visits for loss prevention. The broker also ensures that the Port's insurance carriers remain solvent and financially sound to pay claim obligations as the insurance contract requires.

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Neither the Port nor other private or public entities with the operational size of the Port can efficiently approach and negotiate directly with insurance carriers on items such as coverage terms, limits of liability, selection of select defense counsel, and deductible amounts. Firms like the Port use licensed brokers to facilitate this process and secure the best terms and coverage at the best price.

Upon selection of the broker, the Port and broker will collectively work towards the October 1, 2022, liability insurance renewal. The broker will submit insurance marketing information, applications, and policy specifications to various insurance markets to solicit bids for the liability insurance coverage. The Port has 10 different liability insurance policies and many insurance carriers who participate in providing liability insurance for the Port.

The broker will be licensed in accordance with RCW 48.17 and authorized to serve as a broker (agent) of the Port in these transactions. Insurance premium payments will be paid directly to the broker who in turn will pay the insurance companies. The Port manages and directly pays any costs of the insurance deductibles which depending on policy run up to \$1.5 million. The broker will also provide on-going service throughout the policy year in other areas such as recipient of new claims, claim advocacy, loss prevention, contract reviews, issuance of bonds, coverage reviews, endorsement issuance, and insurance certificate issuance.

The scope of work will be in effect for a five-year term, 2022 through 2027 with an initial three-year term and two additional one-year extension options. This will provide for insurance up to October 1, 2027. The Port's liability insurance renews annually and is purchased prior to or no later than October 1 for the upcoming 12months.

JUSTIFICATION

The Port utilizes the services of a Washington State licensed broker to facilitate the purchase of insurance. Licensed brokers have the ability to find suitable insurance carriers that have the financial strength and interest in insuring Port operations. Due to the size of the Port's total operations, there are several insurance companies who provide coverage under different policies.

The licensed broker also has the ability to purchase bonds the Port uses. This includes street use, pension, and notary bonds. The broker also issues evidence of insurance to interested third parties that arise out of contractual obligations such as when the Port rents or leases equipment.

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Insurance Purchased - The Port purchases excess non-aviation commercial general liability insurance that covers losses involving actual or alleged bodily injury and property damage that arises from claims made against the Port by third parties. This is a primary policy with a \$1 million per occurrence (claim) retention and a limit of \$10 million per occurrence. Excess to this primary policy is a policy with coverage up to a \$50 million per occurrence limit, which provides coverage for Port non-aviation exposures such as the grain terminal, cruise, marina, real estate, and non-NWSA terminal operations.

The Port purchases a separate airport operator's insurance policy that covers liability claims from third parties that involve property damage and bodily injury that arise out of airport operations, airport related operations and on airport premises (including premises managed by the airport properties group). The limit of liability is \$500 million with a \$1 million per occurrence (claim) retention.

Liability insurance is also purchased to cover exposures and liabilities that could stem from the wrongful or non-intentional acts of Port employees, directors, and Commissioners (Public Official Liability) and employment practices liability (\$10 million aggregate limit/\$1.5 million per claim retention); fiduciary liability (\$5 million limit/no-deductible), and law enforcement liability (\$10 million limit/\$1 million per wrongful act retention). There are also several small policies that cover Port vessels, drones, and employee theft and dishonesty.

DETAILS

Purpose is to hire a broker licensed for insurance transactions, to place and bind appropriate liability insurance coverage for the Port at the most economical cost.

Scope of Work

The services the broker will provide include:

1. Submission of marketing specifications to various insurance markets for the purposes of soliciting quotes on coverage from qualified and financially solvent insurance carriers.
2. Present to the Port the best proposals from insurers and negotiate directly with insurers on terms, deductibles, limits, and coverage extensions, as well as price.
3. Pay for the Port's insurance purchase transactions in both the admitted and surplus markets directly to the insurance companies. The Port will in turn pay premiums to the broker. The premiums the Port pays are all net of any insurance commissions.
4. Serve as the Port's insurance broker of record when asked and as needed. Insurance transactions must be done by licensed and bonded brokers or agents as defined in the Revised Code Washington to include admitted policies and surplus lines policies.

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5. Monitor the financial solvency of insurance companies who are insuring the Port and replace carriers as needed if they fall below an acceptable financial solvency rating.
6. Coordinate additional coverage for new operations and facilities as needed to ensure appropriate coverage.
7. Provide bonds to the Port as needed to include notary, pension, traffic control, and/or other bonds, normally from a regulatory agency like the City of Seattle, State of Washington, and Department of Ecology.
8. Provide insurance support services in the area of loss control, property valuations, and underwriting studies as requested by the Port.
9. Review contracts and interlocal agreements and issue upon request statements and/or certificates of insurance to third parties requesting such information.

Schedule

The Port will hire a broker by March 1, 2022, to allow for binding of liability insurance coverage on October 1, 2022.

ALTERNATIVES AND IMPLICATIONS CONSIDERED

Alternative 1 – Do not hire a licensed insurance broker and do not purchase commercial liability insurance.

Cost Implications: There are no direct costs to the Port with this option.

Pros:

1. The Port is not required by statute to purchase liability insurance. The Port could choose to wholly self-insure all the liability exposures without insurance, with the exception of auto insurance. Auto insurance requires regulatory approval from the Department of Licensing which the Port has. The annual savings projected forward would be roughly \$1.4 million for the next five years. However, a single lawsuit or litigation against the Port could exceed that amount several times over
2. The immediate savings would be the \$85,000 per year which is the projected broker fee going forward for five years.

Cons:

1. This could have a severe financial impact on the Port if the Port had one or more unforeseen events happen in any of its operational areas.

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2. A large unforeseen expense for something that could have been insured could have a severe impact on the short-term financials in the year the event was recorded.
3. The lack of insurance could be viewed also publicly as a lack of maintaining proper insurance equivalent to other airport and port entities.
4. Insurance for most policies pays for legal fees associated with the insurer defending the Port against third party allegations. These fees are outside of the liability limit of the policy, meaning the insurance limit is not eroded by the payment by the insurer for defense counsel expense.
5. Often third-party agreements require the Port to show evidence of insurance and would not simply accept at statement from the Port stating that the Port will pay for its obligations to the third party. This could prevent or slow down the execution of an agreement with a third party.
6. No other public entities similar in size to the Port use this approach.

This is not the recommended alternative.

Alternative 2 – Do not hire a licensed insurance broker and try to purchase sufficient commercial liability insurance coverage without a broker.

Cost Implications: The Port would save on broker service fees but not on the insurance itself.

Pros:

1. The Port could seek insurance companies who may work directly on providing the Port a liability policy (policies), and thus save on the fee for a broker. This using the estimate for services estimate for this request would be about \$85,000 per year for the next five years.
2. The Port would also have a cost for the insurance it could purchase but that would be higher than the cost compared to if a licensed broker was procuring this coverage. This is due to the fact very few insurance companies work directly with a large commercial client.
3. This approach would also lead to various Port operational areas without insurance (like Alternative #1) as some companies will not work directly with a client. Thus, the costs would approach Alternative #1 but without the cost of insurance savings.
4. In the event a claim occurs that includes litigation and outside counsel, the Port would have to fund that total expense and go through a process to select and hire such counsel.

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5. There is the opportunity of more tailored servicing by procuring through a broker who then can work with an insurer to provide supplemental services at little to no cost such as loss prevention.

Cons:

1. There are very few liability insurers who would work directly with the Port that the Port knows about. This could be problematic if this insurer declined to offer coverage for certain perils or had limited capacity to insure certain types of liability.
2. If the Port needed specialized insurance the selected insurer may not have the ability to meet this need, thus then requiring the Port to hire a broker to find suitable coverage for the specialized need. This would require a broker fee and could apply to specialty coverage the Port currently includes in its liability insurance such as active assailant coverage; first party mobile equipment coverage and terrorism coverage.
3. If the Port could not reach agreement on the price or on terms of coverage with the direct insurer, the Port could end up with no coverage (Alternative 1 above).
4. The Port would also have a cost for the insurance it could purchase but that would be higher than the cost compared to if a licensed broker was procuring this coverage. This is due to the fact very few insurance companies work directly with a large commercial client.
5. This approach would also lead to various Port operational areas without insurance (like Alternative #1) as some companies will not work directly with a client. Thus, the costs would approach Alternative #1 but without the cost of insurance savings.
6. In the event a claim occurs that includes litigation and outside counsel, the Port would have to fund that total expense and go through a process to select and hire such counsel.
7. There is the opportunity of more tailored servicing by procuring through a broker who then can work with an insurer to provide supplemental services at little to no cost such as loss prevention.
8. The Port does not have the staff or resources to perform the functions of an insurance broker. The Port does not purchase enough liability insurance throughout the year to justify adding this resource internally.

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9. The Port could internally assign staff to meet State of Washington admitted and surplus lines insurance requirements; however, that covers only State of Washington requirements and requirements and license requirements vary from State to State and from Country to Country.

This is not the recommended alternative.

Alternative 3 – Hire a licensed broker to seek solvent and qualified liability insurers who can provide financially sound insurance for the varied liability exposures of the Port. This broker would be licensed to transact business with admitted insurers in the State of Washington as well as insurers from the surplus lines marketplace, as well as foreign companies such as those represented by Lloyds of London.

Cost Implications: \$85,000 estimated average annual broker service fee.

Pros:

1. The benefit of using a licensed broker is the broker's ability to find and connect interested and financially capable insurance companies with the Port. Licensed brokers have contacts with several different insurance companies, around the United States and other countries, that they transact business with on a day-to-day basis. They also have knowledge of new insurance carriers who have the solvency to underwrite large accounts like the Port.
2. The cost of using a broker is less than 13% of the cost of the policy itself. The savings in the insurance product through a competitive selection of insurance using a broker, and the ability of the broker as an intermediary will cover the cost of the broker service fee.
3. Using a broker frees up staff time to focus on other projects and tasks and thus reduces need for staff.
4. In the event of an insurance claim, the broker has access to adjusters and loss investigators that can speed up the adjustment of the claim, recommend defense counsel and other experts, as well as negotiate the claim directly with the insurer using internal resources the Port does not have.
5. In the event of a new acquisition, the broker has the resources to obtain coverage quickly and facilitate any requirements of the purchase. This would include any insurance that is required as part of the contractual purchase or other agreement requirements. For example, when the Port agrees to provide dispatch services for some of King County, that agreement requires a certain type and level of commercial insurance.

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Cons:

1. A service agreement takes time to solicit and procure, and then manage over the term of the contract.
2. If a broker is selected, and the ensuing performance is poor, or the insurance proposals that the broker provides to the Port are unsatisfactory, the Port may end up with insurance that does not meet its needs.
3. In the event the Port is not happy with the selected broker, the Port would have to terminate the contract, and initiate a new solicitation process to find a replacement broker.

This is the recommended alternative.

FINANCIAL IMPLICATIONS

The estimated cost of liability broker services fee on an annual basis is \$85,000.

The request for authorization is only for the broker service fees and not for purchase of insurance.

Annual Budget Status and Source of Funds

Funding will be included in the annual operating budgets of Corporate Division

ATTACHMENTS TO THIS REQUEST

None

PREVIOUS COMMISSION ACTIONS OR BRIEFINGS

January 5, 2016 – Request to Commission to authorize funding for a broker for liability insurance services for 2016-2021 (note this contract was amended one year beyond the original contract term to avoid a procurement during Covid -2019).

September 8, 2015 – Presentation to the Commission on liability insurance program renewal.

January 14, 2011 – The Commission authorized procurement of liability broker insurance services for the years 2011 to 2016.