Metropolitan
Transportation
Authority

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TO: BOARD OF DIRECTORS

THROUGH: ROGER SNOBLE
CHIEF EXECUTIVE OFFICER

FROM: RICHARD BRUMBAUGH
CHIEF FINANCIAL OFFICER

SUBJECT: DUPONT SAFETY RESOURCES CONTRACT

ISSUE

This report will serve to inform the Board of no-cost amendments to the contract with DuPont Safety Resources by which the MTA receives safety consulting services.

BACKGROUND

On September 19, 2001, the Board awarded DuPont Safety Resources a five-year contract to provide safety management and loss prevention consulting services. The motivation was to reign in the MTA's runaway costs associated with workers' compensation and public liability and property loss.

DuPont's remuneration under the contract was an incentive fee – 15% of MTA's cost savings, as defined by two formulas. One formula defined how workers' compensation savings would be measured and the other did the same for public liability and damage savings arising from transit vehicle accidents.

New workers' compensation legislation effective January 1, 2003, that changed the statutory indemnity rate, has made the current formula for workers' compensation savings obsolete. Staff has addressed this and other issues by negotiating minor amendments to the original contract with DuPont and extending the contract term by two quarters without impacting the not-to-exceed value of the contract.

DISCUSSION

Resetting the Benchmark for DuPont Compensation

The original workers' compensation segment of the DuPont compensation formula was set at 2.88 lost workdays per employee, per quarter. This was based on the actual experience in the agreed-upon sample period of January 1, 2001 through

August 31, 2001. Therefore, DuPont needed a reading of less than 2.88 to receive compensation for that quarter. The lost workdays ratio continued to rise after August 31, 2001 and peaked at almost 3.5 in December 2001. At the time DuPont started the engagement, the lost workday ratio was 3.0. To address this issue of equity raised by DuPont, staff and DuPont have agreed to reset the base lost workday ratio at 3.0.

Adjusting the Lost Workdays Computation

Since the MTA did not have a reporting system to measure lost workdays directly, the original formula used a surrogate measure. That surrogate was computed by dividing the dollar amount of temporary disability payments (in a quarter) by the statutory daily limit of these payments per employee. Until December 31, 2002, the limit was $70 per day. However, AB 749 increased the daily limit to $86 for 2003 and further increase in later years. Staff and DuPont have agreed that the formula should employ the currently effective maximum daily limit for temporary disability payments under California law. Further, the rate will be adjusted annually as the law mandates.

Extension of the Contract Term

The original contract was for the five years through September 30, 2006 for both the workers' compensation and public liability and damage programs. DuPont proposed a two-quarter extension to the workers' compensation program. It would now terminate on March 31, 2007. This extension would not apply to the public liability and damage program

Impact of These Changes

These changes are within the spirit of the original agreement and are not impacting the scope of work or financial cap parameters as to require Board approval. Most importantly, the caps on DuPont's compensation would remain. The cap over the life of the contract, including the extension, is $13.8 million with $10.3 million for workers' compensation and $3.5 million for public liability and damage. In addition, the cap of $2.76 million per year, with rollovers, remains in force. Hence, the net effect of the changes allows DuPont to receive appropriate compensation for work performed. Compensation under the new terms will begin as of January 1, 2003. No retroactive compensation will be granted for the period October 1, 2001 through December 31, 2002. Further, the financial exposure of the MTA is limited to the current terms of the contract in the not to exceed amount of $13.8 million for both programs.

NEXT STEPS

DuPont is seeking payment for the first calendar quarter of 2003 by the end of May. An analysis by staff confirms that the financial terms fully protect the MTA and at the same time permit DuPont an adequate return for value created and committed.